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8–31–05 Wednesday
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WHEN: Thursday, September 22, 2005
9:00 a.m.–Noon

WHERE: Office of the Federal Register
Conference Room, Suite 700
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Washington, DC 20002

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

Rules and Regulations

Federal Register
Vol. 70, No. 168
Wednesday, August 31, 2005

DEPARTMENT OF HEALTH AND HUMAN SERVICES

5 CFR Parts 5501 and 5502

RIN 3209–AA15

Supplemental Standards of Ethical Conduct and Financial Disclosure Requirements for Employees of the Department of Health and Human Services

AGENCY: Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: The Department of Health and Human Services, with the concurrence of the Office of Government Ethics (OGE), is amending the HHS regulation that supplements the OGE Standards of Ethical Conduct. This final rule adopts, with certain revisions, the changes made to 5 CFR part 5501 in the interim final rule that was published on February 3, 2005, at 70 FR 5543. After considering comments to that rulemaking, this final rule: Clarifies the definition of an "employee of a component;" Amends the outside activity prior approval requirements applicable to employees of the Food and Drug Administration (FDA) and the National Institutes of Health (NIH); Revises prior approval information collection requirements and the waiver provision applicable to the outside activities prohibitions; Removes professional associations and other science and health-related organizations from the list of entities with which NIH employees are prohibited from engaging in outside activities; Adds exceptions to the NIH outside activities prohibition for delivering a class lecture as part of a regularly scheduled university course, serving on data and safety monitoring boards and grant and scientific review committees, and presenting in Grand Rounds; Limits the prohibition on holding financial interests in substantially affected organizations to senior NIH employees, their spouses, and minor children only, permits investments in such organizations that do not exceed $15,000, and allows holdings capped at $50,000 in sector mutual funds that concentrate their investments in the securities of substantially affected organizations; and Revises the outside award limitations for senior NIH employees by applying an official responsibility test for matters potentially involving an award donor. In addition, the financial disclosure reporting requirements specified in new part 5502 that were added by the interim final rule of February 3, 2005, at 70 FR 5543, and amended by an interim final rule that was published on June 28, 2005, at 70 FR 37009, are adopted as final, subject to certain amendments. The requirement to file a supplemental disclosure of financial interests in substantially affected organizations is refocused to apply to NIH employees who file a public or confidential financial disclosure report and other NIH employees who are designated as investigators in an NIH clinical research protocol approved by an institutional review board. The due date for the initial report is also changed.

DATES: This final rule is effective August 31, 2005.

FOR FURTHER INFORMATION CONTACT: Edgar M. Swindell, Associate General Counsel, Office of the General Counsel, Ethics Division, Department of Health and Human Services, telephone (202) 690–7258, fax (202) 205–9752.

SUPPLEMENTARY INFORMATION:

I. Background

The Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR part 2635, establish uniform rules of ethical conduct applicable to all executive branch personnel. Pursuant to 5 CFR 2635.105, an agency may, with the approval of the Office of Government Ethics, supplement those standards with additional rules that the agency determines are necessary and appropriate, in view of its programs and operations, to fulfill the purposes of part 2635. On July 30, 1996, with the concurrence and co-signature of the OGE Director, HHS published at 61 FR 39755 a final rule codified at 5 CFR part 5501 establishing supplemental standards of ethical conduct for its employees. The 1996 final rule was amended by an interim final rule with a request for comments that was published at 70 FR 5543 on February 3, 2005.

The interim final rule focused primarily on rules applicable to employees of the National Institutes of Health related to outside activities, financial holdings, and awards. Regulatory action was taken to address significant concerns about employee conduct in those areas which had been the subject of media reports and Congressional hearings. The resulting provisions generated considerable comment and prompted press coverage of employee objections, possible adverse effects on hiring and retention, and public reaction across a broad spectrum of viewpoints. The comments have been carefully considered and will be addressed more specifically below.

In addition, the Executive Branch Financial Disclosure Regulation, 5 CFR part 2634, specifies uniform rules governing the public and confidential financial disclosure systems established under the Ethics in Government Act. Pursuant to 5 CFR 2634.103, an agency may, subject to the prior written approval of the Office of Government Ethics, issue supplemental financial disclosure regulations that are necessary to address special or unique circumstances. The interim final rule amended chapter XLV of title 5 by adding new part 5502 to provide for an annual reporting by all employees of financial and other information concerning outside activities and a supplemental disclosure by all FDA and NIH employees with respect to prohibited financial interests. The latter disclosure requirement for NIH employees is being changed to correlate with revisions to the prohibited holdings rule.

Although this rulemaking confirms as final, with significant revisions, the amendments made by the interim final rule, the regulation will be reviewed within one year to evaluate its continued adequacy and effectiveness in relation to current agency responsibilities. As indicated in the preamble to the interim final rule at 70 FR 5543, those aspects of the rule governing outside activities continue to be under review for the remainder of the year indicated in that discussion.

II. Summary of Comments

Approximately 1200 of the more than 1400 comments timely submitted were from NIH employees, and about 70 comments were submitted by spouses and other family members of NIH employees. The remaining comments were submitted by health care professionals and scientific investigators at various universities and health care facilities, and a number of private sector entities, such as professional associations, other non-profit organizations, and corporations. The Department of Health and Human Services has considered each of the comments received. Those determined to be significant are discussed in further detail below in the context of the sections to which they pertain.

Many commenters submitted their views on more than one provision, and some provided multiple observations about a single provision. About 365 comments specifically addressed the outside activity limitations, and slightly more, about 385, focused on the prohibited holdings rule. The awards provision generated no specific reaction.

With respect to outside activities, some commenters objected to the increased paperwork and administrative burden that would be generated by the expanded prior approval requirement. They also expressed a more generalized concern that the restrictions would stifle the ability of government scientists to interact with their private sector counterparts, thus depriving them of personal and professional development opportunities and slowing the translation of scientific discoveries into tangible benefits for the public.

Regarding the prohibited holdings provision, many commenters questioned the relative fairness of the regulatory approach and its application to all NIH employees as well as their spouses and minor children. Some commenters who understood the need to divest holdings in substantially affected organizations urged a longer grace period within which to comply.

A number of intramural NIH employees, collectively known as the Assembly of Scientists, and others recommended as an alternative to the interim final rule that conduct provisions be established for each of several groups or categories of employees. The five or other number of categories recommended were intended to represent large groups of employees with relatively similar duties and authorities. Applicable rules would be tailored to each category in an effort to respond to the issues of greatest risk for each group. While the Department did not wholly accept these proposals, a number of revisions are being made in recognition of the differences between employees as to rank, duties, and their level of responsibility for matters affecting public health and clinical research protocols involving human subjects.

Comments, either of style or substance, that were generally supportive or generally critical of the interim final rule are not discussed in detail. The latter category of comments far exceeded the former, but a few commenters expressed support for the rule asserting that the provisions would reduce or eliminate financial motives that might be perceived as influencing scientific and medical research. Those submissions that offered no constructive comments, but simply inquired about the application of the interim final rule to the commenter's own situation, such as whether a particular company was a significantly affected organization or whether an aspect of the rule applied to the commenter, are not addressed. Those comments that discussed topics unrelated to government ethics, pointed to implementation issues that have been resolved, or were without substantive merit are also not discussed. Nor does this discourse specifically refer to comments that demonstrated a clear misunderstanding of the purpose or language of the interim final rule or of other applicable government ethics laws or regulations, except when such comments highlighted the need for NIH-specific standards. Among such comments were those suggesting that the Government must compensate employees for the costs of complying with regulations intended to prevent financial conflicts of interest, statements that new laws could not legally change the rules for current NIH employees, comments suggesting that it would not be appropriate for the Department to hold NIH employees to any standard that exceeds the standards applicable to employees of non-governmental entities, and comments indicating an unawareness of the exceptions to the outside activity and awards provisions applicable to NIH employees and to the financial holdings provision applicable to NIH employees and their spouses and minor children. Finally, comments regarding the administration of the ethics program at the NIH that are unrelated to substance or procedures in the interim final rule are not addressed.

III. Analysis of the Amendments

A. Supplemental Standards of Ethical Conduct

Section 5501.101 General

Paragraph (c) is amended to provide that the terms used in part 5501, unless otherwise defined, have the same meaning as those defined in parts 2635 and 2640. The paragraph previously referred only to part 2635. The change reflects the use within § 5501.110 of several terms defined in part 2640, such as holdings, pension plan, and sector mutual fund.

Section 5501.102 Designation of HHS Components as Separate Agencies

The change to this section clarifies an ambiguity in § 5501.102(b)(1). The definition of "employee of a component" can be interpreted to apply the supplemental ethics rules applicable to a designated agency component to all employees of a division or region of the Office of the General Counsel if the division or region is principally responsible for advising or representing that component. This formulation does not comport with the current assignment of responsibilities within OGC. For example, regional offices have generalist, rather than component-specific responsibilities. Some divisions have multiple branches, and then only one branch within a division can be said to focus primarily on a particular component. Accordingly, § 5501.102(b)(1) is amended to focus on the regularly assigned duties and responsibilities of an individual employee rather than that person's location within the organization.

Section 5501.106 Outside Employment and Other Outside Activities

Section 5501.106(c)(3)(ii)(B) originally provided for an exception to the FDA prohibited outside activities rule to allow clerical or similar services (such as cashier or janitorial services) for retail stores, such as supermarkets, drug stores, or department stores, that might otherwise be significantly regulated organizations due to their sales of FDA-regulated products. As drafted, the exception applied only where clerical or similar services were performed for retail stores. An employee who worked on the weekends as a plumber could not respond to an emergency repair call to fix a leaky pipe at a bottling plant or a pharmaceutical manufacturing facility. Although seemingly innocuous business relationships can raise conflicts and impartiality concerns, subjecting such activities to an absolute prohibition with only a narrow exception tied to

employment at retail stores does not appear to be warranted.

With respect to the parallel provision governing NIH employees at § 5501.109, several commenters urged that appropriate exceptions be adopted to accommodate activities that pose a diminished risk for potential conflicts or other ethics concerns, such as performing plumbing or electrical work, providing protective or security services, and rendering other types of personal services that are unrelated to the substantive programmatic functions of their employing agency. The Department concurs in those comments and will apply the changes urged for NIH employees to FDA employees as well. Accordingly, this final rule revises the exception to the FDA prohibited outside activity rule at § 5501.106(c)(3) to permit employment that primarily involves manual or unskilled labor or utilizes talents, skills, or interests in areas unrelated to the substantive programmatic activities of the FDA, such as clerical work, retail sales, service industry jobs, building trades, maintenance, or similar services. For example, assuming the activity would not otherwise violate a Federal statute or regulation or result in recusals that would materially impair the employee's ability to do his government job, an FDA employee covered by the rule would be permitted to work as a cashier at a retail drug store and ring up consumer purchases of soft drinks and prescription drugs, or as a truck driver who delivers such products to the retailer. However, § 5501.106(c)(3) will continue to prohibit a public or confidential filer at FDA from serving as a salesman for a beverage distributor or as a pharmaceutical company representative engaged in wholesale transactions.

Section 5501.106(d)(2)(i) as amended by the interim final rule required FDA and NIH employees to obtain prior approval for any outside employment or self-employed business activity. Prior to the interim final rule, this requirement applied only to the FDA. A number of commenters objected to extending the requirement to the NIH, citing the increased paperwork and administrative burden. They claimed that the expanded prior approval requirement would discourage participation in outside activities and lead to a decrease in civic engagement in community groups, volunteer efforts, and non-profit organizations that allegedly pose no conflict of interest for NIH employees. Other commenters questioned the need to approve outside activities with no apparent connection to agency operations such as lawn mowing, teaching music, or selling real estate.

Prior to the interim final rule, NIH employees were required only to obtain prior approval to engage in an outside activity that involved providing professional or consultative services; teaching, speaking, writing, or editing that related to an employee's official duties under the government-wide standard, 5 CFR 2635.807, or that resulted from an invitation from a prohibited source; or serving as an officer, director, or board member. The interim final rule widened the scope of activities subject to prior approval for several reasons. Prior approval at the NIH was expanded primarily as a means to implement the prohibition in § 5501.109 on outside activities with substantially affected organizations (SAO), supported research institutions (SRI), health care providers or insurers (HCPI), or related trade, professional, or similar associations (RTPSA). An approval process that focused only on professional or consultative services, teaching, speaking, writing, editing, or board service would not screen for prohibited activities with SAOs, SRIs, HCPIs, or RTPSAs that fell outside those enumerated categories. Moreover, activities considered less problematic, such as clerical work, protective services, or building maintenance, even when performed for organizations other than SAOs, SRIs, HCPIs, or RTPSAs, potentially could violate other supplemental provisions. For example, an NIH employee cannot work as a child care provider at a local Head Start agency if the employee's salary is funded by an Administration for Children and Families (ACF) grant, or moonlight as a guard for a protective services contractor providing security for an FDA facility because § 5501.106(c)(2) bars compensated employment in an HHS-funded activity. Thus, absent an expanded prior approval requirement, an employee might engage unintentionally in proscribed conduct. Prior approval also provided additional opportunities for a "teaching point" where an individual employee could receive guidance about conflicts under 18 U.S.C. 208, appearance concerns under 5 CFR 2635.502, and the use of public office for private gain addressed in 5 CFR 2635.702. The restrictions on representing outside entities before the Government under 18 U.S.C. 203 and 205 also could be stressed.

Despite the benefits of requiring prior approval for all outside activities, many commenters questioned whether requiring advance permission to paint houses, teach piano, or coach a sports team, for example, was warranted. The Department concurs that such activities generally are unlikely to pose conflicts or other ethics concerns. Consideration was given to excluding these examples and a list of similar activities from the prior approval requirement using the existing authority in § 5501.106(d)(6), now codified as paragraph (d)(7). Upon further evaluation, the Department has decided to remove entirely the requirement that FDA and NIH employees must obtain prior approval for all outside activities.

In its place, paragraph (d)(2) has been revised to require an FDA or NIH employee to obtain prior approval for any outside employment, as defined in 5 CFR 2635.603(a), with, or any self-employed business activity involving the sale or promotion of products or services of, any person or organization that is a prohibited source of the employee's agency component. The term "prohibited source" is defined in 5 CFR 2635.203(d) as any entity that seeks official action from, does business or seeks to do business with, or conducts activities regulated by the employee's agency; has interests that may be substantially affected by the performance or nonperformance of the employee's official duties; or is an organization the majority of whose members are such entities. The Department has designated separate agency components in § 5501.102 that define an "employee's agency" for purposes of outside activity prior approval. The FDA and the NIH have been so designated.

As a result of the revised prior approval requirement, if an outside activity does not involve professional or consultative services; teaching, speaking, writing, or editing that relates to official duties; or board service; an FDA or NIH employee no longer needs prior approval, unless the activity involves employment undertaken at the invitation of or performed for a prohibited source of the FDA or the NIH respectively.

For FDA or NIH employees who previously were subject to a prior approval requirement for all outside activities, this distinction aligns the prior approval requirement more closely with those types of external entities that are most likely to pose conflicts or raise appearance concerns. By tailoring the prior approval requirement in this manner, however, not all potential violations will be detected, as was previously discussed. An NIH employee who seeks to moonlight as a guard at a Head Start grantee agency or for the contractor that provides protective services for FDA at the Parklawn

Building will not have to file an HHS 520 prior approval form because the grantee and contractor are prohibited sources of ACF and FDA respectively, rather than NIH. This omission necessitates extensive training regarding the existing prohibitions in §§ 5501.106(c)(1) and (2) which bar employees from receiving compensation for assisting in the preparation of documents to be submitted to HHS or working in an HHS-funded activity.

Nevertheless, this change in the prior approval requirement from that specified in the interim final rule considerably reduces the paperwork and administrative burden for FDA and NIH employees and their respective agencies, without unduly diminishing the ability of each agency to ensure compliance with applicable ethics laws and regulations. A prior approval requirement for FDA or NIH employees that focused on whether the proposed employment is to be conducted with a prohibited source of HHS, as opposed to the employee's own component, would be unnecessarily broad, given the extensive reach of the Department's operations in many sectors of the economy. Accordingly, this final rule correlates prior approval with those activities and sources of outside employment that have a more clearly demonstrable nexus to the employee's work and that of the employing agency and hence the potential for ethics concerns.

The prior approval exceptions for activities with political, religious, social, fraternal, or recreational organizations formerly contained in paragraphs (d)(1)(iii) and (d)(2)(ii) are now combined, placed in new paragraph (d)(3)(i), and made applicable to all categories within the general approval requirement in paragraph (d)(1), as well as to paragraph (d)(2). The addition of new paragraph (d)(3) necessitated the renumbering of the succeeding paragraphs.

The amended paragraphs (d)(4)(ii)(D) through (d)(4)(ii)(O) specify information to be supplied by an employee who requests prior approval to engage in an outside activity. These paragraphs were edited without substantive change, with the exception of a new paragraph (d)(4)(ii)(F), which caused the subsequent subparagraphs to be redesignated. The new subparagraph (F) elicits travel reimbursement information separately from compensation because travel reimbursement is treated differently under various ethics rules depending upon the employee's status and other circumstances. Subparagraph (I) is amended to focus solely on compensation and non-travel related cash or in-kind items.

Paragraph (e) is amended to clarify that the designated agency ethics official may grant a written waiver of the prohibited outside activity rules to either an individual or a class of similarly situated persons.

Section 5501.109 Prohibited Outside Activities Applicable to Employees of the National Institutes of Health

Under § 5501.109(c)(1) of the interim final rule, subject to certain exceptions, all NIH employees were prohibited from engaging in employment (which includes serving as an officer, director, or other fiduciary board member, serving on a scientific advisory board or committee, and consulting or providing professional services) and compensated teaching, speaking, writing, or editing with a substantially affected organization (SAO), a supported research institution (SRI), a health care provider or insurer (HCPI), or a related trade, professional, or similar association (RTPSA). Employees were also prohibited from engaging in any self-employed business activity that involves the sale or promotion of products or services of an SAO or HCPI.

A "substantially affected organization" was defined to include those entities, irrespective of corporate form, that are engaged in the research, development, or manufacture of biotechnological, biostatistical, pharmaceutical, or medical devices, equipment, preparations, treatments, or products. The term includes those organizations a majority of whose members are engaged in such activities, such as industry trade associations, and any other entity classified by the designated agency ethics official as a substantially affected organization.

A "supported research institution" was defined as an educational institution or a non-profit independent research institute that within the last year or currently has applied for, proposed, or received an NIH grant, cooperative agreement, research and development contract, or cooperative research and development agreement (CRADA).

A "health care provider or insurer" was defined comprehensively to include the types of entities that are eligible to receive payments under the Medicare program for the provision of health care items or services and those risk-bearing entities that offer health insurance or health benefits coverage.

A "related trade, professional, or similar association" referred to a trade, professional, consumer, advocacy, or other organization, association, society, or similar group that is significantly involved in advancing the interests of persons or entities engaged in activities related to or affected by the health, scientific, or health care research conducted or funded by the NIH.

The prohibited outside activities rules applicable to all NIH employees were intended to focus on those types of activities and external entities that may pose the most significant risk of potential conflicts. The need for prophylactic rules barring certain types of outside activities derived in part from the significant administrative burden inherent in case-by-case determinations and the difficulties encountered by non-scientific staff at NIH tasked with administering the ethics program. In order to advise whether an outside activity was related to an employee's official duties, the ethics staff often had to differentiate scientific work performed as an official duty assignment from that proposed as an outside activity, a technical task for which they lacked the requisite expertise. See the discussion in the preamble to the interim final rule at 70 FR 5548.

A number of commenters asserted that the translation of NIH discoveries into viable and available medical advances to improve the public health would be hampered by the restriction on outside consulting and other collaborations with industry. Given that the interim final rule contained no provisions limiting the ability of NIH employees to engage officially in efforts to advance NIH discoveries, or to travel in their official capacities to present and discuss research findings (at the expense of others where appropriate under NIH policy), and contained a specific exception permitting employees to engage in outside activities involving efforts to commercialize invention rights waived to them by the agency, the basis for those comments is unclear. No changes have been made in response to such comments.

Nevertheless, the Department has revised § 5501.109 to accommodate a significant number of comments from professional associations, constituent groups, university observers, employees and their families regarding the new restriction on employment, including consultation and board service, with "related trade, professional or similar associations." Specifically, the comments expressed concern that restrictions imposed on the ability of NIH employees to participate fully as members of the greater scientific community would negatively affect the public health because NIH scientists would become isolated from their

counterparts in the private and academic sectors and ultimately a reduction in recruitment and retention at NIH would result. As noted in the preamble to the interim final rule at 70 FR 5549, the Department fully appreciates that scientific exchange between professionals is a cornerstone of the scientific process, and that science is a collaborative endeavor that necessitates interaction between experts in their respective fields.

Therefore, upon further consideration, outside activities with RTPSAs do not appear to raise the same concerns that underlie the prohibition on outside activities with SAOs, SRIs, and HCPIs. Although activities with health-related trade associations, such as those that represent health care providers or insurers, may present potential conflicts, the trade associations most directly interested in NIH research activities are those that represent the pharmaceutical, biotechnology, and medical device industries. Such trade associations are already covered by the prohibition on outside activities with SAOs due to the composition of their membership. In addition, serving as an officer or board member of, or consulting for, a professional association, an advocacy group, or a consumer organization, although not devoid of potential conflicts, presents financial interests and covered relationship issues distinct from those presented by employment or consulting with SAOs, SRIs, and HCPIs, the commercial interests of which are more directly affected by NIH research and funding activities. Consequently, in order to tailor more narrowly the scope of the outside activity prohibition, RTPSAs are deleted. Outside activities with RTPSAs that involve professional or consultative services, teaching, speaking, writing, editing, or board service or that are performed for a prohibited source of the employee's agency nevertheless require prior approval and are subject to the substantive provisions governing outside activities under prior existing law.

Section 5501.109(c)(3) of the interim final rule contained several exceptions designed to facilitate professional obligations and certain academic endeavors. These exceptions partially lifted the absolute bar on outside activities with the list of organizations described in § 5501.109(c)(1), but they did not affirmatively permit an activity that would otherwise violate Federal law or regulations, including 5 CFR parts 2635, 2636, and 5501. Specifically, exceptions were provided to allow, subject to the prior approval standard and the substantive provisions governing outside activities under prior existing law, participation in pursuits that are critical to maintaining technical proficiency, professional licenses, and academic credentials and disseminating scientific information, such as teaching involving multiple presentations at academic institutions, providing individual patient care, moderating or presenting at continuing professional education programs, and writing or editing scientific articles, textbooks, and treatises that are subjected to scientific peer review or a substantially equivalent editorial review process. The rule also contained exceptions for employment with, providing professional or consultative services to, or teaching, speaking, writing, or editing for, a political, religious, social, fraternal, or recreational organization. The rule also recognized that individuals may be employed in less problematic roles with outside entities such as providing clerical assistance, janitorial services, or unskilled labor.

The exception to the outside activity prohibition in § 5501.109(c)(3)(iii) for clerical or similar services is amended to correspond with the changes to the FDA counterpart to this provision at § 5501.106(c)(3)(ii)(B).

This final rule identifies four additional activities as exceptions to the outside activity prohibition in order to promote important educational objectives and advance public health and safety. As with the existing exceptions, any outside activity excepted from the prohibition in § 5501.109(c)(1) may be prohibited nonetheless if the activity would otherwise violate Federal law or regulations, including 5 CFR parts 2635, 2636, and 5501. With this caveat understood, two changes refine the existing exceptions for teaching and continuing professional education. Two other changes permit employees to serve, under certain circumstances, on data and safety monitoring boards associated with clinical research protocols and to lend their expertise on grant and scientific review committees for external funding institutions.

First, new § 5501.109(c)(3)(i)(B) permits compensation for a single class lecture delivered by the employee as part of a regularly scheduled course taught by an individual other than the employee at an accredited academic institution. Unlike the exception in paragraph (c)(3)(i)(A) for teaching a course involving multiple presentations, a compensated guest lecture delivered on a single occasion within the context of a college course is subject to the prohibition in 5 CFR 2635.807(a)(2)(i)(B) on accepting compensated teaching and speaking invitations extended primarily because of official position and the subject matter restrictions of 5 CFR 2635.807(a)(2)(i)(E). The latter provision refers to activities the subject matter of which deals in significant part with the employee's current or recent (within the last year) work assignments or any ongoing or announced policy, program, or operation of the agency. Similarly, the new exception for single lectures will not permit compensation for activity related to the employee's official duties within the meaning of any other provisions in 5 CFR 2635.807(a)(2)(i). Class lectures that would be prohibited as outside activities for these reasons may, in appropriate circumstances, be given as part of an employee's official duties with supervisory approval. Class lectures permissible as compensated outside activities would be those that result from invitations extended primarily because of the employee's expertise, that occur at universities lacking interests affected substantially by the employee's discharge of official duties, and that convey broad knowledge about a particular scientific or clinical area, and not those that focus on the employee's own work or other cutting-edge research conducted at the NIH.

Second, the current continuing professional education exception addresses only one aspect of the instructional continuum in the medical profession, *i.e.*, those seminars that are open to practicing physicians. Presentations geared to an audience composed of medical students and resident physicians-in-training, commonly known as Grand Rounds, are not covered, yet the educational interaction of NIH employees with this population is as critically important as participation in continuing medical education (CME) instruction, particularly given the potential to recruit attendees to work at the NIH. Accordingly, new paragraph (c)(3)(vii) incorporates a Grand Rounds exception with appropriate limitations to preclude participation in such activities if an SAO or speakers' bureau affiliated with an SAO sponsors the program or the employee's presentation other than through an unrestricted educational grant.

As with other exceptions in paragraph (c)(3), the exception for compensated Grand Rounds presentations is subject to the limitations in 5 CFR 2635.807. Accordingly, the invitation to deliver a Grand Rounds presentation cannot have been tendered to the employee primarily because of the employee's

official position or extended by an entity that has interests that may be substantially affected by the performance or nonperformance of the employee's official duties. The subject matter of the Grand Rounds presentation must not deal in significant part with the employee's recent (within the last year) or current assignments or any ongoing or announced policy, program, or operation of the NIH. The information conveyed may not draw substantially on ideas or official data that are nonpublic information.

Third, NIH employees often have played a critical role in serving on data and safety monitoring boards (DSMB) for clinical trials conducted at universities and medical research institutes. These boards monitor incoming statistical and other data on patient outcomes and adverse events that may be associated with a drug, biologic, or an intervention under review in a clinical trial. The DSMB members are experts in relevant disciplines, such as trial design, biostatistics, and bioethics, who are not directly involved in conducting the study. Although the DSMB members generally are considered a group separate from the sponsor (entity that funds the trial), the organizer (entity that selects the members), or the investigators (lead scientific staff that conducts the clinical research), DSMBs follow various models with respect to the degree of independence from the sponsor. See Arthur S. Slutsky *et al.*, *Data Safety and Monitoring Boards*, 350 N. Eng. J. Med. 1143 (2004); Food and Drug Administration, *Guidance for Clinical Trial Sponsors on the Establishment and Operation of Clinical Trial Data Monitoring Committees* (2001), draft guidance available at *http://www.fda.gov/cber/gdlns/clindatmon.pdf*; National Institutes of Health, *Further Guidance on Data and Safety Monitoring for Phase I and Phase II Trials* (2000), available at *http://grants.nih.gov/grants/guide/notice-files/NOT-OD-00-038.html*; and National Institutes of Health, *NIH Policy for Data and Safety Monitoring* (1998), available at *http://grants.nih.gov/grants/guide/notice-files/not98-084.html*.

The exception is intended to facilitate DSMB service, while maintaining the restrictions if a substantially affected organization selects the members of the DSMB or pays for their service, or if the protocol is funded by the NIH. The exception is also unavailable if the activity would violate the HHS-wide prohibitions in 5 CFR 5501.106(c)(1) and (2) relating to the compensated preparation of documents intended for submission to HHS and working for pay on an HHS-funded activity.

Fourth, NIH employees also have served on grant and scientific review committees for private foundations and other grant-making entities to assist those institutions in awarding their own funds to qualified applicants. NIH employees lend their considerable expertise in judging scientific merit, project feasibility, and other factors. As a result of the interim final rule, private foundations that funded scientific research activities would have been considered an RTPSA inasmuch as they are organizations that are "significantly involved in advancing the interests of persons or entities engaged in activities related to or affected by the health, scientific, or health care research conducted or funded by the NIH." 70 FR 5560. Serving on grant and scientific review committees for private foundations and other grant-making entities is in the public interest, even where done in a personal capacity. Accordingly, the rule is amended to provide an appropriate exception.

For the most part, permitting this activity has been accomplished by removing RTPSAs from the list of organizations described in § 5501.109(c)(1); however, because an SRI or an HCPI can also make grant awards, an exception in new paragraph (c)(3)(viii) is added. For example, a private foundation that makes research grants might itself receive a training or conference grant from the NIH and thus may be considered an SRI. Absent the exception, an employee might be precluded from serving on a body that assists the private foundation in awarding research grants. Similarly, a university or hospital within the SRI and HCPI categories might receive a donation or bequest intended for the purpose of making research grants. Those entities also may convene groups to advise on the selection of grantees.

The exception does not permit an employee to serve on a grant or scientific review committee for a grant award or program funded by the NIH. In addition, if the employee is paid to serve on a grant or scientific review committee, such service cannot involve the preparation of documents intended for submission to HHS within the meaning of § 5501.106(c)(1), and the grant award or program about which the committee provides input cannot be an HHS-funded activity as described in § 5501.106(c)(2). A further caveat is that a substantially affected organization cannot select the members of the grant or scientific review committee or pay them for their service. Provided that the funding institution retains control of member selection and payment, this caveat is not intended to preclude such service if a substantially affected organization provides an unrestricted grant to the funding institution.

Paragraphs (c)(4) and (c)(5), which provided a transitional grace period with an opportunity for an extension of time for terminating outside activities prohibited by paragraph (c)(1), are removed. The time periods calculated from the date of publication of the interim final rule, February 3, 2005, have passed, and such activities should now have ceased.

Section 5501.110 Prohibited Financial Interests Applicable to Employees of the National Institutes of Health

Section 5501.110 of the interim final rule prohibited employees of the NIH who file either a public or confidential financial disclosure report, and their spouses and minor children, from owning stock and having other financial interests in substantially affected organizations, subject to certain exceptions. All other NIH employees (as well as those confidential filers excluded from coverage by the rule) were subject to a $15,000 limit on the holding or acquisition of such interests and certain other restrictions. All NIH employees were permitted to invest freely in widely diversified, publicly traded mutual funds, even if those funds owned shares in substantially affected organizations. The rule also allowed spouses, and employees who came from industry, to retain financial interests derived from industry employment, such as stock options distributed as compensation, provided any resulting conflicts were managed appropriately.

Although these provisions were no more onerous than existing financial holdings restrictions that have applied to FDA employees since 1972, the commenters urged the Department to treat NIH employees differently than their counterparts at FDA because the NIH is not primarily a regulatory agency. They also criticized the application of the prohibited holdings rule to all NIH employees regardless of their relative seniority within the organization or the nature of their official duties. Some commented on the focus on substantially affected organizations for all employees rather than on office supplies, computer equipment, and travel-related businesses with which certain employees may have conflicts under pre-existing government-wide rules. A number of commenters asked why the rules applied to spouses and minor children who have no impact on the pharmaceutical and biotechnology

industries, and questioned more generally the exclusion of an entire economic sector from family investment and retirement portfolios.

Many comments demonstrated that the existing law governing conflicts of interest is not well understood. In arguing for elimination of the prohibited holdings rule, a number of commenters assumed incorrectly that a return to the status quo existing prior to the interim final rule invariably would preserve their ability to hold financial interests in substantially affected organizations, without realizing that each employee's situation would still be subject to a case-by-case analysis that could result in a directed divestiture. Others believed incorrectly that potential conflicts can be managed with full disclosure or that no violation can occur as long as the employee's actions do not actually move stock prices. Apparently unaware that those who give advice, conduct research, or recommend action in a government matter can be fully culpable, others saw no need to limit stock holding because they believed erroneously that only decision makers would have financial conflicts. Other commenters criticized a mechanistic or legalistic approach to conflicts without fully comprehending that Federal law prescribes very specific standards.

In implementing those standards, the interim final rule imposed a significantly changed environment for handling potential conflicts of interest arising from financial interests in substantially affected organizations. Congressional oversight and media reports included references to situations in which the connection to industry derived from financial holdings, and not solely from outside consulting. The new rule replaced a case-by-case evaluation of an employee's duties and financial interests with a bright-line rule designed to eliminate financial conflicts altogether. The rule encompassed the holdings of a spouse and minor children because their interests are imputed to the employee under the criminal conflict of interest statute, 18 U.S.C. 208. The changes wrought by the interim final rule were intended to protect both the employee and the agency more effectively.

Regulations governing the conduct of the employees of any agency must reflect the agency's effect on its constituents and stakeholders. The pharmaceutical, biotechnology, and health care industries have changed substantially over the past two decades, and continue to evolve at a rapid pace. The NIH does not exist or work in a vacuum. Every day, the NIH announces findings or results, scientific priorities, or strategic relationships or plans that impact companies in those fields. Any agency that has this power must hold itself and its employees to an appropriate standard. Given the complexity of the financial interests in those industries, monitoring and identifying conflict of interest situations on a case-by-case basis was no longer considered feasible for the NIH.

The interim final rule recognized no difference between "regulatory" and "non-regulatory" agencies because the legal standards applicable to employee conduct do not make such distinctions. Government agencies, without regard to how their functions may be characterized, exercise significant influence over the activities of non-Federal entities. A core mission of the NIH is to provide the basic science that forms the foundation upon which non-Federal research and development may proceed. Moreover, the potential to affect the financial interests of pharmaceutical and biotechnology companies through clinical trials can be significant. Most importantly, the rule was intended to assure the public in general, and human subjects enrolled in NIH trials in particular, that public health decisions would be made without even the appearance of influence from extraneous financial interests.

Prohibited holdings regulations similar to those applicable to the NIH have been considered an appropriate means to manage potential conflicts and address appearance concerns at various government agencies or agency subcomponents. The prohibitions at those agencies also apply to the financial interests of the employee, spouse, and minor children, and are enforced without regard to the nature of the individual employee's duties. For example, the Department of Housing and Urban Development (HUD) prohibits employee ownership of financial interests in housing and other real estate projects that HUD subsidizes and bars investments in Fannie Mae stock or the securities of other companies that are collateralized by Fannie Mae securities. 5 CFR 7501.104. At the Department of the Treasury, the Office of the Comptroller of the Currency bans investments in the banking industry. 5 CFR 3101.108. Various components of the Environmental Protection Agency (EPA) preclude investments in the automotive, pesticide, and mining industries, and EPA information resources management employees cannot own stock in data management, computer, or information processing firms. 5 CFR 6401.102. At the Department of Transportation, Federal Railroad Administration employees cannot invest in railroads, and Federal Aviation Administration employees are barred from owning stock in an airline or aircraft manufacturing company, or in their suppliers of components or parts. 5 CFR 6001.104.

Against this background, retaining a prohibited holdings regulation at the NIH is amply justified, and comments urging the elimination of the provision have not been adopted. Some commenters recommended retargeting the prohibition toward various subsets of the employee population. These suggestions have received serious consideration, although a number of concerns remain. Retargeting the financial holdings prohibition will require most employees to acquire a more detailed understanding of the law and assume a greater degree of personal responsibility for their actions.

Under the criminal conflict of interest statute, 18 U.S.C. 208, and OGE regulations in 5 CFR parts 2635 and 2640, employees, as well as their spouses and minor children, generally are not able to own stock valued above certain limits if the employees' official duties require them to be involved in particular matters that either involve a company in which they, their spouse, or minor children own stock or that would affect the financial interests of such a company or industry. Absent a waiver under § 208(b), conflicting assets worth more than these limits can be retained only if the employee, without materially impairing his ability to perform the duties of his position, can recuse from working on a matter that would affect the company, and provided that the arrangement does not adversely affect the agency's ability to accomplish its mission.

The task of monitoring investments and recusing appropriately is particularly challenging in an era where mergers, acquisitions, joint ventures, licensing agreements, and corporate name changes are common in the biomedical industry. One of the goals of the prohibited holdings rule was to avoid putting employees into a position where, in a fast paced work environment, they might participate in a government matter at their peril. Further, it had become increasingly difficult to sort through, on a case-by-case basis, these individual circumstances and police such situations to the degree required to maintain public confidence. These concerns remain, but there are other means to attain the desired objective, including increased staffing and resources to address the problem, a massive and continuous effort at

training employees, and holding employees personally accountable for knowing their holdings and recognizing the financial consequences of agency actions in which they may participate. The majority of commenters encouraged the agency to retarget the prohibited holdings rule. Many expressed their belief that stricter enforcement of prior rules would have avoided the problems. They observed that the public perception of the NIH is dependent largely upon the actions of its leadership and of those who are most directly involved in making key decisions that affect human subjects enrolled in clinical trials. A regulatory scheme that insulated senior employees from financial ties to industry was urged as a more measured response to the ethics concerns at the NIH.

The NIH has committed additional staff and resources to ethics program administration. Detailed training development is underway, and a renewed commitment to enforce the rules and to pursue appropriate corrective actions is evident. In this context, the Department has decided to adopt the recommendation that the prohibited holdings rule be limited to senior employees.

For this purpose, "senior employee" will include the NIH Director and the NIH Deputy Director; members of the senior staff within the Office of the Director who report directly to the NIH Director; the Directors, the Deputy Directors, Scientific Directors, and Clinical Directors of each NIH institute and center (IC); extramural program officials who report directly to an IC Director; and any employee of equivalent levels of decision-making responsibility who is designated as a senior employee by the designated agency ethics official or the NIH Director, in consultation with the designated agency ethics official.

Senior employees, their spouses, and minor children will be barred from having financial interests in substantially affected organizations, subject to the exceptions for pensions and other employee benefits, diversified mutual funds, and exceptional circumstances that existed under the interim final rule. In addition, because the OGE regulatory exemptions in 5 CFR 2640.201 and 2640.202 allow an employee to participate in certain types of matters depending upon the value of sector mutual fund interests and publicly traded securities within the investment portfolio of the employee, spouse, and minor children, § 5501.110 has been amended to allow senior employees to take advantage of the OGE exemptions. Under current *de minimis* thresholds, and subject to certain limitations, senior employees, their spouses, and minor children will be permitted to retain investments in SAOs capped at $15,000 in any one company. Although they may own multiple $15,000 holdings in SAOs, provided their cumulative interests in SAOs and SAO sector funds are less than 50 percent of their total investments, senior employees will be required, through broker instructions or otherwise, to monitor capital appreciation and divest any portion that exceeds $15,000. Similarly, total investments in sector funds that state in a prospectus the objective or practice of concentrating their investments in the securities of substantially affected organizations will be capped at $50,000. In calculating the fair market value of any holdings, including stock options, that are subject to these exemption limits, guidance issued by OGE for reporting asset values for financial disclosure purposes will apply. Other generally accepted valuation principles, not inconsistent with OGE guidance, also may be utilized.

The $15,000 cap will adjust automatically to any change in the exemption limit for matters involving parties at 5 CFR 2640.202(a), and the $50,000 cap will change in tandem with the sector fund monetary limit at 5 CFR 2640.201(b). As was the case in the interim final rule, although the dollar amounts are linked, an NIH exception and an OGE exemption may not be identical. For example, not all financial interests valued at $15,000 or less will be covered by the OGE regulatory exemption. Although the NIH exception permits a senior employee to hold a financial interest in a non-publicly traded company (assuming all the other criteria in the section are also satisfied), the OGE regulatory exemption only applies to securities in publicly traded companies or long-term Federal Government or municipal securities. Similarly, the NIH exception would permit ownership of stock options valued at $15,000 or less, but the OGE regulatory exemption for interests in securities would not apply. Accordingly, senior employees are reminded that even though § 5501.110 may allow retention of certain assets that would otherwise be prohibited, the financial interest may nevertheless be problematic under 18 U.S.C. 208. Absent a regulatory exemption that specifically addresses the financial interest, a recusal, a divestiture, or an individual waiver may be required.

The exceptional circumstances exception to the prohibited holdings rule, formerly found in paragraph (d)(3) of the interim final rule and now codified in the final rule as paragraph (d)(4), is amended to clarify that an exception may be granted to a class of individuals. Although the prohibition in § 5501.110(c) has been significantly narrowed in its application only to senior employees, their spouses and minor children, class exceptions may be appropriate where the identified class shares a common factual pattern and the requisite reasons for an exception are similarly evident. An example might be an exception for financial interests held by minor children of new entrant senior employees where the minors are within a certain number of months of attaining the age of majority, and the conflict arising from the retention of the financial interests can be managed through appropriate recusals for a time-limited period. Another example might address the inheritance by a senior employee of a prohibited financial interest a few months before retirement.

Section 5501.111 Awards Tendered to Employees of the National Institutes of Health

Section 5501.111, as added by the interim final rule, mandated that a senior NIH employee would not be permitted to accept a gift with an aggregate market value of more than $200, or cash or an investment interest, that constituted an award or incident to an award given because of the employee's official position or from a prohibited source. (Although often referred to as an award, an honor or other recognition that entailed only the receipt of a plaque or other item of little intrinsic value presented at a gathering of interested persons could be accepted if the presentation item satisfied the criteria for exclusion from the gift definition in 5 CFR 2635.203(b), and the free attendance, including food, refreshments, and entertainment, at the event met the exception requirements for widely attended gatherings and other events in 5 CFR 2635.204(g)).

Section 5501.111 prohibited non-senior employees from accepting awards from a person, organization, or other donor that: is seeking official action from the employee, any subordinate of the employee, or any agency component or subcomponent under the employee's official responsibility; does business or seeks to do business with any agency component or subcomponent under the employee's official responsibility; conducts activities substantially affected by any agency component or subcomponent under the employee's official responsibility; or is an organization a majority of whose members fall into one of the above

categories. In other words, such NIH employees could not accept a cash award or one valued at more than $200 that was tendered by a donor that had matters pending under the employee's official responsibility, either individually or before subordinates in the employee's chain of command, irrespective of whether the matter would ever reach the employee for advice or decision.

Upon further consideration, given that the official position and prohibited source criteria for precluding awards to senior employees added little to the official responsibility test applicable to every other employee, section 5501.111 is amended to apply one uniform rule for all employees based on whether the award donor has matters pending under the employee's official responsibility. The section incorporates the definition of "official responsibility" contained in 18 U.S.C. 202(b): "the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct Government action."

B. Supplemental Financial Disclosure Regulations

5502.105 Agency Procedures

The provision governing reporting procedures is amended to codify the authority of the designated agency ethics official or separate agency components, with the concurrence of the designated agency ethics official, to prescribe standard forms for the collection of information deemed necessary or appropriate to implement part 5502.

5502.106 Supplemental Disclosure of Prohibited Financial Interests Applicable to Employees of the Food and Drug Administration

Section 5502.106, as added by the interim final rule, required FDA and NIH employees to report prohibited financial interests, including those interests that are covered by an applicable exception, within 30 days of joining the agency, being reassigned from another part of HHS, or acquiring such interests, for example, through marriage, gift, or inheritance. This final rule specifies that the value of such interests must be reported. It also removes from § 5502.106 those provisions applicable to NIH employees and places them in a new § 5502.107 in order to correlate with the changes made to the NIH prohibited holdings regulation.

5502.107 Supplemental Disclosure of Financial Interests in Substantially Affected Organizations Applicable to Employees of the National Institutes of Health

New § 5502.107 carries forward the same reporting obligations previously contained in § 5502.106, and clarifies that the value of the reported interests must be disclosed, but revises the class of NIH employees subject to the reporting requirement. With the changes made to 5 CFR 5501.110, subjecting every employee to an extensive and burdensome disclosure obligation is no longer required. Although only senior NIH employees are now subject to a prohibited holdings rule, § 5502.107 will require disclosure of financial interests in substantially affected organizations by filers of public and confidential financial disclosure reports and those employees who are not filers but who serve as clinical investigators designated in an NIH clinical research protocol approved by an institutional review board. The term "clinical investigator" means the principal investigator, accountable investigator, lead associate investigator, medical advisory investigator, associate investigators, and other subinvestigators who make direct and significant contributions to the NIH clinical study, and may include registered nurses and allied health professionals so designated. Those employees who file public or confidential financial disclosure reports or who serve as clinical investigators possess budgetary, grant-making, or research authority, exercise discretion at higher levels within the agency, or are in positions with the potential to affect significantly the life and safety of human subjects. Because holdings in substantially affected organizations may continue to pose conflicts for this cohort of employees, and divestiture on a case-by-case basis may be required, disclosure continues to play a critical role in ethics program administration. Accordingly, depending on the number of clinical research protocols approved each year, approximately one-third to one-half of the NIH employee population will remain subject to the disclosure requirement specified in § 5502.107.

New § 5502.107 also restarts the initial reporting date for on-duty employees subject to the revised disclosure rule. Public filers, confidential filers, and clinical investigators on duty at the NIH on the effective date of this final rule must report in writing on or before October 31, 2005, their holdings in substantially affected organizations held on the date the report is filed. Under the prior regulation, the initial report presented a snapshot of an employee's holdings as of the effective date of the rule. As a result of filing extensions, a considerable gap in time could make the information on the filed report out-of-date. Accordingly, under new § 5502.107, the initial disclosure report must be current as of the date of filing.

IV. Matters of Regulatory Procedure

Regulatory Flexibility Act

The Department of Health and Human Services has determined under the Regulatory Flexibility Act, 5 U.S.C. chapter 6, that this rule will not have a significant economic impact on a substantial number of small entities because the rule prescribes personnel provisions that primarily affect HHS employees.

Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. chapter 35, does not apply to these final rule amendments because they do not contain information collection requirements that are subject to approval by the Office of Management and Budget.

Congressional Review Act

The Department of Health and Human Services has determined that this rulemaking is not a rule as defined in 5 U.S.C. 804, and, thus, does not require review by Congress.

Executive Orders 12866 and 12988

Because this rule relates to HHS personnel, it is exempt from the provisions of Executive Orders 12866 and 12988.

List of Subjects

5 CFR Part 5501

Conflict of interests, Ethics, Executive branch standards of conduct, Financial interests, Government employees, Outside activities.

5 CFR Part 5502

Conflict of interests, Ethics, Government employees, Outside activities, Reporting and recordkeeping requirements.

Dated: August 25, 2005.

Edgar M. Swindell,

Designated Agency Ethics Official, Department of Health and Human Services.

Dated: August 25, 2005.

Michael O. Leavitt,

Secretary, Department of Health and Human Services.

Approved: August 26, 2005.

Marilyn L. Glynn,

General Counsel, Office of Government Ethics.

■ For the reasons discussed in the preamble, the Department of Health and Human Services, with the concurrence of the Office of Government Ethics, adopts as a final rule the interim final rule that amended 5 CFR part 5501 and added 5 CFR part 5502, which was published at 70 FR 5543 on February 3, 2005, and which was amended by the interim final rule published at 70 FR 37009 on June 28, 2005, with the following changes:

Title 5—[Amended]

Chapter XLV—Department of Health and Human Services

PART 5501—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES

■ 1. The authority citation for part 5501 continues to read as follows:

Authority: 5 U.S.C. 301, 7301, 7353; 5 U.S.C. App. (Ethics in Government Act of 1978); 25 U.S.C. 450i(f); 42 U.S.C. 216; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.203, 2635.403, 2635.802, 2635.803.

■ 2. Amend § 5501.101 by revising the first sentence of the introductory text in paragraph (c) to read as follows:

§ 5501.101 General.

* * * * *

(c) *Definitions.* Unless a term is otherwise defined in this part, the definitions set forth in 5 CFR parts 2635 and 2640 apply to terms in this part.

* * *

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■ 3. Amend § 5501.102 by revising paragraph (b)(1) to read as follows:

§ 5501.102 Designation of HHS components as separate agencies.

* * * * *

(b) *Definitions*—(1) *Employee of a component* includes, in addition to employees actually within a component, an employee of the Office of the General Counsel whose regularly assigned duties and responsibilities principally involve the provision of legal services to the relevant component with respect to substantive programmatic issues.

* * * * *

■ 4. Amend § 5501.106 as follows:

■ a. Revise paragraph (c)(3)(ii)(B) to read as set forth below;

■ b. Revise paragraphs (d)(1) and (d)(2) to read as set forth below;

■ c. Redesignate paragraphs (d)(3) through (d)(6) as (d)(4) through (d)(7);

■ d. Add new paragraph (d)(3) to read as set forth below;

■ e. Revise redesignated paragraphs (d)(4)(ii)(D) and (d)(4)(ii)(E) to read as set forth below;

■ f. Redesignate paragraphs (d)(4)(ii)(F) through (d)(4)(ii)(N) as (d)(4)(ii)(G) through (d)(4)(ii)(O);

■ g. Revise redesignated paragraphs (d)(4)(ii)(I) through (d)(4)(ii)(K) to read as set forth below;

■ h. Add new paragraph (d)(4)(ii)(F) to read as set forth below;

■ i. Remove the words "paragraph (d)(3)" in the second sentence of redesignated paragraph (d)(6) and add. in their place, the words "paragraph (d)(4)";

■ j. Revise paragraph (e) to read as set forth below.

The additions and revisions read as follows:

§ 5501.106 Outside employment and other outside activities.

* * * * *

(c) * * *

(3) * * *

(ii) * * *

(B) The employment primarily involves manual or unskilled labor or utilizes talents, skills, or interests in areas unrelated to the substantive programmatic activities of the FDA, such as clerical work, retail sales, service industry jobs, building trades, maintenance, or similar services.

* * * * *

(d) *Prior approval for outside employment and other outside activities*-(1) *General approval requirement.* Except as provided in paragraph (d)(3) of this section, an employee shall obtain written approval prior to engaging, with or without compensation, in outside employment, including self-employed business activities, or other outside activities in which the employee seeks to:

(i) Provide consultative or professional services, including service as an expert witness;

(ii) Engage in teaching, speaking, writing, or editing that:

(A) Relates to the employee's official duties within the meaning of 5 CFR 2635.807(a)(2)(i)(B) through (E); or

(B) Would be undertaken as a result of an invitation to engage in the activity that was extended to the employee by a person or organization that is a prohibited source within the meaning of 5 CFR 2635.203(d), as modified by the separate HHS component agency designations in § 5501.102; or

(iii) Provide services to a non-Federal entity as an officer, director, or board member, or as a member of a group, such as a planning commission, advisory council, editorial board, or scientific or technical advisory board or panel, which requires the provision of advice, counsel, or consultation.

(2) *Additional approval requirement for employees of the Food and Drug Administration and the National Institutes of Health.* In addition to the general approval requirements set forth in paragraph (d)(1) of this section, an employee of the Food and Drug Administration or the National Institutes of Health shall obtain written approval prior to engaging, with or without compensation, in any outside employment, as defined in 5 CFR 2635.603(a), with, or any self-employed business activity involving the sale or promotion of products or services of, any person or organization that is a prohibited source of the employee's component agency.

(3) *Exceptions to prior approval requirements.* (i) Notwithstanding the requirements of paragraphs (d)(1) and (d)(2) of this section, prior approval is not required for participation in the activities of a political, religious, social, fraternal, or recreational organization unless:

(A) The activity or the position held in the organization requires the provision of professional services within the meaning of paragraph (b)(3) of this section; or

(B) The activity is performed for compensation other than the reimbursement of expenses.

(ii) Notwithstanding the requirements of paragraphs (d)(1) and (d)(2) of this section, prior approval is not required for participation in an employment or other outside activity that has been exempted under paragraph (d)(7) of this section.

(4) * * *

(ii) * * *

(D) A description of how the employee's official duties will affect the interests of the person for whom or organization with which the proposed activity will be performed:

(E) The name and address of the person for whom or organization with which the work or activity will be done, including the location where the services will be performed;

(F) A statement as to whether travel is involved and, if so, whether the transportation, lodging, meals, or per diem will be at the employee's expense or provided by the person for whom or organization with which the work or activity will be done, and a description of the arrangements and an estimate of the costs of items to be furnished or reimbursed by the outside entity;

(G) The estimated total time that will be devoted to the activity. If the proposed outside activity is to be performed on a continuing basis, a statement of the estimated number of hours per year; for other employment, a statement of the anticipated beginning and ending date;

(H) A statement as to whether the work can be performed entirely outside of the employee's regular duty hours and, if not, the estimated number of hours and type of leave that will be required;

(I) The method or basis of any compensation to be received (e.g., fee, honorarium, retainer, salary, advance, royalty, stock, stock options, non-travel related expenses, or other form of remuneration tendered in cash or in-kind in connection with the proposed activity) from the person for whom or organization with which the work or activity will be done;

(J) The amount of any compensation to be received from the person for whom or organization with which the work or activity will be done;

(K) The amount and date of any compensation received, or due for services performed, within the current and previous six calendar years immediately preceding the submission of the request for approval from the person for whom or organization with which the work or activity will be done (including any amount received or due from an agent, affiliate, parent, subsidiary, or predecessor of the proposed payor);

(L) A statement as to whether the compensation is derived from an HHS grant, contract, cooperative agreement, or other source of HHS funding or attributed to services related to an activity funded by HHS, regardless of the specific source of the compensation;

(M) For activities involving the provision of consultative or professional services, a statement indicating whether the client, employer, or other person on whose behalf the services are performed is receiving, or intends to seek, an HHS grant, contract, cooperative agreement, or other funding relationship;

(N) For activities involving teaching, speaking, or writing, a syllabus, outline, summary, synopsis, draft or similar description of the content and subject matter involved in the course, speech, or written product (including, if available, a copy of the text of any speech) and the proposed text of any disclaimer required by 5 CFR 2635.807(b)(2) or by the instructions or manual issuances authorized under paragraph (d)(7) of this section; and

(O) Such other relevant information that the designated agency ethics official or, with the concurrence of the designated agency ethics official, each of the separate agency components of HHS listed in § 5501.102(a) determines is necessary or appropriate in order to evaluate whether a proposed activity is likely to involve conduct prohibited by statute or Federal regulations, including 5 CFR part 2635 and this part.

* * * * *

(6) *Duration of approval.* Approval shall be effective for a period not to exceed one year from the date of approval. Upon a significant change in the nature of the outside activity or in the employee's official position or duties, the employee shall submit a revised request for approval using the procedure in paragraph (d)(4) of this section. * * *

* * * * *

(e) *Waivers.* The designated agency ethics official may grant a written waiver, for an individual or class of similarly situated individuals, from any prohibited outside activity provision in this section or in § 5501.109 based on a determination that the waiver is not inconsistent with part 2635 of this title or otherwise prohibited by law and that, under the particular circumstances, application of the prohibition is not necessary to avoid the appearance of misuse of position or loss of impartiality or otherwise to ensure confidence in the impartiality and objectivity with which agency programs are administered. An individual or class waiver under this paragraph may impose appropriate conditions, such as requiring execution of a written disqualification.

■ 5. Amend § 5501.109 as follows:
■ a. Remove paragraph (b)(6);
■ b. Redesignate paragraphs (b)(7) through (b)(11) as (b)(9) through (b)(13);
■ c. Redesignate paragraph (b)(5) as (b)(8);
■ d. Add new paragraphs (b)(6) and (b)(7) to read as set forth below;
■ e. Redesignate paragraphs (b)(3) and (b)(4) as (b)(4) and (b)(5);
■ f. Add new paragraph (b)(3) to read as set forth below;
■ g. Revise redesignated paragraphs (b)(4), (b)(8), (b)(10), (b)(11), and (b)(13) introductory text to read as set forth below;
■ h. Revise paragraph (c)(1) to read as set forth below;
■ i. Revise paragraphs (c)(3)(i), (c)(3)(iii) and (c)(3)(v) to read as set forth below:
■ j. Add new paragraphs (c)(3)(vi) through (c)(3)(viii) to read as set forth below;
■ k. Remove paragraphs (c)(4) and (c)(5).

The additions and revisions read as follows:

§ 5501.109 Prohibited outside activities applicable to employees of the National Institutes of Health.

* * * * *

(b) * * *

(3) *Data and safety monitoring board* (DSMB) means a board, committee, or panel constituted in connection with an ongoing clinical study and comprised of individuals, other than the study sponsors, organizers, and investigators, who possess expertise in relevant specialties and disciplines, such as trial design, biostatistics, and bioethics, and who review accumulating safety and outcome data in order to ensure the continuing safety of the participating human subjects and of those yet to be recruited, and to assess the continuing validity and scientific merit of the investigation.

(4) *Educational activity provider* means a supported research institution or a health care provider or insurer that presents Grand Rounds or offers accredited continuing professional education (or, in the case of a profession or academic discipline whose members are not subject to licensure and which does not have program accreditation requirements, an education program determined by the designated agency ethics official or his designee or, in consultation with the designated agency ethics official or his designee, the NIH Director or the NIH Director's designee to be substantially equivalent to an accredited continuing professional education program), but does not include a substantially affected organization.

(5) *Employment* has the meaning specified in 5 CFR 2635.603(a).

(6) *Grand Rounds* means a regularly scheduled, interactive presentation or series of educational seminars that focus on clinical cases, recent biomedical or behavioral research results, or a review of scientific research methods and findings in a specific field, with supporting basic and clinical science information, that are conducted in an accredited medical school or an affiliated teaching hospital setting that provides practicing physicians, faculty, fellows, resident physician trainees, medical students, graduate students, and post-doctoral fellows, as well as allied and associated health professionals, and other staff, an

opportunity to evaluate outcomes of patient treatment decisions, a forum to discuss clinical decision making, and a means to impart updates in diagnosis, treatment, therapy, and research as indicated by the context of the cases presented.

(7) *Grant or scientific review committee* means a board, committee, or panel of qualified experts assembled by an external grant-making entity or other funding institution for the purpose of making a funding decision, the members of which review, evaluate, rate, rank, or otherwise assess a proposed or ongoing project or program for which grant support is sought on the basis of various factors, such as scientific merit, feasibility, significance, approach, and originality (and scientific progress in any previous period of funding), and gauge the ability of the applicant(s), principal and associate investigators, and scientific team members to complete successfully the project or program, and then recommend to the grantor whether to fund or continue to fund a particular proposal or ongoing program.

(8) *Health care provider or insurer* means a hospital, clinic, skilled nursing facility, rehabilitation facility, durable medical equipment supplier, home health agency, hospice program, health maintenance organization, managed care organization, or other provider of health care items and services as defined in sections 1877(h)(6) or 1903(w)(7) of the Social Security Act (42 U.S.C. 1395nn(h)(6) or 1396b(w)(7)) and any entity organized and licensed as a risk-bearing entity eligible to offer health insurance or health benefits coverage.

(9) *Scientific peer review* is the evaluation of scientific research findings for competence, significance, and originality by qualified experts who research and submit work for publication in the same field and which provides systematized accountability for adherence to ethical guidelines commonly accepted within the relevant research community for disseminating scientific information.

(10) *Substantially affected organization* means:

(i) A biotechnology or pharmaceutical company; a medical device manufacturer; or a corporation, partnership, or other enterprise or entity significantly involved, directly or through subsidiaries, in the research, development, or manufacture of biotechnological, biostatistical, pharmaceutical, or medical devices, equipment, preparations, treatments, or products;

(ii) Any organization a majority of whose members are described in paragraph (b)(10)(i) of this section; and

(iii) Any other organization determined by the designated agency ethics official or, in consultation with the designated agency ethics official, by the NIH Director or the NIH Director's designee that is substantially affected by the programs, policies, or operations of the NIH.

(11) *Supported research institution* means any educational institution or non-profit independent research institute that:

(i) Is, or within the last year has been, an applicant for or recipient of an NIH grant, cooperative agreement, or research and development contract;

(ii) Is, or within the last year has been, a proposer of or party to a cooperative research and development agreement (CRADA) with the NIH; or

(iii) Any organization a majority of whose members are described in paragraphs (b)(11)(i) or (ii) of this section.

(12) *Unrestricted educational grant* means funds received by or available to an educational activity provider from another source that are granted without stipulated conditions for their use other than the limitation that the funds shall be used to advance an educational program of the grant recipient. For purposes of this section, an educational grant shall not be considered unrestricted if the funding source for a Grand Rounds or a continuing professional education program directly or indirectly:

(i) Selects or recommends the moderators, speakers, or presenters at the sponsored event;

(ii) Independently provides additional funding to the moderators, speakers, or presenters in connection with the educational activity;

(iii) Determines or recommends the audience composition;

(iv) Specifies or recommends the topics to be addressed, or

(v) Controls or recommends the planning, content, or implementation of the program in a manner inconsistent with guidelines established by a relevant professional association or accrediting organization that are designed to ensure that such activities are accurate, balanced, educational, free from commercial bias, nonpromotional, and independent of the influence of the funding source.

(13) *Unrestricted financial contribution* means funds received by or available to a publisher, academic press, editorial board, or other entity affiliated with or operated by a supported research institution or a health care provider or insurer from another source that are provided without stipulated conditions for their use other than the limitation that the funds shall be used to advance peer-reviewed writing or editing by the funds recipient. For purposes of this section, a financial contribution shall not be considered unrestricted if the funding source for peer-reviewed writing or editing directly or indirectly: * * *

* * * * *

(c) *Prohibitions*—(1) *Prohibited outside activities with substantially affected organizations, supported research institutions, and health care providers or insurers.* Except as permitted by paragraph (c)(3) of this section, an employee of the NIH shall not:

(i) Engage in employment with a substantially affected organization, a supported research institution, or a health care provider or insurer;

(ii) Teach, speak, write, or edit for compensation for any substantially affected organization, supported research institution, or health care provider or insurer; or

(iii) Engage in any employment or self-employed business activity that involves the sale or promotion of products or services of a substantially affected organization or a health care provider or insurer, except for the purpose of commercializing invention rights obtained by the employee pursuant to Executive Order 10096, 15 U.S.C. 3710d, or implementing regulations.

* * * * *

(3) * * *

(i) *Teaching.* An employee may engage in and accept compensation for:

(A) Teaching a course requiring multiple presentations as permitted under 5 CFR 2635.807(a)(3); or

(B) Delivering a class lecture that is unrelated to the employee's official duties within the meaning of 5 CFR 2635.807 if the activity is performed as part of a regularly scheduled course offered under the established curriculum of an institution of higher education as defined at 20 U.S.C. 1001.

* * * * *

(iii) *Clerical, retail, service industry, building trades, maintenance, or similar services.* An employee may engage in and accept compensation for any outside employment or self-employed business activity that primarily involves manual or unskilled labor or utilizes talents, skills, or interests in areas unrelated to the health and scientific research activities of the NIH, such as clerical work, retail sales, service

industry jobs, building trades, maintenance, or similar services.

* * * * *

(v) *Authorship of writings subjected to scientific peer review or a substantially equivalent editorial review process.* An employee may engage in and accept compensation for a writing or editing activity that is unrelated to the employee's official duties within the meaning of 5 CFR 2635.807 if the resulting article, chapter, essay, report, text, or other writing is submitted to a publisher, academic press, editorial board, or other entity affiliated with or operated by a supported research institution or a health care provider or insurer for publication in a scientific journal, textbook, or similar publication that subjects manuscripts to scientific peer review or a substantially equivalent editorial review process. If a substantially affected organization funds the publishing activities of a supported research institution or a health care provider or insurer, this exception is inapplicable unless the substantially affected organization is involved only as an unrestricted financial contributor and exercises no editorial control.

(vi) *Data and safety monitoring boards.* An employee may serve as a member of a data and safety monitoring board for a clinical study conducted by a supported research institution or health care provider or insurer, provided that:

(A) The members of the DSMB are not selected or paid for their service by a substantially affected organization;

(B) The clinical study is not funded under a grant, cooperative agreement, or research and development contract from, or conducted pursuant to a cooperative research and development agreement (CRADA) with, or aided under another funding mechanism by, the NIH; and

(C) If the service is performed for compensation, the service does not entail prohibited assistance in the preparation of documents intended for submission to HHS within the meaning of § 5501.106(c)(1), and the clinical study is not an HHS-funded activity described in § 5501.106(c)(2).

(vii) *Grand Rounds.* An employee may engage in and accept compensation for a teaching, speaking, writing, or editing activity that is unrelated to the employee's official duties within the meaning of 5 CFR 2635.807 if the activity is performed as part of a Grand Rounds program conducted by an accredited educational institution offering instruction in the life sciences, such as a medical school or school of public health, or by an affiliated teaching hospital, provided that:

(A) The employee's presentation includes an interactive component, such as visiting patients or discussing individual clinical cases, or interacting for educational purposes with undergraduates, graduates, or post-graduate students and fellows, in addition to any lecture;

(B) The audience is composed primarily of faculty and students or trainees registered in a biomedical or health-related program of studies; and

(C) A substantially affected organization or a speakers' bureau affiliated with a substantially affected organization does not sponsor or underwrite the costs of the Grand Rounds program or the employee's presentation, except pursuant to an unrestricted educational grant.

(viii) *Grant or scientific review committee.* An employee may serve on a grant or scientific review committee for a supported research institution or a health care provider or insurer, provided that:

(A) The members of the grant or scientific review committee are not selected or paid for their service by a substantially affected organization;

(B) The grant award or program in relation to which the recommendation of the grant or scientific review committee is sought is not funded under a grant, cooperative agreement, or research and development contract from, conducted pursuant to a cooperative research and development agreement (CRADA) with, or aided under another funding mechanism by, the NIH; and

(C) If the service is performed for compensation, the service does not entail prohibited assistance in the preparation of documents intended for submission to HHS within the meaning of § 5501.106(c)(1), and the grant award or program in relation to which the recommendation of the grant or scientific review committee is sought is not an HHS-funded activity described in § 5501.106(c)(2).

■ 6. Amend § 5501.110 as follows:

■ a. Revise the section heading to read as set forth below;

■ b. Remove paragraphs (b)(1), (b)(2), and (b)(4);

■ c. Redesignate paragraph (b)(3) as (b)(2);

■ d. Revise redesignated paragraph (b)(2) to read as set forth below;

■ e. Add new paragraph (b)(1) to read as set forth below;

■ f. Remove paragraphs (c), (d), (e), and (f) and the notes to paragraphs (e)(1) and (e);

■ g. Redesignate paragraph (g) as (e) and revise redesignated paragraph (e) to read as set forth below;

■ h. Add new paragraphs (c) and (d) and notes to paragraphs (d)(1) and (d) to read as set forth below.

The additions and revisions read as follows:

§ 5501.110 Prohibited financial interests applicable to senior employees of the National Institutes of Health.

* * * * *

(b) * * *

(1) *Senior employee* means the Director and the Deputy Director of the National Institutes of Health; members of the senior staff within the Office of the Director who report directly to the NIH Director; the Directors, the Deputy Directors, Scientific Directors, and Clinical Directors of each Institute and Center within NIH; Extramural Program Officials who report directly to an Institute or Center Director; and any employee of equivalent levels of decision-making responsibility who is designated as a senior employee by the designated agency ethics official or the NIH Director, in consultation with the designated agency ethics official.

(2) *Substantially affected organization* has the meaning set forth in § 5501.109(b)(10).

(c) *Prohibition applicable to senior employees.* Except as permitted by paragraph (d) of this section, a senior employee or the spouse or minor child of such senior employee shall not have a financial interest in a substantially affected organization.

(d) *Exceptions for certain financial interests.* Notwithstanding the prohibition in paragraph (c) of this section:

(1) *Pension or other employee benefit.* A senior employee or spouse or minor child of a senior employee may have a financial interest, such as a pension or other employee benefit, arising from employment with a substantially affected organization.

Note to Paragraph (d)(1): NIH employees, as opposed to spouses and minor children of employees, are generally prohibited under § 5501.109 from engaging in current employment with a substantially affected organization.

(2) *De minimis holdings.* A senior employee or spouse or minor child of a senior employee may have a financial interest in a substantially affected organization if:

(i) The aggregate market value of the combined interests of the senior employee and the senior employee's spouse and minor children in any one substantially affected organization is equal to or less than the *de minimis* exemption limit for matters involving parties established by 5 CFR 2640.202(a) or $15,000, whichever is greater;

(ii) The holding, if it represents an equity interest, constitutes less than 1 percent of the total outstanding equity of the organization; and

(iii) The total holdings in substantially affected organizations and sector mutual funds that, in the literature they distribute to prospective and current investors or participants, state the objective or practice of concentrating their investments in the securities of substantially affected organizations account for less than 50 percent of the total value of the combined investment portfolios of the senior employee and the senior employee's spouse and minor children.

(3) *Diversified mutual funds.* A senior employee or spouse or minor child of a senior employee may have an interest in a substantially affected organization that constitutes any interest in a publicly traded or publicly available investment fund (*e.g.*, a mutual fund), or a widely held pension or similar fund, which, in the literature it distributes to prospective and current investors or participants, does not indicate the objective or practice of concentrating its investments in substantially affected organizations, if the employee neither exercises control nor has the ability to exercise control over the financial interests held in the fund.

(4) *Exceptional circumstances.* In cases involving exceptional circumstances, the NIH Director or the NIH Director's designee, with the approval of the designated agency ethics official or his designee, may grant a written exception to permit a senior employee, or the spouse or minor child of a senior employee, or a class of such individuals, to hold a financial interest in a substantially affected organization based upon a determination that the application of the prohibition in paragraph (c) of this section is not necessary to ensure public confidence in the impartiality or objectivity with which HHS programs are administered or to avoid a violation of part 2635 of this title.

(5) *Technology transfer.* A senior employee may have a financial interest in connection with the development and commercialization of invention rights obtained by the employee pursuant to Executive Order 10096, 15 U.S.C. 3710d, or implementing regulations.

(6) *Sector mutual funds.* (i) A senior employee or spouse or minor child of a senior employee may have an interest in a substantially affected organization that constitutes any interest in a sector mutual fund that, in the literature it distributes to prospective and current investors or participants, does not indicate the objective or practice of concentrating its investments in the biomedical science, pharmaceutical, medical device, biotechnology, or health industry sectors.

(ii) A senior employee or spouse or minor child of a senior employee may have an interest in a substantially affected organization that constitutes any interest in a sector mutual fund that, in the literature it distributes to prospective and current investors or participants, states the objective or practice of concentrating its investments in the securities of substantially affected organizations provided that:

(A) The aggregate market value of the combined ownership interests of the senior employee and the senior employee's spouse and minor children in such sector funds is equal to or less than the *de minimis* exemption limit for sector mutual funds established by 5 CFR 2640.201(b)(2)(i) or $50,000, whichever is greater; and

(B) The total holdings in substantially affected organizations and in sector mutual funds that, in the literature they distribute to prospective and current investors or participants, state the objective or practice of concentrating their investments in the securities of substantially affected organizations account for less than 50 percent of the total value of the combined investment portfolios of the senior employee and the senior employee's spouse and minor children.

Note to Paragraph (d): With respect to any excepted financial interest, employees are reminded of their obligations under 5 CFR part 2635, and specifically their obligation under subpart D to disqualify themselves from participating in any particular matter in which they, their spouses or minor children have a financial interest arising from publicly traded securities that exceeds the *de minimis* thresholds specified in the regulatory exemption at 5 CFR 2640.202 or from non-publicly traded securities that are not covered by the regulatory exemption. Furthermore, the agency may prohibit or restrict an individual employee from acquiring or holding any financial interest or a class of financial interests based on the agency's determination that the interest creates a substantial conflict with the employee's duties, within the meaning of 5 CFR 2635.403.

(e) *Reporting and divestiture.* For purposes of determining the divestiture period specified in 5 CFR 2635.403(d), as applied to financial interests prohibited under paragraph (c) of this section, the "date divestiture is first directed" means the date on which the new entrant public or confidential financial disclosure report required by part 2634 of this title or any report required by § 5502.107(c) of this chapter is due.

■ 7. Amend § 5501.111 as follows:

■ a. Redesignate paragraphs (b), (c), and (d) as (c), (d) and (e);

■ b. Redesignate the note to paragraph (b) as the note to paragraph (c);

■ c. Add new paragraph (b) to read as set forth below;

■ d. Remove redesignated paragraph (c)(1) and redesignate paragraphs (c)(2) and (c)(3) as (c)(1) and (c)(2);

■ e. In the introductory text of redesignated paragraph (c)(1), remove the phrase "other than a senior employee";

■ f. Revise redesignated paragraph (c)(1)(iv) to read as set forth below;

■ g. Revise the introductory text of redesignated paragraph (d) to read as set forth below;

■ h. Revise redesignated paragraphs (d)(2) and (d)(3) to read as set forth below;

■ i. Revise redesignated paragraph (e)(1) and the introductory text of redesignated paragraph (e)(2) to read as set forth below.

The additions and revisions read as follows:

§ 5501.111 Awards tendered to employees of the National Institutes of Health.

* * * * *

(b) *Definitions.* For purposes of this section, official responsibility has the meaning set forth in 18 U.S.C. 202(b).

(c) *Additional limitations on awards to employees of the National Institutes of Health.* The following limitations shall apply to the acceptance by an employee of an award pursuant to 5 CFR 2635.204(d):

(1) *Limitations applicable to employees with official responsibility for matters affecting an award donor.* An employee shall not accept a gift with an aggregate market value of more than $200, or that is cash or an investment interest, that is an award or incident to an award from a person, organization, or other donor that:

* * * * *

(iv) Is an organization a majority of whose members are described in paragraphs (c)(1)(i) through (iii) of this section.

(2) *Prior approval of awards.* (i) No employee shall accept an award under 5 CFR 2635.204(d) or this section unless the receipt thereof has been approved in writing in advance in accordance with procedures specified by the designated agency ethics official, or with the concurrence of the designated agency ethics official, the NIH Director or the NIH Director's designee.

(ii) Approval shall be granted only upon a determination that acceptance of

the award is not prohibited by statute or Federal regulation, including 5 CFR part 2635 and this part.

Note to Paragraph (c): In some circumstances cash and other things of value provided in connection with the provision of personal services, including speaking or writing, may be compensation, not a gift. Other ethics rules governing outside activities may restrict receipt of such compensation. See, for example, 5 CFR 2635.807.

(d) *Exception.* Notwithstanding the prohibition in paragraph (c)(1) of this section, the NIH Director (or the Secretary, with respect to awards tendered to the NIH Director), with the approval of the designated agency ethics official, may grant a written exception to permit an employee to accept an award otherwise prohibited by this section under the following conditions:

* * * * *

(2) Absent the prohibition in paragraph (c)(1) of this section, the gift would be permitted under part 2635 of this title; and

(3) The designated agency ethics official shall have determined that the application of the prohibition in paragraph (c)(1) of this section is not necessary to ensure public confidence in the impartiality or objectivity with which NIH programs are administered or to avoid a violation of part 2635 of this title.

(e) *Disposition of improperly accepted awards.*—(1) *Failure to obtain prior approval.* If an employee accepts an award for which approval is required under paragraph (c)(2) of this section without obtaining such approval, the employee may be required, in addition to any penalty provided by law and applicable regulations, to forfeit the award by returning it to the donor.

(2) *Receipt of prohibited award.* If an employee accepts an award prohibited by paragraph (c)(1) of this section, the employee shall be required, in addition to any penalty provided by law and applicable regulations, to:

* * * * *

PART 5502—SUPPLEMENTAL FINANCIAL DISCLOSURE REQUIREMENTS FOR EMPLOYEES OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES

■ 8. The authority citation for part 5502 continues to read as follows:

Authority: 5 U.S.C. 301, 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2634.103.

§ 5502.102 [Amended]

■ 9. Amend § 5502.102 by removing from the second sentence the citation to "§ 5501.106(d)(4)" and add in its place the citation "§ 5501.106(d)(5)".

■ 10. Amend § 5502.105 by revising paragraph (a) to read as follows:

§ 5502.105 Agency procedures.

(a) The designated agency ethics official or, with the concurrence of the designated agency ethics official, each of the separate agency components of HHS listed in § 5501.102(a) of this chapter may prescribe forms for the collection of information under this part and establish procedures for the submission and review of each report filed. These procedures may provide for filing extensions, for good cause shown, totaling not more than 90 days.

* * * * *

■ 11. Amend § 5502.106 by revising the section heading and paragraphs (b)(2) and (c) to read as follows:

§ 5502.106 Supplemental disclosure of prohibited financial interests applicable to employees of the Food and Drug Administration.

* * * * *

(b) * * *

(2) *Prohibited financial interest* means a financial interest prohibited by § 5501.104(a), including those financial interests that are excepted under § 5501.104(b) of this chapter.

* * * * *

(c) *Report of prohibited financial interests.*—(1) *New entrant employees.* A new entrant employee, other than a public filer or a confidential filer, shall report in writing within 30 days after entering on duty with the FDA any prohibited financial interest and the value thereof held upon commencement of employment with the agency.

(2) *Reassigned employees.* An employee of a separate agency component other than the FDA or of the remainder of HHS who is reassigned to a position at the FDA shall report in writing within 30 days of entering on duty with the FDA any prohibited financial interest and the value thereof held on the effective date of the reassignment to the agency.

(3) *Incumbent employees.* An incumbent employee of the FDA who acquires any prohibited financial interest shall report such interest and the value thereof in writing within 30 days after acquiring the financial interest.

■ 12. Add new § 5502.107 to read as follows:

§ 5502.107 Supplemental disclosure of financial interests in substantially affected organizations applicable to employees of the National Institutes of Health.

(a) *Applicability.* This section does not apply to special Government employees.

(b) *Definitions.* For purposes of this section:

(1) *Clinical investigator* means an employee identified as a principal investigator, accountable investigator, lead associate investigator, medical advisory investigator, associate investigator, or other subinvestigator in an NIH clinical study involving human subjects under a clinical research protocol approved by an institutional review board.

(2) *Clinical research* has the meaning set forth in 42 U.S.C. 284d(b).

(3) *Institutional review board* (IRB) means any board, committee, or other group formally designated by an institution to review a clinical research protocol and approve the initiation of biomedical research involving human subjects and to assess periodically the progress of the investigation to protect the rights and welfare of the trial participants.

(4) *Confidential filer* means an employee who meets the criteria in 5 CFR 2634.904 and who has not been excluded from the requirement of filing a confidential financial disclosure report under the procedures in 5 CFR 2634.905.

(5) *Public filer* means an employee who meets the criteria in 5 CFR 2634.202 and who has not been excluded from the requirement of filing a public financial disclosure report under the procedures in 5 CFR 2634.203.

(6) *Remainder of HHS* has the meaning set forth in § 5501.102(b)(2) of this chapter.

(7) *Separate agency component* has the meaning set forth in § 5501.102(a) of this chapter.

(8) *Substantially affected organization* has the meaning set forth in § 5501.109(b)(10) of this chapter.

(c) *Report of financial interests in substantially affected organizations.*—(1) *New entrant employees.* A new entrant employee, other than a public filer or a confidential filer, who is designated to serve as a clinical investigator shall report in writing within 30 days after entering on duty with the NIH any financial interest in a substantially affected organization and the value thereof held upon commencement of employment with the agency.

(2) *Reassigned employees.* An employee of a separate agency

component, other than the NIH, or of the remainder of HHS who is either a public filer, a confidential filer, or a clinical investigator who is reassigned to a position at the NIH shall report in writing within 30 days of entering on duty with the NIH any financial interest in a substantially affected organization and the value thereof held on the effective date of the reassignment to the agency.

(3) *Incumbent employees.* An incumbent employee of the NIH who is either a public filer, a confidential filer, or a clinical investigator who acquires any financial interest in a substantially affected organization shall report such interest and the value thereof in writing within 30 days after acquiring the financial interest. Any incumbent employee, irrespective of financial disclosure filing status, who is designated a clinical investigator shall report in writing within 30 days of the approval of the clinical research protocol by the relevant institutional review board any financial interest in a substantially affected organization and the value thereof held on the date of the IRB approval.

(4) *Initial report by on duty employees.* An employee on duty at the NIH on August 31, 2005, who is either a public filer, a confidential filer, or a clinical investigator shall report in writing on or before October 31, 2005, any financial interest in a substantially affected organization and the value thereof held on the date the report is filed.

[FR Doc. 05–17352 Filed 8–26–05; 4:12 pm]

BILLING CODE 4150–03–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 906

[Docket No. FV05–906–1 IFR]

Oranges and Grapefruit Grown in Lower Rio Grande Valley in Texas; Changes to Container and Pack Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule revises the container and pack requirements currently prescribed under the marketing order (order) covering oranges and grapefruit grown in the Lower Rio Grande Valley in Texas. The order regulates the handling of such fruit and is administered locally by the Texas Valley Citrus Committee (Committee). This rule revises the orange and grapefruit rules and regulations and container requirements by adding eight new containers to the list of authorized containers for use by Texas citrus handlers, removing one obsolete container, and by combining all the requirements on authorized bags into one grouping for easier reference. Other changes would revise incorrect references to the U.S. grade standards for oranges and grapefruit grown in Texas. These changes are expected to help handlers compete more effectively in the marketplace, better meet the needs of buyers, and to improve producer returns.

DATES: Effective September 1, 2005; comments received by October 31, 2005 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; E-mail: *moab.docketclerk@usda.gov;* or Internet: *http://www.regulations.gov.* All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

FOR FURTHER INFORMATION CONTACT: Belinda G. Garza, Regional Manager, Texas Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (956) 682–2833, Fax: (956) 682–5942; 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, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 906, as amended (7 CFR part 906), regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. 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 USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule revises container and pack requirements currently prescribed under the Texas orange and grapefruit order and makes several conforming and formatting changes. The rule revises the rules and regulations and container requirements by adding eight new containers to the list of authorized containers for use by Texas citrus handlers, removing one obsolete container, combining all of the requirements on authorized bags into one grouping for easier reference. Other changes include revising incorrect references to the U.S. grade standards for oranges and grapefruit grown in Texas and States other than Florida, California, and Arizona (7 CFR 51.680 through 51.714 for oranges, and 7 CFR 51.620 through 51.653 for grapefruit). See 68 FR 46433, August 6, 2003; and 66 FR 48785, September 24, 2001, for information on changes in the grade standards that necessitate changes to the Texas citrus handling regulations.

These changes are expected to help handlers compete more effectively in the marketplace, better meet the needs of buyers, and to improve producer returns by lessening the chances of confusion in the marketplace. In addition, this rule is needed to bring the administrative rules and regulations into conformance with amendments to the U.S. grade standards. These changes were unanimously recommended by the Committee on May 26, 2005.

The Committee's Container Subcommittee met on May 26, 2005, and discussed in detail possible changes to the order's container requirements. The Subcommittee recommended and the Committee unanimously approved the following changes to the orange and grapefruit container requirements and conforming changes to the rules and regulations to bring them into conformity with current industry marketing practices:

(1) The addition of eight new containers to the list of approved containers for use by Texas citrus handlers;

(2) Elimination of one obsolete wire crib from the container list, combining five approved bags currently listed separately into one paragraph for easier reference, and removal of some obsolete language in one container listing;

(3) Removal of references no longer needed in the Texas citrus regulations because of changes made to the U.S. grade standards for Texas oranges and grapefruit; and

(4) Correction of references to legal citations in the regulations.

Under the terms of the order, fresh market shipments of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas are required to be inspected and meet grade, size, container, and pack requirements. Section 906.40 of the citrus marketing order authorizes the issuance of container and pack regulations. Section 906.340(a)(1) of the order's rules and regulations outlines container requirements for fresh shipments of Texas oranges and grapefruit. Container standardization helps prevent marketing confusion and helps foster orderly marketing.

Section 906.340 of the rules and regulations currently specifies 12 containers authorized for use by Texas citrus handlers in paragraphs (a)(1)(i) through (xi). Paragraph (a)(1)(xi) of § 906.340 also authorizes the Committee to approve other types of containers for testing purposes. Such test containers are subject to prior approval and their use by handlers is supervised by the Committee.

Over the years, the Committee has approved experimental containers for use by the Texas citrus industry. The need for experimental containers is reviewed by the Committee at the beginning of each season. Because buyers, including retailers, have continued to request an increasing array of containers to meet their various display objectives, the number of Committee approved experimental containers has increased to 11.

The Committee recently reviewed its experimental container list and decided to convert those being used by handlers to permanent status and to eliminate those that are no longer in use to lessen the chances of confusion and to reflect current industry practices. The Committee, therefore, recommended converting to permanent status 8 experimental containers which are now widely used by the Texas citrus industry. The following containers are being added from the experimental to the permanent container list:

(1) A fiberboard box holding two layers of fruit, with approximate dimensions of 23 inches in length, 15½ inches in width, and 7 inches in depth;

(2) A fiberboard box with approximate dimensions of 15 inches in length, 11 inches in width, and 7¼ inches in depth;

(3) A fiberboard box with approximate dimensions of 25¾ inches in length, 15 inches in width, and 8⅜ to 10½ inches in depth;

(4) A reusable collapsible plastic container with approximate dimensions of 23 inches in length, 15 inches in width, and 7 to 11 inches in depth;

(5) A reusable collapsible plastic container with approximate dimensions of 14¼ x 10¾ x 6¾ inches;

(6) A reusable collapsible plastic bin with approximate dimensions of 36¾ x 44¾ x 27 inches;

(7) An octagonal bulk triple wall fiberboard crib with approximate dimensions of 37¾ inches in length, 25 inches in width, and 25 inches in height: *Provided,* That the container has a Mullen or Cady test of at least 1,100 pounds: *And Provided further,* That the container may be used to pack any poly or mesh bags authorized in this section, or bulk fruit; and

(8) A closed fiberboard carton with approximate dimensions of 16½ inches in length, 10¾ inches in width, and 6$^{15}/_{16}$ inches in height: *Provided,* That the container has a Mullen or Cady test of at least 200 pounds.

Retail buyers are highly competitive and experiment frequently with various in-store displays utilizing many container shapes and sizes. This on-going experimentation is influenced by European container development, consumer preferences, evolving handling/racking systems, and other variables. These forces have combined to demand an ever-increasing number of containers on the experimental list. The intent of this action is to reduce the experimental container list to those which truly are still experimental. The Committee believes that the permanent container list should include all the containers that the Texas citrus industry is now using. Adding the widely used containers to the permanent list and eliminating the unused containers will bring the requirements into conformity with current industry operating practices. This change does not preclude additional containers being put on the experimental list, when necessary.

The Committee also recommended eliminating one wire crib on the permanent list with dimensions of 46½ by 37 by 30 inches, which is no longer being used by the industry. In addition, the Committee recommended combining five separate bag requirements into one paragraph to allow for easier reference. Currently, paragraph (a)(1) of § 906.340 lists bags with a capacity of five, eight, ten, or 18 pounds of fruit, and four-pound poly or vexar bags for oranges only, in paragraphs (iv), (v), (x), and (xi). This action combines all the bag requirements into one paragraph so all of the authorized bags can be more easily identified. In addition, the Committee indicated that a reference to Freight Container Tariff 2G currently in § 906.340(a)(1)(ii) is obsolete and recommended that it be removed.

The U.S. grade standards for Texas oranges and grapefruit were revised in 2003 to reflect current cultural and marketing practices and give the industry greater flexibility in marketing and packaging using developing technologies. The major changes revised the standard pack sections of the grapefruit and orange standards, and the standard sizing section of the orange standard by redefining the requirements in each section. To bring the order regulations into conformity with the revised grade standards, in paragraphs (c)(3)(iii) and (e) of § 906.120, the words "which are packed level full," and "the term *level full* means that the fruit is level with the top edge of the bottom section of the carton;", respectively, are removed. In addition, in the introductory text of paragraph (a)(2)(i)(A) of § 906.340, the comma after "and" and the words "when place packed in cartons or other containers," are removed. Also, in the introductory text of paragraph (a)(2)(ii)(A) of

§ 906.340, the words "when place packed in cartons or other containers" and "and otherwise meet the requirements of standard sizing", when referring to grapefruit only, are removed.

Furthermore, this rule revises several references to the U.S. standards for grapefruit and oranges for Texas and States other than Florida, California, and Arizona in paragraph (b) of § 906.137 in the regulations to correctly identify applicable sections of the U.S. grade standards. A reference to "51.625" of the U.S. grade standards for grapefruit is incorrect and is revised to "51.653" to accurately reflect sections of the grapefruit standard. Also, an incorrect reference to "51.712" of the U.S. grade standards for oranges is revised to "51.714". In addition, a reference to "51.652" in paragraph (c) of § 906.340 is revised to "51.653".

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

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

There are approximately 18 handlers of oranges and grapefruit who are subject to regulation under the order and approximately 212 producers in the production area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $6,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000. The majority of Texas orange and grapefruit handlers and producers may be classified as small entities.

Last year, 6 of the 18 handlers (33 percent) each shipped over 545,951 7/10 bushel cartons of oranges and grapefruit. Using an average f.o.b. price of $10.99 per carton, these handlers could be considered large businesses by the SBA, and the remaining 12 handlers (67 percent) could be considered small businesses. Of the approximately 212 producers within the production area, few have sufficient acreage to generate sales in excess of $750,000; therefore, a majority of producers of Texas oranges and grapefruit may be classified as small entities.

This rule revises container and pack requirements currently prescribed under the Texas orange and grapefruit order and makes several conforming and formatting changes. The rule revises the rules and regulations and container requirements by adding eight new containers to the list of authorized containers for use by Texas citrus handlers, removing one obsolete container, combining all of the requirements on authorized bags into one grouping for easier reference. Other changes include revising incorrect references to the U.S. grade standards for oranges and grapefruit grown in Texas and States other than Florida, California, and Arizona (7 CFR 51.680 through 51.714 for oranges, and 7 CFR 51.620 through 51.653 for grapefruit). See 68 FR 46433, August 6, 2003; and 66 FR 48785, September 24, 2001, for information on changes to the grade standards that necessitate changes in the Texas citrus handling regulations.

These changes are expected to help handlers compete more effectively in the marketplace, better meet the needs of buyers, and to improve producer returns by lessening the chances of confusion in the marketplace. In addition, this rule is needed to bring the order's rules and regulations into conformance with amendments to the U.S. grade standards. These changes were unanimously recommended by the Committee on May 26, 2005.

The Committee's Container Subcommittee met on May 26, 2005, and discussed in detail possible changes to the order's container requirements. The Subcommittee recommended and the Committee unanimously approved the following changes to the orange and grapefruit container requirements and conforming changes to the rules and regulations to bring them into conformity with current industry marketing practices: (1) The addition of eight new containers to the list of approved containers for use by Texas citrus handlers; (2) Elimination of one obsolete wire crib from the container list, combining the requirements of five approved bags currently listed separately into one paragraph for easier reference, and removing obsolete language in one container listing; (3) Removing references no longer needed in the Texas citrus regulations because of changes made to the U.S. grade standards for Texas oranges and grapefruit; and (4) Correcting references to legal citations in the regulations.

Under the terms of the order, fresh market shipments of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas are required to be inspected and meet grade, size, container, and pack requirements. Section 906.40 of the citrus marketing order authorizes the issuance of container and pack regulations. Section 906.340(a)(1) of the order's rules and regulations outlines container requirements for fresh shipments of Texas oranges and grapefruit. Container standardization helps prevent marketing confusion.

Section 906.340 of the rules and regulations currently specifies 12 containers authorized for use by Texas citrus handlers in paragraphs (a)(1)(i) through (xi). Paragraph (a)(1)(xi) of § 906.340 also authorizes the Committee to approve other types of containers for testing purposes. Such test containers are subject to prior approval and under the supervision of the Committee.

Over the years, the Committee has approved experimental containers for use by the Texas citrus industry. The need for experimental containers is reviewed by the Committee at the beginning of each season. Because buyers, including retailers, have continued to request an increasing array of containers to meet their various display objectives, the number of Committee approved experimental containers has increased to 11.

The Committee recently reviewed its experimental container list and decided to convert those being used by handlers to permanent status and to eliminate those that are no longer in use to lessen the chances of confusion and to reflect current industry practices. The Committee, therefore, recommended converting to permanent status 8 experimental containers which are now widely used by the Texas citrus industry. The following containers are being added from the experimental container list to the permanent container list:

(1) A fiberboard box holding two layers of fruit, with approximate dimensions of 23 inches in length, 15½ inches in width, and 7 inches in depth;

(2) A fiberboard box with approximate dimensions of 15 inches in length, 11 inches in width, and 7¼ inches in depth;

(3) A fiberboard box with approximate dimensions of 25¾ inches in length, 15 inches in width, and 8⅜ to 10½ inches in depth;

(4) A reusable collapsible plastic container with approximate dimensions of 23 inches in length, 15 inches in width, and 7 to 11 inches in depth;

(5) a reusable collapsible plastic container with approximate dimensions of 14¼ x 10¾ x 6¾ inches;

(6) A reusable collapsible plastic bin with approximate dimensions of 36¾ x 44¾ x 27 inches;

(7) An octagonal bulk triple wall fiberboard crib with approximate dimensions of 37¾ inches in length, 25 inches in width, and 25 inches in height: *Provided*, That the container has a Mullen or Cady test of at least 1,100 pounds: *And Provided further*, That the container may be used to pack any poly or mesh bags authorized in this section, or bulk fruit; and

(8) A closed fiberboard carton with approximate dimensions of 16½ inches in length, 10¼ inches in width, and 6$^{15}/_{16}$ inches in height: *Provided*, That the container has a Mullen or Cady test of at least 200 pounds.

Retail buyers are highly competitive and experiment frequently with various in-store displays utilizing many container shapes and sizes. This on-going experimentation is influenced by European container development, consumer preferences, evolving handling/racking systems, and other variables. These forces have combined to demand an ever-increasing number of containers on the experimental list. The intent of this action is to reduce the experimental container list to those which truly are still experimental. The Committee believes that the permanent container list should include all the containers the Texas citrus industry is now using. Moving the widely used containers from the experimental list to the permanent list and eliminating unused containers will bring the container requirements into conformity with industry operating practices. This change does not preclude additional containers being put on the experimental list, when necessary.

The Committee also recommended eliminating one wire crib on the permanent list with dimensions of 46½ by 37 by 30 inches, which is no longer being used by the industry. In addition, the Committee recommended combining five separate bag requirements into one paragraph to allow for easier reference. Currently, paragraph (a)(1) of § 906.340 lists bags with a capacity of five, eight, ten, or 18 pounds of fruit, and four-pound poly or vexar bags for oranges only, in paragraphs (iv), (v), (x), and (xi). This rule combines all the bag requirements into one paragraph so all authorized bags can be more easily identified. In addition, the Committee indicated that a reference to Freight Container Tariff 2G currently in § 906.340(a)(1)(ii), is obsolete and recommended that it be removed.

The U.S. grade standards for Texas oranges and grapefruit were revised in 2003 to reflect current cultural and marketing practices and give the industry greater flexibility in marketing and packaging using developing technologies. The major changes revised the standard pack sections of the grapefruit and orange standards, and the standard sizing section of the orange standard by redefining the requirements in each section. To bring the order regulations into conformity with the revised grade standards, in paragraphs (c)(3)(iii) and (e) of § 906.120, the words "which are packed level full," and "the term *level full* means that the fruit is level with the top edge of the bottom section of the carton;", respectively, are removed. In addition, in the introductory text of paragraph (a)(2)(i)(A) of § 906.340, the comma after "and" and the words "when place packed in cartons or other containers," are removed. Also, in the introductory text of paragraph (a)(2)(ii)(A) of § 906.340, the words "when place packed in cartons or other containers" and "and otherwise meet the requirements of standard sizing", when referring to grapefruit only, are removed.

Furthermore, this rule revises several references to the U.S. standards for grapefruit and oranges for Texas and States other than Florida, California, and Arizona in paragraph (b) of § 906.137 in the regulations to correctly identify applicable sections of the U.S. grade standards. A reference to "51.685" of the U.S. grade standards for grapefruit is incorrect and is revised to "51.653" to accurately reflect sections of the grapefruit standard. Also, an incorrect reference to "51.712" of the U.S. grade standards for oranges is revised to "51.714". In addition, a reference to "51.652" in paragraph (c) of § 906.340 is revised to "51.653".

The benefits of these changes are expected to be equally available to all Texas citrus producers and handlers regardless of their size of operation. The recommended changes offer benefits to the entire Texas citrus industry. These changes will enable handlers to compete more effectively in the marketplace by lessening the chances of marketing confusion. These changes also will contribute to the industry's long-term objective of marketing as much citrus as possible.

These regulation changes are expected to lead to market expansion. The alternative of leaving the regulations unchanged would not bring the regulations into conformity with industry operating practices. Accordingly, in assessing alternatives to the changes provided in this interim final rule, this action provides the most beneficial results.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large Texas orange and grapefruit handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

Further, the Committee's meeting was widely publicized throughout the Texas orange and grapefruit industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the May 26, 2005, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

Also, the Committee has a number of appointed subcommittees to review certain issues and make recommendations to the Committee. The Committee's Container Subcommittee met on May 26, 2005, and discussed this issue in detail. That meeting was also a public meeting and both large and small entities were able to participate and express their views. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on changes to the rules and regulations and container requirements currently prescribed under the Texas citrus marketing order. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary,

and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule relaxes container requirements for oranges and grapefruit; (2) the regulatory period begins September 1 and this action should be in effect promptly so handlers can plan accordingly; (3) the Committee unanimously recommended these changes at a public meeting and interested parties had an opportunity to provide input; and (4) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 906

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 906 is amended as follows:

PART 906—ORANGES AND GRAPEFRUIT GROWN IN LOWER RIO GRANDE VALLEY IN TEXAS

■ 1. The authority citation for 7 CFR part 906 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 906.120 [Amended]

■ 2. In § 906.120, paragraph (c)(3)(iii), remove the words "which are packed level full,"; and in paragraph (e), remove the words "the term *level full* means that the fruit is level with the top edge of the bottom section of the carton;".

§ 906.137 [Amended]

■ 3. In § 906.137, paragraph (b), change the number "51.685" to "51.653" and the number "51.712" to "51.714".

■ 4. Section 906.340 is amended as follows:

■ A. Revise paragraph (a)(1) to read as set forth below;

■ B. Amend paragraph (a)(2)(i)(A) introductory text by removing the words ", when place packed in cartons or other containers,";

■ C. Amend paragraph (a)(2)(ii)(A) introductory text by removing the words "when place packed in cartons or other containers" and "and otherwise meet the requirements of standard sizing"; and

■ D. Amend paragraph (c) by revising "51.652" to read "51.653".

§ 906.340 Container, pack, and container marking regulations.

(a) * * *

(1) *Containers.* (i) Closed fiberboard carton with inside dimensions of 13¼ x 10½ x 7¼ inches: *Provided,* That the container has a Mullen or Cady test of at least 200 pounds;

(ii) Closed fully telescopic fiberboard carton with inside dimensions of 16½ x 10¾ x 9½ inches;

(iii) Closed fiberboard carton with inside dimensions of 20 x 13¼ inches and a depth from 9¾ to 13 inches: *Provided,* That the container has a Mullen or Cady test of at least 250 pounds: *And Provided further,* That the container may be used to pack any poly or mesh bags authorized in this section;

(iv) Poly or mesh bags having a capacity of four, five, eight, ten, or 18 pounds of fruit: *Provided,* That only oranges are to be packed in the four-pound bag.

(v) Rectangular or octagonal bulk fiberboard crib with approximate dimensions of 46 to 47½ inches in length, 37 to 38 inches in width, and 36 inches in height: *Provided,* That this container has a Mullen or Cady test of at least 1,300 pounds, and that it is used only once for the shipment of citrus fruit: *And Provided further,* That the container may be used to pack any poly or mesh bags authorized in this section, or bulk fruit.

(vi) Rectangular or octagonal ⅔ fiberboard crib with approximate dimensions of 46 to 47½ inches in length, 37 to 38 inches in width, and 24 inches in height: *Provided,* That the crib has a Mullen or Cady test of at least 1,300 pounds, and that it is used only once for the shipment of citrus fruit: *And Provided further,* That the container may be used to pack any poly or mesh bags authorized in this section, or bulk fruit.

(vii) Octagonal fiberboard crib with approximate dimensions of 46 to 47½ inches in width, 37 to 38 inches in depth, and 26 to 26½ inches in height: *Provided,* That the crib has a Mullen or Cady test of at least 1,300 pounds, and that it is used only once for the shipment of citrus fruit: *And Provided further,* That the crib may be used to pack any poly or mesh bags authorized in this section, or bulk fruit.

(viii) Fiberboard box holding two layers of fruit, with approximate dimensions of 23 inches in length, 15½ inches in width, and 7 inches in depth;

(ix) Fiberboard box with approximate dimensions of 15 inches in length, 11 inches in width, and 7½ inches in depth;

(x) Fiberboard box with approximate dimensions of 25¾ inches in length, 15 inches in width, and 8⅜ to 10½ inches in depth;

(xi) Reusable collapsible plastic container with approximate dimensions of 23 inches in length, 15 inches in width, and 7 to 11 inches in depth;

(xii) Reusable collapsible plastic container with approximate dimensions of 14¼ x 10¾ x 6¾ inches;

(xiii) Reusable collapsible plastic bin with approximate dimensions of 36¾ x 44¾ x 27 inches;

(xiv) Octagonal bulk triple wall fiberboard crib with approximate dimensions of 37¾ inches in length, 25 inches in width, and 25 inches in height: *Provided,* That the container has a Mullen or Cady test of at least 1,100 pounds: *And Provided further,* That the container may be used to pack any poly or mesh bags authorized in this section, or bulk fruit;

(xv) Closed fiberboard carton with approximate dimensions of 16½ inches in length, 10¾ inches in width, and 6 15/16 inches in height: *Provided,* That the container has a Mullen or Cady test of at least 200 pounds;

(xvi) Such types and sizes of containers as may be approved by the committee for testing in connection with a research project conducted by or in cooperation with the committee: *Provided,* That the handling of each lot of fruit in such test containers shall be subject to prior approval and under the supervision of the committee.

* * * * *

Dated: August 26, 2005.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 05–17321 Filed 8–30–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 958

[Docket No. FV05–958–1 FIR]

Onions Grown in Certain Designated Counties in Idaho, and Malheur County, OR; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule which decreased the assessment rate established for the Idaho-Eastern Oregon Onion Committee (Committee) for the 2005–2006 and subsequent fiscal periods from $0.105 to

$0.10 per hundredweight of onions handled. The Committee locally administers the marketing order which regulates the handling of onions grown in designated counties in Idaho, and Malheur County, Oregon. Authorization to assess onion handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period began July 1 and ends June 30. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: September 30, 2005.

FOR FURTHER INFORMATION CONTACT: Susan M. Hiller, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (503) 326–2724, Fax: (503) 326–7440; 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, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 130 and Marketing Order No. 958, both as amended (7 CFR part 958), regulating the handling of onions grown in designated counties in Idaho, and Malheur County, Oregon, 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."

USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Idaho-Eastern Oregon onion handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable onions beginning July 1, 2005, and continue until amended, suspended, or terminated. 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 USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues in effect the action that decreased the assessment rate established for the Committee for the 2005–2006 and subsequent fiscal periods from $0.105 per hundredweight to $0.10 per hundredweight of onions handled.

The Idaho-Eastern Oregon onion marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of Idaho-Eastern Oregon onions. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2004–2005 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on April 14, 2005, and unanimously recommended 2005–2006 expenditures of $956,001 and an assessment rate of $0.10 per hundredweight of onions. In comparison, last year's budgeted expenditures were $997,442. The assessment rate of $0.10 is $0.005 lower than the previous rate. The decreased assessment rate recommended by the Committee reflects the reduction in anticipated expenditures.

Both producers and handlers in the regulated production area expressed a need to decrease the assessment rate to help offset the lower prices received by handlers. The National Agricultural Statistics Service (NASS) reported in the *Vegetables 2004 Summary*, published in January 2005, that the 2004 average F.O.B. price for the Idaho-Eastern Oregon onions was $8.14 per hundredweight. That price is $1.42 below the three year average F.O.B. price of $9.56 per hundredweight for this production area. The Committee considered assessment rates lower than $0.10 per hundredweight; however, it determined that the lower rates would not generate the income necessary to sustain the current level of programs desired by the industry.

The major expenditures recommended by the Committee for the 2005–2006 year include $10,000 for committee expenses, $104,371 for salary expenses, $81,160 for travel/office expenses, $62,470 for production research expenses, $32,000 for export market development expenses, $616,000 for promotion expenses, and $50,000 for unforeseen marketing order contingencies. Budgeted expenses for these items in 2004–2005 were $10,000 $13,482, $81,960, $60,000, $32,000, $600,000, and $50,000, respectively.

The Committee based its recommended assessment rate decrease on the 2005–2006 crop estimate, the 2005–2006 program expenditure needs, and the current and projected size of its monetary reserve. The Committee estimated onion shipments for 2005–2006 at 8,464,000 hundredweight which should provide $846,400 in assessment income. Income derived from handler assessments, along with contributions ($73,600), interest income ($7,400), other income ($2,000), and funds from the Committee's authorized reserve ($26,601), should be adequate to cover budgeted expenses. The Committee estimates that its operating reserve will be approximately $596,074 at the end of the 2005–2006 fiscal period. Funds in the reserve will be kept within the maximum permitted by the order of approximately one fiscal year's operational expenses (§ 958.44).

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

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior

to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2005–2006 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

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

There are approximately 233 producers of onions in the production area and approximately 37 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $6,000,000.

According to the NASS *Vegetables 2004 Summary*, the total F.O.B. value of onions in the regulated production area for 2004 was $110,355,000. Therefore, based on an industry of 233 producers and 37 handlers, it can be concluded that the majority of handlers and producers of Idaho-Eastern Oregon onions may be classified as small entities.

This rule continues in effect the action that decreased the assessment rate established for the Committee and collected from handlers for the 2005–2006 and subsequent fiscal periods from $0.105 to $0.10 per hundredweight of onions. The Committee unanimously recommended 2005–2006 expenditures of $956,001 and an assessment rate of $0.10 per hundredweight. The assessment rate of $0.10 is $0.005 lower than the rate in effect during the 2004–2005 fiscal period. The quantity of assessable onions for the 2005–2006 year is estimated at 8,464,000 hundredweight which should provide $846,400 in assessment income. Income derived from handler assessments, along with contributions ($73,600), interest income ($7,400), other income ($2,000), and funds from the Committee's authorized reserve ($26,601), should be adequate to cover budgeted expenses. The decreased assessment rate recommended by the Committee reflects the reduction in anticipated expenditures from $997,442 to $956,001.

Both producers and handlers in the regulated production area expressed a need to decrease the assessment rate to help offset the lower prices received by handlers. The NASS reported in the *Vegetables 2004 Summary*, which was published in January 2005, that the 2004 average F.O.B. price for the Idaho-Eastern Oregon onions was $8.14 per hundredweight. That price is $1.42 below the three-year average F.O.B. price of $9.56 per hundredweight for this production area. The Committee considered lower assessment rates; however, it determined that lower rates would not generate the income necessary to sustain the current level of programs desired by the industry.

The major expenditures recommended by the Committee for the 2005–2006 year include $10,000 for committee expenses, $104,371 for salary expenses, $81,160 for travel/office expenses, $62,470 for production research expenses, $32,000 for export market development expenses, $616,000 for promotion expenses, and $50,000 for unforeseen marketing order contingencies. Budgeted expenses for these items in 2004–2005 were $10,000, $163,482, $81,960, $60,000, $32,000, $600,000, and $50,000, respectively.

The Committee reviewed and unanimously recommended 2005–2006 expenditures of $956,001 which includes decreases in salary expenses and travel/office expenses, as well as increases in production research expenses and promotion expenses. Prior to arriving at this budget, the Committee considered information from various sources, such as the Committee's Executive, Promotion, Research, and Export subcommittees. These subcommittees discussed alternative expenditure levels, based upon the relative value of various research and promotion projects to the onion industry. The assessment rate of $0.10 per hundredweight of assessable onions was then determined by taking into consideration the estimated level of assessable shipments, the market situation, program expenditure needs, and the desire to sustain a monetary reserve at a viable level.

A review of historical information and preliminary information pertaining to the upcoming year indicates that the producer price for the 2005–2006 season could range between $5.50 and $8.00 per hundredweight of onions. Therefore, the estimated assessment revenue for the 2005–2006 year as a percentage of total producer revenue could range between 1.82 and 1.25 percent.

This action continues in effect the action that decreased the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers. In addition, the Committee's meeting was widely publicized throughout the Idaho-Eastern Oregon onion industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the April 14, 2005, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This action imposes no additional reporting or recordkeeping requirements on either small or large Idaho-Eastern Oregon onion handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

An interim final rule concerning this action was published in the **Federal Register** on June 3, 2005 (70 FR 32481). Copies of that rule were made available by the Committee's staff to all producers, handlers, and interested persons. In addition, the rule was made available through the internet by USDA and the Office of the Federal Register. A 60-day comment period was provided for interested persons to respond to the interim final rule. The comment period ended on August 2, 2005. One response was received, but it was not relevant to the assessment rate decrease.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the

compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 958

Onions, Marketing agreements, Reporting and recordkeeping requirements.

PART 958—ONIONS GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OREGON

■ Accordingly, the interim final rule amending 7 CFR part 958 which was published at 70 FR 32481 on June 3, 2005, is adopted as a final rule without change.

Dated: August 25, 2005.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 05–17269 Filed 8–30–05; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Chapter I

Energy Policy Act of 2005 Requirements; Treatment of Accelerator-Produced and Other Radioactive Material as Byproduct Material; Waiver

AGENCY: Nuclear Regulatory Commission.

ACTION: Time-limited waiver of Energy Policy Act of 2005 requirements.

SUMMARY: The Nuclear Regulatory Commission (NRC) is issuing a time-limited waiver of the requirements enacted by section 651(e) of the Energy Policy Act of 2005, titled "Treatment of Accelerator-Produced and Other Radioactive Material as Byproduct Material", as they pertain to byproduct material as defined in paragraphs (3) and (4) of section 11 e. of the Atomic Energy Act of 1954, as added by section 651(e). The waiver will allow persons owning, using, and otherwise engaging in activities involving the material to continue with their activities and States to continue to regulate this material during the applicable waiver period.

DATES: This waiver is effective August 31, 2005. This waiver is effective through August 7, 2006, for the import and export of materials covered by the waiver, unless terminated sooner if the Commission determines that an earlier termination is warranted. For all other matters, it is effective through August 7, 2009, unless terminated sooner if the Commission determines that an earlier termination is warranted or required.

FOR FURTHER INFORMATION CONTACT: Susan Chidakel, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–1535, e-mail *ssc@nrc.gov* or Merri Horn, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–8126, e-mail, *mlh1@nrc.gov*.

SUPPLEMENTARY INFORMATION: The President of the United States signed the Energy Policy Act of 2005 on August 8, 2005. The provisions of the Act became effective immediately, unless another effective date was expressly provided. Since no effective date was stated for the provisions of section 651(e) of the Act, section 651(e) became effective immediately, and brought byproduct material, as defined in paragraphs (3) and (4) of section 11 e. of the Atomic Energy Act of 1954 (42 U.S.C. 2201 *et seq.*), as added by section 651(e)(1), under the immediate regulatory authority of the Nuclear Regulatory Commission.

Section 11 e.(3) of the Atomic Energy Act of 1954 now includes as byproduct material: (i) any discrete source of radium-226 that is produced, extracted, or converted after extraction (before, on, or after the date of enactment of section 651(e) of the Energy Policy Act of 2005), for use for a commercial, medical, or research activity; and (ii) any material that has been made radioactive by use of a particle accelerator and is produced, extracted, or converted after extraction (before, on, or after the date of enactment of section 651(e) of the Energy Policy Act of 2005), for use for a commercial, medical, or research activity. Section 11 e.(4) expands the definition to include any discrete source of naturally occurring radioactive material, other than source material, if certain conditions are met. Section 11 e.(4) is considered to be a place-holder and NRC staff does not anticipate a need for active regulation of the latter material at this time.

Prior to enactment of the Energy Policy Act of 2005, the NRC did not have authority over the newly covered byproduct material, and it fell under the authority of the States. Therefore, the NRC does not currently have regulations in place that would specifically apply to the material. With the enactment of the Energy Policy Act of 2005, the States may no longer assert the authority to regulate the newly covered byproduct material, except as authorized to do so by the Act.

The Energy Policy Act of 2005 allows the Commission up to 18 months after the date of enactment to issue final regulations for the newly covered byproduct material. To facilitate an orderly transition of regulatory authority with respect to the newly defined byproduct material, the Act also provides for preparation and publication of a transition plan for States that have not previously entered into an Agreement with the Commission under section 274 b of the Atomic Energy Act and for those States that have entered into such an Agreement. However, neither the regulations nor the transition plan have yet been developed. Until such time as the regulations and transition plan have been completed and are in place, persons that engage in activities involving the material will want to continue with their activities.

To ease the transition period from individualized State programs to a more uniform regulatory program developed under the Atomic Energy Act and its section 274b Agreement State Program, section 651(e) of the Energy Policy Act of 2005 authorizes the Commission to issue waivers of its authority. Waivers of the Commission's jurisdiction will permit existing State authorities to continue. Ultimate transition from NRC to State authority for those States with an existing Agreement State program is expected to proceed easily. For States without such programs currently, that want to enter into an agreement with the NRC, this waiver period will permit them to go through the processes necessary to establish and carry out an Agreement State program to regulate this material after the waiver period expires.

Section 651(e)(5) authorizes the Commission to grant a waiver to any entity of any requirement under section 651(e) with respect to a matter relating to the newly defined byproduct material, except as required by section 651(e)(5)(B)(i)(I). Thus, such a waiver can also be granted to entities that engage in activities involving the material. Without the waiver, States that seek to continue regulation of the material would be, and persons that carry on activities involving the newly defined byproduct material could be, in technical violation of the Atomic Energy Act of 1954, as amended by section 651(e) of the Energy Policy Act of 2005.

The authorization to grant waivers is subject to the Commission's determination that the waiver is in accordance with the protection of the public health and safety and the promotion of the common defense and security. The Commission has determined that there is no basis on which to conclude that these materials will not continue to be used in a manner that ensures that the public health and safety will be protected while this waiver is in effect. The Energy Policy Act of 2005 also specifically requires the Commission to consider, in promulgating regulations, the impact on the availability of radiopharmaceuticals to physicians and to patients the medical treatment of which relies on radiopharmaceuticals. The Commission believes that it is in the best interests of the country to allow continued use of the newly defined byproduct material in radiopharmaceuticals for medical purposes, and to allow the States to continue to regulate the newly defined byproduct material until the Commission can codify new regulations for these materials.

In sum, the Commission currently does not have in place a specific set of regulations to oversee the use of byproduct material as defined in paragraphs (3) and (4) of section 11 e. of the Atomic Energy Act of 1954, as added by section 651(e) of the Energy Policy Act of 2005. Granting of the waiver set forth at the end of this document will allow, for the applicable waiver period, States to continue with their programs, persons engaged in activities involving the newly defined Atomic Energy Act byproduct material to continue their operations in a safe manner, and continued access to medical radiopharmaceuticals. This will also permit the Commission and States that currently do not have § 274i Agreement State regulatory programs, but wish to enter into an agreement with the NRC, to appropriately address the newly defined byproduct material. The Commission has determined that issuance of this waiver is in accordance with the protection of the public health and safety and the promotion of the common defense and security.

Waiver

Except as required by section 651(e)(5)(B)(i)(I), the Commission hereby grants a waiver from the requirements of section 651(e) of the Energy Policy Act of 2005, titled, "Treatment of Accelerator-Produced and Other Radioactive Material as Byproduct Material", as follows:

(1) To all persons engaged in export from or import into the United States of byproduct material as defined in section 11 e.(3) and (4) of the Atomic Energy Act 1954, through August 7, 2006, unless terminated sooner if the Commission determines that an earlier termination is warranted; except that the requirements of the Department of Commerce relating to export of such material will continue to apply to such material during the waiver period;

(2) To all persons that acquire, deliver, receive, possess, own, use, or transfer byproduct material as defined in section 11 e.(3) and (4) of the Atomic Energy Act 1954, through August 7, 2009, unless terminated sooner if the Commission determines that an earlier termination is warranted; and

(3) To all States that have entered into an agreement with the Commission under section 274 b. of the Atomic Energy Act of 1954 (42 U.S.C. 2014(e)) and to States that have not entered into such an Agreement, through August 7, 2009, unless terminated sooner if the Commission determines that an earlier termination is warranted; except that such a waiver for an Agreement State will be terminated by the Commission, if the Commission makes the determinations required by section 651(e)(5)(B)(ii) of the Energy Policy Act of 2005.

Dated at Rockville, Maryland, this 25th day of August, 2005.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 05–17293 Filed 8–30–05; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 506, 516, 528, 543, 544, 545, 552, 559, 563, 563b, 567, 574, and 575

[No. 2005–34]

RIN 1550–AB93

EGRPRA Regulatory Review—Application and Reporting Requirements

AGENCY: Office of Thrift Supervision, Treasury (OTS).

ACTION: Final rule.

SUMMARY: As a part of its review of regulations under section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (Pub. L. 104–208, Sept. 30, 1996) (EGRPRA), the Office of Thrift Supervision (OTS) is issuing a final rule, which reduces regulatory burden on savings associations by updating and revising various application and reporting requirements. Specifically, the final rule: modifies the branch office and agency office application and notice requirements, harmonizes publication and public comment procedures for various applications and notices, and revises the meeting procedures. The final rule also eliminates various obsolete rules.

DATES: This rule is effective on October 1, 2005.

FOR FURTHER INFORMATION CONTACT: Josephine Battle, Program Analyst, Thrift Policy, (202) 906–6870; Donald Dwyer, Director, Applications, Examinations and Supervision Operations, (202) 906–6414; Karen Osterloh, Special Counsel, Regulations and Legislation Division, (202) 906–6639; or Gary Jeffers, Senior Attorney, Business Transactions Division, (202) 906–6457, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Introduction

In 2003, OTS and the other federal banking agencies began a joint effort to review their rules and identify outdated or otherwise unnecessary regulatory requirements. This review is required by section 2222 of EGRPRA, which directs the banking agencies to jointly or individually categorize their regulations by type, provide notice and solicit public comment on the categories, request commenters to identify areas of the regulations that are outdated, unnecessary, or unduly burdensome, and eliminate unnecessary regulations to the extent that such action is appropriate. 12 U.S.C. 3311. As part of this EGRPRA process, OTS, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency published a notice seeking comment on unnecessary regulatory burden in their rules governing application and reporting requirements.[1]

Based on the comments submitted in response to the notice and additional comments voiced at EGRPRA outreach meetings, OTS issued an interim final

[1] 68 FR 35589 (June 16, 2003). The June 2003 notice also addressed powers and activities and international operations. The agencies have published subsequent notices seeking comment on consumer protection provisions in lending-related rules at 69 FR 2852 (January 21, 2004); consumer protection provisions in other rules at 69 FR 43347 (July 20, 2004); and money laundering and safety and soundness and securities rules at 70 FR 5571 (February 3, 2005).

rule on November 24, 2004 making various changes to its application and reporting requirements. 69 FR 68257. The interim final rule: (1) Modified the branch office and agency office application and notice requirements, (2) harmonized publication and public comment procedures for various applications and notices, and (3) revised the informal and formal meeting procedures used in application processing. The interim final rule also eliminated various obsolete rules. These changes were designed to reduce burden to the extent consistent with the safe and sound supervision of the industry. The changes furthered the burden reduction efforts in various recent OTS rulemakings.[2]

II. Discussion of Comments

OTS received numerous comments on the interim final rule from savings associations, trade associations, community organizations, and individuals. Many commenters filed joint comments on this interim final rule and a simultaneously published proposed rule on CRA.

Commenters were divided regarding the changes to the informal and formal meeting procedures used in application processing. Otherwise, commenters generally supported the interim final rule. Commenters noted that the changes simplified and streamlined regulatory requirements and processes without compromising the safe and sound regulation of the industry. They commended the rule as a serious effort at regulatory burden reduction that was responsive to comments made in connection with the EGRPRA initiative. Commenters also observed that the changes in the interim final rule permit savings associations to conduct their business more flexibly, to compete more efficiently, and to focus their resources more effectively. Comments on specific aspects of the rule are discussed below.

A. Branch and Home Offices

As part of the EGRPRA initiative, OTS reviewed the application requirements that apply to branch and home offices operated by federal savings associations. The interim final rule made various changes to OTS rules to ease the regulatory burden of these applications and notices. Specifically, the interim final rule:

- Eliminated application and notice requirements for re-designations of home and branch offices.
- Eliminated application and notice requirements for certain highly-rated federal savings associations.
- Eliminated notice requirements for short-distance relocations of branches of federal savings associations.
- Permitted federal savings associations incorporated under the laws of, organized in, or doing business in the District of Columbia to relocate home or branch offices and to establish branch offices under the same application and notice procedures applicable to other federal savings associations.[3]
- Eliminated the requirement that a federal savings association must file an application before it may open a drive-in or pedestrian office near an existing branch or home office where a public entrance of another SAIF-insured institution is located closer to the drive-in or pedestrian office than the public entrance to the thrift's branch or home office.

Commenters addressed various aspects of the interim final rule, but generally supported OTS changes. These comments are discussed below.

1. Elimination of branch and home office applications and notices for highly-rated federal savings associations.

Several commenters addressed the elimination of the application and notice requirements for highly-rated federal savings associations. To qualify for this treatment, a federal savings association must meet certain standards designed to ensure that it is operated in a safe and sound manner and fulfills the CRA and other compliance requirements.[4] In addition, the association must solicit comment by publishing a newspaper notice indicating that it intends to re-locate its home or branch office or establish a new branch office. If a comment opposing the application is filed, the association is required to file an application or notice unless OTS determines that the comment raises issues that are not relevant to the branch and home office approval standards or determines that OTS action in response to the comment is not required.

One commenter highlighted the importance of the newspaper notice requirement and the requirement for filing an application upon receipt of public comment in response to the newspaper notice. The commenter urged OTS to retain these requirements of the interim final rule. These requirements are retained in the final rule.[5]

The preamble to the interim final rule observed that branch offices can be costly to build and operate and that excessive growth can present supervisory issues. Accordingly, OTS specifically requested comment on whether it should require a highly-rated federal savings association to file an application or notice where its investment in branch and home offices exceeds a specified limit, or where the association is engaged in multiple branch expansions. Commenters generally opposed such a requirement.

OTS has not included this limit in the final rule. Upon review, OTS has concluded that the proposed limitation is inconsistent with its objective of enhancing the flexibility and competitiveness of savings associations and the goal of focusing regulatory resources where they have the greatest impact on safety and soundness. OTS believes that the supervisory process, in conjunction with the existing investment limits in real estate, are sufficient to address safety and soundness issues raised by business expansion.[6]

2. Additional suggested requirements for federal thrifts that make branch or home office changes for which an application or notice is not required.

One commenter was concerned that OTS might not be fully aware of new

[2] *See e.g.*, 69 FR 51155 (August 18, 2004); 69 FR 68257 (November 24, 2004); and 70 FR 10023 (March 2, 2005).

[3] Section 5(m)(1) of the Home Owners' Loan Act (HOLA) states:

(A) No savings association incorporated under the laws of the District of Columbia or organized in the District or doing business in the District shall establish any branch or move its principal office or any branch without the Director's prior written approval.

(B) No savings association shall establish any branch in the District of Columbia or move its principal office or any branch in the District without the Director's prior written approval. 12 U.S.C. 1464(m)(1).

In the interim final rule, the Director granted his prior written approval for savings associations subject to section 5(m)(1) of the HOLA to establish and move branch and principal offices, providing they comply with the same application processes as other savings associations.

[4] Specifically, the savings association: must receive a composite rating of 1 or 2, a CRA rating of satisfactory or outstanding, and a compliance rating of 1 or 2 during its most recent examination; must satisfy its capital requirements under 12 CFR part 567 before and after the establishment or relocation of the office; and must not be in troubled condition.

[5] The final rule makes one revision to the exemption for highly-rated federal savings associations. When an existing office is relocated, the prior OTS rule required the savings association to prominently post a notice of this fact in the existing office. *See* 12 CFR 545.95(b)(1)(ii)(2004). The interim final rule inadvertently eliminated the posting requirement for highly-rated federal savings associations. It has been restored in the final rule.

[6] OTS regulations limit the amount of a federal savings association's investment in real estate used for office and related facilities to the amount of its total capital. 12 CFR 560.37(2005).

branches where applications and notices are no longer required. To address this concern, the commenter suggested that OTS require a federal savings association to notify the appropriate regional office after a branch is opened.

This requirement is unnecessary. OTS has revised its internal examination procedures to ensure that its branch and home office location information is accurate and that associations comply with all branching restrictions contained in the HOLA and OTS regulations. In addition, OTS continues to encourage all federal savings associations to consult with their appropriate regional office before they open or relocate any office for which a branch application or notice is not required.[7] While federal savings associations are not required to file applications and notices for many branch office changes, OTS and others will continue to have access to information on branch offices. All savings associations annually must send branch office data to OTS. This data may be accessed on the OTS home page under Data and Research>Corporate Directories>Summary of Deposits (*www.ots.treas.gov/pagehtml.cfm?catNumber=25*). Internet users may search for office deposits by institution, state, county or city. As a result, the general public, regulators, and bankers may: (1) Find the branches nearest to their home or office; (2) Evaluate an institution's share of the deposits in a particular market area; and (3) Analyze deposit information on existing branches in a particular market.

3. Approval standards for branch and home offices.

In addition to the burden-reducing changes described above, the interim final rule rewrote and substantially reorganized the branch and home office rules to provide greater clarity. The interim final rule restated the approval standards in the prior rule.

The preamble noted that OTS considers other issues in its review of branch and home office applications, including compliance with the National Environmental Policy Act (NEPA) (42 U.S.C. 3421 *et seq.*) and the National Historic Preservation Act (NHPA) (16 U.S.C. 470). OTS requested comment on whether the final rule should cite these factors. Commenters urged OTS to include references to these laws in the final rule. These commenters observed that a comprehensive rule would enable savings associations to address all issues appropriately in their initial applications and to avoid processing delays. OTS has revised the final rule to state specifically that OTS will review branch and home office applications and notices under the NEPA and NHPA.

One commenter suggested that the final rule should set out the standards that OTS will consider in determining whether an application has sufficiently addressed NEPA. OTS declines to put this level of detail into its rules because most branch and home office changes have little impact on the environment and because guidance on these matters is provided in OTS Handbooks and in other agencies' rules.[8]

B. Agency Offices

The interim final rule also revised OTS agency office rules. Under the prior rule, a federal savings association could establish or maintain an agency office to service and originate (but not approve) loans and contracts; to manage or sell real estate owned by the federal savings association; and to conduct fiduciary activities or activities ancillary to the association's fiduciary business. See 12 CFR 545.96 (2004). All other activities at agency offices, however, required prior OTS approval.

Before the interim final rule, most requests for additional activities at agency offices involved the approval of loans and contracts. Because these requests did not present any supervisory concerns and imposed an unnecessary burden on federal savings associations, the interim final rule permitted savings associations to conduct these activities without prior OTS approval. Commenters generally supported this rule change, and OTS has adopted it as final.

The interim final rule asked whether there were other activities that should be added to the list of permissible agency office activities. One commenter observed that deposit marketing activities and other activities that support the deposit business (but do not involve the taking of deposits), do not present safety and soundness concerns and should be added to the list of permissible agency office activities.

The final rule does not include the suggested change. It is unclear what activities are encompassed within the phrase "deposit marketing and other activities in support of deposit business." In light of this ambiguity and because taking deposits is an integral part of a savings association's branch activities, OTS will continue to consider these activities on a case-by-case basis. OTS notes, however, that a federal savings association that wants to make advertising materials or deposit applications available in an existing agency office would generally not be required to file an additional agency notice.

C. Application Processing

12 CFR part 516 contains OTS procedures for processing applications, notices, and other filings. While the rules in part 516 are applicable to most applications, regulations for specific types of applications may prescribe different processing procedures and timeframes.[9] OTS reviewed the various processing procedures and timeframes, and amended the rules to synchronize and harmonize these procedures and to reduce confusion. These changes included:

- Conforming the timing requirements for publications of newspaper notices under the mutual to stock conversion rules and the change of control rules to those applicable to other applications.
- Establishing a uniform public comment period for all applications. This comment period extends for 30 days after the date of publication of the initial public notice.
- Providing OTS with discretion to consider or reject late-filed comments.
- Eliminating duplicative or unnecessarily burdensome rules in the OTS acquisition of control regulations and mutual holding company reorganization procedures, and clarifying the scope of application of certain procedures under the Bank Merger Act rules.

[7] One commenter asked whether an association could finalize an opening or relocation of a branch if it initiated a consultation, but the regional office indicated that it opposed the change. Under the new procedures, OTS does not have the ability to disapprove certain branch changes as a part of its application process. This, however, in no way impacts OTS's supervisory responsibilities. Thus, if a regional office informs a savings association that a proposed branch change would raise significant safety and soundness concerns and the savings association ignores these concerns, OTS may take appropriate supervisory action. Of course, OTS may also take appropriate supervisory actions if it is *not* consulted prior to the proposed branch change, and later finds that the branching raises significant safety and soundness issues.

[8] Applications Processing Handbook, Branch Activity Guidelines, § 100.8–100.9 (An institution should provide a statement of the impact of the proposed branch or office change on the human environment, including information on changes in the air and/or water quality, noise levels, energy consumption, congestion of population, solid waste disposal, or environmental integrity of private land within the meaning of the NEPA, 42 USC 4321–4347. To review the NEPA, implementing regulations, and other information, refer to the Web sites for the Council on Environmental Quality (CEQ) at *http://www.whitehouse.gov/ceq* or NEPAnet at *http://ceq.eh.doe.gov/nepa/nepanet.htm*.

[9] 12 CFR 516.1(b)(4) and (c) (2005).

Commenters generally supported these amendments. Accordingly, OTS adopts the interim rule without change.[10]

D. Application Processing—Formal and Informal Meetings

OTS rules at 12 CFR part 516, subpart D provide for meetings in connection with OTS applications. Under the prior rule, OTS was generally required to arrange an informal meeting to discuss issues raised in an application if any commenter on the application requested the meeting. Following that informal meeting, OTS was generally required to arrange a formal meeting, if an informal meeting participant requested the meeting.[11]

The interim final rule eliminated the requirement that OTS must hold formal and informal meetings whenever a commenter requests the meeting. Under the interim final rule, OTS will grant meeting requests only when it finds that written submissions are insufficient to address facts or issues raised by an application, or it otherwise determines that a meeting will benefit its decision-making process. OTS may limit the issues to be considered at the meeting to issues that OTS decides are relevant or material.

Savings association and trade association commenters generally supported this rule change. Community groups and individual commenters, however, opposed this change. These commenters argued that the informal and formal meeting process provided an opportunity for community groups and thrifts to meet with the agency to discuss CRA and anti-predatory lending matters. They asserted that written comments or one meeting did not ensure that these issues are adequately vetted.

The interim final rule appropriately balanced the interests of applicants and public commenters by providing OTS with the discretion to conduct a meeting whenever it finds that written submissions are insufficient to address facts or issues raised by an application, or it otherwise determines that a meeting will benefit its decision-making process. The rule preserves the ability of community groups and others to communicate their concerns to the agency. The interim final rule specifically permits commenters to file written comments, to request a meeting, to submit a written description of the nature of the issues or facts they wish to discuss at the meeting, and to explain the reasons why written submissions are insufficient to adequately address these issues and facts. Based on these submissions, OTS will be able to consider the circumstances of each application and determine whether a meeting is necessary to further explore CRA, fair lending compliance, and other issues. This process conforms closely to the procedures used by the other banking agencies in their application proceedings. OTS believes that the interim final rule appropriately addressed the needs of all parties and adopts it as final without change.

E. Nondiscriminatory Advertising

OTS's former rule at 12 CFR 528.4 (2004) required savings associations to include facsimiles of the equal housing lender logotype and legend in all advertising "other than for savings." Because this requirement required a logotype in advertising for lending unrelated to housing, such as credit card loans, commercial loans, and educational loans, the interim final rule amended § 528.4 to require displays of the equal housing logotype and legend *only* in advertisements for loans for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling or loans secured by a dwelling.

Several commenters supported this change. One, however, noted that the equal housing logotype is an important symbol regarding the commitment to non-discrimination. This commenter argued that the logotype should be displayed on advertisements for all lending.

The equal housing lender logotype does not provide relevant information to individuals shopping for loans unrelated to housing. As a result, the former rule imposed an unnecessary burden on thrifts who must provide the information, and on consumers who must process this information in addition to the volume of other data that they receive in connection with consumer and commercial loan applications. Accordingly, OTS continues to believe that the former rule was too broad, imposed unnecessary burdens, and should be eliminated. OTS notes that this rule is consistent with related rules issued by the other banking agencies, which require the display of the equal housing lender logotype and legend only with respect to advertisements for housing-related loans.[12]

F. Other Changes

In addition to the burden-reducing changes discussed above, the interim final rule eliminated the following regulations:

- 12 CFR 545.74 (2004). This rule imposed various requirements on securities brokerage activities of service corporations. The requirements were obsolete, conflicted with the current law and guidance, and were confusing to the industry.
- 12 CFR 563.181 (2004). This rule required mutual savings associations to report changes in control. It implemented section 407 of the National Housing Act, which was repealed in 1989.[13]
- 12 CFR 563.183 (2004). This rule required savings associations and savings and loan holding companies to report changes of chief executive officers and directors that occur within stated time periods before or after a change of control. This rule implemented 12 U.S.C. 1817(j)(12), which requires notices under more limited circumstances.[14] OTS will rely on the more limited statutory requirements.
- 12 CFR 567.13 (2004). This rule addressed capital maintenance agreements and was obsolete in light of other statutory and regulatory protections.[15]

No commenter objected to these deletions and revisions. Accordingly, OTS adopts these rule changes as final.

III. Regulatory Analysis

A. Paperwork Reduction Act

The information collection requirements contained in the final rule are virtually identical to those included in the November 24, 2004 interim final rule. While OTS has modified the requirements in minor ways, the burden on respondents remains unchanged from those in the earlier rule. The Office of Management and Budget (OMB) approved these collections of information on November 18, 2004 under OMB Control No. 1550–0005; on January 7, 2005 under OMB Control No. 1550–0014; and on January 19, 2005 under OMB Control Nos. 1550–0006, 1550–0011, 1550–0013, 1550–0015, 1550–0016, 1550–0018, 1550–0056 and

[10] Commenters suggested several changes already included in the interim final rule. For example, the interim final rule eliminated the requirement for publication of holding company applications in the "business section" of a newspaper, and conformed the publication requirements for all applications to the extent permitted by statute.

[11] 12 CFR 516.170 and 516.180 (2004).

[12] *Compare* 12 CFR 338.8 (2005) (FDIC).

[13] Title IV of the National Housing Act, including section 407, was repealed in 1989. Pub. L. 101–73, Title IV, § 407, Aug. 9, 1989, 103 Stat. 363.

[14] The statute, for example, does not require any reports from savings and loan holding companies, and requires thrift reports only for changes of officers and directors that follow a change of control.

[15] See e.g., 12 U.S.C. 1831o(e)(2)(C) (prompt corrective action) and OTS implementing regulations at 12 CFR 565.5 (2005).

1550–0072. Respondents/recordkeepers are not required to respond to any collection of information unless it displays a currently valid OMB control number.

B. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, OTS certifies that this final rule will not have a significant economic impact on a substantial number of small entities. The rule makes various changes to OTS application and reporting requirements that reduce regulatory burdens on all savings associations, including small savings associations. These changes will not have a significant impact on small institutions. Accordingly, OTS has determined that regulatory flexibility analysis is not required.

C. Executive Order 12866

The Director of OTS has determined that this final rule does not constitute a "significant regulatory action" for purposes of Executive Order 12866.

D. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (Unfunded Mandates Act) requires an agency to prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The final rule makes various changes that should reduce regulatory burdens on all savings associations. Accordingly, OTS has determined that this rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more and that a budgetary impact statement is not required.

List of Subjects

12 CFR Part 506

Reporting and recordkeeping requirements.

12 CFR Part 516

Administrative practice and procedure, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 528

Advertising, Aged, Civil rights, Credit, Equal employment opportunity, Fair housing, Home mortgage disclosure, Individuals with disabilities, Marital status discrimination, Mortgages, Religious discrimination, Reporting and recordkeeping requirements, Savings associations, Sex discrimination, Signs and symbols.

12 CFR Parts 543 and 544

Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 545

Accounting, Consumer protection, Credit, Electronic funds transfers, Investments, Reporting and recordkeeping requirements, Savings associations.

12 CFR Parts 552 and 563b

Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 559

Reporting and recordkeeping requirements, Savings associations, Subsidiaries.

12 CFR Part 563

Accounting, Advertising, Crime, Currency, Investments, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

12 CFR Part 567

Capital, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 574

Administrative practice and procedure, Holding companies, Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 575

Administrative practice and procedure, Capital, Holding companies, Reporting and recordkeeping requirements, Savings associations, Securities.

Authority and Issuance

■ Accordingly, the interim final rule amending 12 CFR parts 506, 516, 528, 543, 544, 545, 552, 559, 563, 563b, 567, 574, and 575, which was published at 69 FR 68239 on November 24, 2004, is adopted as final with the following changes:

PART 545—FEDERAL SAVINGS ASSOCIATIONS—OPERATIONS

■ 1. The authority citation for part 545 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, and 1828.

■ 2. Amend § 545.93 by redesignating paragraph (b)(3)(iii) as paragraph (b)(3)(iv) and adding a new paragraph (b)(3)(iii) to read as follows:

§ 545.93 Application and notice requirements for branch and home offices.

* * * * *

(b) * * *

(3) * * *

(iii) If you intend to change the location of an existing office, you posted a notice of your intent in a prominent location in the existing office to be relocated. You must post the notice for 30 days from the date of publication of the initial public notice described in paragraph (b)(3)(ii) of this section.

* * * * *

■ 3. Amend § 545.95 by revising the heading and adding a new paragraph (b)(1)(iii) to read as follows:

§ 545.95 What processing procedures apply to my home or branch office application or notice?

* * * * *

(b) * * *

(1) * * *

(iii) OTS will review the application or notice under the National Environmental Policy Act (42 U.S.C. 3421 *et seq.*) and the National Historic Preservation Act (16 U.S.C. 470).

* * * * *

Dated: August 25, 2005.

By the Office of Thrift Supervision.

John M. Reich,

Director.

[FR Doc. 05–17334 Filed 8–30–05; 8:45 am]

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FARM CREDIT ADMINISTRATION

12 CFR Part 615

RIN 3052–AC22

Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Investments, Liquidity, and Divestiture

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA, we, or our) issues this final rule amending our liquidity reserve requirement for the banks of the Farm Credit System (System) to ensure the banks have adequate liquidity. The final rule increases the minimum liquidity reserve requirement to 90 days, increases the eligible investment limit to 35 percent of total outstanding loans and requires Farm Credit banks to develop and maintain liquidity

contingency plans. These enhanced requirements will improve the ability of Farm Credit banks to supply agricultural credit in all economic situations.

DATES: This regulation will be effective 30 days after the publication in the **Federal Register** during which either or both Houses of Congress are in session. We will publish a notice of the effective date in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

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Laura McFarland, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–4020.

SUPPLEMENTARY INFORMATION:

I. Objectives

The objectives of this rule are to:

- Ensure Farm Credit banks have adequate liquidity in the case of market disruption or other extraordinary situations;
- Improve the flexibility of Farm Credit banks to meet liquidity reserve requirements;
- Strengthen the safety and soundness of Farm Credit banks; and
- Enhance the ability of the System to supply credit to agriculture and rural America in all economic conditions.

II. Background

Congress created the System as a government-sponsored enterprise (GSE) to provide a permanent, stable, and reliable source of credit and related services to American agriculture and aquatic producers. Farm Credit banks obtain funds to provide this financing through System-wide debt securities.[1] If access to the debt market becomes temporarily impeded, Farm Credit banks must have enough liquidity to continue operations and pay maturing obligations.

In 1993, we issued § 615.5134 requiring each Farm Credit bank to maintain a liquidity reserve sufficient to fund operations for approximately 15 days.[2] We also issued § 615.5132 restricting eligible investments of Farm Credit banks to 30 percent of total outstanding loans. The investment limit authorizes Farm Credit banks to hold eligible investments for the purposes of (1) Maintaining a liquidity reserve (2) managing surplus short-term funds, and (3) managing interest rate risk. The liquidity reserve provision ensures the safety and soundness of Farm Credit banks, protecting the System from potential market disruptions, and the investment limit prevents Farm Credit banks from using their GSE status to borrow favorably from the capital markets and accumulate large investment portfolios for arbitrage activities. To supplement the regulatory minimum liquidity reserve, and to respond to market conditions and expectations, the Farm Credit banks entered into a voluntary Common Minimum Liquidity Standard (CMLS) agreement to maintain at least 90 days of liquidity. All Farm Credit banks currently exceed the voluntary minimum liquidity reserve requirement.[3]

On November 16, 2004, we published a proposed rule (69 FR 67070) to increase the minimum liquidity reserve requirement to 90 days and raise the maximum eligible investment limit to 35 percent of total outstanding loans. We also proposed that Farm Credit banks develop and maintain contingency plans to ensure the most effective use of the liquidity reserve and to address potential liquidity shortfalls in the event of market disruptions. This final rule addresses the comments received on the proposed rule.

III. Comments and Our Response

We received 5 comments on our proposed rule from three Farm Credit banks, the Farm Credit Council (FCC) representing its membership, and the American Bankers Association (ABA). We also received one comment from a Farm Credit bank as part of our regulatory burden initiative. All commenters supported increasing the liquidity reserve requirement. However, the ABA objected to raising the investment limit, while System commenters asked us to further increase or remove the limit. System commenters also asked us to clarify other aspects of our proposed rule.

We discuss those aspects, along with the individual comments associated with our proposed changes, and our response below. Commenters also responded to our request for comments on the existing rule for disposing of ineligible investments, which we discuss separately below.

Those areas of the proposed rule that did not receive comments are finalized as proposed.

A. Investment Purposes [§ 615.5132]

The FCC and Farm Credit banks generally agreed with increasing the eligible investment limit, but also urged us to remove the limit. One Farm Credit bank stated that the investment limit was arbitrary and does not provide the System with adequate flexibility. Another argued that the limit constrains the bank's ability to achieve a higher level of liquidity if necessary. The FCC commented that investment limits should be set by the bank's board of directors and not by regulation. The FCC argued that an effective risk management program provides a better framework for controlling risk and a regulatory investment limit places an artificial and unnecessary burden on the System with no resulting benefit. Three Farm Credit banks alternatively suggested investment limits of 40 and 50 percent of total outstanding loans if the limit is not removed. One Farm Credit bank further recommended, as an alternative to a 40-percent investment limit, to include unused commitments with total outstanding loans when calculating the percentage of investments.

The ABA opposed increasing the investment limit. The ABA argued that the Farm Credit banks have been able to successfully fund their individual liquidity reserves under the current investment limit. The ABA commented that the increase would allow the System to accumulate larger investment portfolios to further arbitrage profits, thereby diverting financial resources away from farmers, ranchers, and rural homeowners. The ABA also commented that a higher investment limit is unnecessary because the System is a GSE and, during times of systemic stress, investors generally flock to safer investments, including GSE debt securities.

We disagree that an eligible investment limit is unnecessary or that the increase is inappropriate. We believe an investment limit ensures agricultural loans comprise the greatest portion of the System's assets, thereby fulfilling its mission of financing agriculture and rural America. We limit total eligible investments to prevent Farm Credit banks from engaging in inappropriate investment activities that are incompatible with their GSE status. Additionally, we disagree that a higher investment limit is unnecessary. The combination of an increased minimum liquidity reserve requirement and investment limit is designed to address

[1] Farm Credit banks use the Federal Farm Credit Banks Funding Corporation (Funding Corporation) to issue and market System-wide debt securities. The Funding Corporation is owned by the Farm Credit banks.

[2] 58 FR 63034 (November 30, 1993).

[3] The System's liquidity position was 174 days at March 31, 2005. *See* Farm Credit System Quarterly Information Statement, at 21 (May 9, 2005).

situations where the System's access to the debt market becomes temporarily impeded. We recognize the Farm Credit banks have been successful at maintaining appropriate levels of liquidity and managing their balance sheets under the existing investment limit and current, favorable market conditions. However, a larger liquidity reserve requirement, without a corresponding increase in the investment limit, could constrain the ability of Farm Credit banks to manage operations under different market conditions. Under more adverse market conditions, Farm Credit banks may not be able to increase their days of liquidity through extending the duration of debt without incurring substantial cost. The higher investment limit provides each Farm Credit bank additional flexibility to meet the larger liquidity reserve requirement and to effectively manage their balance sheets in all economic conditions.

Similarly, we reject the suggestions for a higher investment limit than the one proposed.[4] Increasing the eligible investment limit to 35 percent is appropriate given the six-fold increase in the minimum liquidity reserve requirement. We believe a 5-percent higher investment limit addresses the 90-day minimum liquidity reserve requirement without compromising the System's responsibility to finance agriculture. Should an emergency situation arise when greater investments are necessary, Farm Credit banks may request FCA approval to temporarily increase the investment limit under § 615.5136(a).

The ABA commented that increasing the investment limit allows Farm Credit banks more room to engage in risky on-balance sheet maturity mismatching. The ABA stated that FCA should take steps to reduce the System's dependence on hedge counterparties. Specifically, the ABA noted that the System, by using derivative instruments, has been transforming longer-term debt in the 1-to-5 year repricing interval into shorter-term debt in the 0-to-6 month repricing interval. The ABA argues that an investment limit increase allows even more room to engage in extreme maturity mismatching, creating the potential for gambling on interest-rate swings.

We do not agree with the commenter that the Farm Credit banks have used their investment authority to engage in inappropriate activity. The transformation of longer-term debt into shorter-term debt using interest rate swaps correlates with the Farm Credit banks' voluntary initiative to increase liquidity reserves. The Farm Credit banks have collectively increased total earning assets and decreased interest-bearing liabilities in the 0-to-6 month bucket to increase days of liquidity. The System has also increased the issuance of synthetic variable rate-debt to compensate for the mismatch.

We have previously stated that any speculative use of derivatives would be considered an unsafe and unsound banking practice.[5] We recognize that derivative financial instruments are useful risk management tools to hedge against interest rate and liquidity risk and are an essential part of any interest rate risk management program. Each Farm Credit bank is required to establish and maintain investment policies that limit counterparty risk in investments and financial derivatives. We require each Farm Credit bank to establish interest rate risk exposure limits, to determine criteria to comply with the limits, to identify and analyze causes of risk, and to conduct interest rate shock tests. Our examination staff reviews these policies and monitors interest rate risk in Farm Credit banks, including counterparty risk in financial derivatives. We have the appropriate safeguards in place to effectively regulate Farm Credit banks without inhibiting their ability to successfully serve agriculture and rural America.

For the reasons discussed above, this section of the rule is adopted as proposed. In so doing, we emphasize that the original purpose of our investment limit remains unchanged.

B. Liquidity Reserve Requirement

1. *Liquidity Reserve Calculation* [§ 615.5134(a)]

All commenters supported increasing the minimum liquidity reserve requirement from approximately 15 days to 90 days, adding a rating element to investments used to fund the liquidity reserve, and the method of discounting those investments to reflect market value in the event of liquidation. One Farm Credit bank asked that all investment grade securities be included in the liquidity reserve, not just highly rated investments. This same commenter asked for clarification on the eligibility of Federal Agricultural Mortgage Corporation (FAMC) agricultural mortgage-backed securities for liquidity purposes.

We believe a regulatory minimum liquidity reserve should be funded with highly rated investments, which are generally more liquid, less volatile, and can be quickly converted to cash without significant loss. We therefore finalize investment rating requirements as proposed. FAMC securities may not be used to fund a Farm Credit bank's liquidity reserve. FAMC securities, while not listed in § 615.5140, are identified as eligible investments under § 615.5174. However, § 615.5174(c)(3) specifically states that FAMC securities may not be used to maintain a Farm Credit bank's liquidity reserve. This prohibition addresses the concern of concentration risk. If the System had real or perceived credit problems due to a crisis in the agricultural economy and could not access the market at reasonable rates, those same economic factors may also adversely affect the price and liquidity of FAMC securities.

System commenters additionally requested clarification of the meaning of the regulatory language "maturing obligations and other borrowings of the bank." They also asked whether proceeds from System debt issuances are applied to the liquidity reserve on the trade date or settlement date.

In response to these requests, we are adding clarifying language to the final rule. The final rule clarifies that "maturing obligations and other borrowings of the bank" excludes both interest receivable and interest payable, since interest received generally offsets interest due. The liquidity reserve calculation should be a simple procedure that excludes both interest receivable and interest payable. The final rule also clarifies that proceeds from debt issuances are to be applied to the liquidity reserve on the contractual trade date. While many longer-term System debt issuances do not trade and settle on the same date, the risk of settlement default is extremely low. The Funding Corporation enters into a contractual agreement with selling group members on the trade date with the firm expectation of receiving cash from System debt issuances on the settlement date. As trades are made, the selling group members are contractually obligated to deliver cash to the Funding Corporation on the settlement date. In the event of a systemic market disruption, cash proceeds from debt issuances are as likely to be delayed as are payments of maturing obligations.

[4] The FCA has recently authorized, as eligible investments under § 615.5140(e), pilot mission-related investment programs that are not subject to the regulatory investment limit of § 615.5132. Instead, the authorizations provide for a separate, additional investment limit for the duration of the pilot program. Because the investments are limited to mission-related investments, we believe they are compatible with the System's GSE status. *See* "Investments in Rural America Pilot Investment Programs," FCA Informational Memorandum (January 11, 2005).

[5] "Guidelines for Using Derivative Products," FCA Bookletter BL–023 (October 31, 1995) and 63 FR 33281.

The FCC further requested we explain what the maturity date would be for obligations that have embedded "put" and "call" options, which give an investor or a Farm Credit bank the option to redeem an obligation before the contractual maturity date. We expect Farm Credit banks to use, for liquidity reserve calculations, the earlier of: the obligation's contractual maturity date, the "call date" for which the call option has been executed, or the "put date" for securities.

Although we received no comments on the frequency of calculating the liquidity reserve, we are adding language to the final rule to clarify that Farm Credit banks must satisfy the 90-day minimum liquidity reserve requirement on a daily basis. Farm Credit banks are expected to calculate the liquidity reserve on a daily basis to ensure compliance.

2. *Discounts* [§ 615.5134(c)]

The ABA supported discounting assets used to fund the liquidity reserve. The FCC asked us to clarify how floating rate debt securities, which exceed contractual cap rates, are discounted. The Farm Credit banks made no individual comments on the discounts.

We are adding language to the final rule to clarify that floating rate debt security coupons meeting or exceeding a contractual cap rate are treated as a fixed rate debt security and discounted at 90 percent. Any floating rate debt security that is below the contractual cap rate is discounted at 95 percent.

3. Other Comments—Eligible Investments [§ 615.5140]

Our proposed rule addressed the liquidity of Farm Credit banks; it did not address the eligible investment categories used to fund the liquidity reserve. However, we received comments from the FCC and two Farm Credit banks on existing eligible investments under § 615.5140. The commenters recommended changes to individual investment limits and the inclusion of additional investment authorities. The FCC and one Farm Credit bank specifically recommended allowing loans supported by GSE-issued long-term standby purchase commitments (LTSPCs) to fund the liquidity reserve. The FCC explained that they consider loans supported by GSE-issued LTSPCs as liquid assets suitable for the liquidity reserve.

This final rulemaking does not change § 615.5140, nor add loans that are credit enhanced by GSE LTSPCs to the list of items that may be used to fund the liquidity reserve. However, we intend to reconsider the issue of loans covered by GSE-issued LTSPCs, as well as the § 615.5140 list of eligible investments, in future rulemaking.

The System commenters also recommended changing the requirements for independently verifying the purchase and sale of investments under § 615.5133(f); obligor limits under § 615.5140(d)(1); and stress testing under § 615.5141. The FCC and a Farm Credit bank commented that § 615.5133(f) adds an unnecessary cost with no resulting benefit. One Farm Credit bank recommended modifying the stress-testing requirements of mortgage-backed securities under § 615.5141 to allow testing on a portfolio basis instead of on individual securities. This same commenter suggested specific obligor limits under § 615.5140(d)(1). We are not addressing these comments in this final rulemaking, but intend to address them in future rulemakings.

C. Liquidity Contingency Plan [new § 615.5134(d)]

Only the ABA commented on the proposed requirement that each Farm Credit bank develop a contingency plan to ensure the most effective use of the liquidity reserve. The ABA supported establishment of such a plan. We adopt this section of the rule as proposed.

D. Disposal of Ineligible Investments [§ 615.5143]

We asked for comments on whether we should change our existing divestiture regulation for those situations when general economic conditions cause investments to become ineligible or when eligibility may be restored. The ABA commented that the existing requirements are sufficient, pointing out that Farm Credit banks may submit individualized plans to divest themselves of investments that become ineligible after acquisition. The FCC commented that mandatory divestiture should be eliminated when investments become ineligible due to credit downgrades or failed stress tests. The FCC recommended replacing the existing rule with a requirement that banks develop a plan to deal with investments that become ineligible. Three Farm Credit banks recommended the mandatory divestiture provision be eliminated and replaced with a general requirement that Farm Credit banks develop their own procedures for handling ineligible investments. One bank recommended the rule distinguish between investments that are ineligible when acquired and those that later become ineligible.

We reviewed the comments submitted and appreciate the perspectives shared. We are taking the comments under advisement and may propose changes to this area of our regulations in the future.

IV. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), FCA hereby certifies the rule will not have a significant economic impact on a substantial number of small entities. Each of the Farm Credit banks, considered with its affiliated associations, has assets and annual income over the amounts that would qualify them as small entities. Therefore, System institutions are not "small entities" as defined in the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 615

Accounting, Agriculture, Banks, Banking, Government securities, Investments, Rural areas.

■ For the reasons stated in the preamble, part 615 of chapter VI, title 12 of the Code of Federal Regulations is amended as follows:

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

■ 1. The authority citation for part 615 continues to read as follows:

Authority: Secs. 1.5, 1.7, 1.10, 1.11, 1.12, 2.2, 2.3, 2.4, 2.5, 2.12, 3.1, 3.7, 3.11, 3.25, 4.3, 4.3A, 4.9, 4.14B, 4.25, 5.9, 5.17, 6.20, 6.26, 8.0, 8 3, 8.4, 8.6, 8.7, 8.8, 8.10, 8.12 of the Farm Credit Act (12 U.S.C. 2013, 2015, 2018, 2019, 2020, 2073, 2074, 2075, 2076, 2093, 2122, 2128, 2132, 2146, 2154, 2154a, 2160, 2202b, 2211, 2243, 2252, 2278b, 2278b–6, 2279aa, 2279aa–3, 2279aa–4, 2279aa–6, 2279aa–7, 2279aa–8, 2279aa–10, 2279aa–12); sec. 301(a) of Pub. L. 100–233, 101 Stat. 1568, 1608.

Subpart E—Investment Management

§ 615.5131 [Amended]

■ 2. Amend § 615.5131 by:

■ a. Removing paragraph (b) and redesignating existing paragraphs (c) through (m) as paragraphs (b) through (l), consecutively; and

■ b. Removing the reference "§ 615.5131(i)" and adding in its place, the reference "§ 615.5131(h)" in paragraph (a).

■ 3. Revise § 615.5132 to read as follows:

§ 615.5132 Investment purposes.

Each Farm Credit bank is allowed to hold eligible investments, listed under § 615.5140, in an amount not to exceed 35 percent of its total outstanding loans, to comply with the liquidity reserve requirement of § 615.5134, manage

surplus short-term funds, and manage interest rate risk under § 615.5135.

■ 4. Amend § 615.5134 by revising paragraphs (a) and (c) and by adding new paragraph (d) to read as follows:

§ 615.5134 Liquidity reserve requirement.

(a) Each Farm Credit bank must maintain a liquidity reserve, discounted in accordance with paragraph (c) of this section, sufficient to fund 90 days of the principal portion of maturing obligations and other borrowings of the bank at all times. The liquidity reserve may only be funded from cash, including cash due from traded but not yet settled debt, and the eligible investments under § 615.5140. Money market instruments, floating, and fixed rate debt securities used to fund the liquidity reserve must be backed by the full faith and credit of the United States or rated in one of the two highest NRSRO credit categories. If not rated, the issuer's NRSRO credit rating, if one of the two highest, may be used.

* * * * *

(c) The liquid assets of the liquidity reserve are discounted as follows:

(1) Multiply cash and overnight investments by 100 percent.

(2) Multiply money market instruments and floating rate debt securities that are below the contractual cap rate by 95 percent of the market value.

(3) Multiply fixed rate debt securities and floating rate debt securities that meet or exceed the contractual cap rate by 90 percent of the market value.

(4) Multiply individual securities in diversified investment funds by the discounts that would apply to the securities if held separately.

(d) Each Farm Credit bank must have a contingency plan to address liquidity shortfalls during market disruptions. The board of directors must review the plan each year, making all needed changes. Farm Credit banks may incorporate these requirements into their § 615.5133 investment management policies.

Subpart F—Property, Transfers of Capital, and Other Investments

§ 615.5174 [Amended]

■ 5. Amend § 615.5174 by removing the reference "§ 615.5131(g)" and adding in its place, the reference "§ 615.5131(f)" in paragraph (a).

Dated: August 25, 2005.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 05–17266 Filed 8–30–05; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AL12

Exceptions to Definition of Date of Receipt Based on Natural or Man-Made Disruption of Normal Business Practices

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document affirms an amendment to the Department of Veterans Affairs (VA) adjudication regulation regarding the definition of "date of receipt" authorizing the Under Secretary for Benefits to establish exceptions to the general rule when a natural or man-made event interferes with the channels through which the Veterans Benefits Administration (VBA) ordinarily receives correspondence, resulting in extended delays in receipt of claims, information, or evidence from claimants served by VBA. Currently, VBA receives correspondence through its 57 Regional Offices and through the Appeals Management Center, which develops claims on appeal to the Board of Veterans Appeals. The intended effect is to ensure that claimants served by the affected VBA office or offices are not deprived of potential entitlement to benefits because of unexpected delays or impediments not caused by the claimants.

DATES: Effective date: August 31, 2005.

FOR FURTHER INFORMATION CONTACT: Maya Ferrandino, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 273–7232.

SUPPLEMENTARY INFORMATION: VA's regulation addressing the date of receipt for purposes of benefit entitlement is located at 38 CFR 3.1(r), which implements the provisions of 38 U.S.C. 5110, the statutory provision regarding effective dates of awards. On July 19, 2004 (69 FR 42879), an interim final rule was published amending § 3.1(r) to provide that the Under Secretary for Benefits may establish exceptions to the rule governing date of receipt in circumstances when he or she determines that a natural or man-made disruption in the normal channels of communication results in one or more VBA offices experiencing extended delays in the receipt of correspondence.

We provided a 60-day comment period that ended September 17, 2004. We received no comments. Based on the rationale set forth in the interim final rule we now affirm as a final rule the changes made by the interim final rule.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Administrative Procedure Act

This document without any changes affirms amendments made by an interim final rule that is already in effect. Accordingly, we have concluded under 5 U.S.C. 553 that there is good cause for dispensing with a delayed effective date based on the conclusion that such procedure is impracticable, unnecessary, and contrary to the public interest.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more (adjusted annually for inflation) in any given year. This final rule would have no such effect on State, local, or tribal governments, or the private sector.

Regulatory Flexibility Act

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

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.109, Veterans Compensation for Service-Connected Disability; and 64.110, Veterans Dependency and Indemnity Compensation for Service-Connected Death.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Radioactive materials, Veterans, Vietnam.

Approved: August 11, 2005.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

■ Accordingly, the interim final rule amending 38 CFR Part 3 that was

published at 69 FR 42879 on July 19, 2004, is adopted as a final rule without change.

[FR Doc. 05–17358 Filed 8–30–05; 8:45 am]
BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[Docket No. OAR–2004–0440; FRL–7960–2]

RIN 2060–AN06

Stay of the Findings of Significant Contribution and Rulemaking for Georgia for Purposes of Reducing Ozone Interstate Transport

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this action, EPA is amending a final rule it issued under section 110 of the Clean Air Act (CAA) related to the interstate transport of nitrogen oxides (NO_X). On April 21, 2004, EPA issued a final rule that required the State of Georgia to submit State implementation plan (SIP) revisions that prohibit specified amounts of NO_X emissions—one of the precursors to ozone (smog) pollution—for the purposes of reducing NO_X and ozone transport across State boundaries in the eastern half of the United States. This rule became effective on June 21, 2004.

Subsequently, the Georgia Coalition for Sound Environmental Policy (GCSEP or Petitioners) filed a petition for reconsideration requesting that EPA reconsider the inclusion of the State of Georgia in the NO_X SIP Call Rule and also requested a stay of the effectiveness of the rule as it relates to the State of Georgia only.

In response to this petition, EPA proposed to stay the effectiveness of the April 21, 2004 rule as it relates to the State of Georgia only, while EPA conducts notice-and-comment rulemaking to further address the issues raised by the Petitioners (70 FR 9897; March 1, 2005). Four parties commented on the proposed rule. No requests were made to hold a public hearing. After considering these comments, EPA has determined to finalize, as proposed, the stay of the effectiveness of this rule as it relates to the State of Georgia, only during notice—and comment proceedings for the petition for reconsideration.

DATES: This final rule is effective on September 30, 2005.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. OAR–2004–0440. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket*. Although listed in the index, some information is not publicly available, *i.e.*, confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other materials, 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 EPA Docket Center, EPA West (Air Docket), Attention E-Docket No. OAR–2004–0440, Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B102, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744 and the fax number is (202) 566–1749.

FOR FURTHER INFORMATION CONTACT: General questions concerning today's action should be addressed to Jan King, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, C539–02, Research Triangle Park, NC, 27711, telephone (919) 541–5665, e-mail *king.jan@epa.gov*. Legal questions should be directed to Winifred Okoye, Office of General Counsel, (2344A), 1200 Pennsylvania Ave., NW., Washington, DC 20460, telephone (202) 564–5446, e-mail *okoye.winifred@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

This action responds only to comments related to the stay of effectiveness of Phase II of the NO_X SIP Call in the State of Georgia. Comments that we consider out of the scope of the proposed rulemaking or not directly related to the reconsideration proceedings are not addressed in this action, but will be addressed later in the final action on the petition for reconsideration.

Outline

I. Background

On October 27, 1998, EPA found that emissions of NO_X from 22 States and the District of Columbia (23 States) were significantly contributing to downwind areas' nonattainment of the 1-hour ozone national ambient air quality standard (NAAQS). [Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone, 63 FR 57354; October 27, 1998 (NO_X SIP Call Rule)]. More specifically, EPA found that the State of Georgia was significantly contributing to 1-hour ozone nonattainment in Birmingham, Alabama and Memphis, Tennessee. (63 FR 57394). The EPA set forth requirements for each of the affected upwind States, including Georgia, to submit SIP revisions prohibiting those amounts of NO_X emissions which significantly contribute to downwind nonattainment. The EPA further required that each State SIP provide for NO_X reductions in amounts that any remaining emissions would not exceed the level specified in EPA's NO_X SIP Call regulations for that State in 2007.

A number of parties, including certain States as well as industry and labor groups, challenged the NO_X SIP Call Rule. More specifically, Georgia and Missouri industry petitioners citing to the Ozone Transport Assessment Group (OTAG), modeling and recommendations, maintained that EPA had record support only for the inclusion of eastern Missouri and northern Georgia, as significantly contributing to downwind nonattainment. In *Michigan* v. *EPA*, 213

F. 3d 663 (D.C. Cir., 2000), cert. denied, 121 S. Ct. 1225 (2001) (*Michigan*), the D.C. Circuit Court vacated and remanded EPA's inclusion of the entire States of Georgia and Missouri, on grounds that OTAG had recommended NO_X controls to reduce transport for areas within the fine grid parts of its modeling but recommended no additional controls for areas within the coarse grid of its modeling. Eastern Missouri and northern Georgia lie within the fine grid. The Court, however, did not question EPA's proposition that eastern Missouri and northern Georgia should be considered as significantly contributing to downwind nonattainment.

On February 22, 2002, EPA proposed the inclusion of only the fine grid parts of Georgia and Missouri in the NO_X SIP Call. (Response to Court Decisions on the NO_X SIP Call, NO_X SIP Call Technical Amendments, and Section 126 Rules, 67 FR 8396; February 22, 2002) (Phase II). The EPA also proposed revised NO_X budgets for Georgia and Missouri that included only these portions of each State.

On April 21, 2004, EPA finalized, as proposed, the inclusion of eastern Missouri and northern Georgia in the NO_X SIP Call Rule, allocated revised NO_X budgets that reflected the inclusion of sources located in only these areas and set revised SIP submittal and full compliance dates of April 1, 2005 and May 1, 2007, respectively. (69 FR 21604).

On June 16, 2004, the GCSEP filed a petition for reconsideration of the inclusion of the State of Georgia in the NO_X SIP Call, under section 307(d) of the CAA (or the Act). Petitioners maintained that grounds that were of central relevance had occurred after the close of the notice-and-comment period for the February 22, 2002 proposal. More specifically, Petitioners cited our March 12, 2004, 1-hour ozone attainment redesignation of Birmingham, Alabama (69 FR 11798; March 12, 2004). Additionally, GCSEP cited our earlier January 17, 1995 Memphis, Tennessee, 1-hour ozone attainment redesignation (60 FR 3352), and maintained that the State of Georgia should not be subject to the NO_X SIP Call Rule because it was no longer significantly contributing to 1-hour ozone nonattainment in any downwind areas. Petitioners also raised other issues such as the effect of EPA's approval and the State of Georgia's implementation, beginning since May 1, 2003, of the Atlanta, Georgia attainment demonstration SIP. Petitioners further requested a stay of the effectiveness of the April 21, 2004, rule as it relates to the State of Georgia, under section 307(d)(7)(B). Finally, GCSEP filed a challenge in the Court of Appeals for the 11th Circuit, which has since been transferred to the D.C. Circuit. Additionally, EPA and GCSEP have requested and the Court has granted the joint request to hold the challenge in abeyance pending completion of the reconsideration proceedings.

II. Final Rule

In today's action we are amending the Phase II rule by staying the effectiveness of the rule as it relates to the State of Georgia, only, during notice-and-comment rulemaking proceedings for the reconsideration petition. As explained in the proposed rule, EPA expects to provide notice-and-comment opportunity to the general public on the issues raised by GCSEP and several other issues as they relate to the continued applicability of the NO_X SIP Call Rule to the State of Georgia. Additionally, we currently anticipate that we will most likely be proposing to withdraw or rescind our findings that sources in the State of Georgia emit NO_X in amounts that significantly contribute to nonattainment of the 1-hour ozone NAAQS in both the former Birmingham, Alabama and Memphis, Tennessee nonattainment areas. This is a consequence of our redesignation of these downwind receptor areas to attainment. Thus, we expect that after EPA completes notice-and-comment rulemaking, the State of Georgia will likely no longer be subject to the NO_X SIP Call requirements. Given this, we believe that the State of Georgia should not continue implementation efforts for the NO_X SIP Call Rule while EPA initiates notice-and-comment rulemaking that will address the issues raised by GCSEP. Accordingly, in this action, EPA is staying the effectiveness of the April 21, 2004 rule with respect to the State of Georgia only, during the pendency of the notice-and-comment rulemaking proceedings that will address the petition for reconsideration. The effect of this stay would be that the State of Georgia, would have no obligation during the pendency of the stay to regulate NO_X emissions under the NO_X SIP Call Rule for purposes of addressing downwind nonattainment of the 1-hour ozone NAAQS.

III. Response to Comments

Four commenters submitted comments on our March 1, 2005 proposal. The comments are summarized herein below along with EPA's responses. We believe that the comments set forth in section III, D-F, below, are beyond the scope of the proposed rulemaking, which was to stay the effectiveness of Phase II in the State of Georgia, only, in order to address a Petition for reconsideration. We believe that these comments raise more substantive issues that are directly related to the reconsideration proceedings, which we anticipate will be proposed very shortly. Therefore, in today's action, we are not addressing or responding to any of them. Rather, we intend to address them in full in the context of that rulemaking action.

A. Comments on the Stay of the NO_X SIP Call in Georgia

Comment: One commenter raised the issue of our authority or lack thereof, under the CAA, to stay the effectiveness of our April 21, 2004 rule. The commenter argued that a proposal to stay the effectiveness of a rule during reconsideration proceedings is not authorized under the Act and maintained that our failure to indicate the section of the Act that allows for the proposed stay resulted in "obscuring the legal justification," for the stay. The commenter claimed we had provided "absolutely no justification for the stay," and argued that our action, to stay the rule, must neither be arbitrary nor capricious but based on reasoned explanation of the basis for the stay. The commenter further asserted that we had provided no discussion of the likelihood of success of the petition for reconsideration or the benefits and burdens of granting a stay. The commenter, citing to various decisions by the U.S. Court of Appeals for the District of Columbia, then argued that we should not grant the stay unless the proponent could demonstrate a likelihood of success on the merits. Another commenter argued in contrast that our authority to subject the State of Georgia to the NO_X SIP Call was now questionable, in light of our redesignation of the downwind nonattainment areas, and a failure to stay the effectiveness of our April 21, 2004, rule during the reconsideration proceeding would be unreasonable, an abuse of discretion, and unlawful. The commenter further maintained that staying the rule pending the reconsideration proceedings would not only be proper but also prevent the State of Georgia from expending scarce resources and time on implementing the requirements especially because "the validity" of the rule was "in such significant doubt."

Response: We are taking this action under Section 553 of the Administrative Proceedings Act (APA), and not under section 307(d)(7)(B) of the CAA, which is clearly inapplicable. We had duly

informed petitioners of our authority in our letter of October 22, 2004, from Jeffrey Holmstead, Assistant Administrator for Office of Air and Radiation to Margaret C. Campbell, Troutman Sanders LLP, Counsel for Georgia Coalition for Sound Environmental Policy, granting the request for reconsideration. (A copy of this letter is in the Docket for this rulemaking). Further, as a general matter, the public is charged with knowledge of applicable laws. We also believe that we have the authority to stay the effectiveness of Phase II in the State of Georgia during the pendency of the reconsideration proceedings and that our failure to clearly cite our authority to do so in the proposal has no effect on the outcome of the proposed action.

It is also incorrect to state that Petitioners have failed to show a likelihood of success on the merits. To the contrary, as stated in the proposed rule, Petitioners have alleged that our prior basis for including the State of Georgia in the NO_X SIP Call Rule evanesced with the attainment redesignation of the downwind receptor areas, Memphis, Tennessee and Birmingham, Alabama.[1] Thus, in response to the Petition for reconsideration, we now expect to propose a rescission or withdrawal of our findings that sources and emitting activities in the State of Georgia emit NO_X in amounts that significantly contribute to nonattainment of the 1-hour ozone standard in both Birmingham, Alabama and Memphis. Tennessee, both of which are now in attainment of the 1-hour standard. If we ultimately finalize, the rescission or withdrawal of the NO_X SIP Call findings, we anticipate that the State of Georgia would no longer have an obligation to reduce NO_X emissions under the NO_X SIP Call Rule, for purposes of addressing downwind nonattainment of the 1-hour ozone NAAQS. Therefore, it is now most likely that after notice-and-comment rulemaking the State of Georgia will not be subject to the NO_X SIP Call requirements. Given this position, it would appear counterproductive and inappropriate to require the State of Georgia to continue implementation efforts for the NO_X SIP Call requirements, during the pendency of the reconsideration petition. In fact, we agree with the comment that such an action on our part would be unreasonable. It could also be construed as both arbitrary and capricious.

Comment: A commenter argued that our proposal was of "indeterminate length [because] [i]f EPA fails to complete the reconsideration process, the stay will last indefinitely."

Response: Although we are only obligated to give "[p]rompt notice" of the denial of a petition for reconsideration, under Section 555(e) of the APA, our failure over time to respond to this petition may be subject to judicial review under Section 706(1) of the APA. See for example, In re: American Rivers and Idaho Rivers United, 372 F.3d 413 (D.C. Cir., 2004); In re: Int'l Chemical Workers Union, 958 F.2d 1144 (D.C. Cir., 1992). Therefore, EPA does not agree that the stay could be of infinite length.

Comment: A commenter viewed our redesignation of the downwind receptors as an inadequate justification for staying this rule. The commenter also stated that our redesignation of Birmingham, Alabama nonattainment area "did not take effect until after the Phase II Rule was finalized." (Emphasis in original). The commenter further argued that the stay was arbitrary and capricious and therefore unlawful "because it does not treat similarly situated sources similarly." According to the commenter, the stay will result in sources in the State of Georgia not being subject to the NO_X SIP Call requirements, even though we found that these sources contribute significantly to ozone nonattainment, while similar sources have been subject to the NO_X SIP Call requirements since May 31, 2004.

Response: In the NO_X SIP Call, we determined that a downwind area should be considered

> "nonattainment," for purposes of section 110(a)(2)(D)(i)(I), under the 1-hour ozone NAAQS if the area (as of 1994–96 time period) had nonattainment air quality and if the area was modeled to have nonattainment air quality in the year 2007, after implementation of all measures specifically required of the area under the CAA as well as implementation of Federal measures required or expected to be implemented by that date.

(63 FR 57386; see also, 63 FR 57373). We explained that "nonattainment [areas] includes areas that have monitored violations of the standard and areas that 'contribute to ambient air quality in a nearby area' that is violating the standard." (63 FR 57386; see, 63 FR 57385–87 for our discussion on the determination of downwind nonattainment receptors).

We also determined at that time that sources in the State of Georgia were significantly contributing to the 1-hour standard nonattainment in Birmingham, Alabama and Memphis, Tennessee (63 FR 57394). Thus, as earlier explained, given that we have redesignated both Memphis, Tennessee and the Birmingham, Alabama nonattainment areas, we anticipate proposing to rescind or withdraw our finding that sources and emitting activities in the State of Georgia emit NO_X in amounts that significantly contribute to nonattainment of the 1-hour ozone standard in both Birmingham, Alabama and Memphis, Tennessee. Therefore, we believe that our redesignation of the downwind receptors is sufficient justification for staying the effectiveness of our April 21, 2004, rule with regard to the State of Georgia. For the same reason, we also do not believe that this stay results in not treating "similarly situated sources similarly." All other areas subject to the NO_X SIP Call are currently contributing significantly to downwind nonattainment.

As to the comment that our Birmingham, Alabama redesignation became effective after our finalization of the Phase II rule, this is also incorrect. The effective dates of regulations appear in the "effective date" section of the **Federal Register** document. 1 CFR 18.17 (2004). See also, *Safety-Kleen Corp.* v. *EPA*, No. 92–1629 (D.C. Cir., Jan. 1996). The effective dates for the redesignation of Birmingham, Alabama and Phase II of the NO_X SIP Call were April 12, 2004, and June 21, 2004, respectively.

B. Delay in Finalizing Phase II of the NO_X SIP Call

Comment: Two commenters claimed that our delay in finalizing the April 21, 2004, rule resulted in the redesignation of the Birmingham, Alabama nonattainment area. These commenters maintained that other partial States, similar to Georgia, and for example, the State of Alabama, have fully complied with the NO_X SIP Call requirements. And one commenter argued that despite the fact that the same argument, made by Petitioners, could be made for other southeastern States with already adopted and approved NO_X SIP Call SIPs, we would be requiring these States to continue with full implementation. Other commenters also contended that our delay in finalizing Phase II resulted in detrimental air quality for several downwind areas and therefore, urged us not to further delay implementation by the proposed stay.

Response: None of the States, southeastern or otherwise, subject to the NO_X SIP Call are similarly situated with

[1] On March 12, 2004, we redesignated Birmingham, Alabama, to attainment of the 1-hour ozone NAAQS. In addition, since 2001, the Memphis, Tennessee nonattainment area, which was redesignated in 1995 has had monitored attainment air quality data.

the State of Georgia. All other States subject to the NO_X SIP Call do contribute to nonattainment in downwind States. Further, although we first proposed the Phase II rule on February 21, 2002, and ultimately finalized it on April 21, 2004, during the intervening period, we had to juggle competing rulemaking demands on our limited scientific and legal staff. Any delay in finalizing Phase II did not contribute to adverse air quality in Birmingham or Memphis since these areas were able to attain the 1-hour ozone standard and be redesignated during that time.

C. Stay of the 8-Hour Basis for the NO_X SIP Call

Comment: One commenter argued that any decision to stay Phase II in the State of Georgia should factor in our finding that sources in the State of Georgia were significantly contributing to the 8-hour ozone standard nonattainment areas in the States of Alabama, Illinois, Indiana, Kentucky, Michigan, Missouri, North Carolina, South Carolina, Tennessee and Virginia.[2] The commenter further argued that a stay would be prejudicial to other downwind States, and primarily the State of North Carolina, because we have required this State to adopt a SIP to achieve attainment of the 8-hour ozone standard by 2009. According to the commenter, under our proposed schedule, sources in the State of Georgia would have been subject to controls on May 31, 2004, which would have assisted the downwind nonattainment areas in meeting their various statutory deadlines. The commenter also argued that our exclusion of the State of Georgia from the NO_X SIP Call requirements would "punish downwind areas," and further result in their not attaining the 8-hour standard "as expeditiously as practicable," under section 7502(a)(2) of the Act. Another commenter urged us to finalize the stay as proposed because we had determined that emissions from the State of Georgia were not impacting any downwind 8-hour ozone nonattainment areas in the recently promulgated Clean Air Interstate Rule, [70 FR 25162; May 12, 2005 (CAIR)].

Response: In the NO_X SIP Call Rule, we had also found that sources in the State of Georgia were significantly contributing to the 8-hour ozone standard nonattainment areas in the States of Alabama, Illinois, Indiana, Kentucky, Michigan, Missouri, North Carolina, South Carolina, Tennessee and Virginia. (63 FR 57395). But because of the various legal challenges to our promulgation of the 8-hour ozone NAAQS (62 FR 38856; July 18, 1997), *American Trucking Ass'ns, Inc.* v. *EPA*, 175 F. 3d 1027 (D.C. Cir., 1999), *reh'g granted in part, denied in part*, 195 F.3d 4 (D.C. Cir., 1999), *aff'd in part, rev'd in part and remanded sub nom., Whitman* v. *EPA*, 531 U.S. 457 (2001), we requested and the Court, in *Michigan* v. *EPA*, 213 F. 3d 663, 670–671 (D.C. Cir., 2000), cert. denied, 121 S. Ct. 1225 (2001) (*Michigan*), granted our motion to stay consideration of issues regarding the 8-hour basis for the NO_X SIP Call. Additionally, in a separate rulemaking action, we stayed the 8-hour basis for the NO_X SIP Call indefinitely. (65 FR 56245; September 18, 2000). See, also 40 CFR 51.121(q). Thus, at this time all of the affected States, which include the States of Georgia and North Carolina, remain under no obligation to comply with the 8-hour basis for the NO_X SIP Call. Also, we would need to lift the stay through notice-and-comment rulemaking. Further, we note that, in the recently promulgated CAIR, we found that sources and emitting activities in the entire State of Georgia do not significantly contribute to 8-hour nonattainment in any downwind State (70 FR 25249).

Therefore, today's action only stays the requirements of Phase II of the NO_X SIP Call, which relate to the 1-hour basis for the NO_X SIP Call, in the State of Georgia. Additionally, in the soon-to-be proposed Petition for Reconsideration rule, we expect to solicit comments on the impact of the continued stay of the 8-hour NO_X SIP Call basis on the Petitioners request that we not subject the State of Georgia to the NO_X SIP Call Rule.

D. Effect of Stay on the NO_X SIP Call Trading Program

Comment: Three commenters also opposed the stay on grounds that the exclusion of the State of Georgia would compromise the integrity of the NO_X SIP Call trading program. They claimed that the sources in the State of Georgia, although now regulated by the State, are not subject to a cap on NO_X emissions, unlike similar sources that are covered by the NO_X SIP Call requirements. According to the commenters, one consequence of the absence of a cap is that these sources are under no requirement to purchase allowances for exceedances of NO_X SIP Call emissions levels and they argued that this, lack of a cap, could result in future exceedances of the 1-hour standard and hinder maintenance of the standard in downwind areas. One commenter noted that it was unclear whether NO_X emissions from these sources were restricted either through the State SIP or permit conditions.

Response: As stated earlier, we believe that this comment and the comments set forth in section III, E–F below, are beyond the scope of the proposed rulemaking. We believe that these comments raise more substantive issues that are directly related to the reconsideration proceedings, which we anticipate will be proposed very shortly. Therefore, we are not addressing these comments at this time, rather we intend to address them in full in the context of that rulemaking action.

E. Comments on Modeling Assumptions

Comment: One commenter noted that the modeling studies conducted in the southeastern States and nationwide, such as CAIR and the Gulf Coast Ozone Study, assumed the full implementation of the NO_X SIP Call in all affected States, including northern Georgia. The commenter then pointed out that the various assumptions would be rendered incorrect by excluding the State of Georgia from NO_X SIP Call requirements.

Response: As stated earlier above, we believe that this comment and the comments set forth in section III. D and F are beyond the scope of the proposed rulemaking. We believe that these comments raise more substantive issues that are directly related to the reconsideration proceedings, which we anticipate will be proposed very shortly. Therefore, we are not addressing these comments at this time, rather we intend to address them in full in the context of that rulemaking action.

F. General Comments

Comment: Another commenter argued that there were several compelling reasons to stay the effectiveness of our April 21, 2004 rule, such as our June 15, 2005, revocation date for the 1-hour ozone standard, and the revisions and implementation of the Atlanta, Georgia SIP, which requires NO_X and volatile organic compounds emissions from both stationary and mobile sources.

Response: As stated earlier above, we believe that this comment and the comments set forth in section III, D–E above, are beyond the scope of the proposed rulemaking. We believe that these comments raise more substantive issues that are directly related to the reconsideration proceedings, which we anticipate will be proposed very shortly. Therefore, we are not addressing these comments at this time, rather we intend to address them in full in the context of that rulemaking action.

[2] 63 FR 57395; October 27, 1998.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993) the Agency must determine whether the regulatory action is "significant" and, therefore, subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

1. Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

3. Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

4. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The OMB has exempted this regulatory action from Executive Order 12866 review. This action stays EPA's finding in Phase II of the NO_X SIP Call related to Georgia and does not impose any additional control requirements or costs.

B. Paperwork Reduction Act

Today's action does not add any information collection requirements or increase burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and therefore is not subject to these requirements.

C. Regulatory Flexibility Act (RFA)

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

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined in the Small Business Administration's (SBA) regulations at 13 CFR 12.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

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

This final action neither imposes requirements on small entities nor will there be impacts on small entities beyond those, if any, required by or resulting from the NO_X SIP Call and the Section 126 Rules. We have therefore concluded that today's rule will relieve regulatory burden for all small entities affected by this rule. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

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

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or Tribal governments or the private sector. The EPA prepared a statement for the final NO_X SIP Call that would be required by UMRA if its statutory provisions applied. Today's action does not create any additional requirements beyond those of the final NO_X SIP Call, therefore, no further UMRA analysis is needed. This rule stays the portion of the NO_X SIP Call that would require the State of Georgia to implement NO_X emissions controls requirements.

E. Executive Order 13132: Federalism

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

This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Today's action

does not impose an enforceable duty on these entities. This action to stay the NO_X SIP Call requirements as they relate to Georgia, imposes no additional burdens beyond those imposed by the final NO_X SIP Call. Thus, Executive Order 13132 does not apply to this rule.

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

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This rule does not have Tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on Tribal governments, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes, as specified in Executive Order 13175. Today's action does not significantly or uniquely affect the communities of Indian Tribal governments. The EPA stated in the final NO_X SIP Call Rule that Executive Order 13084 did not apply because that final rule does not significantly or uniquely affect the communities of Indian Tribal governments or call on States to regulate NO_X sources located on Tribal lands. The same is true of today's action. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action does not impose requirements beyond those, if any, required by or resulting from the NO_X SIP Call and Section 126 Rules.

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

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355; May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rulemaking does not involve technical standards, therefore, EPA is not considering the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

This action does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). For the final NO_X SIP Call, the Agency conducted a general analysis of the potential changes in ozone and particulate matter levels that may be experienced by minority and low-income populations as a result of the requirements of that rule. These findings were presented in the regulatory impact analysis for the NO_X SIP Call. Today's action does not affect this analysis.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective September 30, 2005.

L. Judicial Review

Section 307(b)(1) of the Act specifies which Federal Courts of Appeal have venue for petitions of review of final actions by EPA. This section provides, in pertinent part, that petitions must be filed in the Court of Appeals for the District of Columbia Circuit if the agency action consists of "nationally applicable regulations promulgated, or final action taken, by the Administrator," or (ii) such action is locally or regionally applicable if "such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination."

Any final action related to the NO_X SIP Call is "nationally applicable within the meaning of section 307(b)(1)." The Administrator has also determined that any final action regarding the NO_X SIP Call is of nationwide scope and effect for purposes of section 307(b)(1). See, 63 FR 57480. Thus, any petition for review of today's final action must be filed in the Court of Appeals for the District of Columbia Circuit within 60 days from the date this final action is published in the **Federal Register**.

List of Subjects in 40 CFR Part 51

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

Dated: August 18, 2005.

Jeffrey R. Holmstead,

Assistant Administrator for Air and Radiation.

■ For the reasons set forth in the preamble, part 51 of chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION AND SUBMITTAL OF IMPLEMENTATION PLANS

■ 1. The authority citation for Part 51 continues to read as follows:

Authority: 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

Subpart G—Control Strategy

■ 2. Section 51.121 is amended by adding paragraph (s) to read as follows:

§ 51.121 Findings and requirements for submission of State implementation plan revisions relating to emissions of oxides of nitrogen.

* * * * *

(s) Stay of Finding of Significant Contribution with respect to the 1-hour standard. Notwithstanding any other provisions of this subpart, the effectiveness of paragraph (a)(1) of this section is stayed as it relates to the State of Georgia, only as of September 30, 2005.

[FR Doc. 05–17031 Filed 8–30–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2005–0224; FRL–7732–3]

Methoxyfenozide; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for residues of methoxyfenozide in or on sorghum grain, sorghum grain forage, and sorghum grain stover. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on sorghum grain. This regulation establishes a maximum permissible level for residues of methoxyfenozide in these food commodities. These tolerances will expire and are revoked on December 31, 2007.

DATES: This regulation is effective August 31, 2005. Objections and requests for hearings must be received on or before October 31, 2005.

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–2005–0224. 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 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.

FOR FURTHER INFORMATION CONTACT: Stacey Milan Groce, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–2505; e-mail address: *milan.stacey@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 code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS code 32532)

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

B. How Can I 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 on E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/*.

II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(e) and 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing tolerances for residues of the insecticide methoxyfenozide, benzoic acid, 3-methoxy-2-methyl-2-(3,5-dimethylbenzoyl)-2-(1,1-dimethylethyl)hydrazide, in or on sorghum grain at 0.05 parts per million (ppm), sorghum grain forage at 15 ppm, and sorghum grain stover at 125 ppm. These tolerances will expire and are revoked on December 31, 2007. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations.

Section 408(l)(6) of the FFDCA requires EPA to establish time-limited tolerances or exemptions from the requirement of a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on section 18 related tolerances to set binding precedents for the application of section 408 of the FFDCA and the new safety standard to other tolerances and exemptions. Section 408(e) of the FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, i.e., without having received any petition from an outside party.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of the FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes

exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Section 18 of the FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by the Food Quality Protection Act of 1996 (FQPA). EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

III. Emergency Exemption for Methoxyfenozide on Sorghum Grain, Sorghum Grain Forage, Sorghum Grain Stover and FFDCA Tolerances

The southwestern corn borer is a major pest on corn, but has become problematic for Louisiana sorghum producers in recent years. The southwestern corn borer is known to infest grain sorghum and had not been documented as an important pest of this crop until 2002, when heavy moth infestations developed in corn and migrated to late planted sorghum fields. Grain sorghum is usually planted in the spring, but adverse weather conditions and planting conflicts ensure that a significant amount of acreage will be planted late. These conditions can provide a susceptible host for heavy southwestern corn borer moth flight during late summer. This unexpected heavy migration into grain sorghum has left many growers without adequate technology to control this pest.

The sugarcane borer is a major pest of corn grown in the vicinity of sugarcane. The sugarcane borer recently became an important pest of corn in parts of Louisiana where no sugarcane is produced. This northern shift in the infestation range of the sugarcane borer is likely the result of mild winters and an increase in reduced tillage crop production, which has allowed this pest to become established outside of its normal range. Heavy populations of sugarcane borer moth infestations have migrated to late planted sorghum fields and growers have been ill-prepared in handling this disease.

The Louisiana State AgCenter recommends the following two insecticides: Cypermethrin and lambda-cyhalothrin for control of the southwestern corn borer when they are applied before the larvae bore into the stalk. However, the short-lived residual effectiveness of both pyrethroids requires an effective scouting program to carefully time applications. This practice is not available in Louisiana and there are currently no insecticides registered for control of the sugarcane borer on grain sorghum. Methoxyfenozide is a suitable alternative because of its moderate residual life and low risk to humans and most non-target organisms.

Planting grain sorghum early is an important management practice against both the southwestern corn borer and the sugarcane borer. Early planted sorghum usually matures before southwestern corn borer and sugarcane borer populations reach their peak migration from their host plants. However, this practice is limited by weather conditions, which often delay planting sorghum acreage until late spring and early summer. Shredding the crop stubble followed by tillage is no longer feasible since most sorghum is now grown under reduced tillage conditions. Natural enemies destroy large numbers of the southwestern corn borer, but not at levels necessary to prevent significant loss. EPA has authorized under FIFRA section 18 the use of methoxyfenozide on grain sorghum to control southwestern corn borer and sugarcane borer for use on grain sorghum in Louisiana. After having reviewed the submission, EPA concurs that emergency conditions exist for this State.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of methoxyfenozide in or on sorghum grain, sorghum grain forage, and sorghum grain stover. In doing so, EPA considered the safety standard in section 408(b)(2) of the FFDCA, and EPA decided that the necessary tolerances under section 408(l)(6) of the FFDCA would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing these tolerances without notice and opportunity for public comment as provided in section 408(l)(6) of the FFDCA. Although these tolerances will expire and are revoked on December 31, 2007, under section 408(l)(5) of the FFDCA, residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on sorghum grain, sorghum grain forage, sorghum grain stover after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by these tolerances at the time of that application. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because these tolerances are being approved under emergency conditions, EPA has not made any decisions about whether methoxyfenozide meets EPA's registration requirements for use on sorghum grain, sorghum grain forage, sorghum grain stover or whether permanent tolerances for this use would be appropriate. Under these circumstances, EPA does not believe that these tolerances serves as a basis for registration of methoxyfenozide by a State for special local needs under FIFRA section 24(c). Nor do these tolerances serve as the basis for any State other than Louisiana to use this pesticide on this crop under section 18 of FIFRA without following all provisions of EPA's regulations implementing FIFRA section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for methoxyfenozide, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT**.

IV. Aggregate Risk Assessment and Determination of Safety

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

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of methoxyfenozide and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for time-limited tolerances for residues of methoxyfenozide in or on sorghum grain at 0.05 ppm, sorghum grain forage at 15 ppm, and sorghum grain stover at 125 ppm. EPA's assessment of the dietary exposures and risks associated with establishing these tolerances follows.

A. 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 endpoint. However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intra species differences.

For dietary risk assessments (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (aRfD or cRfD) where + the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA SF.

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

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1×10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a "point of departure" is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for methoxyfenozide used for human risk assessment is shown in the following Table 1:

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR METHOXYFENOZIDE FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute dietary (females 13-50 years of age and the general population including infants and children)	None	None	No appropriate endpoint was identified in the oral toxicity studies, including the acute neurotoxicity study in rats and the developmental toxicity studies in rats and rabbits
Chronic dietary all populations	NOAEL = 10.2 mg/kg/day UF = 100 Chronic RfD = 0.10 mg/kg/day	FQPA SF = 1 cPAD = chronic RfD FQPA SF = 0.10 mg/kg/day	2–Year combined chronic feeding/carcinogenicity, rats LOAEL = 411 mg/kg/day based on hematological changes (decreased RBC, hemoglobin and hematocrit), liver toxicity (increased weights, hypertrophy), histopathological changes in thyroid (increased follicular cell hyppertrophy, altered colloid), possible adrenal toxicity (increased weights)
Short-term, intermediate-term, long-term dermal and Inhalation	None	None	No systemic toxicity was observed at the limit dose following repeated dermal application to rats Based on low vapor pressure, the low acute toxicity of both the technical and formulated products as well as the application rate and application method, there is minimal concern for inhalation exposure.
Cancer (oral, dermal, inhalation)	Methoxyfenozide has been classified as a "not likely" human carcinogen		The classification is based on the lack of evidence of carcinogenicity in male and female rats as well as in male and female mice and on the lack of genotoxocity in an acceptable battery of mutagenicity studies

*The reference to the FQPA SF refers to any additional SF retained due to concerns unique to the FQPA.

B. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.544) for the residues of methoxyfenozide, in or on a variety of raw agricultural commodities including the pome fruits crop group, apple pomace, cotton seed, cotton gin byproducts, sweet corn, field corn, milk, meat, fat, liver, and meat byproducts of cattle, goats, hogs, horses, and sheep. Risk assessments were conducted by EPA to assess dietary exposures from methoxyfenozide in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-

use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. No appropriate endpoint was identified in the oral toxicity studies including the acute neurotoxicity study in rats and the developmental toxicity studies in rats and rabbits. Therefore, acute dietary risk assessments were not conducted.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment the Dietary Exposure Evaluation Model (DEEM™) analysis evaluated the individual food consumption as reported by respondents in the United States Department of agriculture (USDA) 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: 100% of all crops were treated and all resulting residues were at tolerance level.

iii. *Cancer.* Methoxyfenozide has been classified as a "not likely human carcinogen." The classification is based on the lack of evidence of carcinogenicity in male and female rats as well as in male and female mice and on the lack of genotoxicity in an acceptable battery of mutagenicity studies. Therefore, risk assessments to estimate cancer were not conducted.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for methoxyfenozide 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 methoxyfenozide.

The Agency uses the Generic Estimated Environmental Concentration (GENEEC) or the Pesticide Root Zone/ Exposure Analysis Modeling System (PRZM/EXAMS) to estimate pesticide concentrations in surface water and SCI-GROW, which predicts pesticide concentrations in ground water. In general, EPA will use GENEEC (a Tier 1 model) before using PRZM/EXAMS (a Tier 2 model) for a screening-level assessment for surface water. The GENEEC model is a subset of the PRZM/ EXAMS model that uses a specific high-end runoff scenario for pesticides. GENEEC incorporates a farm pond scenario, while PRZM/EXAMS incorporate an index reservoir environment in place of the previous pond scenario. The PRZM/EXAMS model includes a percent crop (PC) area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

The Agency uses the First Index Reservoir Screening Tool (FIRST) or the 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 generally use FIRST (a Tier 1 model) before using PRZM/EXAMS (a Tier 2 model). The FIRST model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. While both FIRST and PRZM/EXAMS incorporate an index reservoir environment, the PRZM/ EXAMS model includes a PC area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

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

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to methoxyfenozide, they are further discussed in the aggregate risk sections below.

Based on the PRZM/EXAMS and SCI-GROW models the estimated environmental concentrations (EECs) of methoxyfenozide for chronic exposures are estimated to be 30 parts per billion (ppb) for surface water and 3.5 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).

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

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

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 methoxyfenozide and any other substances and methoxyfenozide 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 methoxyfenozide has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/ pesticides/cumulative/.*

C. Safety Factor for Infants and Children

1. *In general.* Section 408 of the FFDCA provides that EPA shall apply an additional tenfold margin of safety (MOS) for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different MOS will be safe for infants and children. MOS are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Developmental toxicity studies.* In a developmental toxicity study in rats regarding maternal findings, there were no deaths orclinical signs, nor were there any effects on body weights or food consumption. No changes were noted in any of the reproductive parameters. Fetal examinations did not

reveal any effects on body weight or gross/visceral/skeletal aspects. The maternal NOAEL is 1,000 milligram/kilogram/day (mg/kg/day) Highest dose tested (HDT) and the maternal LOAEL is greater than 1,000 mg/kg/day. The developmental NOAEL is 1,000 mg/kg/day and the developmental LOAEL is greater than 1,000 mg/kg/day.

In a developmental toxicity study in rabbits regarding maternal findings, there were no deaths or clinical signs, nor were there any effects on body weights, weight gains, or food consumption. No changes were noted in any of the reproductive parameters. Fetal examinations did not reveal any effects on body weight or gross/visceral/skeletal aspects. The maternal NOAEL is 1,000 mg/kg/day HDT, and the maternal LOAEL is greater than 1,000 mg/kg/day. The developmental NOAEL is 1,000 mg/kg day and the developmental LOAEL is greater than 1,000 mg/kg day.

3. *Reproductive toxicity study.* In a 2-generation reproduction study, the LOAEL for systemic toxicity is 20,000 ppm (1,551.9 mg/kg day), based on increased absolute and relative liver weights in males and females and on the hepatocellular hypertrophy in males and females. The NOAEL for systemic toxicity is 2,000 ppm (153.4 mg/kg/day). There were no treatment related reproductive effects on the P_1 and P_2 males and females or their F_1 and F_2 offspring. Therefore, the NOAEL for reproductive toxicity is greater than 20,000 ppm (1,551.9–2,036.5 mg/kg day) HDT. The LOAEL for reproductive toxicity was not identified.

4. *Neurotoxicity.* In an acute oral neurotoxicity study in rats, there were no observable signs of a neurotoxic effect at the highest concentration in females. Functional observational battery (FOB) assessment on day 0 revealed a decrease in hindlimb grip strength for males in the 2,000 mg/kg group. Motor activity assessment remained comparable to controls throughout the study for males and females in all exposure groups. No neuropathological endpoints were observed during the histological examinations of the peripheral or central nervous systems of these animals at any exposure concentration. Based on the absence of any substance related effects on body weight or body weight gain and any clinical signs of toxicity, the NOAEL for systemic toxicity is a concentration of 2,000 mg/kg for males and females. The NOAEL for neurotoxic effects is 200 mg/kg for females. Based on a decrease in hindlimb grip strength on day 0 in the 2,000 mg/kg male group, the NOAEL for males is 1,000 mg/kg and the LOAEL for males is 2,000 mg/kg. No LOAEL was established for systemic effects in males or females or for neurotoxic effects in females.

In a subchronic oral neurotoxicity study in rats, there were no observable signs of a neurotoxic effect at the highest concentration in males or females. FOB and MA remained comparable to controls throughout the study and no neuropathological endpoints were observed during the histological exams of these animals at any exposure concentration. Based on the absence of any substance related effects on body weight or body weight gain and any clinical signs of toxicity, the NOAEL for systemic toxicity is also 2,000 ppm for males (1,318 mg/kg/day), and females (1,577 mg/kg/day). No LOAEL was established for systemic or neurotoxic effects.

In none of the other oral toxicity studies on methoxyfenozide were there any signs of neurotoxicity. The studies considered included all the available toxicology studies on methoxyfenozide.

5. *Conclusion.* There is a complete toxicity data base for methoxyfenozide and no additional studies are required at this time. The scientific and regulatory quality of the toxicology data base for methoxyfenozide is high and is considered sufficient to clearly define the toxicity of this chemical. There is, therefore, high confidence in the hazard and dose-response assessments conducted for this chemical. Exposure data are complete or are estimated based on data that reasonably accounts for potential exposures.

The toxicology data provided no indication of increased susceptibility in rats or rabbits from *in utero* and/or post natal exposure to methoxyfenozide. In the prenatal developmental toxicity studies in rats and rabbits, no developmental toxicity was observed at the limit dose, which is the HDT. In the 2-generation reproduction study in rats, no effects in the offspring were observed at the HDT. In none of the oral toxicity studies on methoxyfenozide were there any signs of neurotoxicity. The studies considered included all the available toxicology studies on methoxyfenozide.

Therefore, the Agency has determined that the FQPA Safety Factor (as required by the FQPA of August 3, 1996) can be reduced to 1X in assessing the risk posed by this chemical.

D. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water e.g., allowable chronic water exposure mg/kg day = cPAD - (average food + chronic non-dietary, non-occupational 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 EPA Office of Water are used to calculate DWLOCs: 2 liter (L)/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: Acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and ground water are less than the calculated DWLOCs, EPA concludes with reasonable certainty that exposures to methoxyfenozide in drinking water (when considered along with other sources of exposure for which EPA has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because EPA considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, EPA will reassess the potential impacts of methoxyfenozide on drinking water as a part of the aggregate risk assessment process.

1. *Acute risk.* No appropriate endpoint was identified in the oral toxicity studies including the acute neurotoxicity study in rats and the developmental toxicity studies in rats and rabbits. Therefore, acute dietary risk assessments were not conducted.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to methoxyfenozide from food will utilize 23% of the cPAD for the U.S. population, 37% of the cPAD

for all infants < 1–year old, the infant subpopulation at greatest exposure and 71% of the cPAD for children 1-2 years old, the children subpopulation at greatest exposure. There are no residential uses for methoxyfenozide that result in chronic residential exposure to methoxyfenozide. In addition, despite the potential for chronic dietary exposure to methoxyfenozide in drinking water, after calculating DWLOCs and comparing them to conservative model estimated environmental concentrations of methoxyfenozide in surface water and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table 2:

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

Population Subgroup	cPAD mg/kg/day	%cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. population	0.10	23	30	3.5	2,700
Infants (< 1–year old)	0.10	37	30	3.5	630
Children (1-2 years old)	0.10	71	30	3.5	290

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

Methoxyfenozide 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 were previously addressed.

4. *Aggregate cancer risk for U.S. population.* Methoxyfenozide has been classified as a "not likely" human carcinogen. The classification is based on the lack of evidence of carcinogenicity in male and female rats as well as in male and female mice and on the lack of genotoxicity in an acceptable battery of mutagenicity studies. Therefore, risk assessments to estimate cancer risk were not conducted.

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

V. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology is available to enforce the tolerance expression. The method for use on corn matrices (grain, forage, stover) is TR 34–00–38. Information on the analytical methodology may be requested from: Calvin Furlow, Public Information Resources and Services Branch (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, N.W., Washington, D.C, 20460, telephone number: (703) 305–5229; e-mail address: *furlow.calvin@epa.gov.*

B. International Residue Limits

There are no established or proposed Codex, Canadian, or Mexican limits for residues of methoxyfenozide in or on plant or animal commodities. Therefore, no compatibility issues exist regarding the proposed U.S. tolerances.

C. Conditions

Plantback (recropping) restrictions should appear on the registered labels. These restrictions should specify that the crops for which methoxyfenozide use is registered may be replanted at any time, and all other crops grown for food or feed may be replanted after 7 days.

The existing livestock tolerances are adequate for the uses proposed under these emergency exemptions.

VI. Conclusion

Therefore, tolerances are established for residues of methoxyfenozide, benzoic acid, 3-methoxy-2-methyl-2-(3,5-dimethylbenzoyl)-2-(1,1-dimethylethyl)hydrazide, in or on grain sorghum at 0.05 ppm, grain sorghum forage at 15 ppm, and grain sorghum stover at 125 ppm.

VII. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of the FFDCA, as was provided in the old sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2005–0224 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 October 31, 2005.

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 issue(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 14th St., NW., Washington, DC 2005. 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 the docket ID number OPP–2005–0224, 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 issue(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 time-limited tolerances] under section 408 of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 exemption under section 408 of the FFDCA, such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers, and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

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: August 19, 2005.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. In § 180.554, the table in paragraph (b) is amended by alphabetically adding commodities to read as follows:

§ 180.544 Methoxyfenozide; tolerance for residues.

* * * * *

(b) * * *

Commodity	Parts per million	Expiration/revocation date
sorghum, grain	0.05	12/31/2007
sorghum, grain, forage	15	12/31/2007
sorghum, grain, stover	125	12/31/2007

* * * * *

[FR Doc. 05–17131 Filed 8–30–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2005–0217; FRL–7731–6]

Flonicamid; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for combined residues of flonicamid and its metabolites in or on certain plant and livestock commodities. ISK Biosciences 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 August 31, 2005. Objections and requests for hearings must be received on or before October 31, 2005.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**. EPA has established a docket for this action under Docket identification (ID) number OPP–2005–0217. 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 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.

FOR FURTHER INFORMATION CONTACT: Ann Sibold, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6502; e-mail address:*sibold.ann@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

You may be potentially affected by this action if you 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/*. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at*http://www.epa.gpo/opptsfrs/home/guidelin.htm/*.

II. Background and Statutory Findings

In the **Federal Register** of May 23, 2003 (68 FR 28218) (FRL–7307–5), 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 3F6552) by ISK Biosciences, 7470 Auburn Road, suite A, Concord, Ohio 44077. The petition requested that 40 CFR part 180 be amended by establishing a tolerance for the combined residues of the insecticide flonicamid, [*N*-(cyanomethyl)-4-trifluoromethylnicotinamide] and its metabolites, TFNA, (4-trifluoromethylnicotinic acid), TFNA-AM, (4-trifluoromethylnicotinamide) and TFNG, [*N*-(4-trifluoromethylnicotinoyl)glycine] in or on the raw agricultural commodities: Celery, at 1.2 parts per million (ppm); cotton, at 0.5 ppm; cotton, gin trash, at 6.0 ppm; cotton, hulls, at 1.0 ppm; cotton, meal, at 1.0 ppm; fruit, pome, group 11, at 0.2 ppm; fruit, stone, group 12, except plum and fresh prune plum, at 0.7 ppm; lettuce, head, at 1.0 ppm; lettuce, leaf, at 4.0 ppm; plum, at 0.1 ppm; potato, at 0.2 ppm; potato, flakes, at 0.4 ppm; prune, fresh, at 0.1; spinach, at 9.0 ppm; tomato, paste, at 2.0 ppm; tomato, puree, at 0.5 ppm; vegetable,

cucurbit, group 9, at 0.4 ppm; vegetable, fruiting, group 8, at 0.4 ppm; by establishing tolerances for the combined residues of the insecticide flonicamid, [*N*-(cyanomethyl)-4-trifluoromethylnicotinamide] and its metabolite TFNA-AM, (4-trifluoromethylnicotinamide) in animal tissues and poultry meat byproducts:Cattle, fat, at 0.01 ppm; cattle, meat, at 0.04 ppm; eggs, at 0.02 ppm; goat, fat, at 0.01 ppm; goat, meat, at 0.04 ppm; hog, fat, at 0.01; hog, meat, at 0.01 ppm; horse, fat, at 0.01 ppm; horse, meat, at 0.04 ppm; milk, at 0.02 ppm; poultry, fat, at 0.01 ppm; poultry, meat, at 0.01 ppm; poultry, meat byproducts, at 0.01 ppm; sheep, fat, at 0.01 ppm; sheep, meat, at 0.04 ppm; by establishing tolerances for the combined residues of the insecticide flonicamid [*N*-(cyanomethyl)-4-trifluoromethylnicotinamide] and its metabolites TFNA, (4-trifluoromethylnicotinic acid) and TFNA-AM, (4-trifluoromethylnicotinamide) in the animal meat byproducts: cattle, meat byproducts, at 0.06 ppm; goat, meat byproducts, at 0.06 ppm; hog, meat byproducts, at 0.01 ppm; horse, meat byproducts, at 0.06 ppm; and sheep, meat byproducts, at 0.06 ppm. That notice included a summary of the petition prepared by ISK Biosciences, the registrant. One comment was received on the notice of filing. EPA's response to this comment is discussed in Unit IV.C.

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 a tolerance for combined residues of flonicamid and its metabolites on various crop and livestock commodities at levels set forth in the list below.

Tolerances for combined residues of flonicamid and its metabolites in/on crops and livestock commodities.

1. Recommended tolerances for combined residues of flonicamid and its metabolites TFNA, TFNG and TFNA-AM in/on crops.

Cotton, undelinted seed at 0.50 ppm
Cotton, gin byproducts at 6.0 ppm
Cotton, hulls at 2.0 ppm
Cotton, meal at 1.0 ppm
Fruit, pome, group 11 at 0.20 ppm
Fruit, stone, group at 12 0.60 ppm
Potato 0.20 at ppm
Potato, granular/flakes at 0.40 ppm
Spinach at 9.0 ppm
Tomato, paste at 2.0 ppm
Tomato, puree at 0.50 ppm
Vegetable, cucurbit, group at 0.40 ppm
Vegetable, fruiting, group at 0.40 ppm
Vegetable, leafy except Brassica group 4, except spinach at 4.0 ppm

2. Recommended tolerances for combined residues of flonicamid and its metabolites TFNA and TFNA-AM in/on livestock commodities.

Cattle, fat at 0.02 ppm
Cattle, meat at 0.05 ppm
Egg at 0.03 ppm
Goat, fat at 0.02 ppm
Goat, meat at 0.05 ppm
Horse, fat at 0.02 ppm
Horse, meat at 0.05 ppm
Milk at 0.02 ppm
Poultry, fat at 0.02 ppm
Poultry, meat at 0.02 ppm
Poultry, meat byproducts at 0.02 ppm
Sheep, fat at 0.02 ppm
Sheep, meat at 0.05 ppm
Cattle, meat byproducts at 0.08 ppm
Goat, meat byproducts at 0.08 ppm
Horse, meat byproducts at 0.08 ppm
Sheep, meat byproducts at 0.08 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. Specific information on the studies received and the nature of the toxic effects caused by flonicamid as well as the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies are discussed in Table 1 of this unit.

TABLE 1.—SUBCHRONIC, CHRONIC AND OTHER TOXICITY OF FLONICAMID

Guideline No.	Study Type	Dose Levels	Results
870.3100	90–Day oral toxicity rodents (rats) 28–day range-finding	0, 50 (males), 200, 1,000,2,000 (males), or 5,000(females) ppm (3.08, 12.11,60.0, or 119.4 mg/kg/day,males and 14.52, 72.3, or340.1 mg/kg/day, females) 0, 50 (males), 100, 500, 1,000,5,000 or 10,000 (females)ppm (3.61, 7.47, 36.45,73.8, or 353.4 mg/kg/day,males and 8.36, 41.24, 81.9,372.6, or 642 mg/kg/day,females)	NOAEL is 200 ppm (12.11 mg/kg/day) formales and 1,000 ppm (72.3 mg/kg/day) forfemales LOAELs were 1,000 ppm (60.0 mg/kg/day) formales based on changes in the kidney (hyalinedeposition) and 5,000 ppm (340 mg/kg/day) forfemales based on kidney (hyaline deposition)and liver changes (centrilobular hypertrophy) NOAEL is 100 ppm (7.47 mg/kg/day) for malesand 1,000 ppm (81.9 mg/kg/day) for females. LOAELs were 500 ppm (36.45 mg/kg/day) formales based on changes in the kidney (hyalinedeposition) and 5,000 ppm for females (372.6mg/kg/day) based on kidney (hyalinedeposition), liver changes (centrilobularhypertrophy), hematological effects (anemia)and clinical chemistry (increased cholesterol)
870.3100	90–Day oral toxicity rodents (mice)	0, 100, 1,000 or 7,000 ppm(0, 15.25, 153.9 or 1,069mg/kg bw/day in males,and 0, 20.10, 191.5, or 1,248mg/kg bw/day in females)	NOAEL is 100 ppm (males: 15.25 mg/kgbw/day, females: 20.10 mg/kg bw/day) LOAEL is 1,000 ppm in (males: 153.9 mg/kgbw/day; females: 191.5 mg/kg bw/day) basedon extramedullary hematopoiesis of the spleen Many of the tissues/organs recommended byGuideline 870.3100 were not histologicallyexamined in any dose group, but this study isnot required and serves as a range-findingstudy for the mouse carcinogenicity study.Therefore, it is classified as acceptable, non-guideline study
870.3150	90–Day oral toxicity (nonrodents- dogs)	0, 3, 8, 20, or 50 (females) mg/kg bw/day	NOAEL is 8 mg/kg/day in males and 20 mg/kg/day for female LOAEL is 20 mg/kg/day in males and 50 mg/kg/day in females, based on acute clinical signs in males and females (vomiting, first observed on Day 1 and last observed on Day 90), clinical pathology at 7 weeks (increased total protein levels in males, lower red blood cells and higher reticulocytescounts in females), increased adrenal weights in males, decreased thymusgland weights in males, and increased kidney tubular vacuolation infemales at study termination
870.3200	28–Day dermal toxicity (rats)	0, 20, 150, or 1,000 mg/kg/day	NOAEL is 1,000 mg/kg/day LOAEL is >1,000 mg/kg/day
870.3700	Prenatal developmental toxicity (rats)	0, 20, 100 or 500 mg/kg bw/day	Maternal NOAEL is 100 mg/kg bw/day LOAEL is 500 mg/kg bw/day, based onincreased liver weight, and liver and kidneypathological changes (hypertrophy ofcentrilobular hepatocytes in liver andvacuolation of proximal tubular cell inkidneys) Developmental NOAEL is 100 mg/kg bw/day LOAEL is 500 mg/kg bw/day, based on the increased incidence of cervical rib

TABLE 1.—SUBCHRONIC, CHRONIC AND OTHER TOXICITY OF FLONICAMID—Continued

Guideline No.	Study Type	Dose Levels	Results
870.3700	Prenatal developmentaltoxicity (rabbits)	0, 2.5, 7.5, or 25 mg/kg/day	Maternal NOAEL is 7.5 mg/kg/day LOAEL is 25 mg/kg, based on decreased bodyweights, body weight gains, and food consumption Developmental NOAEL is ≥ 25 mg/kg/day LOAEL is not established
870.3800	Reproduction and fertility effects (rats)	0, 50, 300, or 1,800 ppm(0/0, 3.7/4.4, 22.3/26.5, and132.9/153.4 mg/kg bw/day [M/F]	Parental NOAEL is 50 ppm (equivalent to 3.7/4.4mg/kg/day [M/F] LOAEL is 300 ppm (equivalent to 22.3/26.5mg/kg/day [M/F] based on increased relativekidney weight and hyaline droplet depositionin the proximal tubules of the kidneys in themales and increased blood serum LH levels inthe F1 females Offspring NOAEL is 300 ppm (equivalent to 22.3/26.5mg/kg/day [M/F]. LOAEL is 1,800 ppm(equivalent to 132.9/153.4 mg/kg/day [M/F]based on decreased absolute and relative tobody uterus weights and delayed sexualmaturation in the F1 females Reproductive Performance NOAEL is 1,800 ppm (equivalent to 132.9/153.4mg/kg/day [M/F] LOAEL for reproductive performance was notobserved
870.4100	Chronic toxicity (dogs)	0, 3, 8, or 20 mg/kg/day	NOAEL is 8 mg/kg/day LOAEL is 20 mg/kg/day, based on acute clinical signs(vomiting, mostly within the first week), clinical pathology at 12 months (higher reticulocytes counts) in males and females
870.4200	Carcinogenicity (mice)	0, 250, 750, or 2250 ppm(0/0, 29/38, 88/112, or261/334 mg/kg/day [M/F]	NOAEL was not established LOAEL is 250 ppm (equivalent to 29/38mg/kg/day [M/F]), based on minimal tomoderate centrilobular hepatocellularhypertrophy, minimal to severeextramedullary hematopoiesis, minimal tomoderate pigment deposition in the sternalbone marrow, and increased incidence of tissuemasses/nodules in the lungs in the males, andminimal to moderate decreased cellularity inthe femoral bone marrow andhyperplasia/hypertrophy of the epithelial cellsof the terminal bronchioles of the females At the doses tested, the carcinogenic potentialof IKI-220 (flonicamid) is positive at 250 ppmin males and females based on the increasedincidence of alveolar/bronchiolar adenomas,carcinomas, and combinedadenomas/carcinomas. Dosing was consideredadequate based on increased incidence of tissuemasses/nodules in the lungs and microscopicfindings in the liver, spleen, bone marrow, andlungs. However, data were providedsuggesting this effect is specific to sensitivestrains of mice Carcinogenic in mice

TABLE 1.—SUBCHRONIC, CHRONIC AND OTHER TOXICITY OF FLONICAMID—Continued

Guideline No.	Study Type	Dose Levels	Results
870.4200	Carcinogenicity (mice)	0, 10, 25, 80, 250 ppmmales: 0, 1.20, 3.14, 10.0,30.3 mg/kg/day; females: 0,1.42, 3.67, 11.8, 36.3 mg/kg/day	NOAEL is 80 ppm (equivalent to 10/12mg/kg/day in males/females) LOAEL is 250 ppm (equivalent to 30/36mg/kg/day in males/females) based on lungmasses and terminal bronchiole epithelial cellhyperplasia/hypertrophy in both sexes At the doses tested, the carcinogenic potentialof IKI-220 (flonicamid) is positive in males andfemales based on the incidences ofalveolar/bronchiolar adenomas, carcinomas,and combined adenomas and/or carcinomas. Dosing was consideredadequate based on lung masses and terminal bronchiole epithelialcell hyperplasia/hypertrophy in both sexes Carcinogenic in mice
870.4300	Combined Chronic/carcinogenicity (rats)	0, 50 (males), 100 (males),200, 1,000, or 5,000 (females) ppm (0/0, 1.84,3.68, 7.32/8.92, 36.5/44.1, and 219 mg/kg/day [M/F]	NOAEL is 200 ppm (equivalent to 7.32/8.92mg/kg/day in males/females) LOAEL is 1,000 ppm (equivalent to 36.5/44.1mg/kg/day in males/females) based ondecreased body weights and body weight gains,and increased incidences of keratitis in malesand striated muscle fiber atrophy in females At the high dose there was an incidence (12%)of nasolacrimal duct squamous cell carcinomasslightly outside the historical control range (0-10%) in male rats. A correlation between theincidence of inflammation and the fluctuatingincidence of nasal tumors was made acrossdose groups. EPA did not consider thenasolacrimal duct tumors to be treatment-related Female rats had a significant increasing trendin nasolacrimal duct squamous cell carcinomasat <0.05, and at the high dose was slightlyabove the historical control mean (0.8%) andrange (0-4%). EPA considered the nasolacrimal duct squamouscell carcinomas to be possibly treatment related, but that a clearassociation with treatment could not be made
870.5100	Bacterial reverse mutation	61.7 to 5,000 µg/plate +/-S9	Negative
870.5100	Bacterial system, mammalian activationgene mutation	33 to 5,000 µg/plate +/-S9	Negative for metabolite TFNA
870.5100	Bacterial system, mammalian activationgene mutation	33 to 5,000 ug/plate +/-S9	Negative for metabolite TFNA-AM
870.5100	Bacterial system, mammalian activationgene mutation	33 to 5,000 ug/plate +/-S9	Negative for metabolite TFNG-AM
870.5100	Bacterial system, mammalian activationgene mutation	33 to 5,000 µg/plate +/-S9	Negative for metabolite TFNA-OH
870.5100	Bacterial system,mammalian activation gene mutation	5 to 5000 ug/plate +/-S9	Negative for metabolite TFNG

TABLE 1.—SUBCHRONIC, CHRONIC AND OTHER TOXICITY OF FLONICAMID—Continued

Guideline No.	Study Type	Dose Levels	Results
870.5300	In vitro mammalian cellgene mutation	28.3 to 2,290 µg/mL initialtest, and 143 to 2,290µg/mL repeat	Negative
870.5375	*In vitro* Cytogenetics	573, 1145 and 2290 µg/mL	Negative
870.5395	*In vivo* cyto-genet-ic(micronucleus) test in mice	Twice orally by intragastricgavage at doses of 250, 500and 1,000 mg/kg/day formales and 125, 250 and 500mg/kg/day for females	Negative
Non-guideline	Other genotoxicity, *in vivo* Comet assay	Single doses of 375, 750 and 1,500 mg/kg	Was not positive for nuclear migration up to1,500 mg/kg
Non-guideline	Unscheduled DNA synthesis	Once orally at 600 and 2,000 mg/kg	Is not genotoxic in hepatocytes from treated rats
870.6200	Acute neurotoxicityscreening battery (rats)	0, 100, 300, 600 (males), or 1,000 mg/kg/day	NOAEL is 600 mg/kg in males and 300 mg/kgin females LOAEL is 1,000 mg/kg based on mortality andsigns of toxicity (decreased motor activity,tremors, impaired respiration, and impairedgait) in males This acute neurotoxicity study is unacceptablebecause interval motor activity data were notprovided as specified according to guidelines,FOB handling and open-field observationswere incomplete, and positive data providedwere from a lab other than the performing labfor this study. This study is not required forthis risk assessment and additional informationis not required
870.6200	Subchronic neurotoxicity screeningbattery (rats)	0, 200, 1000, or 10,000 ppm(0/0, 13/16, 67/81, or625/722 mg/kg/day [M/F]	NOAEL is 200/1,000 ppm (equivalent to 13/81mg/kg/day [M/F] LOAEL is 1,000/10,000 ppm (equivalent to67/722 mg/kg/day [M/F] based on decreasedmotor activity, rearing, and foot splay inmales, decreased body weights, body weightgains, and food consumption in males andfemales
870.7485	Metabolism andpharmacokinetics (rats)	Pilot excretion study, singleoral dose 0.85 or 21 mg/kgand pilot pharmacokineticstudy, single oral dose of 2or 50 mg/kg	IKI-220 (flonicamid) was rapidly absorbed andexcreted with no apparent differences betweenthe sexes. By 48 hours after treatment, 93%of the administered dose had been eliminatedand by 168 hours ~96% was eliminated. Theprimary route of elimination was the urine,accounting for ~90% of the dose. The feces oftreated rats accounted for ~5% of theadministered dose, with no significant amountsof radiolabel detected in expired air of eithersex. After 168 hours of a single high or lowdose of the test material, <3% of theradioactivity was recovered in the carcass and<0.05% in the blood, irrespective of dose orsex The pharmacokinetic parameters were alsosimilar between the dose levels (2 and 50mg/kg) and sexes. The radiolabel was rapidlyabsorbed and excreted. The apparent plasmahalf-life (T½) was 4.8-6.0 hours and theelimination followed first order kinetics. Thetime of maximum plasma concentration(Tmax) for individual animals ranged from0.25 to 1 hour after treatment (with a mean foreach group of 0.3-0.6 hours)

TABLE 1.—SUBCHRONIC, CHRONIC AND OTHER TOXICITY OF FLONICAMID—Continued

Guideline No.	Study Type	Dose Levels	Results
870.7485	Metabolism and pharmacokinetics (rats)	2 or 400 mg/kg	Appears that the overall recovery ofradioactive dose from all group was 94-99% by168 hours post-dose. Absorption was rapidand extensive, detected in plasma within 10minutes of dosing, with maximum plasmaconcentrations within 24-54 minutes. By 168hours post-dose, total urinary excretion was72-78%, cage rinse was 10-21%, and fecalexcretion was 4-7% dose. Parent (IKI-220)(flonicamid) and 9 metabolites accounted for80-94% of the dose for all groups. Parent wasdetected primarily in the urine, 46-73% of thedose in excreta in all groups. The primarymetabolite was 4-trifluoromethylnicotinamide(TFNA-AM), 18-27% dose in all dose groups,along with minor amounts of TFNA-AM N-oxide (1-4% dose).Other metabolites in urine and feces were detected atless than or equal to 2.5% of the dose.IKI-220 (flonicamid) was excreted primarily unchangedin the urine, but biotransformation of IKI-220(flonicamid) in rats included nitrile hydrolysis,N-oxidation, hydroxylation of the pyridine ring and amidehydrolysis

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, 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 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 safety 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 exposure (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

A summary of the toxicological dose and endpoints for flonicamid used for human risk assessment is shown in Table 2 of this unit:

TABLE 2.—TOXICOLOGICAL DOSES AND ENDPOINTS FOR FLONICAMID HUMAN HEALTH RISK ASSESSMENTS

Exposure Scenario	Dose Used in RiskAssessment, UF	Special FQPA SF* andLevel of Concern for Risk Assessment	Study and Toxicological Effects
Acute dietary	None	FQPA SF = NA aPAD = NA	Quantitative risk assessment is notrequired since there are no acute dietarytoxicity concerns

TABLE 2.—TOXICOLOGICAL DOSES AND ENDPOINTS FOR FLONICAMID HUMAN HEALTH RISK ASSESSMENTS—Continued

Exposure Scenario	Dose Used in RiskAssessment, UF	Special FQPA SF* andLevel of Concern for Risk Assessment	Study and Toxicological Effects
Chronic dietary	NOAEL = 3.7 mg/kg/day UF = 100 Chronic RfD = 0.04mg/kg/day	FQPA SF = 1 aPAD = chronic RfD/ FQPA SF= 0.04 mg/kg/day	2–Generation Reproduction rat Parental LOAEL = 22 mg/kg/day basedon increased kidney weights, kidney hyaline deposition, increased blood serum LH (F1 females)
Cancer	Suggestive evidence of carcinogenic potential		

UF = uncertainty factor, FQPA SF = Special FQPA safety factor, NOAEL = no observed adverse effect level, LOAEL = lowest observed adverse effect level, PAD = population adjusted dose (a = acute, c = chronic) RfD = reference dose, MOE = margin of exposure, LOC = level of concern, NA = Not Applicable

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances are being proposed for the combined residues of flonicamid and its metabolites, in or on a variety of raw agricultural commodities. Risk assessments were conducted by EPA to assess dietary exposures from flonicamid and its metabolites in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. No such effects were identified in the toxicological studies for flonicamid; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM-FCID™ Version 2), which incorporates food consumption data as reported by respondents in the USDA 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII), and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: 100% crop treated, tolerance level residues, and drinking water estimated concentration of 0.94 parts per billion (ppb).

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for flonicamid and its metabolites 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 flonicamid and its metabolites.

The Agency uses the Generic Estimated Environmental Concentration (GENEEC) or the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) to estimate pesticide concentrations in surface water and Screening Concentrations in Groundwater (SCI-GROW), which predicts pesticide concentrations in ground water. In general, EPA will use GENEEC (a Tier 1 model) before using PRZM/EXAMS to estimate pesticide concentrations (a Tier 2 model) for a screening-level assessment for surface water. The GENEEC model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. GENEEC incorporates a farm pond scenario, while PRZM/EXAMS incorporate an index reservoir environment in place of the previous pond scenario. The PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

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

In order to fully implement the requirements of FQPA, EPA determined that chronic estimated drinking water concentrations (EDWCs) can be used directly in chronic dietary exposure assessments to calculate aggregate dietary (food + water) risk. This is done by using the relevant PRZM-EXAMS value as a residue for water (all sources) in the dietary exposure assessment. The principal advantage of this approach is that the actual individual body weight and water consumption data from the CSFII are used, rather than assumed weights and consumption for broad age groups. This refinement has been used for the flonicamid chronic aggregate risk assessment for surface water.

Based on the PRZM/EXAMS and SCI-GROW models, the EDWCs of combined residues of flonicamid and its metabolites for chronic exposures are estimated to be 0.94 ppb for surface water and 0.00137 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).

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

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

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 flonicamid and any other substances. and flonicamid does not appear to produce a toxic metabolite produced by other substances. EPA considered that there might be a common mechanism among flonicamid and other pesticides. EPA concluded that the evidence did not support a finding of common mechanism for flonicamid and other pesticides. For the purposes of this tolerance action, therefore, EPA has not assumed that flonicamid has a common mechanism of toxicity with other

substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative/*.

D. Safety Factor for Infants and Children

1. *In general.* Section 408 of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines 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 was no evidence for quantitative or qualitative susceptibility following oral or dermal exposures to rats *in utero* or oral exposure to rabbits *in utero*. Following oral exposures to rats, developmental effects were seen only in the presence of maternal toxicity. No developmental effects were seen in rabbits.

The degree of concern for prenatal and/or postnatal susceptibility is low due to the lack of evidence of qualitative and quantitative susceptibility. This is because developmental effects were only seen in one species, only at the maternal toxicity dose, and effects seen in offspring were not more severe than those seen in the maternal toxicity. Thus, neither qualitative nor quantitative susceptibility issues are of concern for flonicamid. The database for required developmental and reproductive studies is complete, thus there are no residual uncertainties.

3. *Conclusion.* The FQPA Safety Factor is reduced to 1X because:

i. There is a complete toxicity database;

ii. There is a lack of susceptibility evidence in the developmental studies and reproductive study (The effects seen in offspring were mild and occurred only in one species.);

iii. The dietary food exposure assessment utilizes proposed tolerance level or higher residues and 100% CT information for all commodities; and

iv. The dietary drinking water assessment (Tier 1 estimates) utilizes values generated by model and associated modeling parameters which are designed to provide conservative, health protective, high-end estimates of water concentrations.

E. Aggregate Risks and Determination of Safety

1. *Acute risk.* No acute risk is expected for the following reasons: No acute toxicity endpoint was identified. There was no endpoint noted in the database from a single dose exposure that could be used for risk assessment. This included the acute neurotoxicity and developmental toxicity studies as well as other short- and long-term studies. Body weight decreases were consider inappropriate for this acute endpoint since in these studies they occur later then the acute time interval. The observed vomiting in either the acute or subchronic dog studies occurred without manifestations of any other acute clinical signs or related pathology. Thus acute clinical effects seen in the dog studies were considered not appropriate. The acute neurotoxicity study was also not appropriate for the general population since the effects observed only occurred in the high doses tested where mortality was also observed, and therefore the neurotoxicity signs were probably part of the death response, While death can be an acute response, the dose at which death occurred was in EPA's judgement, so high that it is unlikely to happen. In addition, the acute neurotoxicity study did not have all the required observations. The effects observed in the developmental studies were not attributable to an acute response, and therefore the developmental studies were not used for an acute endpoint for females of reproductive age. Thus, an acute dietary endpoint was not considered appropriate.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to flonicamid and its metabolites from food and drinking water will utilize 11% of the cPAD for the U.S. population, 15% of the cPAD for all infants <1 year old, and 25% of the cPAD for children 1-2 years old. There are no residential uses for flonicamid that result in chronic residential exposure to flonicamid.

3. *Short-term and intermediate 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). Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Flonicamid 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. *Aggregate cancer risk for U.S. population.* In assessing the carcinogenic potential of flonicamid, EPA took into account the following weight-of-the-evidence considerations:

i. Flonicamid is not mutagenic.

ii. The treatment-related CD-1 mouse lung tumors (benign and malignant) which occurred in both sexes were due to an established mitogenic mode of action that occurred in a susceptible mouse strain with a high background. A clear species difference was observed between mice and rats in the incidence of lung tumors and the BrdU Index studies. (Bromodeoxyuridine (BrdU) Index studies are used to quantify rates of cell proliferation). No tumors were seen in the lungs of rats. The flonicamid induced increase in the BrdU Index appears to be related to the different sensitivity of strains of mice, with the CD-1 mice being a relatively sensitive strain.

iii. The only other tumor response was nasolacrimal duct tumors which occurred in female rats at the high dose which were considered to be possibly treatment-related, but a clear association with treatment could not be made. Unlike male rats, the nasal tumor response in females could not be clearly associated with spontaneous inflammation related to malocclusion of incisor teeth, due to the low incidence of both the neoplastic and non-neoplastic lesions. Given these findings in the cancer and mutagenicity studies, EPA regards the carcinogenic potential of flonicamid as very low and concludes that it poses no greater than a negligible cancer risk to humans.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methods are available to enforce the proposed tolerances of flonicamid and the major metabolites in plants and livestock. The proposed method for plants uses a LC/MS/MS (FMC No. P-3561M) to determine the residues of flonicamid and its major metabolites, TFNA-AM (4-trifluoromethylnicotinamide), TFNA (4-trifluoromethylnicotinic acid), and TFNG [*N*-(4-trifluoromethylnicotinoyl)glycine]. The reported LOQ was 0.01 ppm and the reported LOD was 0.005 ppm for peach, potato, processed commodities of apples, plums, potatoes, and tomatoes. The reported LOQ was 0.02 ppm and the LOD was 0.01 ppm for each analyte in/on wheat; cotton seed, hulls, and refined oil. The method was adequately validated by an independent laboratory.

For livestock, three methods were proposed: LC/MS/MS method (RCC No. 844743) for residues in eggs and livestock tissues, LC/MS method (RCC No. 842993) for residues in milk, and LC/MS/MS method (FMC P3580) which include an acid hydrolysis step for residues in cattle muscle, kidney and liver. The three livestock methods recommend the use of calibration standards, prepared by using control matrix extracts for all or some of the analyze/matrix combinations to remove matrix enhancement effects. The methods were adequately validated by an independent laboratory. These methods may be used for the determination of residues of flonicamid and its metabolites TFNA-AM, TFNG, and TFNA. The validated LOQ was 0.01 ppm and LOD was 0.005 ppm for methods 844743 and 842993; the reported validated LOQ was 0.025 ppm and the LOD was 0.005 ppm for method FMC P3580.

Enforcement methodology may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

No Codex, Mexican or Canadian MRLs or tolerances have been established. Therefore no compatibility questions exist with respect to Codex.

C. Response to Comments

EPA received one comment from the National Cotton Council, which stated that it supports ISK Bioscience's request for the establishment of tolerances in the listed food and feed items. In today's action, EPA is responding affirmatively to this comment.

V. Conclusion

Therefore, tolerances are established for the combined residues of flonicamid [*N*-(cyanomethyl)-4-trifluoromethyl)-3-pyridinecarboxamide], and its metabolites TFNA [4-trifluoromethylnicotinic acid], TFNA-AM [4-trifluoromethylnicotinamide] and TFNG [*N*-(4-trifluoromethylnicotinoyl)glycine] in or on the crops at tolerance levels listed in Unit III.

Tolerances are established for the combined residues of flonicamid [*N*-(cyanomethyl)-4-(trifluoromethyl)-3-pyridinecarboxamide], and its metabolites TFNA [4-trifluoromethylnicotinic acid] and TFNA-AM [4-trifluoromethylnicotinamide] in or on the livestock commodities at tolerance levels listed in Unit III.

VI. 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–2005–0217 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 October 31, 2005.

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 issue(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 14th 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 VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number OPP–2005–0217, 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 issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of 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.

VIII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: August 19, 2005.

Lois A. Rossi,

Acting Director, Office of Pesticide Programs.

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

PART 180—AMENDED

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

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

■ 2. Section 180.613 is added to read as follows:

§ 180.613 Flonicamid; tolerances for residues.

(a) *General.* (1) Tolerances are established for the combined residues of flonicamid [*N*-(cyanomethyl)-4-(trifluoromethyl)-3-pyridinecarboxamide] and its metabolites TFNA [4-trifluoromethylnicotinic acid], TFNA-AM [4-trifluoromethylnicotinamide] TFNG [*N*-(4-trifluoromethylnicotinoyl)glycine] in or on the following raw agricultural commodities:

Commodity	Parts per million
Cotton, gin byproducts	6.0
Cotton, hulls	2.0
Cotton, meal	1.0
Cotton, undelinted seed	0.50
Fruit, pome, group 11	0.20
Fruit, stone, group 12	0.60
Potato	0.20
Potato, granular/flakes	0.40
Spinach	9.0
Tomato, paste	2.0
Tomato, puree	0.50
Vegetable, cucurbit, group	0.40
Vegetable, fruiting, group	0.40

Commodity	Parts per million
Vegetable, leafy except Brassica group 4, except spinach	4.0

(2) Tolerances are established for combined residues of flonicamid [*N*-(cyanomethyl)-4-(trifluoromethyl)-3-pyridinecarboxamide], and its metabolites TFNA [4-trifluoromethylnicotinic acid], TFNA-AM [4-trifluoromethylnicotinamide] in or on the following raw agricultural commodities:

Commodity	Parts per million
Cattle, fat	0.02
Cattle, meat	0.05
Cattle, meat by-products	0.08
Egg	0.03
Goat, fat	0.02
Goat, meat	0.05
Goat, meat byproducts	0.08
Horse, fat	0.02
Horse, meat	0.05
Horse, meat by-products	0.08
Milk	0.02
Poultry, fat	0.02
Poultry, meat	0.02
Poultry, meat by-products	0.02
Sheep, fat	0.02
Sheep, meat	0.05
Sheep, meat by products	0.08

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 05–17128 Filed 8–30–05; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2005–0165; FRL–7719–8]

Halosulfuron-methyl; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for residues of halosulfuron-methyl in or on sweet potatoes. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on sweet potatoes. This regulation establishes a maximum permissible level for residues of halosulfuron-methyl in this food commodity. The tolerance will expire and is revoked on December 31, 2008.

DATES: This regulation is effective August 31, 2005. Objections and requests for hearings must be received on or before October 31, 2005.

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–2005–0165. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket/*. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. 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: Andrew Ertman, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9367; e-mail address: *ertman.andrew@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 code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

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

B. How Can I 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 on E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/*.

II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(e) and 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing a tolerance for residues of the herbicide halosulfuron-methyl, in or on sweet potatoes at 1.0 parts per million (ppm). This tolerance will expire and is revoked on December 31, 2008. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations (CFR).

Section 408(l)(6) of FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on FIFRA section 18 related tolerances to set binding precedents for the application of section 408 of FFDCA and the new safety standard to other tolerances and exemptions. Section 408(e) of FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, i.e., without having received any petition from an outside party.

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. . . ."

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by the Food Quality Protection Act of 1996 (FQPA). EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

III. Emergency Exemption for Halosulfuron-methyl on Sweet Potatoes and FFDCA Tolerances

Several sweet potato growing States requested the use of halosulfuron-methyl due to resistance to pesticides registered for the control of the weed purple nutsedge in sweet potato fields. EPA has authorized under section 18 of FIFRA the use of halosulfuron-methyl on sweet potatoes for control of purple nutsedge in Louisiana, Mississippi, and North Carolina. After having reviewed the submissions, EPA concurs that emergency conditions exist for these States.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of halosulfuron-methyl in or on sweet potatoes. In doing so, EPA considered the safety standard in section 408(b)(2) of FFDCA, and EPA decided that the necessary tolerance under section 408(l)(6) of FFDCA would be consistent with the safety standard and with section 18 of FIFRA. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment as provided in section 408(l)(6) of FFDCA. Although this tolerance will expire and is revoked on December 31, 2008, under section 408(l)(5) of FFDCA, residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on sweet potatoes after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by this tolerance at the time of that application. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because this tolerance is being approved under emergency conditions, EPA has not made any decisions about whether halosulfuron-methyl meets EPA's registration requirements for use on sweet potatoes or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this tolerance serves as a basis for registration of halosulfuron-methyl by a State for special local needs under section 24(c) of FIFRA. Nor does this tolerance serve as the basis for any State other than Louisiana, Mississippi, and North Carolina to use this pesticide on this crop under section 18 of FIFRA without following all provisions of EPA's regulations implementing section 18 of FIFRA as identified in 40 CFR part 166. For additional information regarding the emergency exemption for halosulfuron-methyl, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT**.

IV. Aggregate Risk Assessment and Determination of Safety

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).

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 halosulfuron-methyl and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA, for a time-limited tolerance for residues of halosulfuron-methyl in or on sweet potatoes at 1.0 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. 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 endpoint. However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intra species differences. For halosulfuron-methyl, the Agency identified the need for a developmental neurotoxicity (DNT) study. In the absence of a DNT study, EPA concluded that an additional database UF of 3X is needed for all dietary and residential (non-dietary) exposure scenarios until the data are received and evaluated. An UF of 3X (as opposed to a higher value) was viewed to be adequate because the NOAEL of 50 mg/kg/day (used for acute dietary, short-term incidental oral and inhalation risk assessments) and the NOAEL of 10 mg/kg/day (used for chronic dietary and intermediate-term incidental oral, dermal, and inhalation risk assessments) are 5X and 25X lower, respectively, than the NOAEL of 250 mg/kg/day in the rat developmental study where alterations of the fetal nervous system were seen at 750 mg/kg/day (LOAEL). Consequently, based on the available data it is unlikely the results of the DNT would impact the overall risk assessment.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic population adjusted dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA Safety Factor (SF).

For non-dietary risk assessments (other than cancer) the UF is used to determine the level of concern (LOC). For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100.

To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1 x10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a "point of departure" is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for halosulfuron-methyl used for human risk assessment is shown in Table 1 of this unit:

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR HALOSULFURON-METHYL FOR USE IN HUMAN RISK ASSESSMENT

Exposure scenario	Dose milligram/kilogram/day (mg/kg/day) UF/MOE	Hazard based special FQPA SF	Endpoint for risk assessment
Dietary risk assessments			
Acute dietary Females 13–50 years of age	NOAEL = 50 UF = 300[a] Acute RfD = 0.17 mg/kg/day	1x	Developmental toxicity—rabbit LOAEL = 150 mg/kg/day based on decreased mean litter size, increased number of resorptions (total and per dam) and increased post-implantation loss. (developmental toxicity).
Chronic dietary All populations	NOAEL = 10 UF = 300[a] Chronic RfD = 0.03 mg/kg/day	1x	Chronic toxicity—dog LOAEL = 40 mg/kg/day based on decreased body weight gains in females.
Incidental oral Short-term (1–30 days) Residential only	NOAEL = 50 MOE = 300	1x	Developmental toxicity—rabbit LOAEL = 150 mg/kg/day based on decreased body weight gain, food consumption, and food efficiency. (maternal toxicity).
Incidental oral Intermediate-term (1–6 months) Residential only	NOAEL = 10 MOE = 300	1x	13 Week Subchronic toxicity—dog LOAEL = 40 mg/kg/day based on decreased body weight gain and food efficiency in females.
Non-dietary risk assessments			
Dermal Short-term (1–30 days)	Dermal NOAEL = 100		21–Day dermal toxicity study—rat LOAEL = 1,000 mg/kg/day based on decreased body weight gain in males.
Residential	MOE = 300		
Dermal[b] Intermediate-term (1–6 months)	Oral NOAEL = 10		13 Week subchronic toxicity—dog LOAEL = 40 mg/kg/day based on decreased body weight gain and food efficiency in females.
Residential	MOE = 300	1x	
Dermal[b] Long-term (> 6 months) Residential	Oral NOAEL = 10 MOE = 300	1x	Chronic toxicity—dog LOAEL = 40 mg/kg/day based on decreased body weight gains in females.
Inhalation[c] Intermediate-term (1–6 months) Residential	Oral NOAEL = 10 MOE = 300	1x	13 Week subchronic toxicity—dog LOAEL = 40 mg/kg/day based on decreased body weight gain and food efficiency in females.
Inhalation[c] Long-term (> 6 months) Residential	Oral NOAEL = 10 MOE = 300	1x	Chronic toxicity—dog LOAEL = 40 mg/kg/day based on decreased body weight gains in females.

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR HALOSULFURON-METHYL FOR USE IN HUMAN RISK ASSESSMENT—Continued

Exposure scenario	Dose milligram/kilogram/day (mg/kg/day) UF/MOE	Hazard based special FQPA SF	Endpoint for risk assessment
Cancer	Classification: "not likely to be carcinogenic to humans" by the oral route, based on no evidence from studies in rats and mice.		

[a] UF_{DB} = 300 (10x for inter-species extrapolation and 10 x for intra-species variability, 3x for lack of DNT).
[b] A 75% dermal absorption factor should be used in route-to-route extrapolation.
[c] Absorption via the inhalation route is presumed to be equivalent to oral absorption.

B. Exposure Assessment

1. *Dietary exposure from food, feed uses, and drinking water.* Tolerances have been previously established (40 CFR 180.479) for the residues of halosulfuron-methyl, in or on a variety of raw agricultural commodities. The established tolerances include almond hulls; corn (sweet, kernel+cob with husks removed, field grain, fodder, forage, pop); cotton (gin by-products and undelinted seed); pistachio nutmeat; sugarcane; rice (grain, straw); and tree nuts (crop group 14). Additionally, tolerances are established (40 CFR 180.479 (a)(1)) for residues of halosulfuron-methyl and its metabolites determined as 3-chloro-1-methyl-5-sulfamoylpyrazole-4-carboxylic acid (also referred to as CSA, expressed as parent equivalents) at 0.1 ppm in or on meat by-products of cattle, goats, hogs, horses, and sheep.

In conducting the acute and chronic dietary risk assessments, EPA used the Dietary Exposure Evaluation Model (DEEM™) software. Modeled estimates of drinking water concentrations were directly entered into the exposure model to assess the contribution from drinking water. Risk assessments were conducted by EPA to assess dietary exposures from halosulfuron-methyl in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. The DEEM™ analysis evaluated the individual food consumption as reported by respondents in the U.S. 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: Tolerance level residues and 100 percent crop treated (PCT) for all commodities for which halosulfuron-methyl tolerances are established and for the crop. Aggregate acute food and water exposure was determined by including modeled estimates of drinking water concentrations in the dietary model. The Agency used the acute water concentration (105 parts per billion (ppb)) derived from surface water modeling results, which was significantly higher than the modeled ground water concentration, and therefore protective of potential exposures via ground water sources of drinking water.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment the DEEM™ analysis evaluated the individual food consumption as reported by respondents in the USDA 1994–1996 and 1998 nationwide CSFII and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: tolerance level residues and 100 PCT for all commodities for which halosulfuron-methyl tolerances are established and for sweet potatoes. Aggregate chronic food and water exposure was determined by including modeled estimates of drinking water concentrations in the dietary model. The Agency used the chronic water concentration (105 ppb) derived from surface water modeling results, which was significantly higher than the modeled ground water concentration, and therefore protective of potential exposures via ground water sources of drinking water.

iii. *Cancer.* Halosulfuron-methyl is classified as a "Not Likely" human carcinogen. Therefore, risk assessments to assess cancer risk were not conducted.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for halosulfuron-methyl 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 halosulfuron-methyl.

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

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water.

Based on the FIRST and SCI-GROW models the estimated environmental concentrations (EECs) of halosulfuron-methyl for acute exposures are estimated to be 105 ppb for surface water and 0.065 ppb for ground water. The EECs for chronic exposures are estimated to be 105 ppb for surface water and 0.065 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). Halosulfuron-methyl is currently registered for use on the following residential non-dietary sites: Residential turfgrass and landscaped areas.

The short-term aggregate risk assessment estimates risks likely to

result from 1– to 30–day exposure to halosulfuron-methyl residues. A short-term risk assessment is required for adults because there are both residential handler and post-application exposure scenarios. In addition, a short-term risk assessment is required for infants and children because there is a residential post-application exposure scenario. Since the same effect was identified as the endpoint across all routes of exposure (decreased body-weight gain), MOEs are combined to result in an aggregate MOE (using the "1/MOE Approach"). The Agency's level of . concern for short-term exposure is an MOE of 300 or lower. Results from the short-term risk assessment indicate that all short-term aggregate MOEs are 3,100 or higher. Therefore, estimated aggregate (food + water + residential) exposure to halosulfuron-methyl are not of concern for short-term aggregate exposure.

The intermediate-term aggregate risk assessment estimates risks likely to result from 1 to 6 months of exposure to halosulfuron-methyl residues from food, drinking water, and residential pesticide uses. An intermediate-term risk assessment is not required for adults because residential handler scenarios are not expected to occur for longer than a short-term time frame. However, an intermediate-term risk assessment is required for infants and children because there is a residential post-application oral exposure scenario. Since the same effect was identified as the endpoint across all routes of exposure (decreased body weight gain), MOEs are combined to result in an aggregate MOE (using the "1/MOE Approach"). High-end estimates of residential exposure are used in the intermediate-term assessment, while average values are used for food and drinking water exposure. The Agency's level of concern for intermediate-term exposure is an MOE of 300 or lower. Results from the intermediate-term risk assessment indicate that the intermediate-term aggregate MOE is 819 for the most highly exposed child subgroup. Therefore, estimated aggregate (food + water + residential) exposure to halosulfuron-methyl are not of concern for intermediate-term aggregate exposure.

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

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 halosulfuron-methyl and any other substances and halosulfuron-methyl 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 halosulfuron-methyl 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 website at *http://www.epa.gov/pesticides/cumulative/.*

C. Safety Factor for Infants and Children

1. *In general.* Section 408 of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-natal and post-natal toxicity and the completeness of the database on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using UFs in calculating a dose level that poses no appreciable risk to humans.

2. *Conclusion.* The Agency concludes that no special FQPA SF is necessary to protect the safety of infants and children in assessing halosulfuron-methyl exposure and risks because:

i. There is no evidence of increased susceptibility of young rats in the reproduction study with halosulfuron-methyl. Although there is qualitative evidence of increased susceptibility in the prenatal developmental studies in rats and rabbits the Agency is regulating at the NOAEL of 50 mg/kg/day for acute dietary, short-term incidental oral and inhalation risk assessments and the NOAEL of 10 mg/kg/day for chronic dietary and intermediate-term incidental oral, dermal, and inhalation risk assessments. These endpoints are 5X and 25X lower, respectively, than the NOAEL of 250 mg/kg/day in the rat developmental study where alterations of the fetal nervous system were seen at 750 mg/kg/day (LOAEL).

ii. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments may be refined using anticipated residues calculated from field trial data with any PCT information. Conservative ground and surface water modeling estimates have been used. The Agency's residential standard operating procedures (SOPs) are used to assess post-application exposure to children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by halosulfuron-methyl.

However, a 3X additional database UF will be used to address the data deficiency for the developmental neurotoxicity study. The 3X safety factor should be applied to all dietary and residential non-dietary exposure scenarios. No FQPA SF is appropriate for halosulfuron-methyl.

D. Aggregate Risks and Determination of Safety

The Agency currently has two ways to estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses. First, a screening assessment can be used, in which the Agency calculates drinking water levels of comparison (DWLOCs) which are used as a point of comparison against EECs. The DWLOC values are not regulatory standards for drinking water, but 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), 2 L/60 kg (adult female), and 1 L/10 kg (child). 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. When new uses are added OPP reassesses the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

More recently the Agency has used another approach to estimate aggregate exposure through food, residential, and drinking water pathways. In this approach, modeled surface and ground water EECs are directly incorporated into the dietary exposure analysis, along with food. This provides a more realistic estimate of exposure because actual body weights and water consumption from the CSFII are used. The combined food and water exposures are then added to estimated exposure from residential sources to calculate aggregate risks. The resulting exposure and risk estimates are still considered to be high end, due to the assumptions used in developing drinking water modeling inputs. This risk assessment for halosulfuron-methyl was conducted using this approach.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to halosulfuron-methyl will occupy 14% for females 13–50 years of age, the population subgroup of concern. EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in Table 2 of this unit:

TABLE 2.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO HALOSULFURON-METHYL

Population subgroup	aPAD (mg/kg)	% aPAD (Food and Water)
Females 13 years and older	0.17	14%

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to halosulfuron-methyl from food and water will utilize 2% or less of the cPAD for all population subgroups in DEEM™ including the U.S. population, infants and children. There are no residential uses for halosulfuron-methyl that result in chronic residential exposure to halosulfuron-methyl. Based on the use pattern, chronic residential exposure to residues of halosulfuron-methyl is not expected. EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in Table 3 of this unit:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO HALOSULFURON-METHYL

Population subgroup	cPAD mg/kg/day	% cPAD (Food and Water)
U.S. population	0.03	1%
All Infants (< 1 year)	0.03	1%
Children 1–2 years old	0.03	2%
Children 3–5 years old	0.03	2%
Children 6–12 years old	0.03	1%
All other population subgroups	0.03	<1%

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). Halosulfuron-methyl is currently registered for use(s) that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term exposures for halosulfuron-methyl.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded that food, water and residential exposures aggregated result in aggregate MOEs of 5,800 for the general U.S. population and 3,200 for children 3–5 years old for dermal, incidental oral, and inhalation exposures. These aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food and residential uses. EPA does not expect short-term aggregate exposure to exceed the Agency's level of concern, as shown in Table 4 of this unit:

TABLE 4.—AGGREGATE RISK ASSESSMENT FOR SHORT-TERM EXPOSURE TO HALOSULFURON-METHYL

Population subgroup	Aggregate MOE (Food + Water + Residential)	Aggregate Level of Concern (LOC)
U.S. population	5,800	300
Children 3–5 years	3,200	300
Adults 20–50 years	5,900	300
Females 13–49 years	5,800	300

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account non-dietary, non-occupational exposure plus chronic exposure to food and water (considered to be a background exposure level). Halosulfuron-methyl is currently registered for use(s) that could result in intermediate-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and intermediate-term exposures for halosulfuron-methyl.

Using the exposure assumptions described in this unit for intermediate-term exposures, EPA has concluded that food, water and residential exposures aggregated result in an aggregate MOE of 819 for infants and children (the population subgroup of concern). This aggregate MOE does not exceed the Agency's level of concern for aggregate exposure to food, water and residential uses. EPA does not expect intermediate-term aggregate exposure to exceed the Agency's level of concern, as shown in Table 5 of this unit:

TABLE 5.—AGGREGATE RISK ASSESSMENT FOR INTERMEDIATE-TERM EXPOSURE TO HALOSULFURON-METHYL

Population subgroup	Aggregate MOE (Food + Water + Residential)	Aggregate Level of Concern (LOC)
Children 3–5 years	819	300

5. *Aggregate cancer risk for U.S. population.* Halosulfuron-methyl is classified as a "Not Likely" human carcinogen. Therefore, risk assessments to assess cancer risk were not conducted.

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 halosulfuron-methyl residues.

V. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (example—gas chromatography) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov.*

B. International Residue Limits

There is neither a Codex proposal, nor Canadian or Mexican maximum residue limits, for residues of halosulfuron-methyl in or on sweet potatoes. Therefore, harmonization is not an issue.

VI. Conclusion

Therefore, the tolerance is established for residues of halosulfuron-methyl, methyl 5-[(4,6-dimethoxy-2-pyrimidinyl)amino] carbonylaminosulfonyl-3-chloro-1-methyl-1*H*-pyrazole-4-carboxylate, in or on sweet potato at 1.0 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–2005–0165 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 October 31, 2005.

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 14th 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 the docket ID number OPP–2005–0165, 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 time-limited tolerance under section 408 of FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 exemption under section 408 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 the FFDCA. For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

IX. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: August 19, 2005.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.479 is amended by revising the introductory text of paragraph (a)(1) and by adding text to paragraph (b) to read as follows:

§ 180.479 Halosulfuron-methyl; tolerances for residues.

(a) * * * (1) Tolerances are established for residues of the herbicide halosulfuron-methyl, methyl 5-[(4,6-dimethoxy-2-pyrimidinyl) amino]carbonylaminosulfonyl-3-chloro-1-methyl-1*H*-pyrazole-4-carboxylate, in or on the raw agricultural commodities listed in the table in this unit.

* * * * *

(b) *Section 18 emergency exemptions.* Time-limited tolerances are established for residues of halosulfuron methyl, methyl 5-[(4,6-dimethoxy-2-pyrimidinyl)amino] carbonylaminosulfonyl-3-chloro-1-methyl-1*H*-pyrazole-4-carboxylate, in connection with use of the pesticide under FIFRA section 18 emergency exemptions granted by EPA in or on the following commodity:

Commodity	Parts per million	Expiration/ revocation date
Sweet potato	1.0	12/31/08

* * * * *

[FR Doc. 05–17204 Filed 8–30–05; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0230; FRL–7729–5]

Lactic Acid, 2-Ethylhexyl Ester; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes four exemptions from the requirement of a tolerance for residues of lactic acid, 2-ethylhexyl ester or ethylhexyl lactate when used as an inert ingredient (solvent) in or on growing crops, when applied to raw agricultural commodities after harvest, or to animals. Purac America, Inc. submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of lactic acid, 2-ethylhexyl ester.

DATES: This regulation is effective August 31, 2005. Objections and requests for hearings must be received on or before October 31, 2005.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit XI. of the**SUPPLEMENTARY INFORMATION**. EPA has established a docket for this action under Docket identification (ID) number OPP–2003–0230. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket*. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. 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: Kathryn Boyle, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6304; e-mail address: *boyle.kathryn@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

- Crop production (NAICS code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS code 32532)

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

B. How Can I Get Electronic Documents and Other Related Information?

In addition to using EDOCKET at *(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 July 11,. 2003 (68 FR 41349) (FRL–7316–1), EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a, as amended by the FQPA (Public Law 104–170), announcing the filing of a pesticide petition (PP 0F6179) by Purac America, Inc., 111 Barclay Boulevard, Lincolnshire, IL 60069. The petition requested that 40 CFR 180.950 be amended by establishing an exemption from the requirement of a tolerance for residues of the (S) isomer of lactic acid, 2-ethylhexyl ester, also known as lactic acid, 2-ethylhexyl ester, (2S)- or 2-ethylhexyl lactate (CAS Reg. No. 186817–80–1) when used as a solvent, an inert ingredient, in pesticide products. That notice included a summary of the petition prepared by the petitioner. There were no comments received in response to the notice of filing.

PURAC's petition requested only the establishment of a tolerance exemption for the (S) isomer of lactic acid, 2-ethylhexyl ester. However, according to information on the PURAC website, there is also a general CAS Reg. No. for lactic acid, 2-ethylhexyl ester (CAS Reg. No. 6283–86–9). In the simplest terms an isomer can be defined as a substance which has the same molecular formula as another, but the individual elements of the molecule—the links from one element to another within the molecule—are arranged differently. A stereochemical isomer differs in the 3-D spatial arrangement of the elements. In certain cases, this is sometimes referred to as "mirror images." An example of such a mirror image arrangement is a person's right and left hand. A person holding his hands out, both palms up, cannot make the presentation of four fingers and the thumb of the right hand match the orientation of the left hand. They can be viewed as if there is a mirror between the two. The chemical and physical properties of two isomeric chemicals are essentially the same. There can be some differences in the biological properties of the two isomers. The Agency has determined that both of the names are appropriate for this chemical and is therefore establishing tolerance exemptions using the (S) isomer and the general nomenclature of lactic acid, 2-ethylhexyl ester.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of the FFDCA defines"safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in

residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Toxicological Profile

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information 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 lactic acid, 2-ethylhexyl ester are discussed in this unit.

A. Acute Toxicity

The Agency's review of the following two acute toxicity studies and the toxicity category classification, are shown in the following Table. The Agency uses a scale of I to IV to rate the toxicity of acute studies. Toxicity Category I is indicative of very high acute toxicity. Toxicity Category IV is the Agency's lowest rating of acute toxicity.

ACUTE TOXICITY STUDIES

Study/Species	Results	Toxicity Category
Acute oral toxicity/rat	LD_{50} is equal to or greater than 2,000 mg/kg	III
Primary eye irritation/rabbit	Irritating to the eye	II

B. Repeated Dose Inhalation Toxicity Study

In a 28–day inhalation toxicity study, rats received 6-hour/day nose only exposure, for 5 days/week over a 4-week period. The target concentrations of lactic acid, 2-ethylhexyl ester were 0 (control), 75, 200, 600, or 1,800 mg/cubic meter (mg/m^3). A NOEL (no-observed effect level) was not defined as microscopic effects in the respiratory tract were noted even at 75 mg/m^3. The Agency's reviewer noted that effects seen at 600 mg/m^3 (decreased absolute spleen weight in males), and 1,800 mg/m^3 (gross pathology changes of the lungs, significantly decreased body weight in males, increases in relative liver weight in both sexes, increases in lung weight in males, decreases in absolute spleen weights in both sexes, and in relative spleen weight in females) would be more consistent with consideration of an adverse effect.

C. Developmental Inhalation Toxicity Study

Pregnant rats were exposed to lactic acid, 2-ethylhexyl ester at target concentrations of 0 (control), 200 or 600 mg/m^3 for 6 hours/day nose only exposure from gestation days 6 to 15. Both the 200 and 600 mg/m^3 concentration groups experienced an increased breathing rate. Body weight gains were slightly depressed in both groups. There was also a reduced food consumption relative to controls. A maternal NOAEL (no observed adverse effect level) was not determined. The maternal LOAEL (lowest observed adverse effect level) is 200 mg/m^3.

Mean fetal body weight values for the 600 mg/m^3 group were below those of controls. The only effect at 200 mg/m^3, a slight retardation in fetal ossification, was considered to be equivocal and probably secondary to maternal toxicity. The developmental NOAEL is 200 mg/m^3 and the developmental LOAEL is 600 mg/m^3 based on reduced mean fetal body weights.

D. Metabolism

Lactic acid, 2-ethylhexyl ester is formed by combining lactic acid and 2-ethylhexanol. In mammalian metabolism, this process is reversed. Simple esters such as the lactic acid esters undergo hydrolysis yielding lactic acid and the corresponding alcohol. The human body has well-understood pathways for metabolizing ingested lactic acid. Humans also produce lactic acid as an intermediate product of carbohydrate or glucose metabolism. The Food and Drug Administration (FDA) has estimated the lactate turnover rate in man to be of the order of 2 grams/kg/day. The Agency's evaluation of lactic acid has been placed as a support document in the EDOCKET for this final rule.

In the hydrolysis of lactic acid, 2-ethylhexyl ester, the corresponding alcohol would be 2-ethylhexanol. The mammalian body would metabolize 2-ethylhexanol to the corresponding aldehyde, which would then be metabolized to the corresponding carboxylic acid. The mammalian body has well-understood pathways for metabolism of carboxylic acids to carbon dioxide and water.

E. Toxicity of 2-Ethylhexanol

Since 2-ethylhexanol (CAS Reg. No. 104–76–7) is the alcohol formed via hydrolysis, toxicity studies performed using 2-ethylhexanol as the test substance can be used to further understand the toxicity of lactic acid, 2-ethylhexyl ester. Three sources of data are available: Data submitted to the Agency under a Toxic Substances Control Act (TSCA) test rule, the conclusions and recommendations of the Organization for Economic Cooperation and Development (OECD), and the International Uniform Chemical Information Database (IUCLID) submitted by industry to the European

Chemicals Bureau. Taken together these three data sources supply more than adequate information to evaluate the toxicity of 2-ethylhexanol.

Under a TSCA test rule, toxicity studies performed using 2-ethylhexanol were submitted to the Agency's Office of Pollution Prevention and Toxics (OPPT). Reviews of two carcinogenicity studies (mouse and rat) and a dermal developmental toxicity study are posted on the Agency's website (see *http://www.epa.gov/opptintr/chemtest/ethylhex.htm*). The conclusions of the Agency's reviewers were that 2-ethylhexanol is not carcinogenic in the mouse under the conditions of the study, and that there is no evidence of carcinogenicity in the rat at any dose level tested. In the developmental toxicity study there was no evidence of developmental toxicity at any dose level. The dermal developmental NOAEL is therefore equal to or greater than the highest dose tested (HDT), 3.0 milliliter (mL)/kg/day or 2,520 milligram/kilogram/day (mg/kg/day). Maternal effects (reduced weight gain) were noted at the 3.0 mL/kg/day dose level. Exfoliation occurred at the application site at the 1.0 mL/kg/day dose level. The maternal NOAEL is 0.3 mL/kg/day or 252 mg/kg/day.

The agreed upon conclusions and recommendations of the OECD Screening Information Dataset Initial Assessment Profile (SIAP) are available via the internet (see *http://cs3-hq.oecd.org/scripts/hpv/Home.asp*). The SIAP contains summarized results of OECD's review of several 90–day toxicity studies, two carcinogenicity studies, and several developmental toxicity studies. The IUCLID for 2-ethylhexanol was obtained from the European Chemicals Bureau website (see *http://ecb.jrc.it.esis/*). The IUCLID dataset is a compilation of data submitted by the manufacturers of 2-ethylhexanol and is posted as received. By combining these two sources, the Agency was able to obtain more details on certain of the toxicity studies than available in the SIAP.

Results of three 90–day oral toxicity studies are available:

- In a rat feed study, the NOAEL is 57 mg/kg/day and the LOAEL is 282 mg/kg/day based on swelling of the liver and kidney.
- In a rat gavage study the NOAEL is 125 mg/kg/day and the LOAEL is 250 mg/kg/day based on clinical effects: Cyanide insensitive palmitoyl CoA-oxidation in the liver.
- In a mouse gavage study the NOAEL is 125 (male) and 250 (female) mg/kg/day. The LOAEL is 250(M) and 500(F) based on stomach effects.

These results are consistent (the 57 mg/kg/day is an artifact of dose spacing) and indicate that the target organs were the liver, stomach, and kidney.

2-Ethylhexanol was negative in numerous mutagenicity studies. Both the SIAP and the IUCLID indicated that 2-ethylhexanol is not carcinogenic in the rat or mouse.

Results of developmental toxicity studies via the oral and inhalation routes of exposure performed using 2-ethylhexanol were reported in the SIAP and IUCLID.

- For the rat oral (gavage) study the maternal NOAEL is 130 mg/kg/day and the maternal LOAEL is 650 mg/kg/day. The developmental NOAEL is 130 mg/kg/day, and the developmental LOAEL is 650 mg/kg/day based on slightly reduced mean fetal body weights and increased frequency of fetuses with skeletal variations and retardations.
- In a mouse oral (gavage) developmental toxicity study both the maternal and the developmental NOAEL are equal to or greater than 191 mg/kg/day, the HDT.
- In a single dose rat developmental inhalation toxicity study, maternal feed consumption was reduced, but no fetal malformations were noted. The maternal NOAEL would be less than or equal to 0.850 mg/m^3. The developmental LOAEL would be equal to or greater than 0.850 mg/m^3.

Metabolism studies performed using 2-ethylhexanol indicate that after oral administration, 2-ethylhexanol is rapidly excreted in respiratory carbon dioxide, feces, and urine. Elimination is essentially complete by 28 hours after administration. Only 3% of the administered 2-ethylhexanol is excreted unchanged.

The SIAP conclusions called for additional testing with the metabolite of 2-ethylhexanol, which is 2-ethylhexanoic acid. The rationale for this conclusion was based on the results of several oral studies conducted at time-frames of less than two weeks duration. The IUCLID indicated that these studies were conducted at high dose levels ranging from over 300 to 1,500 mg/kg/day. Alterations in testicular weights were consistently noted at 1,000 and 1,500 mg/kg/day. Alterations in testicular weights were not consistent at dose levels in the 300's mg/kg/day. However, the testicular effects were not noted in the 90–day oral toxicity studies even at dose levels up to 500 mg/kg/day.

F. Conclusions

Acute toxicity studies indicate that lactic acid, 2-ethylhexyl ester is of low to moderate acute oral toxicity, and is irritating to the eye. The database supplied by the petitioner, most specifically the 28–day study, indicate that lactic acid, 2-ethylhexyl ester is irritating to the lung and respiratory tract. Irritation effects such as these are handled through the use of personal protective equipment as determined by the end-product acute toxicity testing not through the establishment of tolerance exemptions.

Of significant note for dietary exposure, chemical substances such as lactic acid esters hydrolyze in the mammalian body to lactic acid and the corresponding alcohol (2-ethylhexanol). The human body has well-understood pathways for metabolizing such chemicals. Given the relationship of 2-ethylhexanol as a metabolite of the mammalian body's metabolism of lactic acid, 2-ethylhexyl ester, data on 2-ethylhexanol is useful for understanding the toxicity of lactic acid, 2-ethylhexyl ester. Data on 2-ethylhexanol can be used to judge that lactic acid, 2-ethylhexyl ester is not a carcinogen.

The Office of Pesticide Programs has reviewed and evaluated a developmental inhalation toxicity study conducted with lactic acid, 2-ethylhexyl ester. OPPT has reviewed and evaluated a dermal developmental toxicity study conducted with 2-ethylhexanol. The SIAP and IUCLID provided information on another developmental inhalation toxicity study conducted with 2-ethylhexanol. None of these studies are the route of exposure most appropriate for evaluating dietary exposure; however, there are in these studies no indications of any increased susceptibility.

For evaluating dietary exposure the oral developmental and 90–day studies conducted using 2-ethylhexanol provide the most appropriate information for assessing the toxicity of lactic acid, 2-ethylhexyl ester. These studies consistently demonstrate NOAELs greater than 100 mg/kg/day.

V. Aggregate Exposures

In examining aggregate exposure, section 408 of the FFDCA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide

chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

A. Dietary Exposure

1. *Food.* The Agency has developed a screening-level model for predicting dietary exposure to inert ingredients. The results of this model are considered to over-estimate exposure to an inert ingredient in a pesticide product. The modeled chronic dietary exposure for the U.S. population for an inert ingredient is 0.12 mg/kg/day. This is well-below the dose levels (discussed above) at which an adverse effect is expected from exposure to lactic acid, 2-ethylhexyl ester.

The Agency must also consider the potential for exposure to lactic acid as a result of application of a pesticide product containing a lactate ester. Lactic acid occurs naturally in meats, fruits, tomato juice, beer, wine, molasses, sour milk, yogurt and cottage cheese. Lactic acid has been added to commercially prepared foods since the 1940-1950s. The FDA has estimated a per capita daily intake for lactic acid of 15 mg. Given the existing and wide-spread presence of lactic acid in the food supply, the amount of lactic acid that could be present as a result of an application of a pesticide product containing lactic acid or a lactate ester is expected to be a very small proportion.

2. *Drinking water exposure.* When released to the environment, lactic acid, 2-ethylhexyl ester will be present predominantly in the dissolved phase surface and ground water. The chemical is soluble in water (0.3 g/liter). Once lactic acid, 2-ethylhexyl is in the water, it is expected that at neutral pH degradation would begin immediately via hydrolysis. Lactic acid, 2-ethylhexyl ester would also degrade rapidly via biodegradation. The estimated half-life of lactic acid, 2-ethylhexyl ester in soil is 17 days. Based on information submitted by the petitioner and estimates from the Agency's PBT profiler (*http://www.pbt.profiler.net*) lactic acid, 2-ethylhexyl ester should completely degrade to water and carbon dioxide in days. Given the rapid biodegradation (i.e. lack of persistance) significant concentrations of lactic acid, 2-ethylhexyl ester are very unlikely in either ground or surface water used as sources of drinking water.

B. Other Non-Occupational Exposure

Given their physical/chemical properties, lactate esters could have a variety of uses in and around the home. According to information on the internet they are being considered as "green" replacements for many of the organic solvents traditionally used in the manufacturing industry.

VI. Cumulative Effects

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

Unlike other pesticide chemicals 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 lactic acid, 2-ethylhexyl ester. The lactate esters are a structurally-related group of chemicals that all hydrolyze to lactic acid, which is not a toxic metabolite. For the purposes of this tolerance action, therefore, EPA has not assumed that these chemical substances have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative/.*

VII. Safety Factor for Infants and Children

FFDCA section 408 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 database unless EPA concluded that a different margin of safety will be safe for infants and children. Lactic acid, 2-ethylhexyl ester has been tested in an inhalation developmental toxicity study in which there were no indications of increased susceptibility. The hydrolysis product of lactic acid, 2-ethylhexyl ester is 2-ethylhexanol. Developmental toxicity studies conducted using 2-ethylhexanol as the test substance have been performed via the oral, dermal, and inhalation routes of exposure. The results of these studies also do not indicate any increased susceptibility. A safety factor analysis has not been used to assess the risk of lactic acid, 2-ethylhexyl ester. For the same reasons, the additional tenfold safety factor for the protection of infants and children is unnecessary.

VIII. Determination of Safety for U.S. Population, and Infants and Children

Based on the available toxicity data on lactic acid, 2-ethylhexyl ester and on its metabolites lactic acid and 2-ethylhexanol, EPA concludes that there is a reasonable certainty of no harm from aggregate exposure to residues of lactic acid, 2-ethylhexyl ester (CAS Reg. No. 6283–86–9) and lactic acid, 2-ethylhexyl ester, (2S)- (CAS Reg. No. 186817–80–1). EPA finds that establishing exemptions from the requirement of a tolerance for lactic acid, 2-ethylhexyl ester (CAS Reg. No. 6283–86–9) and lactic acid, 2-ethylhexyl ester, (2S)- (CAS Reg. No. 186817–80–1) will be safe for the general population including infants and children.

IX. Other Considerations

A. Endocrine Disruptors

FQPA requires EPA to develop a screening program to determine whether certain substances, including all pesticide chemicals (both inert and active ingredients), "may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect . . ." EPA has been working with interested stakeholders to develop a screening and testing program as well as a priority setting scheme. As the Agency proceeds with implementation of this program, further testing of products containing lactic acid, 2-ethylhexyl ester (CAS Reg. No. 6283–86–9) and lactic acid, 2-ethylhexyl ester, (2S)- (CAS Reg. No. 186817–80–1) for endocrine effects may be required.

B. Analytical Method

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

C. Existing Exemptions

There are no existing tolerances or tolerance exemptions forlactic acid, 2-ethylhexyl ester (CAS Reg. No. 6283–86–9) and lactic acid, 2-ethylhexyl ester, (2S)- (CAS Reg. No. 186817–80–1).

D. International Tolerances

The Agency is not aware of any country requiring a tolerance for lactic acid, 2-ethylhexyl ester (CAS Reg. No. 6283–86–9) and lactic acid, 2-ethylhexyl ester, (2S)- (CAS Reg. No. 186817–80–1) nor have any CODEX Maximum Residue Levels been established for any food crops at this time.

E. List 4B Classification

It has been determined that lactic acid, 2-ethylhexyl ester (CAS Reg. No. 6283–86–9) and lactic acid, 2-ethylhexyl ester, (2S)- (CAS Reg. No. 186817–80–1) are to be classified as List 4B inert ingredients. This classification is due to the Toxicity Category II determination for the acute eye irritation study and the lung irritation effects in the 28–day study. Tolerance exemptions for lactic acid, 2-ethylhexyl ester (CAS Reg. No. 6283–86–9) and lactic acid, 2-ethylhexyl ester, (2S)- (CAS Reg. No. 186817–80–1) are established in 40 CFR 180.910 and 180.930 instead of 40 CFR 180.950 as requested by the petitioner PURAC.

X. Conclusions

Accordingly, exemptions from the requirement of a tolerance are established for lactic acid, 2-ethylhexyl ester (CAS Reg. No. 6283–86–9) and lactic acid, 2-ethylhexyl ester, (2S)- (CAS Reg. No. 186817–80–1).

XI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of the FFDCA, as was provided in the old FFDCA sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2003–0230 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 October 31, 2005.

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 issue(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 14th 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 XI.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–2003–0230, 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 issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

XII. Statutory and Executive Order Reviews

This final rule establishes an exemption from the tolerance requirement under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any

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

XIII. 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: August 23, 2005.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. In § 180.910, the table is amended by adding alphabetically the following inert ingredients to read as follows:

§ 180.910 Inert ingredients used pre- and post-harvest; exemptions from the requirement of a tolerance.

* * * * *

Inert Ingredients	Limits	Uses
* *	*	* *
Lactic acid, 2-ethylhexyl ester (CAS Reg. No. 6283–86–9).	.....	Solvent
Lactic acid, 2-ethylhexyl ester, (2S)- (CAS Reg. No. 186817–80–1).	.....	Solvent
* *	*	* *

■ 3. In § 180.930, the table is amended by adding alphabetically the following inert ingredients to read as follows:

§ 180.930 Inert ingredients applied to animals; exemptions from the requirement of a tolerance.

* * * * *

Inert Ingredients	Limits	Uses
* *	*	* *
Lactic acid, 2-ethylhexyl ester (CAS Reg. No. 6283–86–9).	.....	Solvent
Lactic acid, 2-ethylhexyl ester, (2S)- (CAS Reg. No. 186817–80–1).	.....	Solvent
* *	*	* *

[FR Doc. 05–17360 Filed 8–30–05; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2004–0326; FRL–7716–1]

S-metolachlor; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for combined residues (free and bound) of S-metolachlor in or on certain commodities as set forth in Unit II. of the **SUPPLEMENTARY INFORMATION.** The Interregional Research Project Number 4 (IR–4), 681 U.S. Highway #1 South, North Brunswick, NJ 08902–3390, requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), on behalf of the registrant, Syngenta Crop Protection, Swing Road, Greensboro, NC 276419.

DATES: This regulation is effective August 31, 2005. Objections and

requests for hearings must be received on or before October 31, 2005.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION.** EPA has established a docket for this action under docket identification (ID) number OPP–2004–0326. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. 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: Sidney Jackson, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7610; e-mail address: *jackson.sidney@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

- Crop production (NAICS 111), 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/.* To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at *http://www.epa.gpo/opptsfrs/home/guidelin.htm/.*

II. Background and Statutory Findings

In the **Federal Register** of August 13, 2004 (69 FR 50196) (FRL–7371–7), 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 (3E6787) by IR-4 on behalf of Syngenta Crop Protection, Swing Road, Greensboro, NC 27419. The petition requested that 40 CFR 180.368 be amended by establishing tolerances for combined residues (free and bound) of the herbicide S-metolachlor [S-2-chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-1-methylethyl)acetamide], its R-enantiomer, and its metabolites, determined as the derivatives, 2-(2-ethyl-6-methylphenyl)amino-1-propanol and 4-(2-ethyl-6-methylphenyl)-2-hydroxy-5-methyl-3-morpholinone, each expressed as the parent compound, S-metolachlor. It should be noted that the above chemical nomenclature for S-metolachlor differs slightly from that previously listed under 40 CFR 180.368(a)(2). The Agency is establishing these tolerances for residues of S-metolachlor under a new paragraph, 180.368 (a)(3), using this nomenclature because it is more technically accurate in terms of the nature of the residues and the components determined by the analytical method. The Agency has determined that the tolerance expression as listed in paragraph (a)(2) should be changed and will be proposing that change in an upcoming rule. Further chemical definition of S-metolachlor can be found in Unit III. A. of this document. In petition, PP 3E6787, IR-4 requested tolerances for S-metolachlor in or on the following raw agricultural commodities (RACs):

1. Brassica, head and stem, subgroup 5A at 0.5 parts per million (ppm).
2. Cattle, fat at 0.04 ppm; cattle, kidney at 0.20 ppm; cattle, meat at 0.04 ppm; cattle, meat byproducts, except kidney at 0.04 ppm.
3. Corn, field, grain at 0.10 ppm; corn, field, stover at 6.0 ppm; corn, field, forage at 6.0 ppm; corn, sweet, forage at 6.0 ppm; corn, sweet, stover at 6.0 ppm; corn, pop, stover at 6.0 ppm; corn, pop, grain at 6.0 ppm; corn, sweet, kernel plus cob with husk removed at 0.1 ppm.
4. Cotton, gin byproducts at 4.0 ppm; cotton, undelinted seed at 0.1 ppm.
5. Egg at 0.04 ppm.
6. Garlic, bulb at 0.1 ppm.
7. Goat, fat 0.04 ppm; goat, kidney at 0.20 ppm; goat, meat at 0.04 ppm; goat, meat byproducts, except kidney at 0.04 ppm.
8. Horse, fat 0.04 ppm; horse, kidney at 0.20 ppm; horse, meat at 0.04 ppm; horse, meat byproducts, except kidney at 0.04 ppm.
9. Leafy petioles subgroup 4B at 0.10 ppm.
10. Milk at 0.02 ppm.
11. Onion, dry bulb at 0.1 ppm; onion, green at 2.0 ppm.
12. Pea and bean, dried shelled, except soybean, subgroup 6C at 0.1 ppm.
13. Peanut 0.2 ppm; peanut, hay at 20 ppm; peanut, meal at 0.40 ppm.
14. Poultry, fat at 0.04 ppm; poultry, meat at 0.04 ppm; poultry, meat byproducts, except liver at 0.04 ppm.
15. Safflower, seed at 0.1 ppm.
16. Shallot at 0.1 ppm.
17. Sheep, fat at 0.04 ppm; sheep, kidney at 0.20 ppm; sheep, meat at 0.04 ppm; sheep, meat byproducts, except kidney at 0.04 ppm.
18. Sorghum grain, stover at 4.0 ppm; sorghum grain, forage at 1.0 ppm; sorghum grain, grain at 0.3 ppm.
19. Soybean, seed at 0.2 ppm; soybean, forage at 5.0 ppm; soybean, hay at 8.0 ppm.
20. Vegetable, foliage of legume, except soybean, subgroup 7A at 15 ppm.
21. Vegetable, fruiting, group 8 at 0.5 ppm.
22. Vegetable, legume, edible podded, subgroup 6A at 0.5 ppm.
23. Vegetable, root, except sugar beet, subgroup 1B at 0.3 ppm.
24. Vegetable, tuberous and corm, subgroup 1C at 0.2 ppm.

Several of the proposed tolerances were subsequently amended as follows:

Tolerances for vegetable, fruiting, group 8 (except tabasco pepper) at 0.1 ppm; tomato, paste at 0.3 ppm; a separate regional tolerance for pepper, tabasco at 0.5 ppm; brassica, head and stem increased from 0.5 to 0.6 ppm; corn, pop, grain decreased from 6.0 to 0.1 and barley straw from 0.1 to 0.5 ppm. Furthermore, the proposed tolerance of cattle, goat, horse and sheep meat byproducts, except kidney at 0.04 ppm was subsequently amended to establish tolerances for meat byproducts, except kidney and liver of cattle, goat, horse and sheep at 0.04 ppm and separate tolerances for liver of cattle, goat, horse and sheep at 0.1 ppm. The tolerance for poultry, meat byproducts, except liver at 0.04 ppm was also amended to poultry, meat byproducts at 0.04 ppm.

Additionally, IR–4 proposed to amend 40 CFR 180.368(a)(2) by removing tolerances established for the combined residues (free and bound) of the herbicide S-metolachlor [S-2-chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-1-methylethyl)acetamide], and its metabolites, determined as the derivatives, 2-(2-ethyl-6-methylphenyl)amino-1-propanol and 4-(2-ethyl-6-methylphenyl)-2-hydroxy-5-methyl-3-morpholinone, each expressed as the parent compound, in or on the following RAC's: Carrot, roots at 0.20 ppm; Horseradish at 0.20 ppm; onion, green at 0.20; rhubarb at 0.10 ppm; swiss chard at 0.10 ppm; and tomato at 0.1 ppm. The Agency concurs with this proposal based on the fact that these uses are covered by crop group and/or crop subgroup tolerances promulgated under section (a)(3) of this ruling.

Additionally, IR–4 proposed to amend 40 CFR 180.368(d) by establishing tolerances for indirect or inadvertent combined residues (free and bound) of the herbicide S-metolachlor [S-2-chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-1-methylethyl)acetamide] its R-enantiomer,, and its metabolites, determined as the derivatives, 2-(2-ethyl-6-methylphenyl)amino-1-propanol and 4-(2-ethyl-6-methylphenyl)-2-hydroxy-5-methyl-3-morpholinone, each expressed as the parent compound, S-metolachlor in or on the following RAC's:

1. Animal feed, nongrass, group 18 at 1.0 ppm
2. Barley, grain at 0.1 ppm; barley straw at 0.1 ppm
3. Buckwheat, grain at 0.1 ppm
4. Oat, forage at 0.5 ppm; oat, grain at 0.1 ppm; oat straw at 0.5 ppm
5. Peanut, meal at 0.4 ppm
6. Rice, grain at 0.1 ppm; rice, straw at 0.5 ppm
7. Rye, forage at 0.5 ppm; rye, grain at 0.1 ppm; rye straw at 0.5 ppm
8. Wheat, forage at 0.5 ppm; wheat grain at 0.1 ppm; wheat straw at 0.5 ppm

These tolerances for the various grains (barley, buckwheat, oats, rice, rye, wheat) and nongrass animal feeds are being established to cover residues of S-metolachlor in these crops when planted as rotational crops following treatment of a primary crop. The Agency concludes that these tolerances should be assigned to § 180.368(d) for indirect and inadvertent residues, and that adequate data are available to set the rotational crop tolerance for the nongrass animal feeds at 1.0 ppm. In addition, the Agency has concluded that tolerances should be established on the hays of barley, oats, and wheat at 1.0 ppm in paragraph (d). The peanut meal tolerance will be established under paragraph (a)(3) and is not necessary as proposed in (d).

The notice proposing these tolerances included a summary of the petition prepared by Syngenta Crop Protection, Incorporated, the registrant. There were no comments received in response to the notice of filing.

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 November 26, 1997 (62 FR 62961) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of 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 a tolerance for combined residues (free and bound) of S-metolachlor on commodities and at tolerance levels presented in Unit II. of this document. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

Metolachlor is a chloroacetanilide herbicide that was first registered as a pesticide in 1976. Metolachlor (known as racemic metolachlor) is a mixture consisting of 50% each of the R-enantiomer (CGA 77101) and the S-enantiomer (CGA 77102). The S-enantiomer is the herbicidally active isomer.S-metolachlor is also a racemic mixture comprised of 88% S-enantiomer and 12% R-enantiomer. The Agency has determined that S-metolachlor has either comparable or decreased toxicity as compared to racemic metolachlor.

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 S-metolachlor 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 Unit III.A. of the **Federal Register** of April 2, 2003 (68 FR 15945) (FRL–7299–8).

B. Toxicological Endpoints

The dose at which the NOAEL from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the LOAEL of concern 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 UFs may be used: "Traditional UF;" the "special FQPA safety factor;" and the "default FQPA safety factor." By the term "traditional UF," 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 UF 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 (aRfD or cRfD) 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 (1×10^{-5}), one in a million (1×10^{-6}), or one in ten million (1×10^{-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}= point of departure/exposures) is calculated. A summary of the toxicological endpoints for S-metolachlor used for human risk assessment is discussed in Unit III.B. of the final rule published in the **Federal Register** of April 2, 2003 (68 FR 15945) (FRL–7299–8). Should you desire additional information in this regard, please refer to that document.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.368(a)(2)) for the combined residues of S-metolachlor, in or on a variety of RAC's. S-metolachlor is a selective, chloroacetanilide herbicide that is applied as a preplant, preplant-incorporated (PPI), pre-emergence, or post-emergence application, primarily for the control of grass weeds. S-metolachlor is registered to Syngenta Crop Protection, Inc., for use on a wide variety of crops including: Corn, cotton, grasses grown for seed, legume vegetables, peanuts, potatoes, safflower, sorghum, sunflower, and tomatoes and complement the metolachlor (racemic mixture) product line with S-metolachlor products that contain a higher percentage of active pesticidal ingredient.

Permanent tolerances for the combined S-metolachlor residues have been established in/on plant commodities ranging from 0.1 ppm in/on a variety of plant commodities to 15 ppm in/on sugar beet tops 40 CFR 180.368(a))(2). Permanent tolerances are also established for combined residues of racemic metolachlor in 180.368(a)(1) and (c) at levels of 0.02 to 30 ppm.

The Agency has recently reviewed plant metabolism data on S-metolachlor from field tests on soybeans and corn, *in vitro* tests on corn seedlings, and greenhouse tests on seedlings of corn, sorghum, soybeans and peanuts. These data support the petitioners assertion that the metabolism of S-metolachlor in plants is similar to the racemic mixture, metolachlor. The Agency has also recently reviewed animal metabolism data on S-metolachlor. Data from a goat metabolism study indicated that the residues of concern for S-metolachlor in animals are the same as for metolachlor. For both metolachlor and S-metolachlor the residues of concern in plants and animals include the parent compound and its metabolites, determined as the derivatives CGA-37913 and CGA-49751. In the case of S-metolachlor tolerances, the residues of the R-enantiomer should be included in the expression.

Risk assessments were conducted by EPA to assess dietary exposures from S-metolachlor in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1 day or single exposure. In conducting the acute dietary risk assessment EPA used the Lifeline™ Model, Version 2.0, which incorporates food consumption data as reported by respondents in the United State 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. A conservative Tier 1 acute dietary exposure assessment was conducted for all labeled metolachlor and all labeled and proposed S-metolachlor food uses using 100% crop treated (CT) and tolerance level residues.

ii. *Chronic exposure.* In conducting the chronic dietary risk assessment EPA used the Lifeline™ Model, Version 2.0, which incorporates food consumption data as reported by respondents in the USDA 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII), and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: A conservative Tier 1 chronic dietary exposure assessment was conducted for all labeled metolachlor and all labeled and proposed S-metolachlor food uses using 100% CT and tolerance level residues.

Both the acute and chronic analyses assume tolerance-level residues on all crops with established, pending, or proposed tolerances for metolachlor and/or S-metolachlor (collectively referred to as metolachlor in this document). In cases where separate tolerance listings occur for both metolachlor and S-metolachlor on the same commodity, the higher value of the two is used in the analyses. The analyses also assume that 100% of the crops included in the assessment were treated with metolachlor. These assumptions result in overestimates of exposure and are, therefore, highly conservative with respect to dietary risk assessment.

iii. *Cancer.* Metolachlor has been classified as a Group C, possible human carcinogen based on liver tumors in rats at the highest dose tested (HDT). The

chronic NOAEL, 15 milligram/kilogram/day (mg/kg/day), that was established based on tumors in the rat seen at the HDT of 150 mg/kg/day) is comparable to the NOAEL of 9.7 mg/kg/day selected for establishing the chronic reference dose for metolachlor. The Agency concludes that the chronic dietary PAD is protective for cancer dietary risk. Therefore, a separate cancer dietary risk assessment was not conducted.

2. *Dietary exposure from drinking water.* The environmental fate database is complete for S-metolachlor. Parent metolachlor/S-metolachlor appear to be moderately persistent to persistent, and range from mobile to highly mobile in different soils. Metolachlor and S-metolachlor are expected to have similar degradation pathways and rates in soil and water environments.

Drinking water assessment was conducted based on monitoring data from several sources, as well as on Tier 1 First Index Reservoir Screening Tool (FIRST) and Screening Concentration In Groundwater (SCI-GROW) and Tier II modeling (PRZM/EXAMS) for selected vulnerable sites. This assessment is a worst-case scenario and demonstrates high end numbers. It is important to note that the analytical methods used to obtain the monitoring data are not able to distinguish between metolachlor and S-metolachlor; therefore, the estimated environmental concentrations (EECs) presented in this risk assessment are representative of both racemic metolachlor and S-metolachlor.

EECs for metolachlor and S-metolachlor were calculated for both the parent compound and the ethanesulfonic acid (ESA) and oxanilic acid (OA) degradates. The PRZM/EXAMS model was used to estimate the EECs for the surface water concentrations of the parent compound and the FIRST model was used to estimate the EECs for the surface water concentrations of the ESA and OA degradates. Groundwater concentrations were modeled using the SCI-GROW. Although it was determined by the Agency that the ESA and OA metabolites appear to be less toxic than parent metolachlor, they are included in the risk assessment since they were found in greater abundance than the parent in water monitoring studies.

The EECs were estimated for the crops with the highest maximum seasonal application rates, turf (S-metolachlor only) and corn (racemic metolachlor and S-metolachlor) with a maximum seasonal application rate of 4.0 lbs ai per acre (lbs ai/acre).

i. *Surface water modeling of parent metolachlor/S-metolachlor.* Based on PRZM/EXAMS modeling the maximum peak and annual average concentrations of metolachlor/S-metolachlor in surface water were 199 µg/l and 9.2 µg/l, respectively. Based on an evaluation of U.S. Geological Survey (USGS) National Water Quality Assessment (NAWQA) surface water monitoring data, the estimate of the maximum drinking water concentration from surface water sources of parent metolachlor/S-metolachlor is 77.6 µg/l, and the EEC is 4.3 µg/l for the maximum annual time-weighted mean concentration for parent metolachlor/S-metolachlor. These data suggest that the PRZM/EXAMS estimates for metolachlor/S-metolachlor are slightly overestimating the potential impact of metolachlor/S-metolachlor use on surface water.

ii. *Surface water modeling of degradates.* Based on FIRST modeling results, the estimate of the drinking water concentration from surface water sources of metolachlor ESA (ground application with no spray drift) is not likely to exceed 31.9 µg/L for the annual peak concentration and 22.8 µg/L for the annual average exposure for use on turf/corn at a maximum annual application rate of 4.0 lbs ai per acre. Based on FIRST modeling results, the estimate of the drinking water concentration from surface water sources of metolachlor OA (ground application with no spray drift) is not likely to exceed 91.4 µg/L for the annual peak concentration and 65.1 µg/L for the annual average exposure for use on turf/corn at a maximum annual application rate of 4.0 lbs ai per acre.

iii. *Groundwater modeling of parent metolachlor/S-metolachlor.* Metolachlor/S-metolachlor appears to be mobile in different soil types. Metolachlor/S-metolachlor and its degradates have been detected in ground water demonstrating that it is likely to impact ground water resources. In order to augment existing monitoring data, the (SCI GROW) screening model was used to estimate ground water concentrations. The model estimates the upper bound ground water concentrations of pesticides likely to occur when the pesticide is used at the maximum allowable rate in areas with ground water vulnerable to contamination. The estimated concentration of metolachlor/S-metolachlor in drinking water from shallow ground water sources is 5.5 µg/l for application on corn at a seasonal maximum rate of 4.0 lbs ai. per acre. This concentration is appropriate for both the peak and annual average exposures.

From the available ground water monitoring data , the highest annual maximum concentration from the (NAWQA) ground water monitoring data for acute exposure to metolachlor/S-metolachlor is 32.8 µg/l. Data collected in Iowa as part of the NAWQA program indicate that metolachlor/S-metolachlor has been detected in ground water at concentrations as high as 15.4 µg/l. However, these data are not used quantitatively in the risk assessment because the next highest concentration detected is 1.7 µg/l suggesting that the maximum concentration may be an outlier. Additionally, recent data collected by the Suffolk County, New York Department of Health Services, Bureau of Groundwater Resources indicate that both metolachlor/S-metolachlor (analytical methods did not determine the enantiomeric ratio) and its degradates have been detected in ground water. In data collected between 1997 and 2001, metolachlor/S-metolachlor was detected in 60 well samples with a maximum concentration of 83 µg/l. No information was available on frequency of detection and since only summary statistics were provided, these data are not used quantitatively in this assessment. Nonetheless, even use of the 83 µg/l value as the exposure level in drinking water would not raise the aggregate risk estimate, as discussed in Unit III.E. of this document the level of concern.

iv. *Groundwater modeling of degradates.* The EEC for metolachlor ESA from use on turf/corn is not expected to exceed 65.8 µg/l for peak and annual average exposures. The EEC for metolachlor OA from use on turf/corn is not expected to exceed 31.7 µg/l for peak and annual average exposures. These values exceed the maximum values detected in the Iowa NAWQA study (63.7 µg/l for metolachlor ESA and 4.4 µg/l for metolachlor OA and also exceed those detected in the two PGW studies (metolachlor ESA was detected at a maximum concentration of 24 µg/l, while metolachlor OA was detected at a maximum concentration of 15.6 µg/l).

Recent data collected by the Suffolk County, New York Department of Health Services, Bureau of Groundwater Resources indicate that both metolachlor/S-metolachlor (analytical methods did not determine the enantiomeric ratio) and its degradates have been detected in ground water. In data collected between 1997 and 2001, metolachlor ESA was detected in 296 wells with a maximum concentration of 39.7 µg/l, while metolachlor OA was detected in 228 wells with a maximum concentration of 49.6 µg/l. No information was available on frequency of detection and only summary statistics were provided on these data. Therefore,

these data are not used quantitatively in this assessment. However, these data suggest that the screening level SCI-GROW estimates for metolachlor ESA and OA are slightly overestimating the potential impact of metolachlor/S-metolachlor use on ground water.

A summary of metolachlor EEC's in surface water and ground water is presented in Table 1.

TABLE 1.—METOLACHLOR EEC'S

	Surface Water (peak)	Surface Water (average)	Ground Water
Parent	199	9.2	5.5
Metolachlor ESA	31.9	22.8	65.8
Metolachlor OA	91.4	65.1	31.7
Total EECs (ppb)	322.3	97.1	103.0

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).

S-metolachlor is registered (as an emulsifiable concentrate formulation) for use on lawn, turf (including sod farms), golf courses, sports fields, and ornamental gardens and marketed to commercial applicators. Current product labels include the statement, "Not intended for homeowner purchase or use." Therefore, a residential handler assessment was not conducted.

Based on the use pattern of residential products, duration of post application exposure is expected to be short term. A short-term dermal endpoint was not selected, since no systemic toxicity was seen at the limit dose of 1,000 mg/kg/day; therefore, a dermal risk assessment was not conducted.

Post-application inhalation exposure is also expected to be minimal since S-metolachlor is only applied in an outdoor setting and the label specifies that residents should not re-enter treated areas until after sprays have dried. Based on these assumptions, a postapplication inhalation exposure was not calculated.

However, the following post-application incidental oral scenarios following application to lawns and turf have been identified:

i. Short-term oral exposure to toddlers and children following hand-to-mouth exposure

ii. Short-term oral exposure to toddlers and children following object-to-mouth exposure

iii. Short-term oral exposure to toddlers and children following soil ingestion. The term "incidental" is used to distinguish the inadvertent oral exposure of small children from exposure that may be expected from treated foods or residues in drinking water.

The exposure estimates for the three post-application scenarios (object-to-mouth, hand-to-mouth, and incidental soil ingestion) were combined to represent the possible (if not likely) high-end oral exposure resulting from lawn (or similar) use. Table 2 summarizes the results of the residential post-application assessment.

TABLE 2.—SUMMARY OF SHORT-TERM RESIDENTIAL POST-APPLICATION EXPOSURE

Exposure Scenario[a]	S-metolachlor[b]	Oral Dose (mg/kg/day)
Object-to-mouth	S-metolachlor	0.0092
Hand-to-mouth	S-metolachlor	0.037
Soil ingestion	S-metolachlor	0.00012
Combined exposure	S-metolachlor	0.046

[a]Exposure scenario represents oral exposure of children, with an assumed body weight of 15 kg.
[b]S-metolachlor application rate is 2.47 lb ai/acre.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." EPA has examined the common mechanism potential for S-metolachlor and has concluded that S-metolachlor should not be included with the chloroacetanilide pesticides designated as a "Common Mechanism Group." The Agency's position is that only some chloroacetanailides, namely acetochlor, alachlor and butachlor should be considered as a "Common Mechanism Group" due to their ability to cause nasal turbinate tumors.

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 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 FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on

toxicity and exposure unless EPA determines 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 UF (safety) 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 UFs and/or special FQPA safety factors, as appropriate.

2. *Prenatal and postnatal sensitivity.* There is no indication of quantitative or qualitative increased susceptibility of rats or rabbits to *in utero* and/or postnatal exposure in the available toxicity data.

3. *Conclusion.* There is a sufficient toxicity data base and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. The FQPA Safety Factor for the protection of infants and children has been reduced to 1X because:

i. The toxicology data base is complete for the FQPA assessment.

ii. There is no indication of quantitative or qualitative increased susceptibility of rats or rabbits to *in utero* and/or postnatal exposure to metolachlor in the available toxicity data.

iii. A developmental neurotoxicity study is not required for S-metolachlor.

iv. The dietary (food and drinking water) and non-dietary exposure (residential) assessments will not underestimate the potential exposures for infants and children from the use of S-metolachlor.

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

1. *Acute risk.* The acute aggregate risk assessment addresses potential exposure from combined residues of metolachlor/S-metolachlor on food and total residues of metolachlor/S-metolachlor plus ESA and OA degradates in drinking water (surface water and ground water). Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to metolachlor/S-metolachlor will occupy <1% of the aPAD for the U.S. population and all population subgroups. In addition, there is potential for acute dietary exposure to metolachlor/S-metolachlor and the ESA and OA degradates in drinking water. After calculating DWLOCs and comparing them to the EECs for surface water and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in the following Table 3:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO METOLACHLOR/S-METOLACHLOR

Population Subgroup	aPAD (mg/kg)	%aPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Acute DWLOC (ppb)
U.S. population	3.0	<1	322	103	105,000
Infants (<1year)	3.0	<1	322	103	30,000
Children (1–2 years)	3.0	<1	322	103	30,000
Females (13–49 years)	3.0	<1	322	103	90,000

2. *Chronic risk.* The chronic aggregate risk assessment addresses potential exposure from combined residues of metolachlor/S-metolachlor on food and total residues of metolachlor/S-metolachlor plus ESA and OA degradates in drinking water (surface water and ground water). There are no residential uses that result in chronic residential exposure to S-metolachlor. EPA has concluded that chronic exposure to metolachlor/S-metolachlor from food will utilize 1% of the cPAD for the U.S. population, 4% of the cPAD for children 1 to 2 years, the subpopulations at greatest exposure and 1% of the cPAD for females 13 to 49 years. In addition, there is potential for chronic dietary exposure to metolachlor/S-metolachlor and ESA and OA degradates in drinking water. After calculating DWLOCs and comparing them to the EECs for surface water and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table 4:

TABLE 4.–AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO METOLACHLOR/S-METOLACHLOR

Population subgroup	cPAD mg/kg/day	%cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. population	0.1	1	97	103	3,500
Infants (<1 year)	0.1	2	97	103	1,000
Children (1 to 2 years)	0.1	4	97	103	1,000
Females (13 to 49 years)	0.1	1	97	103	3,000

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).

S-metolachlor is currently registered for use that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term residential exposures for metolachlor/S-metolachlor.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded that food and residential exposures aggregated result in an aggregate MOE of 1,000 for children 1 to 2 years. This aggregate MOE does not exceed the Agency's level of concern for aggregate exposure to food and residential uses. In addition, short-term DWLOCs were calculated and compared to the EECs for chronic exposure of metolachlor/S-metolachlor and ESA and OA degradates in ground water and surface water. After calculating DWLOCs and comparing them to the EECs for surface water and ground water, EPA does not expect short-term aggregate exposure to exceed the Agency's level of concern, as shown in the following Table 5:

TABLE 5.—AGGREGATE RISK ASSESSMENT FOR SHORT-TERM EXPOSURE TO METOLACHLOR/S-METOLACHLOR

Population Subgroup	Aggregate MOE (Food + Residential)	Aggregate Level of Concern (LOC)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Short-Term DWLOC (ppb)
Children (1–2 years)	1,000	100	97	103	4,500

4. *Intermediate-term risk.* An intermediate-term aggregate risk assessment considers potential exposure from food, drinking water, and non-occupational (residential) pathways of exposure. However, for metolachlor/S-metolachlor, no intermediate-term non-occupational exposure scenarios (greater than 30 days exposure) are expected to occur. Therefore, intermediate-term DWLOC values were not calculated and an intermediate-term aggregate risk assessment was not performed.

5. *Aggregate cancer risk for U.S. population.* An aggregate cancer risk assessment considers potential carcinogenic exposure from food, drinking water, and non-occupational (residential) pathways of exposure. However, the NOAEL (15 mg/kg/day), that was established based on tumors in the rat (seen at the HDT of 150 mg/kg/day) is comparable to the NOAEL of 9.7 mg/kg/day selected for establishing the cRfD dose for metolachlor. Therefore, the chronic risk assessment is protective for cancer as well as other chronic risks.

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 metolachlor/S-metolachlor residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

The Pesticide Analytical Manual (PAM) Vol. II, lists a GC/NPD method (Method I) for determining residues in/on plants and a GC/MSD method (Method II) for determining residues in livestock commodities. These methods determine residues of metolachlor and its metabolites as either CGA–37913 or CGA–49751 following acid hydrolysis. Residue data from the most recent field trials and processing studies were obtained using an adequate GC/NPD method (AG–612), which is a modification of Method I. Adequate data are available on the recovery of metolachlor through Multi-residue Method Testing Protocols. The FDA PESTDATA database indicates that metolachlor is completely recovered through Method 302, PAM Vol. I (3rd ed., revised 10/97).

B. International Residue Limits

No maximum residue limits for either metolachlor or S-metolachlor have been established or proposed by Codex, Canada, or Mexico for any agricultural commodity; therefore, no compatibility issues exist with respect to U.S. tolerances.

V. Conclusion

Therefore, the tolerances are established at 180.368 for combined residues (free and bound) of the herbicide S-metolachlor [S-2-chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-1-methylethyl)acetamide], its R-enantiomer, and its metabolites, determined as the derivatives, 2-[2-ethyl-6-methylphenyl)amino]-1-propanol and 4-(2-ethyl-6-methylphenyl)-2-hydroxy-5-methyl-3-morpholinone, each expressed as the parent compound S-metolachlor, in or on vegetable brassica, head and stem, subgroup 5A at 0.6 ppm; cattle, fat at 0.04 ppm; cattle, kidney at 0.20 ppm; cattle liver at 0.1 ppm; cattle, meat at 0.04 ppm; cattle, meat byproducts, except kidney and liver at 0.04 ppm; corn, field, grain at 0.10 ppm; corn, field, stover at 6.0 ppm; corn, field, forage at 6.0 ppm; corn, sweet, forage at 6.0 ppm; corn, sweet, stover at 6.0 ppm; corn, pop, stover at 6.0 ppm; corn, pop, grain at 0.1 ppm; corn, sweet, kernel plus cob with husk removed at 0.1 ppm; cotton, gin byproducts at 4.0 ppm; cotton, undelinted seed at 0.1 ppm; egg at 0.04 ppm; garlic, bulb at 0.1 ppm;

goat, fat 0.04 ppm; goat, kidney at 0.20 ppm; goat, liver at 0.1 ppm; goat, meat at 0.04 ppm; goat, meat byproducts, except kidney and liver at 0.04 ppm; horse, fat 0.04 ppm; horse, kidney at 0.20 ppm; horse liver at 0.1 ppm; horse, meat at 0.04 ppm; horse, meat by-products, except kidney and liver at 0.04 ppm; vegetable leaf petioles subgroup 4B at 0.10 ppm; milk at 0.02 ppm; onion, dry bulb at 0.1 ppm; onion, green at 2.0 ppm; vegetable legumes, pea and bean, dried shelled, except soybean, subgroup 6C at 0.1 ppm; peanut at 0.2 ppm; peanut, hay at 20 ppm; peanut, meal at 0.40 ppm; poultry, fat at 0.04 ppm; poultry, meat a 0.04 ppm; poultry, meat by-products, at 0.04 ppm; safflower, seed at 0.1 ppm; shallot, bulb at 0.1 ppm; sheep, fat at 0.04 ppm; sheep, kidney at 0.20 ppm; sheep, liver at 0.1 ppm; sheep, meat at 0.04 ppm; sheep, meat by-products, except kidney and liver at 0.04 ppm; sorghum grain, stover at 4.0 ppm; sorghum grain, forage at 1.0 ppm; sorghum grain, grain at 0.3 ppm; soybean, seed at 0.2 ppm; soybean, forage at 5.0 ppm; soybean, hay at 8.0 ppm; tomato, paste at 0.3 ppm; vegetable, foliage of legume, except soybean, subgroup 7A at 15 ppm; vegetable, fruiting, group 8, except tabasco pepper, at 0.1 ppm; vegetable, legume, edible podded, subgroup 6A at 0.5 ppm; vegetable, root, except sugar beet, subgroup 1B at 0.3 ppm; and vegetable, tuberous and corm, subgroup 1C at 0.2 ppm; pepper tabasco at 0.5 ppm; nongrass, animal feed (forage, fodder, straw, hay), group 18 at 1.0 ppm; barley, grain at 0.1 ppm; barley straw at 0.5 ppm; barley hay at 1.0 ppm; buckwheat, grain at 0.1 ppm; oat, forage at 0.5 ppm; oat, grain at 0.1 ppm; oat, straw at 0.5 ppm; rice, grain at 0.1 ppm; rice, straw at 0.5 ppm; rye, forage at 0.5 ppm; rye, grain at 0.1 ppm; rye, straw at 0.5 ppm; wheat, forage at 0.5 ppm; wheat, grain at 0.1 ppm; wheat, straw at 0.5 ppm and wheat, hay at 1.0 ppm.

VI. 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–2004–0326 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 October 31, 2005.

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 14th 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 VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number OPP–2004–0326, 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).

VII. 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.

VIII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: August 23, 2005.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.368 is amended:

i. In paragraph (a)(2), in the table, by removing the commodities carrot, roots; horseradish; onion, green; rhubarb; swiss chard; and tomato;

ii. By adding paragraph (a)(3);

iii. By adding paragraph (c)(2); and

iv. In paragraph (d) by adding text.

The amendments read as follows:

§ 180.368 Metolachlor; tolerances for residues.

(a) * * *

(3) Tolerances are established for the combined residues (free and bound) of the herbicide S-metolachlor [S-2-chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-1-methylethyl)acetamide], its R-enantiomer, and its metabolites, determined as the derivatives, 2-[2-ethyl-6-methylphenyl)amino]-1-propanol and 4-(2-ethyl-6-methylphenyl)-2-hydroxy-5-methyl-3-morpholinone, each expressed as the parent compound, in or on the following raw agricultural commodities:

Commodity	Parts per million
* * *	* *
Cattle, fat	0.04
Cattle, kidney	0.2
Cattle, liver	0.1
Cattle, meat	0.04
Cattle, meat byproducts, except kidney and liver	0.04
Corn, field, stover	6.0
Corn, pop, stover	6.0
Corn, sweet, stover	6.0
Corn, field, forage	6.0
Corn, sweet, forage	6.0
Corn, sweet, kernel plus cob with husks removed	0.1
Corn, field, grain	0.1
Corn, pop, grain	0.1
Cotton, gin byproducts	4.0
Cotton, undelinted seed	0.1
Egg	0.04
Garlic, bulb	0.1
Goat, fat	0.04
Goat, kidney	0.2
Goat, liver	0.1
Goat, meat	0.04
Goat, meat byproducts, except kidney and liver	0.04
* * *	* *
Horse, fat	0.04
Horse, kidney	0.2
Horse, liver	0.1
Horse, meat	0.04
Horse, meat byproducts, except, kidney and liver	0.04
* * *	* *
Milk	0.02
Onion, dry bulb	0.1
Onion, green	2.0
Peanut	0.2
Peanut, hay	20.0
Peanut, meal	0.4
Poultry, fat	0.04
Poultry, meat	0.04
Poultry, meat byproducts	0.04
* * *	* *
Safflower, seed	0.1
Shallot, bulb	0.1
Sheep, fat	0.04

Commodity	Parts per million
Sheep, kidney	0.2
Sheep, liver	0.1
Sheep, meat	0.04
Sheep, meat by-products, except kidney and liver	0.04
Sorghum, grain, forage	1.0
Sorghum, grain, stover	4.0
Sorghum, grain, grain	0.3
Soybean, forage	5.0
Soybean, hay	8.0
Soybean, seed	0.2
* * * * *	
Tomato, paste	0.3
Vegetable, brassica, head and stem, subgroup 5A	0.6
Vegetable, foliage of legume, except soybean, subgroup 7A	15.0
Vegetable, fruiting group 8, (except tabasco pepper)	0.1
Vegetable, leaf petioles, subgroup 4B	0.1
Vegetable, legume, edible podded, subgroup 6A	0.5
Vegetable, legume, pea and bean, dried shelled, (except soybean) subgroup 6C	0.1
Vegetable, root, (except sugar beet) subgroup 1B	0.3
Vegetables, tuberous and corm, subgroup 1C	0.2

* * * * *

(c) * * *

(2) Tolerances with regional registration as defined in § 180.1(n) are established for the combined residues (free and bound) of the herbicide S-metolachlor [S-2-chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-1-methylethyl)acetamide], its R-enantiomer, and its metabolites, determined as the derivatives, 2-[2-ethyl-6-methylphenyl)amino]-1-propanol and 4-(2-ethyl-6-methylphenyl)-2-hydroxy-5-methyl-3-morpholinone, each expressed as the parent compound, in or on the following raw agricultural commodities:

Commodity	Parts per million
Pepper, tabasco	0.5

(d) *Indirect or inadvertent residues.* Tolerances are established for the indirect or inadvertent combined residues (free and bound) of the herbicide S-metolachlor [S-2-chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-1-methylethyl)acetamide], its R-enantiomer, and its metabolites, determined as the derivatives, 2-[2-ethyl-6-methylphenyl)amino]-1-propanol and 4-(2-ethyl-6-methylphenyl)-2-hydroxy-5-methyl-3-morpholinone, each expressed as the parent compound, in or on the following raw agricultural commodities:

Commodity	Parts per million
Barley, grain	0.1
Barley, hay	1.0
Barley, straw	0.5
Buckwheat, grain	0.1
Nongrass, animal feed (forage, fodder, straw, hay) group 18	1.0
Oat, forage	0.5
Oat, grain	0.1
Oat, hay	1.0
Oat, straw	0.5
Rice, grain	0.1
Rice, straw	0.5
Rye, forage	0.5
Rye, grain	0.1
Rye, straw	0.5
Wheat, forage	0.5
Wheat, grain	0.1
Wheat, hay	1.0
Wheat, straw	0.5

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BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[FRL–7961–3]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Amendment

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA, also the Agency or we in this preamble) today is granting a petition to modify an exclusion (or delisting) from the lists of hazardous waste previously granted to BMW Manufacturing Co., LLC (BMW) in Greer, South Carolina. This action responds to a petition for amendment submitted by BMW to eliminate the total concentration limits in its wastewater treatment sludge covered by its current conditional exclusion.

EPA received public comments on the November 26, 2004, Proposed Rule (69 FR 68851) and took into account all public comments before granting this final rule. The Agency re-evaluated the specific information initially provided by the petitioner in its original request and delistings granted to other automobile manufactures for their F019 waste. This final decision eliminates the total concentration limits for barium, cadmium, chromium, lead, nickel, and cyanide from its conditionally excluded wastewater treatment sludge from the requirements of the hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA). The waste will still be subject to local, State, and Federal regulations for nonhazardous solid wastes.

DATES: Effective August 31, 2005.

ADDRESSES: The RCRA regulatory docket for this final rule is located at the EPA Library, U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. The public may copy material from any regulatory docket at no cost for the first 100 pages, and at a cost of $0.15 per page for additional copies. For copying at the South Carolina Department of Health and Environmental Control, please see below.

FOR FURTHER INFORMATION CONTACT: For general and technical information concerning this final rule, please contact Kris Lippert, RCRA Enforcement and Compliance Branch (Mail Code 4WD–RCRA), U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562-8605, or call, toll free (800) 241–1754, and leave a message, with your name and phone number, for Ms. Lippert to return your call. Questions may also be e-mailed to Ms. Lippert at *lippert.kristin@epa.gov*. You may also contact Cindy Carter, Appalachia III District, South Carolina Department of Health and Environmental Control (SCDHEC), 975C North Church Street, Spartanburg, South Carolina. If you wish to copy documents at SCDHEC, please contact Ms. Carter for copying procedures and costs.

SUPPLEMENTARY INFORMATION: The information in this section is organized as follows:

I. Overview Information

A. What Action Is EPA Finalizing?

After evaluating BMW's petition and public comments received in response to the November 26, 2004, Proposed Rule (69 FR 68851), we are amending the current BMW's delisting to eliminate the total concentration limits for barium, cadmium, chromium, lead, nickel, and cyanide from its conditionally excluded wastewater treatment sludge from the requirements of the hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA). The waste will still be subject to local, State, and Federal regulations for nonhazardous solid wastes.

B. Why Is EPA Approving This Petition for Amendment?

EPA believes that the information provided by BMW provides a reasonable basis to eliminate all total concentration limits. We, therefore, grant BMW an amendment to its current delisting for an elimination of all total concentration limits on its delisted wastewater treatment sludge. EPA believes that this amendment to eliminate all concentration limits will not harm human health and the environment when disposed in a nonhazardous waste landfill, if the required delisting levels are met. EPA grants the elimination of all total concentration limits, based on descriptions of waste management and waste history, evaluation of the results of waste sample analysis, on the requirement that BMW's petitioned waste must meet the required delisting level of all the constituents of concern concentration limits as state in the May 2, 2001, Final Rule before disposal, and that no substantial public comments were received during the public comment period. The petitioned waste will not be subject to regulation under 40 CFR parts 262 through 268 and the permitting standards of 40 CFR part 270. Although management of the waste covered by this petition is relieved from Subtitle C jurisdiction, the waste will remain a solid waste under RCRA. As such, the waste must be handled in accordance with all applicable Federal, State, and local solid waste management regulations. Pursuant to RCRA section 3007, EPA may also sample and analyze the waste to determine if delisting conditions are met. EPA believes that BMW's petitioned waste will not harm human health and the environment when disposed in a nonhazardous waste landfill if the delisting levels are met as granted in the May 2, 2001, Final Rule and amended in this exclusion.

C. What Are the Terms of This Exclusion?

The following summarizes the maximum allowable constituent concentrations (delisting levels) for BMW's waste. We calculated these delisting levels for each constituent that is part of BMW's current delisting based on the Delisting Risk Assessment Software (DRAS) EPA Composite Model for Leachate Migration with Transformation Products (EPACMTP) model, which grants BMW an exclusion from the lists of hazardous wastes in subpart D of 40 CFR part 261 for its petitioned waste when disposed in a Subtitle D landfill. BMW must meet all of the following delisting conditions in order for this exclusion to be valid: delisting levels in mg/l in the TCLP extract of the waste of 100.0 for Barium, 1.0 for Cadmium, 5.0 for Chromium, 33.6 for Cyanide, 5.0 for Lead, and 70.3 for Nickel.

This amended exclusion applies to the waste described in the petition only if the requirements described above as well as in Table 1 of Appendix IX to part 261 of Title 40 of the Code of Federal Regulations are satisfied. The maximum annual volume of the wastewater treatment sludge is 2850 cubic yards.

D. When Is the Final Amendment Effective?

This rule is effective August 31, 2005. HSWA amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. For these same reasons, this rule can become effective immediately (that is, upon publication in the **Federal Register**) under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

E. How Does This Action Affect States?

Because EPA is issuing today's exclusion under the Federal RCRA delisting program, only States subject to Federal RCRA delisting provisions would be directly affected. This would exclude two categories of States: States having a dual system that includes Federal RCRA requirements and their own requirements, and States who have received EPA's authorization to make their own delisting decisions. We describe these two situations below.

We allow states to impose their own non-RCRA regulatory requirements that are more stringent than EPA's, under Section 3009 of RCRA. These more stringent requirements may include a provision that prohibits a Federally issued exclusion from taking effect in the State, or that prohibits a Federally issued exclusion from taking effect in the State until the State approves the exclusion through a separate State administrative action. Because a dual system (that is, both Federal and State programs) may regulate a petitioner's waste, we urge petitioners to contact the applicable State regulatory authorities or agencies to establish the status of their waste under that State's program.

We have also authorized some States to administer a delisting program in place of the Federal program; that is, to make State delisting decisions. Therefore, this exclusion does not necessarily apply within those authorized States. If BMW transports the petitioned waste to, or manages the waste in, any State with delisting authorization, BMW must obtain delisting approval from that State before it can manage the waste as nonhazardous in that State.

In order for this amendment to be effective in an authorized State, that State must adopt this amendment through its State administrative process.

II. Background

A. What Is a Delisting Petition?

A delisting petition is a formal request from a generator to EPA or another agency with jurisdiction to exclude from the lists of hazardous waste regulated by RCRA, a waste that the generator believes should not be considered hazardous.

B. What Regulations Allow Hazardous Waste Generators To Delist Waste?

Under 40 CFR 260.20 and 260.22, a generator may petition EPA to remove its waste from hazardous waste control by excluding it from the lists of hazardous wastes contained in 40 CFR 261.31, 261.32 and 261.33. Specifically, 40 CFR 260.20 allows any person to

petition the Administrator to modify or revoke any provision of parts 260 through 266, 268 and 273 of Title 40 of the Code of Federal Regulations. 40 CFR 260.22 provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists. A generator can petition EPA for an amendment to an existing exclusion under these same provisions of the Code of Federal Regulations.

C. What Information Must the Generator Supply?

A petitioner must provide sufficient information to allow EPA to determine that the waste to be excluded does not meet any of the criteria under which the waste was listed as a hazardous waste. In addition, the Administrator must determine that the waste is not hazardous for any other reason.

III. EPA's Evaluation of the Waste Data

A. What Waste Is the Subject of This Amendment?

BMW in Greer, South Carolina, manufactures automobiles for domestic consumption and for shipment to foreign markets. The assembly plant operations include body welding, conversion coating, painting, final assembly, and shipment. The manufacturing process that causes F019 to be generated is conversion coating, when applied to automobile bodies that contain aluminum. Conversion coating takes place in the plant's paint shop and treats the metal surface of each automobile body before painting to provide resistance to corrosion and to prepare the metal surface for optimum paint adhesion. Wastewater from all plant operations is treated at BMW's wastewater pretreatment plant which is located in an area of the paint shop. The wastewater is treated to meet the requirements of BMW's wastewater pretreatment permit before discharging the water to the publicly owned treatment works (POTW). Treatment results in the formation of insoluble metal hydroxides and phosphates. Wastewater treatment sludge is generated when these metal hydroxides and phosphates are dewatered in a filter press. The sludge that exits from the filter press is classified as F019 when the automobile bodies contain aluminum, and the exit from the filter press will be the point of generation of F019. BMW was granted its current Federal delisting exclusion for this F019 wastewater treatment sludge at a maximum annual volume of 2,850 cubic yards on May 2, 2001 (66 FR 21877).

A full description of this waste and the Agency's evaluation of the original BMW's petition are contained in the "Proposed Rule and Request for Comments" published in the **Federal Register** on February 12, 2001 (66 FR 9781). After evaluating public comment on the proposed rule, we published a final decision in the **Federal Register** on May 2, 2001 (66 FR 21877), to exclude BMW's wastewater treatment sludge derived from the treatment of EPA Hazardous Waste No. F019 from the list of hazardous wastes found in 40 CFR 261.31. The hazardous constituents of concern for which F019 was listed are hexavalent chromium and cyanide (complexed). BMW petitioned the EPA to exclude its F019 waste because BMW does not use either of these constituents in the manufacturing process. Therefore, BMW did not believe that the waste meets the criteria of the listing. EPA's final decision to grant the delisting exclusion on May 2, 2001, was conditioned on the following delisting levels: (1) Delisting levels in mg/l in the TCLP extract of the waste of 100.0 for Barium, 1.0 for Cadmium, 5.0 for Chromium, 33.6 for Cyanide, 5.0 for Lead, and 70.3 for Nickel; (2) the total concentration of cyanide (total, not amenable) in the waste, not the waste leachate, must not exceed 200 mg/kg; (3) the total concentrations, in mg/kg, of metals in the waste, not the waste leachate, must not exceed 2,000 for Barium, 500 for Cadmium, 1,000 for Chromium, 2,000 for Lead, and 20,000 for Nickel. If the waste exceeded any of the delisting limits, then the waste has to be managed as hazardous waste.

C. How Did EPA Evaluate This Petition?

In support of its original petition, BMW submitted: (1) Descriptions of its manufacturing and wastewater treatment processes, the generation point of the petitioned waste, and the manufacturing steps that will contribute to its generation; (2) Material Safety Data Sheets (MSDSs) for materials used to manufacture automobiles and to treat wastewater; (3) the minimum and maximum annual amounts of wastewater treatment sludge generated from 1996 through 1999, and an estimate of the maximum annual amount expected to be generated in the future; (4) results of analysis for metals, cyanide, sulfide, fluoride, and volatile organic compounds in the currently generated waste at the BMW plants in Greer, South Carolina, and Dingolfing, Germany; (5) results of the analysis of leachate obtained by means of the Toxicity Characteristic Leaching Procedure ((TCLP), SW–846 Method 1311), from these wastes; (6) results of the determinations for the hazardous characteristics of ignitability, corrosivity, and reactivity, in these wastes; (7) results of determinations of dry weight percent, bulk density, and free liquids in these wastes; and (8) results of the MEP analysis of the currently generated waste at the plant in Greer, South Carolina.

EPA reviewed the allowable total concentrations in the waste, as calculated by DRAS for the waste, to determine if eliminating the total concentration limits for the constituents of concern would be still protective to human health and the environment. The allowable total concentrations, according to the DRAS, were all at least 1,000 times greater than the actual maximum total concentrations found in the waste. Based on the DRAS results, EPA grants BMW's petition for amendment to eliminate all total concentration limits.

IV. Public Comments on the Proposed Amendment

A. Who Submitted Comments on the Proposed Rule?

EPA received public comments on the proposed noticed published on November 26, 2004, from Alliance of Automobile Manufacturers; The Aluminum Association; BMW Manufacturing Co., LLC; Donald Humphrey; and EPA. All commenters were supportive of the proposal except Donald Humphrey.

B. Comments and Responses From EPA

Comment: On October 30, 2002, (67 FR 66251), EPA's Office of Solid Waste proposed the Methods Innovation Rule (MIR) to remove from the regulations unnecessary requirements to use only SW–846 Methods other than those considered to be Method Defined Parameters (MDP). The Agency is no longer generally requiring the use of only SW–846 Methods for regulatory applications other than those involving MDPs. The general purpose of this rule is to allow more flexibility when conducting RCRA-related sampling and analysis activities.

Response: EPA has revised Table 1: (2) Verification Testing Requirements: in Appendix IX of this Final Rule with appropriate language.

Comment: The Alliance of Automobile Manufacturers, the Aluminum Association, and BMW believe the F019 listing itself should be revised to exclude wastewater treatment sludges from automotive industry conversion coating on aluminum when hexavalent chromium and cyanides are not used in the process.

Response: Today's final rule is site-specific and waste-specific; it applies only to BMW's plant in Greer, South Carolina, and only to the petitioned waste. EPA understands the commenters' concern, but it is outside the scope of this delisting.

Comment: Donald Humphrey disagreed with granting this final rule, because he feels that BMW must abide by the rules of RCRA.

Response: On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they exhibit one or more of the characteristics of hazardous wastes identified in Subpart C of part 261 (*i.e.*, ignitability, corrosivity, reactivity, and toxicity) or meet the criteria for listing contained in section 261.11(a)(2) or (a)(3). Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, sections 260.20 and 260.22 provide an exclusion procedure, allowing BMW to demonstrate that its F019 waste from its specific facility should not be regulated as a hazardous waste. BMW has complied with the requirements of sections 260.20 and 260.22, and therefore, is having its petition to amend an exclusion (or delisting) from the lists of hazardous waste granted.

V. Administrative Assessments

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a rule of general applicability and therefore is not a "regulatory action" subject to review by the Office of Management and Budget. Because this action is a rule of particular applicability relating to a particular facility, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Because the rule will affect only one facility, it will not significantly or uniquely affect small governments, as specified in section 203 of UMRA, or communities of Indian tribal governments, as specified in Executive Order 13175 (65 FR 67249, November 6, 2000). For the same reason, this rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This rule does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The Congressional Review Act, 5 U.S.C. 801 *et seq.* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties (5 U.S.C. 804(3)). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Dated: July 15, 2005.

Alan Farmer,

Acting Director, Waste Management Division.

■ For the reasons set out in the preamble, 40 CFR part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

■ 1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C 6905, 6912(a), 6921, 6922, 6924(y) and 6938.

■ 2. In Table 1 of Appendix IX, Part 261 revise the entry for BMW Manufacturing Co., LLC to read as follows:

Appendix IX to Part 261—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
*	*	*
BMW Manufacturing Co., LLC	Greer, South Carolina ...	Wastewater treatment sludge (EPA Hazardous Waste No. F019) that BMW Manufacturing Corporation (BMW) generates by treating wastewater from automobile assembly plant located on Highway 101 South in Greer, South Carolina. This is a conditional exclusion for up to 2,850 cubic yards of waste (hereinafter referred to as "BMW Sludge") that will be generated each year and disposed in a Subtitle D landfill after August 31, 2005. With prior approval by the EPA, following a public comment period, BMW may also beneficially reuse the sludge. BMW must demonstrate that the following conditions are met for the exclusion to be valid. (1) Delisting Levels: All leachable concentrations for these metals and cyanide must not exceed the following levels (ppm): Barium-100; Cadmium-1; Chromium-5; Cyanide-33.6, Lead-5; and Nickel-70.3. These metal and cyanide concentrations must be measured in the waste leachate obtained by the method specified in 40 CFR 261.24, except that for cyanide, deionized water must be the leaching medium. Cyanide concentrations in waste or leachate must be measured by the method specified in 40 CFR 268.40, Note 7.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(2) Annual Verification Testing Requirements: Sample collection and analyses, including quality control procedures, must be performed using appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW–846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A, (uses EPA Method 1664, Rev. A), 9071B, and 9095B. Methods must meet Performance Based Measurement System Criteria in which the Data Quality Objectives are to demonstrate that representative samples of the BMW Sludge meet the delisting levels in Condition (1). (A) Annual Verification Testing: BMW must implement an annual testing program to demonstrate that constituent concentrations measured in the TCLP extract do not exceed the delisting levels established in Condition (1). (3) Waste Holding and Handling: BMW must hold sludge containers utilized for verification sampling until composite sample results are obtained. If the levels of constituents measured in the composite samples of BMW Sludge do not exceed the levels set forth in Condition (1), then the BMW Sludge is non-hazardous and must be managed in accordance with all applicable solid waste regulations. If constituent levels in a composite sample exceed any of the delisting levels set forth in Condition (1), the batch of BMW Sludge generated during the time period corresponding to this sample must be managed and disposed of in accordance with Subtitle C of RCRA. (4) Changes in Operating Conditions: BMW must notify EPA in writing when significant changes in the manufacturing or wastewater treatment processes are implemented. EPA will determine whether these changes will result in additional constituents of concern. If so, EPA will notify BMW in writing that the BMW Sludge must be managed as hazardous waste F019 until BMW has demonstrated that the wastes meet the delisting levels set forth in Condition (1) and any levels established by EPA for the additional constituents of concern, and BMW has received written approval from EPA. If EPA determines that the changes do not result in additional constituents of concern, EPA will notify BMW, in writing, that BMW must verify that the BMW Sludge continues to meet Condition (1) delisting levels. (5) Data Retention: Records of analytical data from Condition (2) must be compiled, summarized, and maintained by BMW for a minimum of three years, and must be furnished upon request by EPA or the State of South Carolina, and made available for inspection. Failure to maintain the required records for the specified time will be considered by EPA, at its discretion, sufficient basis to revoke the exclusion to the extent directed by EPA. All data must be accompanied by a signed copy of the certification statement in 40 CFR 260.22(i)(12). (6) Reopener Language: (A) If, at any time after disposal of the delisted waste, BMW possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or groundwater monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified in the delisting verification testing is at a level higher than the delisting level allowed by EPA in granting the petition, BMW must report the data, in writing, to EPA and South Carolina within 10 days of first possessing or being made aware of that data. (B) If the testing of the waste, as required by Condition (2)(A), does not meet the delisting requirements of Condition (1), BMW must report the data, in writing, to EPA and South Carolina within 10 days of first possessing or being made aware of that data. (C) Based on the information described in paragraphs (6)(A) or (6)(B) and any other information received from any source, EPA will make a preliminary determination as to whether the reported information requires that EPA take action to protect human health or the environment. Further action may include suspending or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (D) If EPA determines that the reported information does require Agency action, EPA will notify the facility in writing of the action believed necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing BMW with an opportunity to present information as to why the proposed action is not necessary. BMW shall have 10 days from the date of EPA's notice to present such information. (E) Following the receipt of information from BMW, as described in paragraph (6)(D), or if no such information is received within 10 days, EPA will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment, given the information received in accordance with paragraphs (6)(A) or (6)(B). Any required action described in EPA's determination shall become effective immediately, unless EPA provides otherwise.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(7) Notification Requirements: BMW must provide a one-time written notification to any State Regulatory Agency in a State to which or through which the delisted waste described above will be transported, at least 60 days prior to the commencement of such activities. Failure to provide such a notification will result in a violation of the delisting conditions and a possible revocation of the decision to delist.
*	*	* * * * *

[FR Doc. 05–17359 Filed 8–30–05; 8:45 am]
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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 98–67 and CG Docket No. 03–123; FCC 05–139]

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

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: In this document, the Commission grants petitions for reconsideration of the *2004 TRS Report & Order*. Through this action, the Commission reverses its conclusion that translation from American Sign Language (ASL) into Spanish is not a telecommunications relay service (TRS) eligible for compensation from the Interstate TRS Fund. This decision will allow Spanish-speaking people who are deaf to communicate with others who speak only Spanish and will allow them to integrate more fully into society.

DATES: Effective September 30, 2005.

FOR FURTHER INFORMATION CONTACT: Thomas Chandler, Consumer & Governmental Affairs Bureau, Disability Rights Office at (202) 418–1475 (voice), (202) 418–0597 (TTY), or e-mail at *Thomas.Chandler@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order on Reconsideration*, FCC 05–139, adopted July 14, 2005, and released July 19, 2005, in CC Docket 98–67 and CG Docket 03–123. This *Order on Reconsideration* does not contain new or modified information collections requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506 (c)(4). The full text of the *Order on Reconsideration* and copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The *Order on Reconsideration* and copies of subsequently filed documents in this matter may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact BCPI at their Web site: *http://www.bcpiweb.com* or call 1–800–378–3160. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). The *Order on Reconsideration* can also be downloaded in Word or Portable Document Format (PDF) at: *http://www.fcc.gov/cgb/dro*.

Synopsis

Title IV of the Americans with Disabilities Act of 1990 (ADA) requires the Commission to ensure that TRS is available to the extent possible in the most effective manner to persons with hearing or speech disabilities in the United States. TRS enables a person with a hearing or speech disability to have access to the telephone system to communicate with hearing individuals. The statute requires that TRS offers persons with hearing and speech disabilities telephone transmission services that are functionally equivalent to voice telephone services. When TRS was first implemented in 1993, persons desiring to use TRS to call a hearing person through the telephone system generally used a TTY (text-telephone) device connected to the public switched telephone network (the PSTN). In what is now referred to as a traditional TRS call (*e.g.*, TTY text-based), the person with a hearing or speech disability dials (*i.e.*, types) a telephone number for a TRS facility using a TTY, and then types the number of the party he or she desires to call. The CA, in turn, places an outbound voice call to the called party. The CA serves as the link in the conversation, converting all TTY messages from the caller into voice messages, and all voice messages from the called party into typed messages for the TTY user. The process is performed in reverse when a voice telephone user initiates a traditional TRS call to a TTY user.

The most striking development in the short history of TRS has been the enormous growth in the use of VRS. As most frequently used, VRS allows a deaf person whose primary language is ASL to communicate in ASL with the CA through a video link. The CA, in turn, places an outbound telephone call to a hearing person. During the call, the CA communicates in ASL with the deaf person and by voice with the hearing person. As a result, the conversation between the two end users, deaf and hearing, flows in near real time and in a faster and more articulate manner than with a TTY or text-based TRS call. As a result, VRS calls reflect a degree of functional equivalency that is not attainable with text-based TRS.

Section 225 of the Communications Act, creates a cost recovery framework whereby providers of TRS are compensated for their costs of providing TRS. This framework is based on a jurisdictional separation of costs. As a general matter, providers of *intrastate* TRS are compensated by the states, and providers of *interstate* TRS are compensated from the Interstate TRS Fund (Fund). The Interstate TRS Fund is funded by contributions from all carriers providing interstate telecommunications services, and is administered by the TRS fund administrator, currently the National Exchange Carrier Association, Inc.

(NECA). The Fund administrator uses these funds to compensate eligible TRS providers for the costs of providing the various forms of TRS. Fund distributions are made on the basis of a payment formula initially computed by NECA in accordance with the Commission's rules, and then approved or modified by the Commission. The per-minute compensation rates are presently based on the projected average cost per minute of each service.

The Evolution of TRS

Since TRS became available on a nationwide basis in July 1993, the Commission has addressed the provision, regulation, and compensation of TRS on numerous occasions. As the Commission has noted, in adopting Title IV of the ADA, Congress recognized that persons with hearing and speech disabilities have long experienced barriers to their ability to access, utilize, and benefit from telecommunications services. The intent of Title IV, therefore, is to further the Communications Act's goal of universal service by ensuring that individuals with hearing or speech disabilities have access to the nation's telephone system. To this end, the Commission must ensure that persons with hearing and speech disabilities have adequate means of accessing the telephone system. At its inception, TRS was limited to the use of a TTY connected *via* the PSTN to the CA, who would then make a voice call to the other party to the call. In 1998, however, the Commission issued a Notice of Proposed Rulemaking, seeking comment on whether Title IV applies to other forms of TRS that go beyond the TTY-to-speech and speech-to-TTY model. The Commission tentatively concluded that improved TRS services, such as speech-to-speech (STS) and VRS, falls within the scope of Title IV because its language and structure establish that Congress intended TRS to be an evolving service that would expand beyond traditional TTY relay service as new technologies developed. The Commission therefore proposed recognizing new forms of TRS that it believed would broaden the potential universe of TRS users and further promote access to telecommunications for the millions of persons with disabilities who might otherwise be foreclosed from participating in our increasingly telecommunications and information-oriented society.

In March 2000, the Commission adopted its tentative conclusions that STS and VRS are forms of TRS. The Commission found that STS would help break the insularity barriers that confine members of the community of people with speech disabilities and offer them opportunities for education, employment, and other, more tangible benefits that are concomitant with independence. The Commission further concluded that TRS encompasses VRS, and that VRS would make relay services functionally equivalent to conventional telephone service for individuals whose first language is ASL. The Commission did not mandate the provision of VRS, given its technological infancy. The Commission nevertheless encouraged the use and development of VRS, and to this end stated that, on an interim basis, all VRS calls would be eligible for cost recovery from the Interstate TRS Fund. Finally, as discussed more fully below, the Commission also concluded that any non-English language relay services in a shared language, such as Spanish-to-Spanish, are telecommunications relay services, and required interstate common carriers to provide interstate Spanish relay service.

In April 2002, the Commission further expanded the scope of TRS by concluding that IP Relay falls within the statutory definition of TRS. In reaching this conclusion, the Commission noted that Congress did not adopt a narrow definition of TRS, but rather used the broad phrase "telephone transmission service" that was constrained only by the requirement that such service provide a specific functionality. In June 2003, the Commission released the *Second Improved TRS Order & NPRM*, again expanding the scope of TRS to encompass new types of TRS calls, including two-line voice carry-over (VCO) and two-line hearing carry-over (HCO). The Commission stated that as technology has further developed, new variations of traditional TRS are now available to support the preferences and needs of persons with hearing and speech disabilities.

Finally, in August 2003, the Commission concluded that captioned telephone VCO service is a type of TRS eligible for cost recovery under Section 225. In reaching this conclusion, the Commission noted that the types and forms of relay services that we have found to fall within the definition of TRS have neither been static nor limited to relay services involving a TTY or the PSTN. The Commission also emphasized that captioned telephone service will reach a segment of the population persons who develop a hearing disability later in life and have some residual hearing that has traditionally not been well serviced by current TRS options, and that just as VRS has allowed greater functional equivalence in telecommunications for callers who use sign language, captioned telephone service will provide greater functional equivalence for those people who prefer VCO TRS and use this technology.

Non-Shared Language Relay Service

In 1998, the Commission first raised the issue whether multilingual relay services (MRS), *i.e.*, relay service in a shared foreign language (such as Spanish-to-Spanish), and translation services, *i.e.*, relay services between two parties who each use a different language, were TRS services under Section 225. The Commission tentatively concluded that Title IV of the ADA, as a general matter, only encompasses same-language MRS, and that such calls, to the extent voluntarily provided, should be compensated by the intrastate jurisdiction or the Interstate TRS Fund, as appropriate. The Commission also tentatively concluded that translation TRS, especially foreign language translation services, are value-added TRS offerings that go beyond the "relaying" of conversations between two end users, and therefore should not be compensable from the Interstate TRS Fund. The Commission sought comment on whether an exception should be made for ASL translation services, explaining that because ASL is a language unique to the deaf community, ASL translation services may be necessary to provide functional equivalency to ASL users.

In March 2000, the Commission concluded that MRS—non-English language relay services that relay conversations in a shared language—are TRS services compensable by either the intrastate jurisdiction or the Interstate TRS Fund. The Commission recognized that Spanish is the most widely spoken non-English language in the United States, and that the number of Spanish-speaking persons is significantly larger than any other non-English speaking population and is rapidly growing. The Commission concluded that this warrants the availability of interstate Spanish relay service, and therefore mandated that interstate common carriers provide interstate Spanish relay services by March 1, 2001. The Commission added that while it was mandating only interstate Spanish relay service, any non-English language relay service provided by an interstate relay provider would be compensable from the Interstate TRS Fund. The Commission also stated that although it was not requiring each state TRS program to offer intrastate Spanish (or any other non-English language) relay service, it urged states to consider offering such services if the need arose, noting that there could otherwise be an

adverse effect on the personal and economic well-being of individuals who speak a language other than English, making employment and education more difficult for them to attain.

With respect to non-shared language relay service, the Commission concluded that the translation of typed ASL to English was TRS because it was necessary to provide "functional equivalency" to ASL users. The Commission noted that where a TTY user's message is in ASL, the CA will, upon request of the TTY user, repeat the message to the hearing person using standard spoken English, and the CA will repeat the hearing person's message by typing in ASL. The Commission stated that because the grammar and syntax of ASL are different from English, if this were not done, the hearing party may not understand the information as well as if it is presented in English, and *vice versa*. The order did not otherwise address non-shared language TRS.

The Texas Public Utilities Commission (TX PUC) filed a petition for reconsideration, requesting that the Commission allow other non-shared language relay translation service (beyond ASL to English translation service) to be compensable from the Interstate TRS Fund. The TX PUC stated that there is a great demand for such service, and that the need for this service is particularly important for many deaf children of Latino origin. The TX PUC explained that many such children live in homes where Spanish is the spoken language, but the children are educated at school in ASL and English. Therefore, many deaf children of Spanish-speaking families are not able to participate in family communications. Sprint filed comments supporting the petition, stating that the provision of Spanish-to-English relay service is necessary to enable deaf children of Spanish-speaking parents to communicate with their families. Sprint also asserted that the incremental cost of providing such service would be *de minimis*.

In response to the TX PUC petition, the Commission sought comment on whether non-shared (or multi-lingual) language translation service through relay is a form of TRS compensable from the Interstate TRS Fund. The Commission noted that since the time we addressed this issue in the *1998 TRS NPRM*, the Commission has developed a better understanding of the needs of certain TRS consumers in this area, and recognizes that multi-lingual translation service through TRS may meet the unique needs of certain identifiable TRS users. The Commission sought comment on whether provision of this service is consistent with, or necessary under, the functional equivalency mandate. The Commission also sought comment on how multilingual translation service for TRS would be implemented with VRS, STS, and other forms of TRS.

Several parties filed comments responding to this issue. Commenters representing TRS providers and disability advocacy groups asserted that non-shared language relay should be recognized as TRS, because it provides functionally equivalent relay service for millions of deaf children, parents, or friends who wish to communicate by telephone with Spanish-speaking Americans but cannot, because the persons who are deaf have been educated in ASL and English. Commenters in opposition generally maintained that non-shared language translation goes beyond the functional equivalency mandate because it provides relay users with a service not offered to non-relay voice telephone users, *i.e.*, the ability, as part of their basic telephone services, to call and communicate with a person who speaks a different language.

In 2004, the Commission found that non-shared language TRS is value-added translation service that is not compensable from the Interstate TRS Fund. At the same time, the Commission recognized that states, in their efforts to tailor intrastate TRS to meet the needs of their citizenry, may identify the need to offer non-shared language TRS. The Commission stated that it supported, and in fact encouraged, states to assess the need for, and if appropriate offer, non-shared language intrastate TRS. In this regard, the Commission noted that it was not concluding that offering non-shared language TRS conflicts with Commission rules, but rather that the offering of such a service is an example of an entity permissibly exceeding the mandatory minimum standards.

The Petitions for Reconsideration

Three parties seek reconsideration of the Commission's conclusion that non-shared language TRS service is not a form of TRS compensable from the Interstate TRS Fund. Specifically, they assert that non-shared language Spanish translation Video Relay Service—*i.e.*, VRS where the CA translates what is signed in American Sign Language (ASL) into spoken Spanish, and *vice versa*—is a form of TRS compensable from the Interstate TRS Fund.

Communication Services for the Deaf (CSD) argues that the enormous size of America's Spanish-speaking population means that the provision of VRS between ASL and Spanish-speaking users is needed to achieve functional equivalent relay service. CSD notes that the recent growth of the Spanish-speaking population in America has been extraordinary, and that the Commission's disability access rules already reflect this fact. CSD notes, for example, that the Commission has already required Spanish-to-Spanish interstate relay services, singling out this language only because the number of Spanish-speaking persons is significantly larger than any other non-English speaking population and is rapidly growing. CSD further argues that it is inconsistent to permit reimbursement for ASL-to-English VRS, but not ASL-to-Spanish VRS. CSD asserts, in other words, that having recognized at least one translation relay service to achieve functional equivalency, it makes little sense to deny reimbursement for relay translation between ASL and Spanish-speaking people, particularly because after English, Spanish is the next most widely spoken language in the country. Further, CSD emphasizes that authorizing ASL-to-Spanish VRS is particularly critical for deaf Latino children because such children are educated in ASL and therefore can communicate by telephone with their relatives and other Spanish-speaking persons only through non-shared language TRS. Finally, CSD suggests that the cost to provide non-shared language ASL-to-Spanish calls would not be any greater than that for ASL-to-English calls, and that ASL-to-Spanish calls would likely constitute no more than one to two percent of all VRS calls. The National Video Relay Service Coalition (NVRSC) makes similar arguments.

In response to the petitions for reconsideration, eighteen individuals filed comments in support, making many of the same arguments made by petitioners. These comments generally express the desire of deaf members of the Latino community to have the ability to communicate over the telephone via VRS in ASL, their native language, with the members of the Spanish-speaking community who are not deaf. No comments opposed recognizing Spanish translation VRS as a form of TRS compensable from the Interstate TRS Fund.

Discussion

We reverse the Commission's prior ruling on this issue and conclude that ASL-to-Spanish VRS—*i.e.*, relay service where the CA translates what is signed in American Sign Language (ASL) into spoken Spanish, and vice versa—is a

form of TRS compensable from the Interstate TRS Fund. Accordingly, we grant the petitions for reconsideration on this issue filed by CSD, NVRSC, and Hands On. (We note that the petitions for reconsideration only addressed Spanish language translation VRS, *i.e.*, ASL-to-Spanish VRS). NECA shall compensate providers of this service at the same rate we adopt for VRS when a Spanish translation service is not involved. In reaching this conclusion, we find that it is essential that members of the large Spanish-speaking population in this country who are deaf, hard of hearing, or have a hearing disability, and for whom ASL is their primary language, have the means to communicate via the telephone system with persons without such disabilities who speak Spanish, in keeping with the goal of universal service.

ASL-to-Spanish VRS Meets the Needs of an Identifiable Segment of the Population of Persons With Hearing and Speech Disabilities

As explained above, the Commission has recognized that Congress intended TRS to be an evolving service that would encompass new developments in technology and meet the needs of identifiable segments of the population of persons with hearing and speech disabilities. The Commission has also recognized Congress' clear direction that Title IV and the TRS regime are intended to further the goals of universal service by bringing persons with hearing and speech disabilities into the telecommunications mainstream and facilitating their educational and employment opportunities. To this end, Section 225 specifically directs the Commission to ensure that TRS is available to the extent possible to persons with hearing and speech disabilities in the United States.

The Commission's recognition of new forms of TRS to meet the particularized needs of certain persons with hearing and speech disabilities has not been confined to addressing the needs of persons with certain disabilities (*e.g.*, Speech-to-Speech) or the use of new technologies (*e.g.*, VRS and captioned telephone service). It has also included recognizing that persons with hearing and speech disabilities who do not speak English should have access to the telephone system, and therefore that some non-English language relay service should be provided. As stated above, the Commission has concluded that the provision of Spanish language relay service is essential to ensuring that the nation's large Spanish-speaking population has access to the telephone system.

We find that the recognition of ASL-to-Spanish VRS as a form of TRS compensable from the Interstate TRS Fund serves once again to meet the needs of an identifiable segment of the population of persons with hearing and speech disabilities, and therefore to further the goal of universal service, consistent with the Commission's decisions noted above. The record reflects both that there is a large and growing Spanish-speaking population in this country, and that deaf members of this population, educated in ASL, cannot communicate with their family and friends who speak only Spanish. Indeed, the Commission has previously recognized that the provision of non-shared language relay service may satisfy a particular need of persons with hearing or speech disabilities. Further, the Commission has specifically recognized both shared non-English language relay service and VRS as forms of TRS compensable from the Interstate TRS Fund, and that precluding such services through a narrow reading of the statute would be inconsistent with Congress' intent in enacting Title IV of the ADA.

First, the record reflects that there are nearly 40 million Latinos living in the United States, and that number will increase to over 60 million by 2025, representing over 18% of the population. This is the largest minority population in the nation, and Spanish is the most widely used non-English language spoken in the United States. The record also reflects that, as reported by Gallaudet University, as many as 24.5% of all deaf and hard of hearing students age three and over are Latino. The Commission has previously acknowledged that Hispanics are the fastest growing minority group in the deaf school age population. Relatedly, we note that Spanish is the predominant language in Puerto Rico, which has a certified state relay program under the Commission's rules. (Territories such as Puerto Rico are encompassed by Section 225 and the TRS regulations. *See* 47 U.S.C. 225(b)(1); 42 U.S.C. 12102(3). Puerto Rico's state TRS program was re-certified by the Commission on July 24, 2003. *Notice of Certification of State Telecommunications Relay Service (TRS) Programs*, Public Notice, CC Docket No. 98–67, 18 FCC Rcd 15322, (2003), published at 68 FR 45819, August 4, 2003; *see generally http://welcome.topuertorico.org/descrip.shtml* (noting that language has been a central issue in Puerto Rican education and culture since 1898, and that now English and Spanish are both official languages in Puerto Rico)). As NVRSC has noted, in Puerto Rico, where Spanish is the primary language, failure to compensate for ASL-to-Spanish VRS leads to the result that Puerto Ricans who are deaf or hard of hearing using ASL must have their VRS conversations translated into English, a language that is either not spoken or is a second language for most Puerto Ricans. (NVRSC Petition at 10).

Second, the Commission has also acknowledged that for many deaf Hispanic persons, particularly children, ASL is their primary language, even though it is not the language used in their home. As a result, as CSD has noted, because many do not learn Spanish in the deaf and residential day schools they attend, the only way for these children to communicate with some relatives by telephone—especially because many are young and cannot yet type—is through non shared-language VRS. (CSD Petition at 10). In other words, the particular communications needs of deaf children raised in Spanish-speaking households arise precisely because the children are deaf, and therefore learn ASL as their primary language and not Spanish. Recognizing non shared-language Spanish translation VRS as a form of TRS therefore empowers these persons to have access to the telephone system to become more fully integrated into society. The legislative history of Title IV makes clear that the lack of telephone access for persons with certain disabilities relegated them to second-class citizenship, and that the relay system was intended to empower such persons to have greater control over their own lives and greater opportunities. Therefore, we agree with CSD that precisely because Spanish-speaking Latino Americans make up so large a portion of the American population, the Commission should be taking actions to enhance, not reduce communication between deaf people and Americans who speak Spanish.

Recognition of ASL-to-Spanish VRS as a Form of TRS Is Consistent With the Recognition of VRS as a Form of TRS

In reaching the conclusion that ASL-to-Spanish VRS is TRS, we find significant, as have petitioners and commenters, that TRS already entails translation between two languages, English and ASL. The Commission has previously recognized that ASL is not English. For two persons to communicate with each other using these languages there must be a translation between a spoken language (English) and a visual language (ASL), each with its own grammatical structure

and syntax. (*See also* CSD Petition at 6. CSD adds that it was for this very reason that VRS was first created—it was seen as a means of enabling ASL users who were not sufficiently acquainted with the English language to be able to communicate with hearing people who did not know ASL).

Further, we now conclude that the Commission's previous characterization of ASL-to-Spanish translation VRS as a value added service was misplaced. As we have noted, for certain identifiable segments of the population, the only way to communicate via telephone in a functionally equivalent manner is by ASL-to-Spanish translation VRS. Therefore, although a translation to Spanish may be a value added service for hearing persons, or in other contexts, we do not believe it can be fairly characterized as such for the deaf community for whom ASL is their primary language. As the record reflects, for deaf children who are raised in Spanish-speaking homes, and who are taught ASL in school as their primary language, without this service it is virtually impossible to communicate with their Latino communities.

We also believe that the statutory mandate of functional equivalency must serve primarily as a benchmark for determining those services and features that TRS must offer, not as a barrier that precludes the recognition of new forms of TRS that give access to the nation's telephone system to identifiable groups of persons with hearing and speech disabilities. Significantly, the Commission has made clear that functional equivalency is reflected in the services and features required by the mandatory minimum standards that a provider must offer to receive compensation from the Interstate TRS Fund. At the same time, the TRS regulations recognize that states may offer services that exceed the mandatory minimum standards, as long as they do not conflict with the existing standards; indeed, in the past the Commission has encouraged states to do so with regard to non-shared language TRS. The determination of whether a particular service falls within the scope of TRS and is compensable from the Fund must take into account the purpose of the service and whether it affords persons with hearing and speech disabilities a means of functionally equivalent access to the nation's telephone system.

Recognition of ASL-to-Spanish VRS as a Form of TRS Is Consistent With the Commission's Focus on Spanish Language Access in Other Contexts

The conclusion that ASL-to-Spanish VRS falls within the scope of TRS compensable from the Interstate TRS Fund is also supported by the special emphasis the Commission has placed on providing the nation's Spanish-speaking population with access to communications in other contexts. First, as we have noted above, the Commission concluded that the provision of Spanish-to-Spanish relay service is essential to ensuring that the nation's large Spanish-speaking population has access to the telephone system. The Commission explained that just as the voice telephone network allows for a Spanish-speaking user to call a parent and speak in Spanish, TRS users should have the same functional equivalency. The Commission found that because Spanish is the most widely spoken non-English language in the country, it was appropriate that the Commission mandate the availability of interstate Spanish relay service; at the same time, the Commission left to the states the determination whether particular demographics made it appropriate to offer other non-English language relay service.

Second, the Commission has adopted captioning rules for Spanish language programming because there was already a market for such programming in the United States. The Commission explained that it was extending its disability access obligations only to Spanish video programmers because the number of Spanish-speaking persons is significantly larger than any other non-English speaking population and is rapidly growing. The Commission also noted that it was appropriate to require Spanish language captioning because the captioning rules applied to programming in Puerto Rico.

Third, the Commission's Web site has a homepage that contains information written in Spanish about its rules and regulations. Consumers also have access to numerous Commission Factsheets and other documents that have been translated to Spanish. (The Commission has endeavored to provide Spanish translations of Commission Factsheets and Consumer Advisories. In addition, because we receive a large number of inquiries about charges on telephone bills, we have sample telephone bills available (both wireline and wireless) with definitions in Spanish of all line item terms. We also have translated telephone complaint Form 475, and "slamming" complaint Form 501, into Spanish to allow Spanish-speaking consumers to easily file complaints with the Commission). In sum, the Commission has endeavored in a variety of contexts to make its services and information accessible to the nation's large population of Spanish-speaking persons.

Recognition of ASL-to-Spanish VRS as a Form of TRS Will Not Have an Undue Impact on the Interstate TRS Fund

Finally, the record reflects that allowing compensation from the Interstate TRS Fund for ASL-to-Spanish VRS will not have an appreciable impact on the required size of the Fund. We are mindful that the size of the Interstate TRS Fund has been rapidly increasing in recent years, largely due to the popularity of the two Internet-based relay services (IP Relay and VRS), and that a larger Fund size requires a higher carrier contribution factor, with costs ultimately passed on to all consumers. But as we have noted, the record indicates that ASL-to-Spanish VRS calls should constitute no more than one to two percent of all VRS calls. Therefore, as the Commission stated when it recognized STS as a form of TRS, we find that no information has been presented that demonstrates that ASL-to-Spanish VRS is too costly relative to the benefit derived from this service. Further, the record also reflects that the operational cost of providing ASL-to-Spanish VRS is not likely to be significantly more than ASL-to-English VRS. Prior to the *2004 TRS Report and Order*, CSD had been providing ASL-to-Spanish VRS service for a period in 2002 and 2003 at the same rate as ASL-to-English VRS service.

Conclusion

We therefore conclude that ASL-to-Spanish VRS—*i.e.*, relay service where the CA translates what is signed from ASL to spoken Spanish, and *vice versa*—is a form of TRS compensable from the Interstate TRS Fund. (We remind providers (and consumers) that VRS is not the same as Video Remote Interpreting (VRI), and that VRS, including the ASL-to-Spanish VRS that we recognize in this *Order on Reconsideration*, may not be used when two persons are together and an interpreter is needed. As the Commission has explained, VRI is a service that is used when an interpreter cannot be physically present to interpret for two persons who are together at the same location (for example, at a meeting or in a doctor's office). *See Federal Communications Commission Clarifies That Certain Telecommunications Relay Services (TRS) Marketing And Call Handling Practices Are Improper And Reminds That Video Relay Service (VRS) May Not Be Used As A Video Remote Interpreting Service*, Public Notice, CC Docket No. 98–67, CG Docket No. 03–123, 20 FCC Rcd 1471, (2005),

published at 70 FR 8034, February 17, 2005. In that situation, an interpreter at a remote location may be used via a video connection. A fee is generally charged by companies that offer this service. By contrast, VRS, like all forms of TRS, is a means of giving access to the telephone system. Therefore, VRS is to be used only when a person with a hearing disability, who absent such disability would make a voice telephone call, desires to make a call to a person without such a disability through the telephone system (or when, in the reverse situation, the hearing person desires to make such a call to a person with a hearing disability). In circumstances where a person with a hearing disability desires to communicate with someone in person, he or she may not use VRS but must either hire an "in-person" interpreter or a VRI service). Accordingly, providers offering ASL-to-Spanish VRS may be compensated from the Interstate TRS Fund. Because presently VRS is not a mandatory service, we also do not make ASL-to-Spanish VRS a mandatory service at this time. Further, NECA shall compensate providers of this service at the same rate we adopt for VRS when a Spanish translation service is not involved. (We note that the petitions for reconsideration only addressed Spanish language translation VRS, *i.e.*, ASL-to-Spanish VRS. As noted above, the record suggests that compensation of ASL-to-Spanish VRS will not impose costs significantly greater than those associated with ASL-to-English VRS. We leave open the issue whether providers, after the 2005–2006 fund year, may include in their submitted projected costs any additional costs caused by providing ASL-to-Spanish VRS translation service we recognize in this *Order on Reconsideration*).

Final Regulatory Flexibility Certification

The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an initial regulatory flexibility analysis be prepared for notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." (*See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, Title II, 110 Statute 857 (1996)). The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." (5 U.S.C. 601(6)). In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. (5 U.S.C. 601(3) incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**"). A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). (15 U.S.C. 632). Nationwide, there are approximately 1.6 million small organizations. (Independent Sector, The New Nonprofit Almanac & Desk Reference (2002)).

This *Order on Reconsideration* addresses three petitions for reconsideration of the Commission's prior conclusion that non-shared language TRS service is not a form of TRS compensable from the Interstate TRS Fund. (*See* petitions filed by CSD (September 30, 2004), NVRSC (October 1, 2004), and Hands On Video Relay Services, Inc. (Hands On) (October 1, 2004)). This item reverses the Commission's prior conclusion that non-shared language Spanish translation Video Relay Service—*i.e.*, VRS where the CA translates what is signed in American Sign Language (ASL) into spoken Spanish, and *vice versa*—is a not a form of TRS compensable from the Interstate TRS Fund. The Commission concludes that the public interest is best served by requiring the Interstate Fund Administrator to pay to eligible providers of ASL-to-Spanish VRS the costs of providing interstate service. We find that it is essential that members of the large Spanish-speaking population in this country who are deaf, hard of hearing, or have a hearing disability, and for whom ASL is their primary language, have the means to communicate via the telephone system with persons without such disabilities who speak Spanish, in keeping with the goal of universal service. In addition, as noted in paragraph 31 of the item, the record reflects that allowing compensation from the Interstate TRS Fund for ASL-to-Spanish VRS will not have an appreciable impact on the required size of the Fund, or that ASL-to-Spanish VRS is too costly relative to the benefit derived from this service. Therefore, given the lack of a significant economic impact, we certify that the requirements of the *Order on Reconsideration* will not have a significant economic impact on a substantial number of small entities.

We also note that, arguably, there are not a substantial number of small entities that will be affected by our action. The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such firms having 1,500 or fewer employees. (13 CFR 121.201, NAICS code 517110 (changed from 513310 in October 2002). According to Census Bureau data for 1997, there were 2,225 firms in this category which operated for the entire year. U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 5, NAICS code 513310 (issued October 2000). Of this total, 2,201 firms had employment of 999 or fewer employees, and an additional 24 firms had employment of 1,000 employees or more. Thus, under this size standard, the majority of firms can be considered small. (The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1,000 employees or more")). Currently, only eight providers are providing VRS and being compensated from the Interstate TRS Fund: AT&T, Communication Access Center for the Deaf and Hard of Hearing, Hamilton, Hands On, MCI, Nordia, Sorenson and Sprint. We expect that only one of the providers noted above is a small entity under the SBA's small business size standard. In addition, the Interstate Fund Administrator is the only entity that will be required to pay to eligible providers of ASL-to-Spanish VRS the costs of providing interstate service. The Commission will send a copy of this *Order on Reconsideration*, including a copy of this Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the SBA. (5 U.S.C. 605(b)).

Congressional Review Act

The Commission will send a copy of this *Order on Reconsideration* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

Ordering Clauses

Pursuant to the authority contained in Sections 1, 2, and 225 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, and 225, this *Order on Reconsideration* is hereby adopted.

The Petition for Partial Reconsideration filed by Hands On is granted in part, as provided herein; the Petition for Reconsideration filed by CSD is granted in part, as provided herein; and the Petition for Reconsideration filed by NVRSC is granted, as provided herein.

This *Order on Reconsideration* shall be effective September 30, 2005.

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

Federal Communications Commission.

Jacqueline R. Coles,

Associate Secretary.

[FR Doc. 05–17110 Filed 8–30–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 98–67 and CG Docket No. 03–123; FCC 05–140]

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

AGENCY: Federal Communications Commission

ACTION: Final rule.

SUMMARY: In this document, the Commission concludes that because speed of answer is central to the provision of "functionally equivalent" telecommunications relay service (TRS), and video relay service (VRS) is now widely used—if not the preferred form of TRS, VRS providers must provide service in compliance with the speed of answer rule adopted to be eligible for compensation from the Interstate TRS Fund. The rule establishes for the first time, mandatory speed of answer requirement for VRS, requires VRS to be officered 24/7, and permit VRS providers to be compensated for providing VRS mail. Also, in this document, the Commission closes TRS Docket No. CC 98–67.

DATES: Effective September 30, 2005.

FOR FURTHER INFORMATION CONTACT: Thomas Chandler, Consumer & Government Affairs Bureau, Disability Rights Office at (202) 418–1475 9 (voice), (202) 418–0597 (TTY), or e-mail at *Thomas.Changler@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order,* FCC 05–140, adopted July 14, 2005, and released July 19, 2005, in CC Docket 98–67 and CG Docket 03–123. The Commission addresses threes issues related to the provision of Video Relay Services, a form of telecommunications relay service (TRS): (1) The adoption of a speed of answer rule for VRS; (2) whether VRS should be required to be offered 24 hours a day, 7 days a week (24/7); and (3) whether VRS providers may be compensated for providing VRS Mail. This *Report and Order* does not contain new or modified information collections requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506 (c)(4). The full text of the *Report and Order* and copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, NW., CY–A257, Washington, DC 20554. The *Report and Order* and copies of subsequently filed documents in this matter may also be purchased from the Commission's duplicating contract, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact BCPI at their Web site *www.bepiweb.com* or call 1–800–378–3160. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fee504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). The *Report and Order* can also be downloaded in Word or Portable Document Format (PDF) at: *http://www.fcc.gov/cgb/dro.*

Synopsis

Title IV of the Americans with Disabilities Act of 1990 (ADA). Pub. L. 101–336, 401, 104 Statute 327, 336–69 (1990), adding Section 225 to the Communications Act of 1934 (Communications Act), as amended, 47 U.S.C. 225; implementing regulations at 47 CFR 64.601 *et seq.*), requires common carriers offering telephone voice transmission services to provide TRS throughout the area in which they offer service so that persons with disabilities will have access to telecommunications services, and provides that they will be compensated for their just and reasonable costs of doing so. Title IV is intended to further the universal service goal set out in the Communications Act of 1934 (Act), as amended, by providing to individuals with hearing or speech disabilities telephone services that are "functionally equivalent" to those available to individuals without such disabilities. Congress recognized that persons with hearing and speech disabilities have long experienced barriers to their ability to access, utilize, and benefit from telecommunications services.

The advent of VRS as a form of TRS has been one of the most important developments in the short history of TRS. VRS allows a deaf person whose primary language is ASL to communicate in ASL with the CA, a qualified interpreter, through a video link; the CA, in turn, places an outbound telephone call to a hearing person. During the call, the CA communicates in ASL with the deaf person and by voice with the hearing person. As a result, the conversion between the two end users, deaf and hearing, flows in near real time and in a faster and more articulate manner than with a TTY or text-based TRS world. The use of VRS reflects this reality. In April 2005 the monthly minutes of use were approximately 1.8 million, a ten-fold increase in the past two years, and more than the number of interstate traditional TRS minutes. (*See* TRS Fund Performance Status Report as of May 31, 2005, *http://www.neca.org* (under Resources, then TRS Fund)).

Discussion

Speed of Answer

The TRS Speed of Answer Rule

TRS became available on a nationwide basis in July 1993. Initially, the Commission's regulations required the provision of only "traditional," or text (TTY)-based TRS, and the Commission adopted mandatory minimum standards to govern the provision of this service. Providers seeking compensation from the Interstate TRS Fund for providing any form of TRS must offer service in compliance with the applicable mandatory minimum standards, unless waived. In the initial Notice of Proposed Rulemaking following the adoption of Section 225, the Commission explained

that the statute requires the Commission to establish minimum federal standards to be met by all providers of intrastate and interstate telecommunications relay services to ensure that telephone service for [persons with hearing and speech disabilities] is functionally equivalent to voice service offered to hearing individuals. Guided by this principle, the Commission's proposed rules included a speed of answer performance standard requiring that a least 85 percent of all calls be answered within 10 seconds the "85/10" rule).

In July 1991, the Commission adopted the TRS mandatory minimum standards, including the speed of answer rule. The rule stated in relevant part, that TRS shall, except during network failure, answer 85% of all calls within 10 seconds and no more than 30 seconds shall elapse between receipt of dialing information and the dialing of the requested number. The rule did not address whether compliance would be measured daily, monthly, or on some other basis. The Commission stated that although some common carriers favored relaxing the proposed rule, no evidence had been presented to suggest that the proposed rule was neither feasible nor clear. The Commission concluded that the 85/10 standard will best meet our goal of providing relay services which are functionally equivalent to voice telephone services.

In 1998, the Commission proposed amendments to the TRS mandatory minimum standards to enhance the quality of TRS and broaden the potential universe of TRS users. (This *NPRM* followed a Notice of Inquiry. *See Telecommunications Relay Services, the Americans with Disabilities Act of 1990, and the Telecommunications Act of 1996,* CC Docket No. 90–571, Notice of Inquiry, 12 FC Red 1152, (1997)). These proposals included recognizing VRS as a form of TRS ("improved services"), and also changing the TRS rules, including the speed of answer rule. Specifically, the *1998 TRS NPRM* proposed: (1) Revising the speed of answer rule to require TRS providers to answer 85% of all calls within 10 seconds by a CA prepared to place the TRS call at that time; (2) requiring that compliance with the 85/10 rule be calculated on a daily basis; (3) clarifying that the 10 second speed of answer time is triggered when a call initially arrives at the provider's network, and that once a call does so, regardless of how the provider's network handles the call, the call must be answered within 10 seconds by a CA prepared to place the call; and (4) finding that "abandoned" calls—*i.e.*, calls that are abandoned or successively redialed without being completed because the caller does not reach a CA prepared to place the call-not be included in the speed of answer calculation. The Commission proposed amending the speed of answer rule to make the experience of persons using TRS in placing a telephone call through a TRS center more functionally equivalent to the experience of voice callers using the voice telephone network. The Commission stated that the ability to make a telephone call without delay is fundamental to our concept of a rapid, efficient, Nationwide communications system. The Commission further emphasized that the speed-of-answer requirements are a cornerstone of the Commission's TRS rules, and the ability of a TRS user to reach a CA prepared to place his or her call, without experiencing delays that a voice telephone user would not experience in placing a telephone call, is fundamental to the concept of "functional equivalence."

In the March 2000 *Improved TRS Order*, the Commission expanded the scope of TRS by recognizing VRS as a form of TRS eligible for compensation from the Interstate TRS Fund. The Commission also modified the speed of answer rule to minimize the circumstances under which customers experience delays in placing their calls through relay services. In so doing, the Commission again emphasized that for a TRS user, reaching a CA to place a relay call is the equivalent of picking up a phone and getting a dial tone. Any interpretation of our rule that delays a customer's ability to place a call through the relay center clearly compromises the functional equivalence of relay service.

The modified speed of answer rule: (1) Requires 85 percent of all calls to be answered in 10 seconds by any method that results in the TRS caller's call immediately being handled, not put in a queue or on hold; (2) clarifies that the 10-second limit begins at the time the call is delivered to the TRS center's network, and that the call is considered delivered when the relay center's equipment accepts the call from the LEC and the public switched network actually delivers the call to the TRS center; (3) requires that compliance with the speed of answer rule be measured on a daily basis; and (4) requires that abandoned calls be included in the speed of answer calculation. The Commission stated that these new rules will protect consumers from delays in placing calls through TRS services, and will ensure calls are received and answered by relay centers as quickly as possible, thereby giving TRS users functionally equivalent servicer.

However, the March 2000 order did not address the speed of answer rule for VRS. In December 2001, the Commission waived the speed of answer rule for VRS providers for two years in order to encourage more entrants into the VRS market and help provide more time for technology to develop. The Commission also stated that because demand for VRS was undetermined, the 85/10 rule might keep potential VRS providers out of the market, thereby hindering the development and growth of VRS. For this Internet-based service, the Commission stated that it would consider the call delivered to the IP Relay center when the IP Relay center's equipment accepts the call from the Internet. The Commission added that carriers providing IP Relay, in order to remain qualified to receive reimbursement from the Interstate TRS Fund, will have to maintain sufficient staffing to adhere to the Commission's speed of answer standard. In De ember 2003, the Commission extended the initial two-year waiver until June 30, 2004. In the June 30, 2004, *2004 TRS Report & Order* the Commission further extended the speed of answer waiver for VRS until January 1, 2006, or such time as the Commission adopts a separate rule addressing speed of answer for VRS, whichever is earlier. The Commission found that it was premature to require VRS providers to meet the speed of answer requirement (or to adopt a different speed of answer requirement for VRS), and noted comments that a lack of qualified interpreters would make it difficult to meet the standard.

At the same time, because of the importance of this issue to the notion of functional equivalency, the Commission sought comment in the *2004 TRS Report & Order's FNPRM* on whether a particular speed of answer requirement should be adopted for VRS. The Commission stated that consumers have expresses some frustration over long wait times in placing VRS calls, a result at least in part due to the rapidly growing use of VRS by consumers, and that long wait times undermine the notion of functional equivalency, mandated by Congress. The Commission therefore sought comment on what an appropriate speed of answer rule for VRS might be, whether it should be the same as the present rule for traditional TRS calls, when such a rule should become effective, whether there are a sufficient number of interpreters available to ensure that providers could meet a particular speed of answer rule,

and how a particular rule might affect the cost of providing VRS.

On February 8, 2005 after the close of the comment period on the speed of answer issue as raised in the *2004 TRS Report & Order's FNPRM*, the Commission released a Public Notice seeking additional comment on the adoption of a speed of answer rule for VRS. (*See Federal Communications Commission Seeks Additional Comment on the Speed of Answer Requirement for Video Relay Service (VRS)*, CC Docket No. 98–67, CG Docket No. 03–123, Public Notice, 20 FCC Rcd 2376, (2005), published at 70 FR 10930, March 7, 2005, (*2005 Speed of Answer PN*)). The Commission noted that the comments previously filed lacked specificity on certain elements of a speed of answer rule, and therefore requested comment on several specific points, including what the rule should be, whether different standards should be phased in over time, how speed of answer should be measured, how abandoned calls should be treated, how "call backs" should be treated, whether compliance should be measured on a daily, monthly, or some other basis, and whether the providers should be required to submit reports to the Commission detailing their compliance with the speed of answer rule.

The Comments on the Application of a Speed of Answer Rule to VRS

In response to the *2004 TRS Report & Order's FNPRM*, seven comments and five reply comments were filed; comments were filed by the State of California and the California Public Utilities Commission (CA PUC)(October 18, 2004); Communication Services for the Deaf, Inc. (CSD) (October 18, 2004); Hands On Video Relay Services, Inc. (Hands On) (October 15, 2004); National Video Relay Service Coalition (NVRSC) (October 18, 2004); Sorenson Media, Inc. (Sorenson) (October 18, 2004); Sprint Corporation (Sprint) (October 18, 2004); and one individual Karl Kosiorek (October 5, 2004). Reply comments were filed by CSD (November 15, 2004); Hands On (November 15, 2004); NVRSC (November 15, 2004); and two individuals, Sarah Blattburg (November 12, 2004) and Judith Jones (November 15, 2004). Several other commenters, although not specifically addressing the speed of answer requirement, expressed concern about the shortage of interpreters necessary to staff VRS centers as well as to provide services for the deaf and hard of hearing community. In response to the *2005 Speed of Answer PN*, 27 comments and 48 reply comments were filed. Comments were filed by CSD (February 25, 2005); Hands On (February 25, 2005); NVRSC (February 25, 2005); Sorenson (February 25, 2005); AT&T Corp. (AT&T) (February 25, 2005); MCI (February 25, 2005); NorCal Center on Deafness (NorCal) (February 8, 2005); Registry of Interpreters for the Defa, Inc. (RID) (February 25, 2005); University of Minnesota, Disability Services (UMDS) (February 25, 2005); Utah State Office of Rehabilitation (USOR) (March 3, 2005); and 56 individuals. Reply comments were filed by CSD (March 4, 2005(); MCI (March 5, 2005); Hands On (March 4, 2005); NVRSC (March 4, 2005); Arizona Commission for the Deaf and Hard of Hearing (ACDHH) (March 4, 2005); California Public Utilities Commission (CAPUC) (March 4, 2005); Hamilton Relay, Inc. (Hamilton) (March 4, 2005); Sprint Corporation (Sprint) (March 4, 2005); and Gallaudet University, Gallaudet Interpreting Service (Galaudet) (March 3, 2005). The majority of commenting VRS providers and the organizations representing deaf and hard of hearing consumers support adopting a speed of answer rule for VRS. *Compare* AT&T Comments to PN at 2; Hands On Comments to PN at 1; CSD Comments to PN at 1–2; Sprint Reply Comments to PN at 2 (Supporting adoption of a speed of answer rule); NVRSC Comments to PN at 1; NorCal Comments to PN at 1 *with* Sorenson Comments to PN at 1; MCI Comments to PN at 1, and Hamilton Reply Comments to PN at 1; USOR Comments to PN at 1; UMDS Comments to PN at 2 and GIS Reply Comments to PN at 3 (opposing adoption of a speed of answer rule)). (For the initial commenters supporting the adoption of a speed of answer rule, *see* CSD Comments at 29–39; Hands On Comments at 14–20; NVRSC Comments at 12; Sprint Comments at 11; CSD Reply Comments at 2–4). Several commenting parties assert that presently there are not a sufficient number of qualified interpreters in the labor pool to meet a mandatory answering standard and to have community interpreters available for other purposes. (Sorenson Comments at 11; MCI Comments to PN at 2; RID Comments to PN at 1; Sorenson Comments to PN at 3; UMDS Comments to PN at 2). Some commenters also assert that if a speed of answer rule were adopted it would result in a high quality service with a slower answer speed being replaced by a lower quality service with a faster answer speed. (Sorenson Comments to PN at 2; GIS Reply Comments to PN at 2). Sorenson argues that the Commission should not focus on just one element of functional equivalency (speed of answer). (Sorenson Comments to PN at 4). CP PUC, UMDS, and USOR also oppose adoption of a speed of answer rule at this time. CA PUC Comments to PN at 16; UMDS Comments to PN at 2; USOR Comments to PN at 1. (MCI further contends that the adoption of a speed of answer rule would create an outcome that would unfairly disadvantage new entrants. MCI Comments to PN at 2–3). Supporting commenters stress that the functional equivalency mandate requires VRS providers to be able to answer a VRS call within a reasonable amount of time. (*See*, Sprint Comments at 11). However, the majority of the individual commenters to the PN express their opposition to adopting a speed of answer rule based on their general belief that such a rule would compel the VRS providers to hire less qualified interpreters in order to meet the speed of answer rule. Several commenters also maintain that VRS has become a sufficiently mature service to satisfy the speed of answer rule and that the Commission should either allow the existing speed of answer waiver to expire or adopt a speed of answer rule at this time. (CSD Comments at 29–30; Hands On Comments at 14–20; NVRSC Comments at 12; CSD Reply Comments at 2–4).

The commenters recommending a speed of answer requirement suggest proposals ranging from applying the current 85/10 rule to VRS, to requiring 85 percent of all calls to be answered within 30 seconds. (*See* AT&T Comments to PN at 2–3 (85 percent of all calls must be answered within 30 seconds (85/30)); Hands On Comments to PN at 2 (proposing 85/30 rule); NVRSC Coments to PN at 4 (proposing 85/10) rule; NorCal Comments to PN at 1 (proposing 85/10 rule); Sprint Reply Comments to PN at 2 (proposing initial 75/60 rule followed by 85/30 rule)).

Some commenters that oppose adoption of a speed of answer rule nevertheless offer standards if such rule were to be adopted. Sorenson, although opposing the adoption of a speed of answer requirement, asserts that if a speed of answer requirement is adopted, the rule should require 80 percent of calls to be answered within four minutes for the first year, and 80 percent of calls to be answered within three minutes for the second year. (Sorenson Comments to PN at 7). The commenters also generally propose that the rule should become effective within three to six months of the date of the order adopting a standard. (AT&T Comments to PN at 3 n.8 (6 months; CSD Comments to PN at 2 (3 months); Hands on Comments to PN at 4 (6 months); NVRSC Comments to PN at 4

(60 to 120 days); NorCal Comments to PN at 2 ("immediately"); Sprint reply Comments to PN at 3 (6 months); Sorenson Comments to PN at 7 (6 months)). Sorenson asserts that a transition period is essential given the existing shortage of qualified interpreters. (Sorenson Comments to PN at 7). Some commenters also support having various speed of answer requirements phased in over time. (CSD Comments to PN at 2 (phase-in of 75/60 within 3 months of date of order, and 85/30 within 6 months of date of order, with the goal of reaching 85/10 in 2 years); Sprint Reply Comments to PN at 2 (phase-in of 75/60 to 85/30)). Further, commenters generally agree that the speed of answer calculation should be measured, at least initially, on a monthly basis, and then in a few years on a daily basis. (AT&T Comments to PN at 2–3; CSD Comments to PN at 5; Hands On Comments to PN at 6; Sorenson Comments to PN at 8). NVRSC and ACDHH recommend that the calculation be made on a daily basis. (NVRSC Comments to PN at 8; ACDHH Reply Comments to PN at 3). MCI recommends that the calculation be made on a quarterly basis. (MCI Comments to PN at 4). CSD asserts, for example, "[a] monthly measurement will provide the flexibility to meet the ebbs and flows characteristic of VRS in this changing market." (CSD Comments to PN at 5).

Commenters also address the appropriate starting and ending points for measuring speed of answer. (AT&T Comments to PN at 3–4; CSD Comments to PN at 3; Hands On Comments to PN at 4–5; MCI Comments to PN at 4; NVRSC Comments to PN at 5; Sorenson Comments to PN at 7). Commenters generally agree that the measurement standard should be the same as the speed of answer measurement for IP Relay, where the measurement begins when the call is delivered to the provider's server and ends when the call is assigned to a VRS CA to handle the call. (AT&T Comments to PN at 3–4; CSD Comments to PN at 3; Hands On Comments to PN at 4–5; MCI Comments to PN at 4; NVRSC Comments to PN at 5; Sorenson Comments to PN at 7). AT&T and Hands On, however, caution that there may be a several seconds delay for the call to "synchronize" into the VRS system before an interpreter may answer the call. (AT&T Comments to PN at 4 n. 10; Hands On Comments to PN at 5). No commenters proposed an alternative method for this measurement.

Commenters also generally agree that abandoned calls (abandoned calls are those calls answered by a relay center but never handled by a CA because the customer hangs up), should be included in the VRS speed of answer calculation, as they are in the speed of answer calculation for the other forms of TRS. (AT&T Comments to PN at 4; CSD Comments to PN at 3; Hands On Comments to PN at 5; NVRSC Comments to PN at 6; ACDHH Reply Comments to PN at 3. RID, however, does not support the inclusion of abandoned calls in the calculation because VRS calls are susceptible of being dropped in the Internet Protocol. RID Comments to PN at 2). CSD asserts, however, that calls that are abandoned within the permissible speed of answer time should not be included with the calculation. SCD states that when a call is abandoned shortly after the call is placed, it is generally because the consumer has decided either not to place the call, or to do so at another time, and not because the caller no longer wished to wait for an interpreter or because he or she has waited too long. (CSD Comments to PN at 3–4). In addition, commenters generally agree that "call backs"—*i.e.*, calls where the consumer elects to have the provider call the consumer back when a VRS CA becomes available to place the call, rather than have the consumer wait for the next available CA should not be allowed because it is not an element of functional equivalency. (AT&T Comments to PN at 4; CSD Comments to PN at 4–5; Hands On Comments to PN at 5–6; NVRSC Comments to PN at 7; NorCal Comments to PN at 1; CA PUC Reply comments to PN at 5). Hands On and NVRSC recommend that providers be permitted to call back the calling party when necessary to "re-connect" a call that has been disconnected for technical reasons. Hands On Comments to PN at 6; NVRSC Comments to PN at 7, note 15. Sorenson and RID, however, support the call back feature as an option to be offered to the caller. (RID Comments to PN at 3; Sorenson Comments to PN at 8). Sorenson recommends that the call backs be included in the speed of answer calculation. (Sorenson Comments to PN at 8). Finally, all commenters support having providers submit their speed of answer data to the TRS Fund administrator either on a monthly or quarterly basis. (AT&T Comments to PN at 4 (monthly basis); CSD Comments to PN at 5 (monthly basis); Hands On comments to PN at 6 (monthly basis); NVRSC Comments to PN at 8 (monthly basis); ACDHH Reply Comments to PN at 3 (monthly basis); CA PUC Reply Comments to PN at 7 (monthly basis); Sorenson Comments to PN at 8 (quarterly basis)).

VRS Speed of Answer

We conclude that waiver of the speed of answer rule for VRS can no longer be justified. The record reflects that VRS providers have now had over three and a half years of experience in providing VRS, and with monthly minutes of use approaching two million (now more than interstate traditional TRS); it can no longer be said that the provision of VRS is in its infancy. We do not, however, require VRS providers to meet the 85/10 speed of answer rule in the TRS mandatory minimum standards at this time. Instead, we adopt the following speed of answer rule for VRS, and amend our rules accordingly: (1) By January 1, 2006, VRS providers must answer 80 percent of all VRS calls within 180 seconds, measured on a monthly basis; (2) by July 1, 2006, VRS providers must answer 80 percent of all VRS calls within 150 seconds, measured on a monthly basis; and (3) by January 1, 2007, VRS providers must answer 0 percent of all VRS calls within 120 seconds, measured on a monthly basis. VRS providers must answer 80 percent of all VRS calls within 120 seconds, measured on a monthly basis. VRS providers must meet these standards to be eligible for compensation from the Interstate TRS Fund.

VRS Speed of Answer Standards and Phase-In Period. From the inception of TRS mandated by Title IV of the ADA, speed of answer has been one of the fundamental components of ensuring that TRS users have functionally equivalent access to the telephone system. Substantial delays in reaching a CA who is ready to place the call cannot be reconciled with the ability of hearing persons to pick up the telephone and hear a dial tone. We therefore conclude that VRS must be subject to a speed of answer requirement so that consumers using this service will have prompt access to a CA ready to place their call. The Commission has repeatedly recognized that TRS service should mirror voice telephone service to the extent feasible, and that requires that a VRS user be able to promptly reach a CA.

At the same time, we recognize the concerns expressed by commenters that there may not presently be a sufficient number of qualified interpreters to permit VRS providers to meet a speed of answer rule that approaches the present rule applicable to the other forms of TRS. RID, for example, asserts that although it supports VRS calls being answered in a reasonable period of time, it is "concerned that the current

number of certified, qualified interpreters is well below the number required to adequately and safely provide quality VRS service." (RIC Comments to PN at 1). RID states that the "crisis in the quantity, quality, and qualifications of interpreters dates back to the 1996 * * * declaration * * * that a national shortage of interpreters exists," and that this "crisis affects all deaf citizens needing interpreting services for medical appointments, business meetings, court appearances, and now VRS." (RIC Comments to PN at 1). (*See also* Sorenson comments at 8–11; CA PUC Comments at 16; Sorenson Comments to PN at 4–5; MCI Comments to PN at 1–3; Hamilton Reply comments at 1–2; CA PUC Reply Comments to PN at 7; ACDHH Reply Comments to PN at 1–2; UMDS Comments to PN at 2; USOR comments to PN at 1). Many individual commenters expressed a similar concern. We also recognize that as VRS providers hire interpreters in greater numbers to meet the demand of VRS users, there are fewer community interpreters available to meet the needs of persons with hearing disabilities in other circumstances (*e.g.*, in schools, hospitals, business meetings, etc.). (*See*, Sorenson Comments 8–9; CA PUC Comments at 16; RID Comments to PN at 1; ACDHH Reply Comments to PN at 1–2; Hamilton Reply Comments to PN at 2; MCI Reply comments to PN at 3; UMDS Comments to PN at 2). Further, we recognize that providers will need some time to adjust their staffing levels to meet a speed of answer requirement. Therefore, as noted elsewhere, we will phase-in speed of answer requirements beginning January 1, 2006. (We note that when the Commission adopted the closed captioning rules, it adopted a transition period because of concerns that a limited number of captioners were avialable. *See Closed Captioning and Video Description of Video Programming*, MM Docket No. 95–176, Report and Order, 13 FCC Rcd 3272, 3292–3293, paragraphs 41–42, (1997), published at 62 FR 48487, September 16, 1997)). We find that this should allow VRS providers adequate time to meet the requirements adopted herein. (We also note that the question whether end-user VRS equipment must be interoperable with the relay services of all VRS providers is presently pending before the Commission. *See Petition for Declaratory Ruling Filed by the California Coalition of Agencies Serving the Deaf and Hard of Hearing (CCASDHH) Concerning Video Relay Service (VRS) Interoperability*, CC Docket No. 98–67, CG Docket No. 03–123, Public Notice, 20 FCC Red 4162, (2005), published at 70 FR 12884, March 16, 2005. We recognize that our resolution of the interoperability issue may also affect VRS providers' speed of answer performance).

We conclude, based on the record before us, that providers shall be required to meet the following VRS speed of answer requirements: (1) By January 1, 2006, VRS providers must answer 80 percent of all VRS calls within 180 seconds, measured on a monthly basis; (2) by July 1, 2006, VRS providers must answer 80 percent of all VRS calls within 150 seconds, measured on a monthly basis; and (3) by January 1, 2007, VRS providers must answer 80 percent of all VRS calls with 120 seconds, measured on a monthly basis. We believe these requirements best balance the fundamental policy considerations underlying the TRS regime (*e.g.*, that reaching a CA ready to place the call is the same as reaching a dial tone) and the concerns of some providers and consumers that there is a shortage of interpreters. (Because of the concerns we have noted about the shortage of interpreters, and comments in the record proposing a compliance standard of less than 85 percent, we find that the 80 percent threshold is appropriate in these circumstances). In this regard, we also recognize that call volume and the capacity of a provider to handle incoming Internet-based VRS calls may affect speed of answer performance. These issues are currently under review. For this reason as well, we require VRS speed of answer to be measured on a monthly basis, instead of a daily basis. We recognize that there may be some days when it is difficult to meet the speed of answer rule, particularly until the providers have determined, and are able to maintain, optimal VRS CA staffing levels to meet call demand. Because we are requiring VRS providers to offer service 24/7, a provider's answer performance during periods of less demand (*e.g.*, in the late night hours) may offset answer performance during periods of high demand.

We believe that this is a starting point that moves us toward the goal of functional equivalency without compromising: (1) The quality of interpreters; (2) the availability of community interpreting; and (3) the viability of open competition where inflexible requirements serve as an obstacle to new entrants. We, therefore, will carefully monitor compliance with these requirements, and will revisit them if necessary. We will also re-examine the VRS speed of answer rule after January 1, 2007, to determine if, and when, it might be appropriate to further tighten the speed of answer requirement.

Measuring Speed of Answer. We conclude that the speed of answer measurement begins when the VRS provider's equipment accepts the call from the Internet. In the *IP Relay Declaratory Ruling*, the Commission stated that it would consider the IP Relay call delivered to the IP Relay center the IP Relay center's equipment accepts the call from the Internet. We adopt a similar rule for VRS. Further, the call is "answered" when either a CA or an automated system responds to the incoming call and begins taking instructions from the calling party about the outbound call the calling party wishes to make. We not that the commenters that addressed this issue generally support this approach. (AT&T Comments to PN at 3–4; CSD Comments to PN at 3; Hands On Comments to PN at 4–5; MCI Comments to PN at 4; NVRSC Comments to PN at 5; Sorenson Comments to PN at 7).

Abondoned Calls. We conclude that abandoned calls must be included in the VRS speed of answer calculation. As many commenters note, (AT&T Comments to PN at 4; CSD Comments to PN at 3; Hamilton Comments to PN at 5; NVRSC Comments to PN at 6; ACDHH Reply Comments to PN at 3), the treatment of abandoned calls for VRS should be the same as for the other forms of TRS. Sorenson asserts that sequential calls should be included in the speed of answer calculation, *i.e.*, that multiple calls made by the calling party through the same CA should be counted as separate calls (which results in the subsequent calls having a speed of answer of zero). (Sorenson Comments to PN at 7; *but see* CSD Reply Comments to PN at 10; NVRSC Replay Comments to PN at 10 (both opposing this suggestion); *see generally* 47 CFR 64.604(a)(3)(i) (requiring providers to handle sequential calls)). Because the speed of answer measurement is intended to regulate the time it takes for the TRS user to reach a CA ready to place his or her call (*i.e.*, answer speed for the first in-bound call to the TRS provider), it does not apply to sequential calls made by a caller through the same CA. (*See* CSD Reply Comments to PN at 10; NVRSE Reply Comments to PN at 10). Therefore, we reject Sorenson's suggestion. The speed of answer rule presently provides that abandoned calls shall be included in the speed of answer calculation. (*See* 47 CFR 64.604(b)(2)(ii)(B)). As the Commission has explained, abandoned calls are those calls answered by a relay center, but never handled by a CA because the customer hangs up. As

noted above, although the Commission realized that some calls might be abandoned for reasons that have nothing to do with the length of time it takes for the call to reach a CA, such calls are included in the speed of answer measurement because excluding them would distort a provider's actual speed of answer performance by reducing the total number of calls from which speed of answer is calculated.

"Call Backs." We conclude that, effective January 1, 2006, VRS (and TRS) provider may not use a call back arrangement, including one that gives the consumer the choice of waiting for a CA or having the provider call the consumer back when a CA is available. (We recognize a narrow exception to this rule in circumstances where because of reliance on the Internet the VRS equipment user and the CA become disconnected. In those circumstances, the VRS provider may initiate a call to the VRS user to try to reconnect the call with the called party so that the VRS user does not have to contact the VRS provider again and wait for an available CA to handle the call). In the *Call Handling Practices Public Notice*, the Commission stated that TRS providers may not offer their service in such a way so as to force a TRS consumer (deaf or hearing) to leave a message with the TRS provider asking the caller to provide call back information so that the provider can call the consumer back when a CA is available to handle the call. The Commission further stated that this type of "call back" arrangement was impermissible because it relieves the provider of its central obligation to be available when a caller desires to make a TRS call, and permits the provider, and not the caller, to be in control of when the TRS call is placed. The Commission distinguished that situation, however, from that where the consumer reaches a recording but is given the choice of either waiting for an available CA or having a CA call the consumer back when available. The Commission stated, however, that it was concerned that the use of a "call back" option in any context is inconsistent with the functional equivalency mandate, but also noted that use of a call back feature "will be an issue only for those forms of TRS not subject to a speed of answer rule."

We conclude that because in this *Report and Order* we have adopted a speed of answer requirement for VRS, VRS (and TRS) providers may not use a call back arrangement. We also conclude that call backs are inconsistent with functional equivalency and the notion that TRS is a service whereby a consumer, in reaching a CA, reaches the equivalent of a "dial tone," and therefore the ability to immediately have his or her outgoing call placed.

Filing Reports. The *2005 Speed of Answer PN* also sought comment on whether the Commission should require providers to submit reports detailing call data reflecting their compliance with the speed of answer rule. (*2005 Speed of Answer PN* at 3). We decline to impose such a mandatory requirement at this time. We note, however, that NECA, in connection with its obligation to make payments from the Fund only "to eligible TRS providers operating pursuant to the mandatory minimum standards," and therefore to verify payment claims, may seek access to this data. (*See* 47 CFR 64.604(c)(5)(iii)(E)).

Providing Service 24/7

Title IV of the ADA directs the Commission to adopt regulations to implement TRS, including regulations that mandate that TRS services operate every day for 24 hours per day. 47 U.S.C. 225(d)(1)(C). As a result, the Commission's initial regulations similarly provided that TRS shall operate 24 hours per day, seven days per week ("24/7"). (*See TRS I*, 6 FCC Rcd 4669, Appendix B (adopting 47 CFR 64.604(b)(4)). When the Commission recognized VRs as a form of TRS, however, it stated that because it was not mandating the service it would not require providers to offer it 24/7. Therefore, the Commission amended its rules to state that relay services that are not mandated by this Commission need not be provided every day, 24 hours a day. (47 CFR 64.604(b)(4)(i)).

In the *2004 TRS Report & Order's FNPRM*, the Commission, noting the increasing popularity of VRS service, sought comment on whether VRS should be a mandatory service and whether it should be required to be offered 24/7, either as a mandatory service or even if not made a mandatory service. The Commission also sought comment on how the possible shortage of qualified interpreters might affect this issue.

Three VRS providers, one consumer organization, and eight individuals filed comments on this issue. (Comments were filed by Hands On (October 15, 2004); Sprint (October 18, 2004); Sorenson (October 18, 2004), and NVRSC (October 18, 2004); Robin Mills; (September 23, 2004); PJ Carberg (September 15, 2004); Paula Warner (September 16, 2004); Jan Humphrey (October 13, 2004); Karl Kosiorek (October 5, 2004); Candita Lewis (October 18, 2004); Jennifer Sweeney (October 20, 2004); and Risa Gottlieb (October 14, 2004). NVRSC also filed reply comments on this issue (November 12, 2004)0. Hands On, Sprint, and NVRSC assert that VRS should be offered 24 hours a day and 7 days a week because the provision of VRS is sufficiently mature, its use is widespread, and there would be minimal costs associated with providing VRS on a 24/7 basis. (Hands On Comments at 21; NVRSC Comments at 12; Sprint Comments at 10). Hands On notes, for example, that according to its traffic usage data the usage rate for the first hour and the last hour of the service consists of only 3 percent of the total minute usage, which means that the provider would only need to staff three to four additional interpreters during the midnight hours. (Hands On Comments at 22). Sorenson, however, asserts that "there is a limited number of qualified individuals availab eto serve as interpreters for VRS and mandating that all providers staff [24/7] would put additional strains on this already limited pool." (Sorenson Comments at 11–12). We note, however, that since the filing of its comments, Sorenson has begun offering VRS 24/7. (*See* Sorenson Comments at 12; *http://www.sorensonvrs.com*). We also note that Hands On currently offers service 20 hours a day, 7 days a week, *see http://www.hovrs.com*, and the Communication Access Center for the Deaf and Hard of Hearing (CAC) currently offers service 21 hours a day Monday through Friday, and 18 hours a day Saturday and Sunday, *see http://www.cacvrs.org*. NVRSC asserts that the 24/7 requirement will create a market for VRS interpreters that will eliminate any shortages. (NVRSC Reply Comments at 4). All but one of the individual commenters support adopting a 24/7 requirement for VRS to make the service more functionally equivalent to voice telephone service, although some of the commenters (including the individual commenter opposed to the adoption of the 24/7 rule) express concern about the availability of interpreters necessary to meet this requirement.

We conclude that VRS providers must offer service 24/7 to be eligible for compensation from the Interstate TRS Fund. The record reflects the rapid growth in the use of VRS since provision of this service began in 2002. Presently, there are approximately two million minutes of use of VRS each month. As consumers increasingly rely on VRS as their preferred means of using TRS to access the telephone system, it becomes imperative that consumers have access to this service 24/7. Indeed, Congress expressly

recognized that having TRS available 24/7 is centeral to the notion of functional equivalency; it included that requirement in the statute. Finally, we recognize that the adoption of a speed of answer rule for VRS would be less meaningful if providers can choose when they will offer service.

For these reasons, we conclude that VRS providers must offer this service 24/7 to be eligible for compensation from the Interstate TRS Fund. Because the regulations provide that non-mandatory forms of TRS need not be offered 24/7, (*see* 47 CFR 64.604(b)(4)(i)), we amend the rule so that it no longer applies to VRS. (We also note that the Commission raised the issue of whether VRS should be made a mandatory service at the same time it raised the issue of whether VRS should be required to be provided 24/7. We will address whether VRS should be a mandatory service in a separate order). The requirement that providers offer VRS 24/7 shall become effective on January 1, 2006, the same date that the VRS speed of answer rule adopted above is effective.

VRS Mail

The Petition for Declaratory Ruling

On March 31, 2004, Hands On filed a Petition for Declaratory Ruling requesting that the Commission declare that the provision of video VRS Mail to deaf and hard of hearing persons is eligible for compensation form the Interstate TRS Fund. (*VRS Mail Petition* at 1). Video VRS mail is used by a hearing person when she attempts to call a deaf or hard of hearing VRS user through a VRS CA, but the VRS user is not available to answer the call. In those circumstances, the hearing persons can have a VRS CA leave a message in video format ASL for the deaf or hard of hearing VRS user, so that the VRS user can retrieve the video message at a later time.

As Hands On notes, although the majority of VRS calls are initiated by a deaf or hard of hearing person using a video link to a CA, a hearing person may also initiate a VRS call. (*VRS Mail Petition* at 2). In the latter situation, the hearing person calls the VRS provider (usually via an 800 number) and gives either the IP address, or the name or proxy number (if the deaf or hard of hearing person is registered with the VRS service), of the deaf or hard of hearing person to be called. (*VRS Mail Petition* at 2). The VRS provider then attempts to place a VRS call to the deaf or hard of hearing person. If the deaf or hard of hearing person does not answer, VRS Mail gives the hearing calling party the option of leaving VRS Video Mail message. If the calling party chooses to do so, the CA listens to the calling party's message and makes a video recording of the message in ASL. The CA then transmits (or otherwise makes available) the video message (the VRS Mail) to the deaf or hard of hearing person, who is able to retrieve the message on her video equipment at a later time. (*VRS Mail Petition* at 3). For example, the video message can be sent to the VRS user either via e-mail or, if the provider knows the IP address of the VRS user (*e.g.*, through registration or some other arrangement with the particular provider), directly to the VRS user's hardware. Hands On asserts that, under the functional equivalency mandate, because a hearing person can receive a voice mail message from a CA who is relaying a VRS call initiated by a deaf or hard of hearing person, a deaf or hard of hearing person should also be able to receive a message from a hearing person who has initiated a VRS call. (*VRS Mail Petition* at 5). Hands On also notes that because a deaf or hard of hearing person can *leave* a voice message via VRS for a hearing person, a deaf or hard of hearing person should be able to *receive* a message in video from a hearing person. (*VRS Mail Petition* at 3). Regardless of how characterized, the thrust of Hands On's argument is that VRS must provide symmetry between the parties to a call and their ability to leave or receive a message from the other party to the call. Hands On also asserts that regardless of how the transmission of Video Mail is technically accomplished, *i.e.*, how it is stored and retrieved, the VRS call ends when the hearing person hangs up after leaving the message for the deaf or hard of hearing person. (*VRS Mail Petition* at 3).

On July 9, 2004, the Commission released a Public Notice requesting comment on Hands On's petition. (*Petition for Declaratory Ruling Filed Regarding Provision of Video Relay Service (VRS) Video Mail*, CG Docket No. 03–123, Public Notice, DA 04–2062 (July 9, 2004), published at 69 FR 44534, July 26, 2004). Five VRS providers, a state administrator, three consumer organizations, and ten individuals filed comments, and ten individuals filed reply comments. Comments were filed by CSD (August 11, 2004); Hands On (August 16, 2004); MCI (August 16, 2004); Sorenson (August 16, 2004); Sprint (August 16, 2004); Deaf Counseling, Advocacy and Referral Agency California Center for Law and the Deaf (DCARA) (August 12, 2004), NorCal Center on Deafness (NorCal) (August 13, 2004), Telecommunications for the Deaf, Inc. (TDI) (August 16, 2004); the Idaho Public Utilities Commission (Idaho PUC) (August 16, 2004). We note that the Consumer & Governmental Affairs Bureau received nine Congressional letters in response to constituents' inquiries about VRS Mail. All commenters generally support Hands On's petition. Commenters generally agree that under the functional equivalency mandate both hearing persons (voice users) and persons who are deaf or hard of hearing (video users) should be able to leave messages with the other party to the VRS call through the CA. (*See, e.g.*, CSD Comments at 2; MCI Comments at 3; Hands on Comments at 7; Sorenson Comments at 3–4; NorCal Comments at 1; Sprint Comments at 2; DCARA Comments at 1; TDI Comments at 3–6). They state that how the ASL message is stored by the CA and retrieved by the called party is irrelevant, so long as the VRS Mail service provides the functionality of leaving a message for the called party. (*See, e.g.*, CSD Comments at 1–8; MCI Comments at 1–3; Sorenson Comments at 2; Sprint Comments 2). Commenters note that presently CAs leave voice mail messages from deaf and hard of hearing VRS users on the called party's answering machine or voice mail system, and that this is considered a reimbursable TRS call. (*See, e.g.*, CSD Comments at 1; Sorenson Comments at 2–3; NorCal Comments at 1). They assert that a deaf or hard of hearing VRS user should similarly be able to receive a message from the calling party, and that the VRS provider should be compensated for the conversation time in handling the call and creating the video message. (*See, e.g.*, CSD Comments at 3; Hands On Comments at 9; Sorenson Comments at 1–2). Sorenson asserts, for example, that when a deaf or hard of hearing VRS users calls a hearing individual and the call is answered by an answering machine or is directed to voice mail, the TRS fund supports the portion of the call in which the [CA] leaves a voice message on behalf of the deaf user, translating the message from ASL into spoken language. The reverse scenario, in which the CA translates a hearing caller's spoken message into an ASL video message for a deaf user who has missed a call, is simply a variation of the one the Commission has already approved. There is no functional difference between a message being left in video format for a deaf user or in voice format for a hearing user; both allow the recipient of the message to retrieve the message in his or her native

language (ASL or spoken English)." (Sorenson Comments at 2).

Sorenson also emphasizes that the ability to leave a voice mail message is common and vital for both business and personal communications, and therefore that it is essential that VRS users also have the ability to retrieve messages when they are unavailable to receive a call. (Sorenson Comments at 3). Sorenson notes that it offers a service it calls "SignMail" that allows incoming video messages to be left for a VRS users when a hearing individual initiates a call and the VRS user is not available to answer the call. Sorenson asserts that this service has proved to be very popular with users, but that it has not been able to be compensated from the Interstate TRS Fund for the conversation minutes used to convert incoming voice messages into ASL video messages for VRS users. (Sorenson Comments at 1). CSD, noting that the Commission has an obligation "to ensure that regulations * * * encourage * * * the use of existing technology and do not discourage or impair the development of improved technology," contends that Congress intended to bring voice mail and other enhanced services under the wing of TRS as soon as these services became technological possible. (CSD Comments at 5). Several comments assert that video VRS mail service is no different from the TTY answering machine or voice mail features of traditional TRS. (*See, e.g.*, Idaho PUC Comments at 1–2; CSD Comments at 3–7).

Commenters assert that providers should be compensated from the Interstate TRS Fund for the CA's conversational time with the calling party and recording the video message. (*See, e.g.*, CSD Comments at 3; Sorenson Comments at 2; Hands On Comments at 9; Spring Comments at 2). CSD asserts, for example, that the Commission is simply being asked "to approve compensation for the *conversation minutes* needed to convert the message that the caller wishes to leave from voice to ASL." (CSD Comments at 3 (emphasis in original)). Sorenson states that "[t]hose conversation minutes used by a CA to connect to the video screen, prompt the hearing caller to begin speaking his or her message and sign the message in ASL should be compensated, as these steps are functionally identical to those in the TRS/TTY context." (Sorenson Comments at 2).

Compensation for VRS Mail From the Interstate TRS Fund

We conclude that VRS providers offering VRS Mail may be compensated from the Interstate TRS Fund for handling VRS calls that result in leaving a video message for the VRS user. (VRS Mail, by definition, is used when a hearing person attempts to make a call through a VRS provider to a person who is deaf or hard of hearing (sometimes called a "reverse" VRS call). We remind VRS providers that, to be eligible for compensation from the Interstate TRS Fund, they must provide access for hearing persons to call the VRS provider (generally via an 800 number) so the hearing person can request that the provider make an outbound call via video to a person who is a deaf or hard of hearing using VRS equipment. (*See* 47 U.S.C. 225(a)(3) defining TRS as providing persons with hearing and speech disabilities the ability to engage in communication with persons without such disabilities, and not limiting it to calls initiated by the person with a hearing or speech disability). As commenters note, a deaf or hard of hearing user who attempts to make a VRS call (or any kind of TRS call) to a hearing person, but reaches an answering machine or voice mail system, may have the CA leave a voice message for the called party, which is then reimbursable from the Fund. We also conclude that in the reverse scenario—when a hearing person attempts to call a VRS user who is not available—the CA should similarly be able to leave a reimbursable message with the called party. Whether viewed as affording VRS users the ability to *receive* messages from hearing persons, or as affording hearing persons the ability to *leave* a message with the VRS user, the implication is the same: Regardless of which party to a VRS call initiates that call, each party should be able to leave messages with, and receive messages from, the other party. (Hands On and commenters make various arguments in support of the petition by analogizing to other services the TRS regulations require, including answering machine and voice mail retrieval, and the rules on calls placed through TRS that reach voice mail or interactive menus. *See, e.g.*, Hands On Comments at 4–6; MCI Comments at 2–3; Sorenson Comments at 3–4; Spring Comments at 2; TDI Comments at 5; *see generally* 47 CFR 64.604(a)(3)(vii) and (viii). Although we do not necessarily agree that these requirements address situations directly analogous to VRS Mail, they do support our conclusion here by indicating that the use of, and access to, messages that are left by calling parties when the called party is not available is fundamental to the meaningful use of the telephone system).

We also find that the fact that the CA, in creating a VRS Mail message, records in ASL what the calling party desires to say, and the VRS user retrieves the message as a video message (and not as a voice message), is of no consequence. As commenters have noted, the end result is that regardless of which party to the VRS call is leaving or receiving a message, each party is retrieving the message in his or her primary language. We believe that this fundamental service cannot be denied to VRS users simply because they receive the message as a video message. We agree with commenters that the ability to leave and receive messages is vital in both business and personal communications, and therefore VRS Mail service should be reimbursable. (*See, e.g.*, Sorenson Comments at 3). We also find that it is immaterial how the VRS provider stores the video message and how the VRS user retrieves the message. So long as the video message is created in real time—*i.e.*, the VRS CA records the video message at the same time that the hearing person is speaking the message during the VRS call, and not at some later time after the calling party has disconnected—the call is a VRS call that is compensable from the Interstate TRS Fund. In other words, the VRS providers may be compensated for the call from the beginning of the conversation time until the CA is done signing the message voiced by the calling party. (The Interstate TRS Fund compensates for conversation minutes, which begin when someone (usually the called party) answers the outbound telephone call from the CA, and ends when either party to the call hangs up. *See generally* 47 CFR 64.604(c)(5)(iii)(E)). Conversation minutes therefore do not include time for call set-up, ringing, waiting for an answer, and wrap-up, or calls that reach a busy signal or no answer. Therefore, for calls that result in VRS Mail, the VRS provider may be compensated for the time beginning when the hearing party begins to voice his or her message, and ending when the CA completes signing the message voice from the calling party or the calling party hangs up, whichever is earlier. Because the conversation time for such calls will generally be short, and there are presently relatively few inbound VRS calls, we do not believe compensating this service will have a significant impact on the Interstate TRS Fund. Further, nothing in the record suggests the contrary.

Other Issues: Terminating CC Docket No. 98–67

In the *Report and Order* we close the TRS docket—CC Docket No. 98–67,

which the Commission opened in 1998 when it released the *1998 TRS NPRM* addressing improved TRS services, and incorporate its materials in the current docket, CG Docket No. 03–123 (materials submitted in CC Docket No. 98–67 need not be resubmitted). All filings addressing TRS matters should be filed in CG Docket No. 03–123.

Final Regulatory Flexibility Certification

The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an initial regulatory flexibility analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. (*See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601–602, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, Title II, 110 Statute 857 (1996)). The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." (5 U.S.C. 601(6)). In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. (5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**"). A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). (15 U.S.C. 632). Nationwide, there are approximately 1.6 million small organizations. (Independent Sector, The New Nonprofit Almanac & Desk Reference (2002)).

This *Report and Order* addresses three issues related to the provision of Video Relay Service (VRS): (1) The adoption of a speed of answer rule for VRS; (2) whether VRS should be required to be offered 24 hours a day, 7 days a week, (24/7); and (3) whether VRS providers may be compensated for providing VRS Mail. The Commission concludes that the public interest is best served by requiring providers of VRS to comply with a speed of answer rule in order to be compensated for such services. However, we do not require VRS providers to meet the new speed of answer rule in order to be compensated from the TRS Fund at this time. Instead, by January 1, 2006, VRS providers must answer 80 percent of all VRS calls within 180 seconds, measured on a monthly basis; by July 1, 2006, VRS providers must answer 80 percent of all VRS calls within 150 seconds, measured on a monthly basis; and by January 1, 2007, VRS providers must answer 80 percent of all VRS calls within 120 seconds, measured on a monthly basis. As noted in paragraph 25 of this *Report and Order*, although the Commission sought comment on whether to require providers to submit reports detailing call data reflecting their compliance with the speed of answer rules, we declined to impose such a requirement at this time.

The Commission further concludes that it is in the public interest that VRS providers seeking compensation from the Interstate TRS Fund must provide VRS 24 hours a day, 7 days a week. As consumers increasingly rely on VRS as their preferred means of using TRS to access the telephone system, it becomes imperative that consumers have access to their service 24/7.

Finally, the Commission concludes that VRS providers may be compensated from the Interstate TRS Fund for the conversation minutes devoted to creating VRS Mail, *i.e.*, for recording a video message in American Sign Language (ASL) that is sent to a deaf or hard of hearing person's VRS equipment, or is otherwise retrievable by such person, so that a hearing person attempting to call a VRS user can leave a message when the VRS user is not available to answer the call. As explained in paragraph 37 of this *Report and Order*, the Commission believes that this fundamental service cannot be denied to VRS users simply because they receive the message as a video message.

We do not believe that these actions will have a significant economic impact; however, in the event that they do, we also note that there are not a substantial number of small entities that will be affected by our actions. The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such firms having 1,500 or fewer employees. (13 CFR 122.201, NAICS code 517110 (changed from 513310 in October 2002). According to Census Bureau data for 1997, there were 2,225 firms in this category which operated for the entire year. U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 5, NAICS code 513310 (issued October 2000). Of this total, 2,201 firms had employment of 999 or fewer employees, and an additional 24 firms had employment of 1,000 employees or more. Thus, under this size standard, the majority of firms can be considered small. (The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is Firms with 1,000 employees or more)). Currently, only eight providers are providing VRS and are being compensated from the Interstate TRS Fund: AT&T, Communication Access Center for the Deaf and Hard of Hearing, Hamilton, Hands On, MCI, Nordia, Sorenson and Sprint. We expect that only one of the providers noted above is a small entity under the SBA's small business size standard. In addition, the Interstate Fund Administrator is the only entity that will be required to pay to eligible providers of VRS the costs of providing interstate service. The Commission will send a copy of this *Report and Order*, including a copy of this Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the SBA (5 U.S.C. 605(b)). This certification will also be published in the **Federal Register**. (5 U.S.C. 605(b)).

Congressional Review Act

The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see*, 5 U.S.C. 801(a)(1)(A).

Ordering Clauses

Pursuant to the authority contained in Section 1, 2, and 225 of the Commissions Act of 1934, as amended, 47 U.S.C. 151, 152, and 225, that this *Report and Order* is hereby *adopted* and Part 64 of the Commission's rules, 47 CFR 64.604 is *amended* as set forth in the Rule Changes.

Hands On's Petition for Declaratory Ruling on VRS Mail is *granted* to the extent indicated herein.

CC Docket No. 98–67 is *terminated*.

This *Report and Order* shall be effective September 30, 2005.

The Commission's Consumer & Government Affairs Bureau, Reference Information Center shall send a copy of this *Report and Order*, including the Regulatory Flexibility Certification, to

the Chief Counsel for Advocacy of the U.S. Small Business Administration.

List of Subjects in 47 CFR Part 64

Individuals with disabilities, Telecommunications.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Rule Changes

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

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

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

Authority: 47 U.S.C. 154, 254(k); secs. 403 (b)(2)(B), (c), Public Law 104–104, 110 Stat. 56.

■ 2. Section 64.604 is amended by adding paragraph (b)(2)(iii) and revising paragraph (b)(4)(i) to read as follows:

§ 64.604 Mandatory minimum standards.

* * * * *

(b) * * *

(2) * * *

(iii) Speed of answer requirements for VRS providers are phased-in as follows: by January 1, 2006, VRS providers must answer 80% of all calls within 180 seconds, measured on a monthly basis; by July 1, 2006, VRS providers must answer 80% of all calls within 150 seconds, measured on a monthly basis; and by Janury 1, 2007, VRS providers must answer 80% of all calls within 120 seconds, measured on a monthly basis. Abandoned calls shall be included in the VRS speed of answer calculation.

* * * * *

(4) * * *

(i) TRS shall operate every day, 24 hours a day. Relay services that are not mandated by this Commission need not be provided every day, 24 hours a day, except VRS.

* * * * *

[FR Doc. 05–17327 Filed 8–30–05; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MB Docket No. 05–181; FCC 05–159]

Implementation of Section 210 of the Satellite Home Viewer Extension and Reauthorization Act of 2004 To Amend Section 338 of the Communications Act

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission adopts final rules implementing section 210 of the Satellite Home Viewer Extension and Reauthorization Act of 2004, which amends section 338(a)(4) of the Communications Act to require satellite carriage of the analog signals and digital signals of local stations in Alaska and Hawaii. Satellite carriers with more than five million subscribers must carry these signals to substantially all of their subscribers in each station's local market by December 8, 2005 for analog signals and by June 8, 2007 for digital signals

DATES: Effective September 30, 2005.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Eloise Gore, *Eloise.Gore@fcc.gov* of the Media Bureau, Policy Division, (202) 418–2120.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's Report and Order, FCC 05–159, adopted on August 22, 2005 and released on August 23, 2005. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY–A257, Washington, DC 20554. These documents will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) The complete text may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Paperwork Reduction Act

This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. The Commission received approval for the information collection requirements contained in this Order from the Office of Management and Budget on June 14, 2005. There have been no changes to the information collection requirements since receiving OMB approval. In addition, therefore, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). As described in the Final Regulatory Flexibility Certification, *supra*, the businesses affected by our action are not small.

Summary of the Report and Order

Introduction

1. In this Report and Order ("Order"), we adopt rules to implement section 210 of the Satellite Home Viewer Extension and Reauthorization Act of 2004 ("SHVERA"). The Satellite Home Viewer Extension and Reauthorization Act of 2004 (SHVERA), Public Law 108–447, section 210, 118 Stat 2809 (2004). SHVERA was enacted on December 8, 2004, as title IX of the "Consolidated Appropriations Act, 2005." Section 210 of the SHVERA amends section 338(a) of the Communications Act of 1934, as amended, ("Communications Act" or "Act"). Section 338 of the Act governs the carriage of local television broadcast stations by satellite carriers; *see* 47 U.S.C. 338. In general, the SHVERA amends this section to require satellite carriers to carry the analog and digital signals of television broadcast stations in local markets in states that are not part of the contiguous United States, and to provide these signals to substantially all of their subscribers in each station's local market by December 8, 2005 for analog signals and by June 8, 2007 for digital signals; *see* 47 U.S.C. 338(a)(4). Our rules will implement the SHVERA requirements for carriage of analog and digital signals in Alaska and Hawaii. This Order concludes that such carriage shall include high definition and multicast signals as broadcast by local stations in these states. We adopt a two-step carriage election process beginning with carriage elections for analog signals by October 1, 2005, and followed by carriage elections for digital signals by April 1, 2007.

Background

Satellite Home Viewer Act (SHVA) and Satellite Home Viewer Improvement Act of 1999 (SHVIA)

2. In 1988, Congress passed the Satellite Home Viewer Act ("SHVA"), which established a statutory copyright license for satellite carriers to offer subscribers access to broadcast programming via satellite when they are unable to receive the signal of a broadcast station over the air (that is, an "unserved" household). The Satellite Home Viewer Act of 1988, Pub. L. No. 100–667, 102 Stat. 3935, Title II (1988) (codified at 17 U.S.C. 111, 119). SHVA was enacted on November 16, 1988, as an amendment to the copyright laws. SHVA gave satellite carriers a statutory license to offer signals to "unserved" households. In 1999, Congress enacted the Satellite Home Viewer Improvement Act ("SHVIA"), which expanded the 1988 SHVA by amending both the 1988 copyright laws (*see* 17 U.S.C. 119, 122), and the Communications Act (*see* 47 U.S.C. 325, 338, 339 and 340) to permit satellite carriers to retransmit local broadcast television signals directly to subscribers in the station's local market ("local-into-local" service) without requiring that they be "unserved" households. The Satellite Home Viewer Improvement Act of 1999, Pub. L. No. 106–113, 113 Stat. 1501 (1999) (codified in scattered sections of 17 and 47 U.S.C.). SHVIA was enacted on November 29, 1999, as Title I of the Intellectual Property and Communications Omnibus Reform Act of 1999 ("IPACORA") (relating to copyright licensing and carriage of broadcast signals by satellite carriers).

3. A satellite carrier provides "local-into-local" service when it retransmits a local television station's signal back into the local market of the television station for reception by subscribers; *see* 17 U.S.C. 122(j). If a carrier carries one or more stations in the market pursuant to the statutory copyright license, it is required to carry all of the other local stations in that market upon the station's request (that is, the "carry-one, carry-all" requirement); *see* 47 U.S.C. 338(a)(1). Generally, a television station's "local market" is the designated market area ("DMA") in which it is located. Section 340(i)(1) (*as amended by* section 202 of the SHVERA) defines the term "local market" by using the definition in 17 U.S.C. 122(j)(2): "The term 'local market,' in the case of both commercial and noncommercial television broadcast stations, means the designated market area in which a station is located, and—(i) In the case of a commercial television broadcast station, all commercial television broadcast stations licensed to a community within the same designated market area are within the same local market; and (ii) in the case of a noncommercial educational television broadcast station, the market includes any station that is licensed to a community within the same designated market area as the noncommercial educational television broadcast station." DMAs describe each television market in terms of a unique geographic area, and are established by Nielsen Media Research based on measured viewing patterns; *see* 17 U.S.C. 122(j)(2)(A)–(C). There are 210 DMAs that encompass all counties in the 50 states, except for certain areas in Alaska; *see* Nielsen Station Index Directory and Nielsen Station Index United States Television Household Estimates (2004–5 ed.); *see also* Television and Cable Factbook 2005 (Warren Communications) A–73. A satellite carrier choosing to provide such local-into-local service is generally obligated to carry any qualified local station in a particular DMA that has made a timely election for mandatory carriage, unless the station's programming is duplicative of the programming of another station carried by the carrier in the DMA, or the station does not provide a good quality signal to the carrier's local receive facility; *see* 47 U.S.C. 338(a)(1), (b)(1) and (c)(1).

Satellite Home Viewer Extension and Reauthorization Act of 2004 (SHVERA)

4. In December 2004, Congress passed and the President signed the Satellite Home Viewer Extension and Reauthorization Act of 2004. SHVERA again amends the 1988 copyright laws and the Communications Act. This rulemaking is required to implement provisions in section 210 of the SHVERA which establishes new and special requirements for satellite carriage of local stations in states outside the contiguous United States.

Discussion

5. Section 210 of the SHVERA creates a new subsection of the Communications Act, 338(a)(4), that requires satellite carriers with more than five million subscribers in the United States to carry the analog and digital signals of each television broadcast station licensed in local markets "within a State that is not part of the contiguous United States." Due to an apparent inconsistency in numbering the provisions added by the SHVERA, it is not clear if this provision will ultimately be codified as 338(a)(4) or (a)(5); *see* 47 U.S.C.A. 338 n.1 (West 2005) ("So in original. Two pars. (3) enacted."). In this Order we use the subsection as enacted by section 210, 338(a)(4). Analog signals are required to be carried by December 8, 2005, and digital signals by June 8, 2007. A carrier is required to provide these signals to substantially all of its subscribers in each station's local market. In addition, a satellite carrier is required to make available the stations that it carries in at least one local market to substantially all of its subscribers located outside of local markets and in the same state. The SHVERA also mandates that satellite carriers may not charge subscribers for these local signals more than they charge subscribers in other States to receive local market television stations. Although most of the requirements imposed by the new section 338(a)(4) are self-effectuating, the SHVERA requires the Commission to promulgate regulations concerning the timing of carriage elections by stations in local markets covered by section 338(a)(4) of the Act; *see* 47 U.S.C. 338(a)(4) (*as amended by* the SHVERA), which provides:

(4) Carriage of Signals of Local Stations in Certain Markets—A satellite carrier that offers multichannel video programming distribution service in the United States to more than 5,000,000 subscribers shall (A) within 1 year after the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, retransmit the signals originating as analog signals of each television broadcast station located in any local market within a State that is not part of the contiguous United States, and (B) within 30 months after such date of enactment retransmit the signals originating as digital signals of each such station. The retransmissions of such stations shall be made available to substantially all of the satellite carrier's subscribers in each station's local market, and the retransmissions of the stations in at least one market in the State shall be made available to substantially all of the satellite carrier's subscribers in areas of the State that are not within a designated market area. The cost to subscribers of such retransmissions shall not exceed the cost of retransmissions of local television stations in other States. Within 1 year after the date of enactment of that Act, the Commission shall promulgate regulations concerning elections by television stations in such State between mandatory carriage pursuant to this section and retransmission consent pursuant to section 325(b), which shall take into account the schedule on which

local television stations are made available to viewers in such State.

6. We adopted the required Notice of Proposed Rulemaking (*"NPRM"*) on April 29, 2005 and established a short pleading cycle due to the need to implement the new rules before the upcoming carriage cycle; *see Implementation of Section 210 of the Satellite Home Viewer Extension and Reauthorization Act of 2004 to Amend Section 338 of the Communications Act*, 20 FCC Rcd 9319, 9330, paragraph 30 (2005) (*"NPRM"*). We received comments from six parties. As we stated in the *NPRM*, the new and amended rules apply only to satellite service in the states covered by section 338(a)(4), which we herein conclude are Alaska and Hawaii. The existing signal carriage provisions in § 76.66 of the Commission's rules also continue to apply to satellite service in these states, where relevant and not inconsistent with the rules adopted in this proceeding; see 47 CFR 76.66.

Satellite Carriers With More Than 5,000,000 Subscribers

7. Section 338(a)(4) of the Act expressly applies to a "satellite carrier that offers multichannel video programming distribution service in the United States to more than 5,000,000 subscribers;" *see* 47 U.S.C. 338(a)(4) (*as amended by* the SHVERA). In the *NPRM*, we proposed that this provision applies to satellite carriers that have more than five million subscribers in 2005 and, in the future, to any carriers with more than five million subscribers. Currently, DIRECTV and EchoStar qualify under this definition; see *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Eleventh Annual Report, MB Docket No. 04–227, FCC 05–13 at paragraphs 54–55 (2004). We received no comments relevant to the proposed rule, which follows the statutory language and which we adopt as new § 76.66(b)(2) without change. Section 76.66(a)(1) of the current rules defines "satellite carrier;" *see* 47 CFR 76.66(a)(1). If in the future there are new satellite carriers with more than five million subscribers, they would be required to comply with this carriage provision and to follow the rule provisions that apply to "new local-into-local service;" see 47 CFR 76.66(d)(2).

Noncontiguous States

8. Section 338(a)(4) of the Act as amended by section 210 of the SHVERA applies to "a State that is not part of the contiguous United States;" *see* 47 U.S.C. 338(a)(4) (*as amended by* the SHVERA). Because the general definition of "State" in the Communications Act includes "the Territories and possessions," we sought comment on whether "State" as used in the SHVERA should be read to include the noncontiguous territories and possessions of the United States, including but not limited to Puerto Rico and Guam, and whether considerations such as a satellite carrier's regulatory authorizations and/or actual service area are relevant to interpreting the obligation under section 338(a)(4) of the Act to serve "noncontiguous states." Territories in the Pacific, such as Guam, are in a different International Telecommunication Union ("ITU") region from the 50 states. The contiguous United States, Alaska, Hawaii, Puerto Rico and the U.S. Virgin Islands are located in ITU Region 2 and have orbital assignments in the Region 2 BSS Plan. The *"Region 2 Plans"* comprise the Plan for BSS in the band 12.2–12.7 GHz in ITU Region 2 as contained in Appendix 30 of the ITU Radio Regulations, and the associated Plan for the feeder-links in the frequency band 17.3–17.8 GHz for the broadcasting-satellite service in Region 2 as contained in Appendix 30A of the ITU Radio Regulations. Guam, the Northern Marianas, Wake Island and Palmyra Island are located in ITU Region 3 and have orbital assignments in the Region 3 BSS plan at 122.0° E.L., 121.80° E.L., 140.0° E.L. and 170.0° E.L. respectively. Satellites operating pursuant to the Region 2 BSS plan are subject to different technical requirements and use different frequency bands than satellites authorized to operate in Region 3. Therefore, satellites designed to serve Region 2 areas would not meet the technical requirements necessary to serve Region 3 areas. We requested comment on the impact of regulatory differences (*e.g.*, use of different frequency bands) between ITU regions in providing service to these locations, but we noted in the NPRM that spot beam technology may allow coverage of widely spaced areas if visible from the satellite location; see NPRM, 20 FCC Rcd at 9322, paragraph 7.

9. We recognize that the phrase "a State that is not part of the contiguous United States" is susceptible to different interpretations. It is unclear from the statutory text whether the intended application of the term "State" means the definition of "State" as it appears in the Communications Act, which includes all territories and possessions, or whether it refers to the literal or colloquial use of the word "State," meaning one of the fifty more or less internally autonomous territorial and political units composing the United States of America. In determining the proper interpretation, we bear in mind that section 3 of the Communications Act provides definitions of terms that apply for the purposes of this Act, "unless the context otherwise requires;" *see* 47 U.S.C. 153. As explained below, we believe the best construction of this phrase, based on context and the current record before us, is that "a State that is not part of the contiguous United States" was intended to refer only to Alaska and Hawaii and not to the broader definition of the Communications Act which includes territories and possessions. This conclusion is consistent with arguments made by satellite carriers EchoStar and DIRECTV, who point out the serious technical difficulties of serving all the territories and possessions. Several broadcast stations in Puerto Rico argue that "State" should be read to include territories and possessions so that stations in Puerto Rico will be entitled to mandatory carriage. In addition to the technical difficulties, EchoStar also argues that Congress' intent to limit section 338(a)(4) of the Act to Alaska and Hawaii is evidenced by the related copyright provisions in the SHVERA. We agree. As mentioned in the *NPRM*, Alaska is the only one of the 50 states that is not entirely subsumed within one or more DMAs; *see Notice*, 20 FCC Rcd at 9326, paragraph 18. Similarly, none of the noncontiguous territories and possessions are included in a DMA. However, section 122 of title 17, which defines "local market" for the statutory copyright license, as well as for section 338 of the Act generally, was amended only to add the areas in the State of Alaska that are outside of all DMAs to the definition of "local market;" *see* 17 U.S.C. 122(j)(2) (generally defining local market as "the designated market area in which a station is located" and further defining "designated market area" by reference to determinations by "Nielsen Media Research and published in the 1999–2000 Nielsen Station Index Directory and Nielsen Station Index United States Television Household Estimates or any successor publication."); 47 U.S.C. 338(k) (3). Critically, the noncontiguous territories and possessions were not added; *see* 17 U.S.C. 122(j)(2)(D), *as amended* by section 111(b) of the SHVERA ("Certain areas outside of any designated market area.—Any census area, borough, or other area in the State of Alaska that is outside of a designated market area, as determined by Nielsen Media Research,

shall be deemed to be part of one of the local markets in the State of Alaska. A satellite carrier may determine which local market in the State of Alaska will be deemed to be the relevant local market in connection with each subscriber in such census area, borough, or other area."); 47 U.S.C. 338(k)(3). Consequently, were we to apply "State" to the noncontiguous territories and possessions, satellite carriers would not have a statutory copyright license to retransmit the stations in these markets because they would not fall within the definition of "local market" in section 122(j).

10. Satellite carriers do not and are not required to reach all geographic areas that include the possessions and territories of the United States. Many areas are not visible to all satellites. For example, Guam is below the horizon for United States satellite assignment east of 148° W.L. The Commission has recognized that contiguous United States ("CONUS") antenna beams modified to include Puerto Rico and the U.S. Virgin Islands could divert power from other regions and potentially adversely affect the services of other countries; *see Policies and Rules for Direct Broadcast Satellite Service Report and Order*, 17 FCC Rcd 11,368, 11,372 (2002). We acknowledge that EchoStar and a company affiliated with DIRECTV currently provide service to Puerto Rico, including some local stations, and to the U.S. Virgin Islands. No one disputes, however, that service to Guam and other islands in the far Pacific would be outside the range of these companies and that requiring service to islands without television stations and without permanent populations would be absurd. Based on the serious technical difficulties of serving the territories and possessions, and the fact that the affected satellite carriers have never before served any subscribers in much of these areas, we believe Congress did not have in mind the definition of "State" as set forth in the Communications Act. For all the reasons discussed above, we believe the best reading of the statute, and the one most consistent with Congressional intent, is that section 338(a)(4) of the Act's use of the phrase "State that is not part of the contiguous United States" was not meant to include the noncontiguous territories and possessions, but instead was meant to refer only to the states of Alaska and Hawaii; *see Griffin* v. *Oceanic Contractors, Inc.*, 458 U.S. 564, 575 (1982) (stating that interpretations of a statute which would produce absurd results are to be avoided if alternative interpretations consistent with the legislative purpose are available); *Lawson* v. *Suwanee Fruit & S.S. Co.*, 69 S. Ct. 503 (1949) (Statutory definitions usually control the meaning of statutory words, but not where obvious incongruities in language would be created and major purpose of statute would be destroyed); *Teva Pharm., USA, Inc.* v. *FDA*, 182 F.3d 1003, 1011 (D.C. Cir. 1999) (citing *Robinson* v. *Shell Oil Co.*, 519 U.S. 337, 346 (1997)) (asserting that the FDA must interpret that statute to avoid absurd results and further congressional intent).

Analog and Digital Signals

11. We explained in the *NPRM* that the SHVERA requirements for satellite carriage to the noncontiguous states differ significantly from the existing satellite broadcast carriage requirements, both in scope and timing; *see Notice*, 20 FCC Rcd at 9323, paragraph 8. Currently, under the Communications Act and Commission rules implementing the Act, satellite carriers choose whether to rely on the statutory copyright license in section 122 of title 17 to offer "local-into-local service," which in turn triggers the carry-one, carry-all obligation; see 47 U.S.C. 338(a)(1) and 47 CFR 76.66(b); *see also Implementation of the Satellite Home Viewer Improvement Act of 1999*, 16 FCC Rcd 1918 (2000) ("*DBS Must Carry Report and Order*"), 16 FCC Rcd 16544 (2001) ("*DBS Must Carry Reconsideration Order*"). The U.S. Court of Appeals for the Fourth Circuit upheld the constitutional validity of SHVIA and the reasonableness of the Commission's rules promulgated thereunder. *See Satellite Broadcasting and Communications Ass'n* v. *FCC*, 275 F.3d 337 (2001), *cert. denied*, 536 U.S. 922 (2002). The Communications Act, moreover, prohibits a multichannel video programming distributor from retransmitting the signal of a broadcast station unless it has "the express authority" of the station. 47 U.S.C. 325(b)(1)(A). *See also* 17 U.S.C. 122(a) (*as amended by* section 1002 of the SHVIA) and 47 U.S.C. 338(a)(1) (*as amended by* section 1008 of the SHVIA); *see* 47 U.S.C. 338(a)(1) and 47 CFR 76.66(b); *see also Implementation of the Satellite Home Viewer Improvement Act of 1999*, 16 FCC Rcd 1918 (2000) ("*DBS Must Carry Report and Order*"), 16 FCC Rcd 16544 (2001) ("*DBS Must Carry Reconsideration Order*"). The U.S. Court of Appeals for the Fourth Circuit upheld the constitutional validity of SHVIA and the reasonableness of the Commission's rules promulgated thereunder. *See Satellite Broadcasting and Communications Ass'n* v. *FCC*, 275 F.3d 337 (2001), *cert. denied*, 536 U.S. 922 (2002). The Communications Act, moreover, prohibits a multichannel video programming distributor from retransmitting the signal of a broadcast station unless it has "the express authority" of the station. 47 U.S.C. 325(b)(1)(A). *See also* 17 U.S.C. 122(a) (*as amended by* section 1002 of the SHVIA) and 47 U.S.C. 338(a)(1) (*as amended by* section 1008 of the SHVIA). Satellite carriers are not currently required to offer local-into-local service in any market. The question of satellite carriage obligations concerning a station's digital signal is currently pending before the Commission; *see* MB Docket Nos. 98–120 and 00–96; *see also WHDT* v. *Echostar*, 18 FCC Rcd 396 (MB 2003) ("WHDT Order").

12. Section 338(a)(4) of the Act supersedes carry-one, carry-all by mandating analog and digital carriage in Alaska and Hawaii. A satellite carrier with more than five million subscribers is now required to retransmit the analog signals of each television station in local markets in Alaska and Hawaii to subscribers in those local markets by December 8, 2005 (one year after enactment of the SHVERA) and to retransmit the digital signals of each station no later than June 8, 2007 (30 months after enactment of SHVERA). We sought comment in the *NPRM* on whether the statute unambiguously means that if any or all of the local stations in these states are still broadcasting analog signals as well as digital signals as of June 8, 2007, the SHVERA requirement mandates dual must carry; *see NPRM*, 20 FCC Rcd at 9323–24, paragraph 9. The Communications Act provides for termination of analog signal licenses as of December 31, 2006, unless local stations request an extension and demonstrate that one or more criteria exist in their markets; *see* 47 U.S.C. 309(j)(14) (criteria include the so-called "85% test").

13. DIRECTV contends that section 338(a)(4) of the Act does not unambiguously require that satellite carriers must continue carrying analog signals after they begin carrying digital signals. DIRECTV suggests that there are two plausible readings of the text: that satellite carriers must retransmit analog signals either as long as Alaska and Hawaii broadcasters transmit in analog, or until satellite carriers are required to retransmit digital signals. It advocates that latter reading as the wiser policy. DIRECTV therefore reads section 338(a)(4) of the Act to require that satellite carriers replace the analog signals with digital signals in June 2007. DIRECTV explains that because satellite

carriers digitize analog broadcast signals, there is little quality difference between an analog and SD digital signal to the DBS subscriber. Microcom, a satellite distributor and dealer in Alaska, argues that dual carriage is not warranted when a broadcast station is operating both its digital and analog service in a standard definition format because the law requires the content of those two services to be identical. Microcom, however, is in error as the "simulcasting" requirements were eliminated in our Second DTV Periodic Review last year. In contrast, IBC and R y F, representing broadcast stations in Puerto Rico, argue that SHVERA requires satellite carriers to retransmit both the analog and digital signals by the mandated dates.

14. We find that section 338(a)(4) of the Act is ambiguous with respect to the question of dual carriage. The statutory provision states that satellite carriers "shall (A) within 1 year after December 8, 2004, retransmit the signals originating as analog signals of each television broadcast station located in any local market within a State that is not part of the contiguous United States; and (B) within 30 months after December 8, 2004, retransmit the signals originating as digital signals of each such station." While this language clearly contains two separate carriage requirements, it is unclear from the text whether Congress intended the analog carriage requirement to continue after commencement of the digital carriage requirement (*i.e.*, simultaneous or dual carriage) or whether it intended the analog requirement to end when the digital requirement takes effect. The statute does not speak directly to the issue, and there is no legislative history to shed light on what Congress intended. Where the statutory language is ambiguous, we must construe the statute so as to effectuate the legislative purpose and intent; *see Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843 (1984) (asserting that if a statute is silent or ambiguous, the question for the court is whether the agency's interpretation is based on a permissible construction of the statute). The Supreme Court stated, "If Congress has explicitly left a gap for the agency to fill, there is express delegation of authority to the agency to elucidate a specific provision of the statute by regulation. Such legislative regulations are given controlling weight unless they are arbitrary, capricious, or manifestly contrary to the statute;" *see Id.* at 843–44; *see also Nat'l Cable & Telecomm. Assn.* v. *Brand X Internet Serv.*, 125 S. Ct. 2688, 2699 (2005) (citing *Smiley* v. *Citibank*, 517 U.S. 735, 742 (1996)) (clarifying that *Chevron* established the presumption that Congress, when it left a statute ambiguous, understood that the ambiguity would be resolved by an agency and desired the agency to possess whatever degree of discretion the ambiguity allowed). The Supreme Court noted that where a statute's plain terms admit two or more reasonable ordinary usages, the Commission's choice of one of them is entitled to deference; *see Id.* at 2704. Here, we agree with DIRECTV that the most reasonable interpretation of section 338(a)(4) of the Act is that the analog carriage requirement ends upon commencement of the digital carriage requirement. We therefore conclude that satellite carriers must carry the signals of local stations in Alaska and Hawaii that originate as analog beginning no later than December 8, 2005, and the signals that originate as digital beginning no later than June 8, 2007, but that the analog carriage requirement ends when the digital carriage requirement begins. Based on the record in this proceeding, requiring carriage of both analog and digital signals simultaneously would likely increase the burden on satellite carriers without offering subscribers a substantial benefit. Because satellite carriers digitize analog broadcast signals, there is essentially no difference from a satellite subscriber's perspective between the analog signal and the standard definition (SD) digital signal broadcast when such signals are carrying the same programming, as is currently the general practice in the industry. Thus, a dual carriage requirement would often result in a satellite carrier carrying the same programming with essentially the same signal quality twice. Moreover, in light of the requirement to carry multicast signals described below, satellite subscribers will be able to receive multiple digital programming streams offered by local stations, and we do not believe that the remote likelihood that certain programming transmitted by analog signals would not be transmitted by any of a station's digital signals justifies the burden that a dual carriage requirement would impose on satellite carriers. Therefore, we conclude that simultaneous carriage of both analog and digital signals is not required and would serve no useful purpose in light of our other decisions in this proceeding. We will address other issues related to carriage of digital signals in the context of the proceeding addressing satellite carriage of local stations pursuant to section 338 of the Act as it applies throughout the United States during and after the transition to digital television; *see Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules*, CS Docket Nos. 98–120 and 00–96 (pending rulemaking proceeding to determine satellite carriers' obligations with respect to carriage of digital signals pursuant to section 338 of the Act.

Digital Signal Content and Format

15. Section 338(a)(4) of the Act requires carriage of "signals originating as analog signals" and "signals originating as digital signals." We stated in the *NPRM* that there is no reference to "primary video" or any other term in section 338(a)(4) of the Act that expressly limits or describes the nature, format or content of the broadcast signal that satellite operators must carry in the noncontiguous states; *see NPRM*, 20 FCC Rcd at 9323–24, paragraph 9; *see also* 47 U.S.C. 338(j), 534(b)(3) and 535(g). The Commission recently concluded that the statutory term relating to cable mandatory carriage, "primary video," was ambiguous with respect to whether it requires cable operators to carry broadcasters' multicast signals. Faced with an ambiguous statute, the Commission did not require mandatory carriage of multicast signals by cable systems; *see Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules*, CS Docket No. 98–120, Second Report and Order and First Order on Reconsideration, FCC 05–27, at paragraph 33 (rel. Feb. 23, 2005) ("*DTV Second Report and Order*") (declining, based on the record, to require cable operators to carry more than one programming stream of a digital station that multicasts). The *NPRM* concluded, therefore, that the amendment requires that satellite carriers carry all multicast signals of each station in noncontiguous states and carry the high definition digital signals of stations in noncontiguous states in high definition format. We also referenced the pending proceeding on satellite carriage of digital signals, in general, and sought comment on our view of the statutory language and any alternative construction of the SHVERA as the statute relates to the carriage of multicast and/or high definition signals. Satellite carriage of high definition and multicast local signals is also under review in the ongoing broadcast carriage rulemaking docket in the context of applying the statutory prohibition on material degradation; *see Implementation of the Satellite Home*

Viewer Improvement Act of 1999, 16 FCC Rcd 1918, 1970–72 , paragraphs 120–123 (2000) (*"Report and Order"); Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules*, 16 FCC Rcd 2598, 2600, 2658, paragraphs 3 and 136 (2001) (*"First Report and Order"*). *See also NPRM*, 20 FCC Rcd at 9323–24, paragraph 9.

16. As explained in the *NPRM*, we continue to believe that the statutory language requires that satellite carriers carry all multicast signals and high definition (HD) signals of each local broadcast station in the noncontiguous states. We find section 338(a)(4)of the Act's use of the plural term "signals" in requiring carriage of "signals originating as digital signals" to unambiguously mean carriage of the entire free over-the-air digital broadcast, without limitation, being transmitted by a broadcaster. While DIRECTV argues that, because Congress also used the plural term "signals" with respect to analog signals (and there is no analog multicast or analog HD), the phrase "signals of each station" could be interpreted to mean the transmission of a single station's signal over time, we do not believe that this constitutes a reasonable interpretation of the statute. Section 338(a)(4) of the Act contains no limitation on the nature of the digital broadcast signal—such as the term "primary video" as used in the cable context—in describing the digital signals the satellite operator must carry in the noncontiguous states. At the time the SHVERA was enacted in December 2004, the Commission had interpreted, in the cable carriage proceeding three years earlier, the term "primary video" in section 614(b)(3) of the Act to mean "a single programming stream and other program-related content." Had Congress intended to limit digital carriage to only a single standard definition stream, we believe Congress would have included similar limiting language in the satellite context. Section 338(a)(4) of the Act, by contrast, contains a broad requirement that satellite carriers retransmit "the signals originating as digital signals." We also find unconvincing DIRECTV's reliance on section 338(j) of the Act's general directive that the Commission prescribe requirements on satellite carriers that are "comparable" to the must carry requirements imposed on cable operators; *see* 47 U.S.C. 338(j). According to DIRECTV, because cable operators in Alaska and Hawaii are not yet required to carry most digital signals in HD format nor are they required to carry multicast signals, the Commission cannot impose such requirements on satellite carriers in Alaska and Hawaii without running afoul of section 338(j) of the Act. We disagree. Under principles of statutory construction, section 338(a)(4) of the Act's specific mandate requiring carriage of "the signals originating as digital signals" in Alaska and Hawaii supercedes the general comparability directive set forth in section 338(j) of the Act. Where the statute is clear and unambiguous, we must implement the express meaning of the statutory language; *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842–43 (1984). Requiring carriage of multicast and HD signals most accurately reflects the requirement set forth in the statutory language itself. We decline to read into the statute a limitation where none exists. We believe that section 338(a)(4) of the Act requires carriage of Alaska and Hawaii broadcasters' entire free over the air broadcast, including multicast and HD signals. This decision, however, is limited to section 338(a)(4) of the Act and does not interpret any other statutory provision that regulates cable or satellite carriage obligations.

17. Even if we were to find ambiguity in the statutory language, however, we believe, for the reasons given above, that the better reading, and the one that most accurately reflects Congress's intent, requires satellite carriers to carry all multicast and HD signals. We also reject EchoStar and DIRECTV's argument that in order to avoid an unconstitutional construction of section 338(a)(4) of the Act, the Commission must not construe the statute to impose a multicast and HD carriage obligation. As explained below, we find interpreting section 338(a)(4) of the Act as mandating multicast and HD carriage is consistent with the First Amendment. The Supreme Court has held that must carry "is a content-neutral regulation" that must be analyzed under the intermediate level of scrutiny. Under this test, a content-neutral regulation will be upheld if: (1) It furthers an important or substantial governmental interest; (2) the government interest is unrelated to the suppression of free expression; and (3) the provisions do not burden substantially more speech than is necessary to further those interests.

18. With regard to the first prong of the analysis, we find that the multicast and HD carriage obligation imposed under section 338(a)(4) of the Act furthers two important governmental interests. First, it ensures that the citizens of Alaska have full access to television programming. In enacting section 338(a)(4), we believe Congress recognized the unique situation in Alaska which makes communications services critically important to the public safety, education, and economic development of the state. Alaska has the lowest population density in the country, and communities in rural Alaska are unique in several ways. Most rural Alaskan communities are quite small—almost 90% of Alaskan communities have fewer than 1,000 people; 25% of the communities have between 100 and 250 people; and 29% of the communities have fewer than 100 people. Most Alaskan communities are also very remote and isolated—most rural communities in Alaska do not have access via road systems to the relatively urban areas of the State (Anchorage, Fairbanks and Juneau), and, indeed, many Alaskan communities can be accessed only by air or by water and are frequently inaccessible because of weather conditions. These characteristics taken together significantly limit the communications options available to Alaskan communities. Indeed, Alaska's unique geography when combined with the State's unique population distribution presents many rural Alaskans with serious challenges in obtaining a diverse range of television programming, particularly through over-the-air broadcasting. Moreover, cable service and other forms of multichannel video programming distribution services are often not available to them. As the Alaska Broadcasters have reported, 23% of Alaskan households are unable to access cable television, and these rural households on average are able to receive only one television station through over-the-air broadcasting. Service transmitted by satellite is one of the few viable means of transcending these obstacles, and the ability to receive multiple programming streams from local stations through satellite carriers would be the only way that many rural Alaskan households would be able to access these programming streams. Moreover, given the important role that DBS service plays in rural Alaska, unless satellite customers are provided with access to multicasting, there may not be sufficient incentive for Alaskan television stations to develop additional programming streams targeted to the needs and interests of rural communities, thus denying these Alaskans the benefits of the digital transition. We thus believe Congress intended section 338(a)(4) of the Act to be interpreted broadly, without limitations, in order to further the important governmental interest of providing the Alaskan community with full access to digital communications.

19. In addition, we find that multicast and HD carriage obligations imposed under section 338(a)(4) of the Act further a second important governmental interest of ensuring Alaska and Hawaii an equitable distribution of satellite service. We recognize that section 338(a)(4) of the Act is responsive to a long history of more limited DBS service in Alaska and Hawaii than in the lower 48 states. Filings in prior Commission proceedings indicate that, with respect to DBS service, Alaskans had "far fewer choices than other Americans do, often their signal reception is poorer, and the reception equipment required is often much larger." In Hawaii, the DBS subscriber packages were not comparable to the subscriber packages available in the 48 lower states, particularly in the area of programming. For example, some of the most popular programming channels—such as CNN, ESPN, Headline News, Discovery Channel—were not offered to subscribers in Hawaii. The State of Hawaii continues to maintain today that the level of service provided to Hawaiian subscribers remains significantly lower than that provided to subscribers in the lower 48 states. According to the State of Hawaii, every television market that is larger than Honolulu already receives local-into-local service from DIRECTV and nearly half of the 130 markets that receive local-into-local service from DIRECTV are smaller than Honolulu. We believe section 338(a)(4) of the Act was intended to remedy the situation in the noncontiguous states by providing Alaska and Hawaii with access to all of the programming offered through free over-the-air broadcasts, including all multicast and HD signals. We find that interpreting the statute in this manner best achieves the important governmental interest of making available "to *all* people of the United States" a "rapid, efficient, *Nation-wide*, and world-wide wire and radio communication service" and of providing "a fair, efficient, and *equitable* distribution of radio services" among the several States.

20. With respect to the second prong of the constitutional analysis, we find the Government's interest in ensuring the citizens of Alaska full access to television programming and the equitable distribution of satellite service are aimed at bringing a more robust communications service to the citizens of Alaska and Hawaii, not at stemming expression. These governmental interests are thus "unrelated to the suppression of free expression." Indeed, they are aimed at providing the residents of Alaska and Hawaii with access to more information. We therefore find the second prong of the intermediate scrutiny test to be easily satisfied.

21. With respect to the third prong of the analysis, we find that this multicast and HD carriage requirement will not burden substantially more speech than is necessary to further the important governmental interests. Satellite carriage of local digital broadcast signals pursuant to section 338 of the Act as it will apply in the contiguous states, including carriage of HD and multicast signals, is under review in the ongoing broadcast carriage rulemaking docket; *see Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules*, CS Docket No. 98–120. Congress took steps to confine the breadth and burden of the regulation by directing the multicast and HD carriage obligation to apply only in the states of Alaska and Hawaii. The carriage requirement is thus narrowly tailored to serve the important government interests identified above in a direct and effective way. In addition, while DIRECTV makes a number of claims as to the burdensomeness of the regulation, the actual effects of a multicast and HD requirement in the States of Alaska and Hawaii remain unclear. We find speculative DIRECTV's argument that imposing an HD and multicast carriage requirement for Alaska and Hawaii would place a substantial capacity burden on its system. The requirement for carriage of multicast and HD signals does not begin until June 2007. We do not know at this time how many programming streams Alaskan and Hawaiian local broadcast stations will be multicasting in 2007. At this point, for example, no station in Alaska or Hawaii is broadcasting more than two streams of programming; *see e.g. www.CheckHD.com* (showing one station, each, in Anchorage, Fairbanks, and North Pole, Alaska currently broadcasting two streams and none in Hawaii). Moreover, by the time the multicast and HD carriage requirement would take effect, many of the capacity issues may well be remedied through improvements in satellite technology.

22. In short, we believe that in enacting section 338(a)(4), Congress sought to address the specific communications problems and special needs that exist in the states of Alaska and Hawaii and intended, through expanded satellite carriage, that subscribers in Alaska and Hawaii would be ensured full, not limited, access to the benefits of the digital transition. The multicast and HD carriage requirement furthers these important governmental interests without burdening substantially more speech than necessary and thus satisfies the requirements under the First Amendment. We note, however, that the foregoing analysis interprets section 338(a)(4) of the Act only, and thus does not interpret sections 614 and 615 or section 338 with respect to satellite carriage of digital signals throughout the United States.

Carriage Elections

23. Section 338(a)(4) of the Act leaves implementation of carriage election rules expressly to the Commission's discretion; *see* 47 U.S.C. 338(a)(4). Consequently, in the *NPRM* we proposed regulations concerning the timing of the carriage elections related to the new carriage requirements in Alaska and Hawaii; *see NPRM*, 20 FCC Rcd at 9324–25, paragraphs 10–15. The first satellite carriage cycle (pursuant to the SHVIA) will end on December 31, 2005. The carriage election deadline for the second cycle is October 1, 2005, for carriage beginning January 1, 2006; *see* 47 CFR 76.66(c)(4). As described in the *NPRM*, the analog signal carriage requirement for Alaska and Hawaii commences December 8, 2005, which is just a few weeks before the carriage cycle that applies to satellite carriers and broadcast stations in the contiguous states, which commences January 1, 2006, and continues until December 31, 2008; *see NPRM*, 20 FCC Rcd at 9324, paragraph 11; *see* 47 CFR 76.66(c). The carriage election process enables stations to choose between carriage pursuant to retransmission consent or mandatory carriage; see 47 U.S.C. 325(b). Retransmission consent is based on an agreement between a broadcast station and satellite carrier, and includes a station's authorization and terms for allowing its broadcast signal to be carried. Broadcast stations and satellite carriers are required to negotiate retransmission consent agreements in good faith. 47 U.S.C. 338(b)(3)(c) (*as amended by* section 207 of the SHVERA). If a station elects must-carry status, it is, in general, entitled to insist without other terms that the satellite carrier carry its signal in its local market; *see* 47 U.S.C. 338(a); *see also* 47 CFR 76.66(c).

24. To implement the carriage election timing requirements in section 210 of the SHVERA, we will track the existing regulations as closely as possible so that carriage elections in Alaska and Hawaii will be synchronized with carriage elections in the contiguous states. Because the analog carriage requirement in Alaska and Hawaii takes

effect only 24 days before the carriage cycle in the rest of the country, we will use the same carriage election deadline of October 1, 2005. Thus, commercial television broadcast stations in a local market in the noncontiguous states are required to make a retransmission consent-mandatory carriage (must carry) election by October 1, 2005, which is the same deadline for local stations in local-into-local markets in the contiguous states; *see* amended § 76.66(c)(6). No commenter disagreed with this proposal and we adopt rules to implement it now; *see* amended rule § 76.66(c)(6).

25. With respect to carriage of the digital signals of stations in Alaska and Hawaii, the *NPRM* proposed that the retransmission consent-must carry election by a station in a local market in Alaska or Hawaii should be a two-step process with one election that applies to the analog signal carriage, which commences December 8, 2005, and a second carriage election that would govern carriage of the digital signal. Carriage of signals originating as digital must commence by June 8, 2007, but may begin pursuant to retransmission consent at any time. We proposed that the deadline for the second carriage election, for digital carriage, would be April 1, 2007, two months before carriage must commence. As an alternative, we suggested a one-step process in which the station's election by October 1, 2005, for its analog signal, would also apply to its digital signal, for which mandatory carriage will commence by June 8, 2007.

26. Two commenters, EchoStar and Microcom, favored the one-step approach on the basis of simplicity for satellite carriers and reduced burden for broadcasters. We believe, however, that the two-step approach better tracks Congress' decision to mandate carriage of analog and digital signals in two separate steps. Two separate elections is also more consistent with the Commission's Cable Must Carry decision in 2001, which permits stations broadcasting both analog and digital signals to elect must carry for their analog signal and retransmission consent for their digital signal; *see Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules, etc.*, 16 FCC Rcd 2598, 2610 (2001) ("*DTV Carriage First Report and Order*"). The two-step approach is also consistent with treating carriage of the digital signal as sequential rather than concurrent with the analog signal. It is important for local stations in Alaska and Hawaii to have a second, separate opportunity to elect between must carry and retransmission consent for their digital signals. We adopt the rule, as proposed in the *NPRM*, which establishes the procedures for this two-step carriage election; *see* amended rule § 76.66(c)(6).

27. As further described in the *NPRM*, after the initial carriage cycle in Alaska and Hawaii (January 1, 2006 through December 31, 2008), the election cycle and carriage election procedures provided in section 76.66(c) will apply in the future; see *NPRM*, 20 FCC Rcd at 9325, paragraph 14. For example, the next carriage election (after the upcoming 2005 election) is required by October 1, 2008, for the carriage cycle beginning January 1, 2009; *see* 47 CFR 76.66(c)(2) and (4). We received no comments on this point.

28. We also confirm that stations in Alaska and Hawaii should be permitted to elect must carry for their analog signals and negotiate for carriage of the digital signals via retransmission consent before the mandatory digital signal carriage takes effect. We received no comments on this point. Therefore, prior to June 8, 2007, when the mandatory digital carriage rights for local stations in Alaska and Hawaii take effect, such stations may separately negotiate for voluntary carriage of their digital signals even if they elect mandatory carriage for their analog signals; *see* amended § 76.66(c)(6). This flexibility is also consistent with the approach generally taken in the digital carriage rulemaking proceeding thus far.

29. We also described in the *NPRM* that new television stations in Alaska or Hawaii should follow § 76.66(d)(3) of the Commission's rules to notify the satellite carrier and elect carriage. Based on section 338(a)(4) of the Act, a new station in Alaska or Hawaii will have a right to mandatory carriage for its analog signal if it begins service after December 8, 2005, and for its digital signal if it begins service after June 8, 2007. The existing rule describes the procedures and timing for requesting and obtaining carriage; thus, no rule amendments are needed; *see* 47 CFR 76.66(d)(3)(ii) through (iv). We received no comments on this issue, except that EchoStar asked that we clarify that stations that commence digital service after March 1, 2007 be required to comply with the Commission's rules for new stations. This date was related to the proposed special notification rules, which are discussed, *infra*. We provide that clarification here: new television broadcast stations in Alaska and Hawaii should follow the new station rule in § 76.66(d)(3) of the Commission's rules to notify satellite carriers and elect must carry or retransmission consent for their analog and digital signals.

Procedures for Carriage

30. The *NPRM* provided that in all other respects related to the mechanics of carriage, other than the carriage election cycle, we would apply the existing rules pertaining to satellite carriage as they were adopted to implement section 338 pursuant to the SHVIA; *see NPRM*, 20 FCC Rcd at 9324, paragraph 10; *see also* 47 U.S.C. 338(a)(1), (b)(1), and (c); 47 CFR 76.66(g) and (h). As noted in the *NPRM*, section 338(a)(4) of the Act also refers to the "cost to subscribers of such transmissions" but does not require rules for implementation. *NPRM*, 20 FCC Rcd at 9324, n. 34. We received no comments with respect to the mechanics for carriage and application of the existing rules. Therefore, our amended rules provide that carriage may be requested by television broadcast stations in local markets in Alaska and Hawaii effective December 8, 2005 for analog signals, and June 7, 2007 for digital signals; *see* amended rule § 76.66(b)(2). The carriage procedures for stations in Alaska and Hawaii shall follow the existing requirements, except with respect to the carriage election process, as described herein; *see* amended rule § 76.66(c)(6). Non-commercial television stations do not elect carriage because they cannot elect retransmission consent; *see* 47 U.S.C. 325(b)(2)(A). They are entitled to mandatory carriage; *see* 47 U.S.C. 338.

Availability of Signals

31. Section 338(a)(4) of the Act provides that satellite retransmissions of local stations in Alaska and Hawaii "shall be made available to substantially all of the satellite carrier's subscribers in each station's local market;" *see* 47 U.S.C. 338(a)(4) (*as amended by* section 210 of the SHVERA). The provision did not define "substantially all" subscribers, and we sought comment on its meaning in this context. Given that the statute refers to "subscribers," obviously it is not referring to parts of the state that the carrier cannot reach at all. Rather, as the *NPRM* pointed out, this wording is consistent with the physical limitations of some satellite technology that may not be able to reach all parts of a state or a DMA where a spot beam is used to provide local stations. EchoStar agrees with our interpretation, noting that the existing geographic service rules apply to both Alaska and Hawaii and provide well-established parameters for service offerings. Microcom asserts that, at a minimum, "substantially all" should be defined as those that could be served by a satellite providing primary services

within the engineering constraints of the primary or spot beams.

32. We believe that this statutory provision recognizes the existing physical limitations on satellite service, particularly in these noncontiguous states. With respect to DBS service to Alaska, for example, the Commission has stated that although reliable service usually requires a minimum elevation angle of ten degrees or more, service to Alaska is often offered at elevation angles as low as five degrees; *see Policies and Rules for the Direct Broadcast Satellite Service,* 17 FCC Rcd 11,331, 11,358–59 (2002). The Commission defined elevation angle "as the upward tilt of an earth station antenna measured in degrees relative to the horizontal plane (ground), that is required to aim the earth station antenna at the satellite. When aimed at the horizon, the elevation angle is zero. If the satellite were below the horizon, the elevation angle would be less than zero. If the earth station antenna were tilted to a point directly overhead, it would have an elevation angle of 90°." In addition, the Commission determined that in some areas of Alaska, from some orbital locations, the elevation angle was less than five degrees, or even below the horizon, thereby making service to those areas impossible. For example, the elevation angle for Attu Island, Alaska is less than zero or below the horizon for the 61.5°, 101°, and 110° orbit locations and only 4 for the 119° location. Microcom asserts that no location in Alaska has an elevation angle less than 10 degrees to the DBS orbital locations at 148 and 157 degrees West Longitude and proposes that carriers that use these orbital locations to provide local-into-local service to local markets on the west coast could do the same to provide the local stations in one or more of the Alaska DMAs, as well as to serve parts of Alaska not in a DMA. We are inclined to agree with Microcom that satellite carriers that have these orbital slots and can serve these areas should do so, and we note that satellite carriers must abide by the geographic service rules that require service where technically feasible; *see Policies and Rules for the Direct Broadcast Satellite Service,* 17 FCC Rcd at 11,358–62.

33. In the *NPRM* we said it is not necessary to adopt new rules to implement this provision and noted that this provision is similar to the Commission interpretation adopted in the implementation of the SHVIA, that satellite carriers that offer local-into-local service are not required to provide service to every subscriber in a DMA. Only EchoStar commented and agreed that no special rules were necessary on this point.

Areas Outside Local Markets

34. As described above, Alaska is the only one of the fifty states that has areas that are not included within any DMA. Section 338(a)(4) of the Act requires a satellite carrier in Alaska to make available the signals of all the local television stations that it carries in at least one local market to substantially all of its subscribers in areas outside of local markets who are in the same state; *see* 47 U.S.C. 338(a)(4), *as amended* by section 210 of SHVERA. Congress also modified the copyright provisions of title 17 to include these areas of Alaska that are outside of all DMAs within the definition of "local market" as it pertains to the statutory copyright license for carriage of local stations; *see* 17 U.S.C. 122(j)(2)(D) *as amended by* section 111(b) of the SHVERA. In Alaska, there are three DMAs covering the main population centers, but most of the state, which is sparsely populated, is not included in a DMA. Thus, a satellite carrier in Alaska will be required to provide the television stations that it carries in at least one of the three DMAs, in which carriage of local stations is required by section 338(a)(4) of the Act, to areas of the State not included in DMAs. In the *NPRM* we said that we believe the statute speaks for itself and that no special rule is required to implement this statutory requirement.

35. No commenter disputed that the statutory language is largely self-effectuating, but Microcom recommended that the Commission allow subscribers that are outside all DMAs to subscribe to any local package that they are technically capable of receiving. DIRECTV contends that section 338(a)(4) of the Act does not contemplate giving subscribers this option and that the SHVERA leaves the choice of which package to offer to the satellite carrier. DIRECTV explains that it could not comply with a rule that allowed subscribers outside of DMAs to choose which DMA package of local signals they want due to limitations in the set top box based upon the "market ID" that DIRECTV assigns to each local market. The market ID is critical to the operation of DIRECTV's billing and customer service system, which cannot function with differing choices of local market packages within a given zip code or county. We agree that the statute does not require that the choice of local package rest with the individual subscriber, and, therefore, it is unnecessary to require a satellite carrier to reconfigure its operations to afford this choice. Moreover, the statutory copyright license in section 122 of title 17 specifies that: "A satellite carrier may determine which local market in the State of Alaska will be deemed to be the relevant local market in connection with each subscriber in such census area, borough, or other area;" see 17 U.S.C. 122(j)(2)(D) as amended by section 111(b) of the SHVERA We note, too, that DIRECTV has committed to working with local officials in Alaska to identify the appropriate local market to offer to Alaska subscribers who are not in a DMA. A satellite carrier that wishes to offer subscribers their choice of Alaska DMA package, however, is free to do so, as the statutory language neither compels nor forbids this approach.

36. Microcom also raises a separate issue concerning signal availability, which is related to the revisions to the distant signal statutory copyright license, as revised by the SHVERA in conjunction with local signal availability pursuant to section 338(a)(4). Section 119(a)(16) of title 17 provides that the statutory copyright license for satellite retransmission of distant signals shall not apply with respect to satellite retransmission of a network station located outside of the State of Alaska to any subscriber in Alaska if a television station located in Alaska is made available by the satellite carrier pursuant to section 122; see 17 U.S.C. 119(a)(16)(A) as amended by section 111 of the SHVERA. Section 119(a)(16)(B) limits the restriction in (A) if the distant signal is a digital signal and no television station licensed to a community in Alaska and affiliated with the same network is transmitting a digital signal. See also, 17 U.S.C. 122(j)(2)(D) as amended by section 111(b) of the SHVERA, which amends the definition of "local" and thereby creates the copyright license for the areas in Alaska that are outside of a DMA: "Any census area, borough, or other area in the State of Alaska that is outside of a designated market area, as determined by Nielsen Media Research, shall be deemed to be part of one of the local markets in the State of Alaska. A satellite carrier may determine which local market in the State of Alaska will be deemed to be the relevant local market in connection with each subscriber in such census area, borough, or other area." Microcom asks that we define when a signal is made "available" for this purpose and to consider the cost to a subscriber to obtain the equipment to access the local signal package. We did not raise this question in the NPRM, as it applies

specifically to eligibility for distant signals. We note, however, that the statute defines "available," as it pertains to the copyright license in section 119, to mean that the station is available if the satellite carrier offers that local station to other subscribers who reside in the same zip code as the subscriber in question; see 17 U.S.C. 119(a)(4)(G) as amended by section 103 of the SHVERA; see also 47 U.S.C. 339(a)(2)(H) as amended by section 204 of the SHVERA, which is substantially the same definition. Thus, we cannot agree with Microcom's proposal to determine availability based on the cost of equipment to receive the local station package. Microcom also asks the Commission to address questions pertaining to "commercial retransmission consent" for commercial establishments in Alaska that are not within a DMA. This issue is not within the scope of this proceeding, which is limited to implementation of section 338(a)(4).

37. The rules governing satellite carriage of local stations that were adopted to implement the SHVIA define "local market" based upon the copyright definition cited in section 338 of the Act; *see* 47 U.S.C. 338(k)(3) (formerly (h)(3)); *see also* 47 CFR 76.66(e). EchoStar referred to the notification proposal in connection with its request for clarification concerning new stations. Accordingly, we amend our rule section to track the revised definition of local market in section 122 of title 17 to reflect the revisions related to areas of Alaska outside of all DMAs; *see* adopted § 76.66(e)(2) and (3).

Notification by Satellite Carrier

38. In the *NPRM* we sought comment on a proposal to require special satellite carrier notifications to local stations in connection with the new carriage requirements in Alaska and Hawaii, although section 338(a)(4) of the Act does not require such notification. We proposed two special notifications: the first for the forthcoming carriage election for analog signals, and the second for carriage of digital signals in 2007. We received no comments on this proposal. We conclude that it is unnecessary to establish a special notification procedure for the upcoming carriage election with respect to analog signal carriage. Moreover, there is inadequate time to adopt such a provision and make it effective in time to be meaningful for the analog carriage election deadline adopted in this Order. The deadline for stations to make carriage elections is October 1, 2005, for the carriage cycle that commences January 1, 2006, and that will govern carriage for local stations' analog signals in Alaska and Hawaii beginning December 8, 2005. Thus, satellite carriers would have to send the proposed 30 day notification before September 1, which would require **Federal Register** publication of this Order no later than August 1, 2005. We note that EchoStar currently provides local-into-local service in the Honolulu and Anchorage DMAs, assuring that the stations in those markets are aware that they should make carriage elections no later than October 1, 2005 to ensure continued carriage. With respect to the other local markets in Alaska and Hawaii, if satellite carriers follow the existing rule for initiating local service, the notifications, elections, and carriage would come too late to satisfy the statutory requirement of commencing carriage of analog signals by December 8, 2005; see 47 CFR 76.66(d)(2) (Requires 60 day notice prior to commencing service in a new market, gives stations 30 days to elect carriage, requires carriage to commence 90 days later). We will instead rely on the publication of this Order and the existing carriage election deadline to assure that stations in Alaska and Hawaii receive adequate notice for the October 1, 2005 carriage election deadline.

39. We will adopt the second notification requirement to ensure that local stations in Alaska and Hawaii are reminded of their digital carriage rights commencing in June 2007. We will require satellite carriers with more than 5 million subscribers to notify all television broadcast stations located in local markets in Alaska and Hawaii that they are entitled to carriage of their digital signals as of June 8, 2007, and that they must elect mandatory carriage or retransmission consent by April 1, 2007, to be assured of carriage, as provided in §§ 76.66(b)(2) and (c)(6). This notification will be required by March 1, 2007, with respect to the carriage election for digital signals; *see* adopted § 76.66(d)(2)(iii). The amended rule provides for carriage requests from both commercial and noncommercial television broadcast stations.

40. As further described in the *NPRM*, a new satellite carrier that meets the definition in section 338(a)(4) of the Act in the future will be required to comply with § 76.66(d)(2) of the Commission's rules regarding "new local-into-local service" (imposes requirements when a new satellite carrier intends to retransmit a local television station back into its local market).

Procedural Matters

41. *Accessibility Information.* To request this *Report and Order* or other materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty). This document can also be downloaded in Word and Portable Document Format (PDF) at: *http://www.fcc.gov*.

42. The Commission will send a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office (GAO) pursuant to the Congressional Review Act, see U.S.C. 801(a)(1)(A).

Final Regulatory Flexibility Certification

43. The Regulatory Flexibility Act of 1980, as amended (RFA), requires a regulatory flexibility analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

44. We are amending § 76.66 of the Commission's rules as required by section 210 of the SHVERA. We expect these rule amendments will not have a significant economic impact on a substantial number of small entities. The rules are required by statute and will allow for local television stations to elect carriage pursuant to retransmission consent or mandatory carriage with respect to satellite carriers with more than 5 million subscribers in a non-contiguous state. "Satellite carriers," including Direct Broadcast Satellite (DBS) carriers, will be directly and primarily affected by the rules.

45. The satellite carriers covered by these rules are governed by the SBA-recognized small business size standard of Cable and Other Program Distribution. This size standard provides that a small entity is one with $12.5 million or less in annual receipts. The two satellite carriers that are subject

to these rule amendments because they currently have more than five million subscribers, DIRECTV and EchoStar, report annual revenues that are in excess of the threshold for a small business. We anticipate that any satellite carrier that, in the future, has more than five million subscribers would necessarily have more than $12.5 million in annual receipts. Thus, the entities directly affected by the proposed rules are not small entities.

46. We also note that, in addition to satellite carriers, television broadcast stations are indirectly affected by the amended rule in that they potentially benefit from the satellite carriage required by the rule and must elect between mandatory carriage and retransmission consent. This carriage election, however, follows the existing Commission rules. These existing rules currently permit stations in Alaska and Hawaii to elect carriage if and when a satellite carrier offers local-into-local service in their market. The amended rules affect these election rights by merely providing a date certain for carriage in these specified markets, and this change does not amount to a significant economic impact.

47. Therefore, we certify that the adopted rules will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of this Report and Order, including a copy of this Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the SBA. This certification will also be published in the **Federal Register**.

Final Paperwork Reduction Act of 1995 Analysis

48. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. The Commission received approval for the information collection requirements contained in this Order from the Office of Management and Budget on June 14, 2005. There have been no changes to the information collection requirements since receiving OMB approval. In addition, we note that there is no new or modified "information burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* U.S.C. 3506(c)(4). As described in the Final Regulatory Flexibility Certification, *supra*, the businesses affected by our action are not small.

49. *Further Information.* For additional information concerning the PRA information collection requirements contained in this Order, contact Cathy Williams at 202–418–2918, or via the Internet to *Cathy.Williams@fcc.gov.*

50. *Additional Information.* For additional information on this proceeding, contact Eloise Gore, *Eloise.Gore@fcc.gov*, of the Media Bureau, Policy Division, (202) 418–2120.

Ordering Clauses

51. Accordingly, *it is ordered* that pursuant to section 210 of the Satellite Home Viewer Extension and Reauthorization Act of 2004, and sections 1, 4(i) and (j), and 338(a)(4) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and (j), and 338(a)(4), that this Report and Order *is adopted* and the commission's rules are hereby amended and shall become effective October 31, 2005.

52. *It is further ordered* that the Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Report and Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 76

Cable television, Television.

Federal Communications Commission
William F. Caton,
Deputy Secretary.

Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 76 as follows:

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

■ 1. The authority citation for part 76 continues to read:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 338, 339, 340, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572 and 573.

■ 2. Section 76.66 is amended by revising paragraphs (b)(2) and (c)(4), by adding paragraph (c)(6), redesignate paragraphs (d)(2)(iii) and (iv) as paragraphs (d)(2)(iv) and (v), add new paragraph (d)(2)(iii) and revise paragraphs (e)(2) and (3) to read as follows:

§ 76.66 Satellite broadcast signal carriage.

* * * * *

(b) * * *

(2) A satellite carrier that offers multichannel video programming distribution service in the United States to more than 5,000,000 subscribers shall, no later than December 8, 2005, carry upon request the signal originating as an analog signal of each television broadcast station that is located in a local market in Alaska or Hawaii; and shall, no later than June 8, 2007, carry upon request the signals originating as digital signals of each television broadcast station that is located in a local market in Alaska or Hawaii. Such satellite carrier is not required to carry the signal originating as analog after commencing carriage of digital signals on June 8, 2007. Carriage of signals originating as digital signals of each television broadcast station that is located in a local market in Alaska or Hawaii shall include the entire free over-the-air signal, including multicast and high definition digital signals.

* * * * *

(c) * * *

(4) Except as provided in paragraphs (c)(6), (d)(2) and (d)(3) of this section, local commercial television broadcast stations shall make their retransmission consent-mandatory carriage election by October 1st of the year preceding the new cycle for all election cycles after the first election cycle.

* * * * *

(6) A commercial television broadcast station located in a local market in Alaska or Hawaii shall make its retransmission consent-mandatory carriage election by October 1, 2005, for carriage of its signal that originates as an analog signal for carriage commencing on December 8, 2005, and by April 1, 2007, for its signal that originates as a digital signal for carriage commencing on June 8, 2007 and ending on December 31, 2008. For analog and digital signal carriage cycles commencing after December 31, 2008, such stations shall follow the election cycle in paragraphs (c)(2) and (4). A noncommercial television broadcast station located in a local market in Alaska or Hawaii must request carriage by October 1, 2005, for carriage of its signal that originates as an analog signal for carriage commencing on December 8, 2005, and for its signal that originates as a digital signal for carriage commencing on June 8, 2007 and ending on December 31, 2008.

* * * * *

(d) * * *

(2) * * *

(iii) A satellite carrier with more than five million subscribers shall provide the notice as required by paragraphs (d)(2)(i) and (ii) of this section to each television broadcast station located in a local market in Alaska or Hawaii, not

later than March 1, 2007 with respect to carriage of digital signals; provided, further, that the notice shall also describe the carriage requirements pursuant to 47 U.S.C. 338(a)(4), and paragraph (b)(2) of this section.

* * * * *

(e) * * *

(2) A designated market area is the market area, as determined by Nielsen Media Research and published in the 1999–2000 Nielsen Station Index Directory and Nielsen Station Index United States Television Household Estimates or any successor publication. In the case of areas outside of any designated market area, any census area, borough, or other area in the State of Alaska that is outside of a designated market area, as determined by Nielsen Media Research, shall be deemed to be part of one of the local markets in the State of Alaska.

(3) A satellite carrier shall use the 1999–2000 Nielsen Station Index Directory and Nielsen Station Index United States Television Household Estimates to define television markets for the first retransmission consent-mandatory carriage election cycle commencing on January 1, 2002 and ending on December 31, 2005. The 2003–2004 Nielsen Station Index Directory and Nielsen Station Index United States Television Household Estimates shall be used for the second retransmission consent-mandatory carriage election cycle commencing January 1, 2006 and ending December 31, 2008, and so forth for each triennial election pursuant to this section. Provided, however, that a county deleted from a market by Nielsen need not be subtracted from a market in which a satellite carrier provides local-into-local service, if that county is assigned to that market in the 1999–2000 Nielsen Station Index Directory or any subsequent issue of that publication. A satellite carrier may determine which local market in the State of Alaska will be deemed to be the relevant local market in connection with each subscriber in an area in the State of Alaska that is outside of a designated market, as described in paragraph (e)(2) of this section.

* * * * *

[FR Doc. 05–17324 Filed 8–30–05; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2005–22240]

RIN 2127–AJ60

Federal Motor Vehicle Safety Standards; Occupant Protection in Interior Impact

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: This document responds to petitions for reconsideration requesting changes to a final rule published on February 27, 2004 (February 2004 final rule). The February 2004 final rule amended the upper interior impact requirements of Federal Motor Vehicle Safety Standard No. 201, "Occupant protection in interior impact." Among other matters, to address the safety consequences of certain new vehicle designs, the February 2004 final rule added new targets to door frames and seat belt mounting structures found in some vehicles. This document amends the definition of "seat belt mounting structure" to ensure that the definition is not unnecessarily broad, and clarifies several issues related to existing target relocation procedures. This document also delays the implementation of the new requirements for door frames and seat belt mounting structures from September 1, 2005 until December 1, 2005.

DATES: The amendments in this rule are effective September 1, 2005.

Petitions: Petitions for reconsideration must be received by October 17, 2005, and should refer to this docket and the notice number of this document and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 7th Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For technical issues: Lori Summers, Office of Crashworthiness Standards, NVS–112, NHTSA, 400 7th Street, SW., Washington, DC 20590. Telephone: (202) 366–1740. Fax: (202) 493–2290.

For legal issues: Mr. George Feygin, Attorney Advisor, Office of the Chief Counsel, NCC–112, NHTSA, 400 7th Street, SW., Washington, DC 20590. Telephone: (202) 366–5834. Fax: (202) 366–3820. E-mail: George.Feygin@nhtsa.dot.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In 1995, the National Highway Traffic Safety Administration (NHTSA) amended Federal Motor Vehicle Safety Standard (FMVSS) No. 201, "Occupant protection in interior impact," to require passenger cars, trucks, and multipurpose passenger vehicles with a gross vehicle weight rating (GVWR) of 4,536 kilograms (10,000 pounds) or less, and buses with a GVWR of 3,860 kilograms (8,500 pounds) or less, to provide head protection when an occupant's head strikes upper interior components, such as pillars, side rails, headers, and the roof during a crash.[1] The new head protection requirements were necessary because head impacts with upper interior components resulted in a significant number of occupant injuries and fatalities.

The head impact protection provisions of FMVSS No. 201 set minimum performance requirements for vehicle interiors by establishing target areas within the vehicle that must be properly padded or otherwise have energy absorbing properties to minimize head injury in the event of a crash. Compliance with the upper interior impact requirements is determined, in part, by measuring the forces experienced by a Free Motion Headform (FMH) test device when it is propelled, at any speed up to and including either 18 km/h or 24 km/h (12 mph or 15 mph), into certain targets on the vehicle interior.

New vehicle designs not contemplated by the 1995 amendments to FMVSS No. 201 emerged, and with them, certain safety concerns. First, a number of manufacturers began producing three door coupes and pickup trucks with three or four doors. Unlike the conventional designs, these vehicles do not have B-pillars between doors. Yet, the door frames appeared to be equivalent to the B-pillar for purposes of head impact protection because these door frames were located near the head of a seated vehicle occupant and posed the same potential head injury risks as a B-pillar. Second, certain pillarless coupes and convertibles used a freestanding vertical structure to provide an attachment point for the upper anchorage of a lap and shoulder belt. This structure, which must be relatively stiff in order to ensure the stability of the belt anchorage, was normally located near the head of the occupant in the seating position for which the belt is provided.

[1] *See* 60 FR 43031 (August 18, 1995). For a detailed discussion of subsequent amendments to the head impact protection requirements see 69 FR 9217 at 9218–9220 (February 27, 2004).

Because these structures do not support the roof of the vehicle, neither the door frames nor freestanding vertical seat belt mounting structures fit within the definition of "pillar" found in FMVSS No. 201 and, thus, did not have to meet the FMH impact requirements. Yet, the agency was concerned about the potential safety consequences of these new designs because they posed the same potential head injury risks as a pillar, roll-bar, or other stiff vertical component.

On February 27, 2004, the agency published a final rule that addressed this concern (69 FR 9217; Docket 00–7145). The February 2004 final rule amended the definition of "B-pillar" and added several other definitions, to ensure that door frames aft of the A-pillar and forward of any other pillars become subject to the FMH impact requirements. The final rule also required freestanding vertical seat belt mounting structures to meet the FMH impact requirements. The final rule defined "seat belt mounting structure" as:

> A component of the vehicle body or frame, including trim, extending above a horizontal plane 460 mm above the seating reference point, SgRP, of the closest outboard designated seating position, with an upper seat belt anchorage conforming to the requirements of S4.2.1 and S4.3.2 of Standard No. 210 (49 CFR 571.210) attached to it, and is not a pillar, roll bar, brace or stiffener, side rail, seat, or part of the roof.

II. Summary of Petitions for Reconsideration

The agency received petitions for reconsideration of the February 2004 final rule from the Alliance of Automobile Manufacturers (Alliance) and from DaimlerChrysler (DCX). Subsequently, Alliance also filed a request for an interpretation related to the February 2004 final rule.[2]

A. Alliance Petition

In its petition, Alliance stated that the current definition of seat belt mounting structure encompasses some vehicle components that were not contemplated by the agency. While the agency intended to subject freestanding vertical seat belt mounting structures to the head impact protection requirements of FMVSS No. 201, according to Alliance, the current definition will also require rear package shelves, side-wall trim panels, and interior rear quarter trim panels to provide head impact protection. Alliance believes that these seat belt mounting structures are "integrated into the body structure of the vehicle" and should be excluded from the FMH impact requirements. In support of its view, Alliance provided examples of vehicles with rear seat belt anchorages located on the rear package shelf or in the rear upper corner of the interior rear quarter panel, next to the seat back. Other examples showed vehicles with the front seat belt anchorage located on the front upper corner of the interior rear quarter panel, or on the rear package shelf area, behind the seat back.[3]

On October 5, 2004, NHTSA met with Alliance to further discuss certain provisions of the petition for reconsideration.[4] At the meeting, Alliance supplemented its petition by proposing an alternative definition of the seat belt mounting structure. Specifically, Alliance requested that the definition state that only a portion of the seat belt mounting structure that "projects into the daylight opening" be subjected to the FMH impact requirements. For vehicles in which a daylight opening cannot be clearly established, Alliance suggested that the seat belt mounting structure be defined as a "freestanding load bearing component of the vehicle body" or part of the roof."

B. DCX Petition

In its petition, DCX indicated support for the Alliance petition and expressed concern that NHTSA unintentionally subjected seat belt mounting anchorages integrated within the vehicle body structure to the FMH impact requirements. DCX suggested that language in the preamble to the final rule referring to "stand-alone structures rising from the floor of a vehicle" indicated that NHTSA did not intend to include seat belt anchorages located on the interior rear quarter panel or rear package shelf in the definition of the seat belt mounting structure. DCX requested that NHTSA amend the definition of the seat belt mounting structure as follows:

> Seat belt mounting structure means a component extending above or out of the normal horizontal vehicle body structure or surface at the height of the upper door surface or lower edge of the window opening with an upper seat belt anchorage conforming to the requirements of S4.2.1 and S4.3.2 of Standard No. 210 (49 CFR 571.210) attached to it, and is not a pillar, roll bar, brace or stiffener, side rail, seat, or part of the roof or normal body structure (below the level of window opening) such as a body closure panel, quarter panel or its trim.

III. Discussion and Analysis

A. Definition of Seat Belt Mounting Structure

In amending the upper interior impact requirements, the agency did not intend to limit the definition of the seat belt mounting structure strictly to "stand-alone" objects. This is because some seat belt mounting structures that could cause injury (because of their proximity to an occupant's head and the resulting risk of head injury) could be located on "attached" or integrated vehicle components. Nevertheless, the agency did not intend to apply the FMH impact requirements to interior quarter panel trim, or rear package shelves that are located such that they could not readily come in contact with the normally seated occupant's head.

Accordingly, the agency agrees with Alliance and DCX that the definition provided in the February 2004 final rule encompasses some vehicle components that were not contemplated by that rulemaking. We are amending the definition of the seat belt mounting structure to ensure that the seat belt mounting structure FMH impact requirements are not overly broad.

Why the agency is not adopting a seat belt mounting structure definition based on "window opening" or "daylight opening."

In their petitions, Alliance and DCX urged the agency to change the definition of seat belt mounting structure such that only pillar-like components protruding above the vehicle beltline or the daylight window opening by a certain vertical distance would be subject to FMH impact requirements. We note that the agency has previously considered the issue of defining the seat belt mounting structure in terms of daylight opening.[5] We again decline to adopt the petitioner's suggestion for two reasons.

First, we believe the terms "beltline" or "daylight opening" are inappropriate for defining the seat belt mounting structures because these design elements may not exist or may not be easily identified in vehicles that are most likely to include seat belt mounting structures. Specifically, the agency believes that freestanding seat belt mounting structures are most likely to appear in open body vehicles. Because these vehicles may not include complete roofs, side windows, or side doors, it may not be possible to define where the "daylight opening" or "beltline" begins. For example, a Jeep Wrangler is, in certain configurations,

[2] *See* Docket Number NHTSA–2000–7145–11.

[3] *See* Docket Number NHTSA–2000–7145–09, Appendix A.

[4] For a detailed summary of the meeting please see Docket Number NHTSA–2000–7145–12.

[5] *See* 69 FR 9217 at 9222.

an open body vehicle that has a soft roof assembly and detachable side doors. This vehicle design makes it difficult to clearly establish a daylight opening or beltline.

Second, in some vehicles, the rear package shelf panel is located higher than the daylight opening or beltline. Because petitioners argue that these shelves should not be subjected to the FMH impact requirements, the definition based on daylight opening or beltline location would not fully resolve the manufacturer's concerns.

The agency believes that locating the seat belt mounting structure should not depend on the location and the height of the nearest daylight opening, but on the structure's proximity to the occupant's head, and the likelihood that the occupant's head could strike that structure. Thus, instead of attempting to define the seat belt mounting structure in reference to daylight opening, the agency believes that it is more appropriate to describe the seat belt mounting structure in reference to the head CG of a seated Hybrid-III 50th percentile male dummy. The head CG of the seated Hybrid-III 50th percentile male dummy is 660 mm vertically above the seating reference point (SgRP).[6] Regardless of vehicle type, using this geometric measurement method enables identification of the seat belt mounting structure parts or components that could come in contact with the occupant's head.

In deciding how to best refine the current definition of seat belt mounting structure, the agency carefully evaluated the information presented by Alliance and DCX. Specifically, we examined the upper seat belt anchorage locations of vehicles shown in Appendices A and B of the Alliance petition.[7] The seat belt mounting structure configurations, presented by Alliance as problematic in light of the current seat belt mounting structure definition, fall into two categories.

In some vehicles described by Alliance, the upper seat belt anchorage is located on the rear package shelf behind the seat back. This configuration exists in some two-seat vehicles such as the Corvette Convertible and Cadillac XLR, and some four-seat vehicles such as the Mitsubishi Eclipse Spyder. In other vehicles, the seat belt upper anchorage is located on either the front upper corner of the interior quarter panel, or the rear upper corner of the interior quarter panel, near the junction of the seat back and rear package shelf.

We believe that raising the minimum height specification in the seat belt mounting structure definition and excluding interior rear quarter panels from the FMH impact requirements would resolve the petitioner's concerns without compromising occupant safety.

Seat belt mounting components located on the rear package shelf.

After examining the information presented by Alliance, we conclude that an upper seat belt anchorage located on the rear package shelf is usually located such that it could not come in contact with the occupant's head.

For two-seat vehicles, because of front seat head restraint height requirements, it is unlikely that the head of the front seat occupant would impact objects that are located behind the seat back or the head restraint, as the head impact trajectory would be blocked. Accordingly, the agency believes that the head restraint will prevent head contact with most targets located on the rear package shelf. For vehicles with two rows of seating positions, the rear seat back or rear seat head restraint would likely prevent the rear seat occupant's head contact with most targets located on the rear package shelf.

In sum, we conclude that a seated occupant's head is not likely to contact a vehicle interior component that is located behind the head restraint or seat back because the head impact trajectory would be blocked. Because the upper seat belt anchorage located behind the rearmost designated seating is unlikely to come into contact with the occupant's head, the agency decided to revise the seat belt mounting structure definition such that it would not encompass most interior components located on the rear package shelf.

Specifically, for seat belt mounting structures located behind the rearmost designated seating positions, the revised definition will encompass only components that extend 660 mm above the SgRP of that seating position; *i.e.*, above the head CG of a Hybrid-III 50th percentile male dummy in a generic vehicle seat. The agency believes that this definition will ensure that components located behind the rearmost seat back or the head restraint are not subject to the new FMH impact requirements unless they reach a height where head contact becomes possible.

For seat belt mounting structures located in front of other seating positions, the definition remains unchanged because the rear seat occupants could strike the vehicle components that extend 460 mm above the SgRP of the seating position located behind these components.

The relevant portion of the revised regulatory text will read as follows:

Seat belt mounting structure means:

(a) A vehicle body or frame component, including trim, that incorporates an upper seat belt anchorage conforming to the requirements of S4.2.1 and S4.3.2 of 49 CFR 571.210, that is located rearward of the rearmost outboard designated seating position, and that extends above a horizontal plane 660 mm above the seating reference point (SgRP) of that seating position; and

(b) A vehicle body or frame component, including trim, that incorporates an upper seat belt anchorage conforming to the requirements of S4.2.1 and S4.3.2 of 49 CFR 571.210, that is located forward of the rearmost outboard designated seating position, and that extends above a horizontal plane 460 mm above the SgRP of that seating position located rearward of the anchorage.

Interior quarter panels.

In amending the upper interior impact requirements, the agency did not intend to add new FMH impact targets to interior quarter panels located between the edge of the side door opening and the rearmost outboard seating position. We believe that locating additional targets on the interior rear quarter panels would be impracticable for a variety of vehicle designs. Accordingly, we are revising the seat belt mounting structure definition to exclude interior rear quarter panels. We defined the interior rear quarter panel as follows: "Interior rear quarter panel means a vehicle interior component located between the rear edge of the side door frame, the front edge of the seat back, and the daylight opening."

B. Request for Clarification

Petitioners requested that NHTSA clarify several issues related to target relocation procedures. Specifically, they asked if an SB target, requiring relocation because of vehicle configuration, to a point below the 460 mm plane, would become invalid, and whether targets relocated into open space would become invalid.

First, the agency believes that targets relocated below the 460 mm horizontal plane should not be automatically invalidated. This is consistent with our position regarding other targets subject to current head impact protection requirements. For example, a BP4 target relocated below a 460 mm horizontal plane is not automatically excluded from testing. Instead, the target is

[6] The 660 mm distance was determined using a generic vehicle seat with the seat back angle ranging between 20 and 25 degrees.

[7] *See* Docket No. NHTSA–2000–7145–9.

relocated in accordance with target relocation procedures specified S10(b) and S10(c) of FMVSS No. 201.[8] Thus, there is no minimum height limitation for a relocated target. Second, any target that is relocated in "open space" need not meet the FMH impact requirements. Finally, with respect to other target relocation questions raised by petitioners, we again note that target relocation procedures are specified in S10(b) and S10(c) of FMVSS No. 201. In order for us to answer a more specific relocation question related to an individual vehicle configuration, a manufacturer would need to provide more specific information related to the target in question.

C. Effective Date

Because the effective date for the new requirements for door frames and seat belt mounting structures is imminent, we are delaying the implementation of the new requirements from September 1, 2005 until December 1, 2005. This short delay will enable manufacturers to carefully evaluate how the changes in this document would affect vehicle compliance. Because the practical affect of these changes is that fewer vehicle components will be subject to certain requirements of 49 CFR 571.201, longer lead time is unnecessary. For the same reasons, we are making the amendments effective September 1, 2005.

IV. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking document was not reviewed under Executive Order 12866, "Regulatory Planning and Review." The agency has considered the impact of this rulemaking action under the Department of Transportation's regulatory policies and procedures, and has determined that it is not "significant."

This document narrows the definition of the seat belt mounting structure to ensure that the definition is not unnecessarily broad, and clarifies several issues raised by a petitioner. The practical affect of this change in the definition is that fewer vehicle components will be subject to certain requirements of 49 CFR 571.201.

B. Executive Order 13132 (Federalism)

The agency has analyzed this rulemaking action in accordance with the principles and criteria set forth in Executive Order 13132. This final rule does not have a substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132.

C. Executive Order 13045

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

This rule is not subject to the Executive Order 13045 because it is not economically significant as defined in E.O. 12866 and does not involve decisions based on environmental, safety or health risks having a disproportionate impact on children.

D. Civil Justice Reform

Pursuant to Executive Order 12988, "Civil Justice Reform" (61 FR 4729, February 5, 1996), the agency has considered whether this rulemaking would have any retroactive effect. This final rule does not have any retroactive effect. A petition for reconsideration or other administrative proceeding will not be a prerequisite to an action seeking judicial review of this rule. This final rule would not preempt the states from adopting laws or regulations on the same subject, except that it would preempt a state regulation that is in actual conflict with the Federal regulation or makes compliance with the Federal regulation impossible or interferes with the implementation of the Federal statute.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires agencies to evaluate the potential effects of their rules on small businesses, small organizations and small governmental jurisdictions. I have considered the possible effects of this rulemaking action under the Regulatory Flexibility Act and certify that it would not have a significant economic impact on a substantial number of small entities because the amendments in this rulemaking do not impose new requirements. Instead, this rulemaking narrows the definition of the seat belt mounting structure. The practical affect of this change in the definition is that fewer vehicle components will be subject to certain requirements of 49 CFR 571.201.

F. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This final rule does not adopt any new information collection requirements.

G. National Technology Transfer And Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272) directs us to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

There are no available voluntary consensus standards that are equivalent to FMVSS No. 201.

H. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal 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 more than $100 million in any one year ($120.7 million as adjusted annually for inflation with base year of 1995).

This final rule will not result in costs of $120.7 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector. Thus, this final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

I. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) 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

[8] The same issue was raised in a November 2, 2004 request for a legal interpretation from Alliance. *See* Docket No. NHTSA–2000–7145–13.

year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

J. Privacy Act

Please note that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), or you may visit *http://dms.dot.gov.*

K. National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

List of Subjects in 49 CFR Parts 571

Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

■ In consideration of the foregoing, Part 571 is amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 2011, 30115, 30166 and 30177; delegation of authority at 49 CFR 1.50.

■ 2. Section 571.201 is amended by revising the definition of Seat belt mounting structure in S3, adding the definition of Interior rear quarter panel to S3 in alphabetical order, and revising S6.3(e) to read as follows:

§ 571.201 Standard No. 201; Occupant protection in interior impact.

* * * * *

S3. *Definitions.* * * *

Interior rear quarter panel means a vehicle interior component located between the rear edge of the side door frame, the front edge of the rearmost seat back, and the daylight opening.

* * * * *

Seat belt mounting structure means:

(a) A vehicle body or frame component, including trim, that incorporates an upper seat belt anchorage conforming to the requirements of S4.2.1 and S4.3.2 of 49 CFR 571.210, that is located rearward of the rearmost outboard designated seating position, and that extends above a horizontal plane 660 mm above the seating reference point (SgRP) of that seating position; and

(b) A vehicle body or frame component, including trim, that incorporates an upper seat belt anchorage conforming to the requirements of S4.2.1 and S4.3.2 of 49 CFR 571.210, that is located forward of the rearmost outboard designated seating position, and that extends above a horizontal plane 460 mm above the SgRP of that seating position located rearward of the anchorage.

(c) The seat belt mounting structure is not a pillar, roll bar, brace or stiffener, side rail, seat, interior rear quarter panel, or part of the roof.

* * * * *

S6.3 * * *

(e) Any target located on the seat belt mounting structures, door frames and other door frames before December 1, 2005.

* * * * *

Dated: August 25, 2005.

Jeffrey W. Runge,

Administrator.

[FR Doc. 05–17294 Filed 8–29–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 595

[Docket No. NHTSA–2004–19092]

RIN 2127–AJ07

Make Inoperative Provisions; Vehicle Modifications To Accommodate People With Disabilities

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

ACTION: Final rule.

SUMMARY: To facilitate further the modification of vehicles to accommodate individuals with disabilities, this final rule expands the existing exemptions from the "make inoperative" provision of the Vehicle Safety Act. Responding to petitions for rulemaking from members of the mobility industry, this document expands the exemption to include exemptions from provisions of the advanced air bag requirements, the child restraint anchorage system requirements, and the upper interior head protection requirements.

DATES: The effective date for this final rule is October 31, 2005.

Petitions for reconsideration. Petitions for reconsideration of this final rule must received not later than October 17, 2005.

ADDRESSES: Petitions for reconsideration of the final rule must refer to the docket and notice number set forth above and be submitted to the Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, with a copy to Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Ms. Gayle Dalrymple, Office of Crash Avoidance Standards at (202) 366–5559. Her fax number is (202) 366–7002. For legal issues, you may call Ms. Dorothy Nakama, Office of Chief Counsel at (202) 366–2992. Her fax number is (202) 366–3820. You may send mail to both of these officials at the National Highway Traffic and Safety Administration, 400 Seventh St., SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

I. Background

The National Traffic and Motor Vehicle Safety Act requires vehicle manufacturers to certify that their vehicles comply with all applicable Federal motor vehicle safety standards (49 U.S.C. 30112 *et seq.*). The Act further prohibits manufacturers, distributors, dealers, and repair businesses from knowingly making inoperative any part or device or element of design installed in or on a motor vehicle that is in compliance with an applicable standard (49 U.S.C. 30122; "make inoperative" provision). Any action that removes or disables safety equipment or features installed to comply with an applicable standard, or that degrades the performance of such equipment or features could lead to the assessment of civil penalties. Section 30122 authorizes regulations to exempt a person from the make inoperative provision if the agency decides the exemption is consistent with motor vehicle safety and the purpose and policy of the Safety Act.

To facilitate the modification of motor vehicles for persons with disabilities, NHTSA provides a limited exception from the make inoperative provision. While a vast majority of Americans can drive and ride in a motor vehicle as produced and certified by manufacturers, individuals with disabilities often require special modifications to accommodate their particular needs. Some of these modifications may require removal of

federally required safety equipment. In these instances, if individuals with disabilities are to drive and ride in a motor vehicle in these instances, federally required safety features must be made inoperative.

Recognizing the specialized transportation needs of individuals with disabilities, NHTSA established an exemption from the make inoperative provision. 49 CFR 595 Subpart C, "Vehicle Modifications To Accommodate People With Disabilities," permits repair businesses to modify certain types of federally required safety equipment and features under specified circumstances. This exemption from the make inoperative provision was established because the previous policy of considering and responding to requests on a case-by-case basis was not effective or efficient for the vehicle modifiers, the persons requiring the modifications, or the agency. (66 FR 12638; February 27, 2001.)

When establishing the exemption from the make inoperative provision, the agency considered that, as of 1997, approximately 383,000 vehicles had some type of adaptive equipment installed in them to accommodate a driver or passenger with a disability.[1] We also recognized that the modification of vehicles to accommodate persons with disabilities would increase in frequency as the population ages and as a greater number of individuals with physical disabilities take advantage of opportunities presented by the Americans With Disabilities Act.[2] Using 2002 data from the Bureau of Transportation Statistics, we estimate the number of personal motor vehicles modified for use by persons with disabilities existing in the U.S. in 2002 was about 1,123,000, with a 95 percent confidence interval from 743,000 to 1,504,000. An estimated 75 percent of modified vehicles were modified for the driver (including vehicles modified for both driver and passenger). The estimated proportion of the U.S. personal motor vehicle fleet that are modified for use by people with disabilities is 0.0051 (0.51 percent) with a confidence interval from 0.0034 to 0.0067. We estimate that in 2002, 814,000 households had one modified vehicle and another 155,000 households had two modified vehicles.[3]

The exemption from the make inoperative provision facilitates modifications by providing guidance to modifiers on the type of modifications that can be made without unduly decreasing the level of safety provided to the vehicle occupants and to others. Included in the exemption are the seat belt and passive restraint requirements for passenger cars, and light trucks, buses and multipurpose passenger vehicles, under Federal Motor Vehicle Safety Standard (FMVSS) No. 208, *Occupant crash protection*[4] and head impact protection requirements for certain target points under FMVSS No. 201, *Occupant protection in interior impacts*.[5]

II. Notice of Proposed Rulemaking

In response to petitions for rulemaking from Bruno Independent Living Aids (Bruno), the Adaptive Driving Alliance (ADA)[6] and the National Mobility Equipment Dealers Association (NMEDA), NHTSA published a notice of proposed rulemaking on September 17, 2004 (69 FR 56018) (DOT Docket No. NHTSA–2004–19092). The agency proposed to amend the exemption from the make inoperative provision under 49 CFR Part 595, by adding the FMVSS No. 208 advanced air bag requirements, a limited exemption for the FMVSS No. 225 LATCH requirements, and a limited exemption for the FMVSS No. 201 upper interior head protection requirements. Each of the proposed changes is summarized below.

Advanced Air Bag Requirements

After the exemption from the make inoperative provision was published on February 27, 2001, the agency published a final rule that added requirements to FMVSS No. 208 to reduce the risk of serious air bag-induced injuries, especially to small women and young children, and to improve the safety for all occupants by means that include advanced air bag technology. (65 FR 30680; May 12, 2002.) The advanced air bag technology requirements are being phased in beginning September 1, 2003, with full compliance required September 1, 2006. Motor vehicles subject to the phase-in will be required to minimize air bag risks by automatically turning off the air bag in the presence of an occupant who is a young child or deploy the air bag in a manner less likely to cause serious or fatal injury to an out of position occupant. Among the technologies used to comply with these requirements are a variety of seat position, occupant weight, and pattern sensors incorporated into the seat structure.

In its petition for rulemaking, Bruno requested that the advanced air bag requirements be included with the other FMVSS No. 208 requirements excluded from the make inoperative provision. Bruno stated that the installation of one of its mobility aid products, the Turning Automotive Seat (TAS) could be accomplished without making a conventional air bag inoperative, but would require deactivation of advanced air bag features. Bruno stated that maintaining the operation of seat position and occupant sensing devices used to comply with the advanced air bag requirements for numerous makes and models of motor vehicles is beyond its capability.

ADA's August 8, 2002 petition provided additional support for Bruno's request. The ADA argued that it is no more feasible for modifiers to comply with the advanced air bag requirements than the "*existing* air bag requirements," which are currently exempted. Petitioners argued that maintaining compliance with the advanced air bag requirements would require modifiers to reinstall, modify, or design complex components of the air bag system. Petitioners further argued that the advanced air bag requirements are just as incompatible with the one-of-a kind, custom-fitted nature of vehicle modifications to accommodate a specific individual's disability as the current FMVSS No. 208 requirements in Part 595.

In response to the petitions for rulemaking, NHTSA proposed to expand the make inoperative exemptions established at 49 CFR 595.7(c)(14) by adding to it the following sections of FMVSS No. 208:

S15, *Rigid barrier test requirements using 5th percentile adult female dummies;*

S17, *Offset frontal deformable barrier requirements using 5th percentile adult female test dummies;*

S19, *Requirements to provide protection for infants in rear facing and convertible child restraints and car beds;*

S21, *Requirements using 3-year-old child dummies;*

S23, *Requirements using 6-year-old child dummies;*

S25, *Requirements using an out-of-position 5th percentile adult female at the driver position.*

In many instances, a vehicle modification requiring an exemption for the advanced air bag requirements would also rely on the current

[1] *Estimating the Number of Vehicles Adapted for Use by Persons with Disabilities*, NHTSA Research Note, 1997.

[2] 42 U.S.C. 12101, *et seq.*

[3] 2002 National Transportation Availability and Use Survey, Bureau of Transportation Statistics.

[4] Under 49 CFR 595.7(c)(14).

[5] 49 CFR 595.7(c)(7).

[6] The ADA is a trade association representing dealers and manufacturers that modify and sell vehicles adapted for people with disabilities.

exemption from the occupant crash protection requirements of S5, *Occupant crash protection requirements for the 50th percentile adult male dummy*, of FMVSS No. 208. NHTSA stated that it expected that modifications requiring an exemption from the advanced air bag requirements in conjunction with the exemption from S5, as well as those requiring only an exemption from the advanced air bag regulations, would affect a very small number of motor vehicles each year in comparison to the overall number of motor vehicles in the country.

In the NPRM, the agency tentatively concluded that these modifications would be essential to enable individuals with a disability to use a motor vehicle. Additionally, seating positions modified under the proposed exemption would accommodate specific, individual needs making it less likely that these seating positions would be used by other occupants who would benefit either from the air bag itself, or from those features designed to minimize air bag risk. We recognize that in most cases, the decision to deactivate the air bag, or not, will be a product of the equipment, the vehicle and the method of installation. We strongly urge the vehicle manufacturers, equipment manufacturers, and modifiers to work together to determine whether the air bag actually needs to be deactivated for these different combinations. There may be seating, equipment and vehicle combinations in which air bag deactivation is not necessary. However, these situations should be studied carefully so that modification does not result in inadvertent air bag suppression or overly forceful deployment.

LATCH Requirements

Prior to establishing the exemption from the make inoperative provision (published on February 27, 2001), the agency established FMVSS No. 225, which requires motor vehicles to be equipped with a lower anchorage and tether anchorage (LATCH[7]) system designed exclusively to secure child restraint systems. (64 FR 10786; March 5, 1999; "LATCH rule".)

FMVSS No. 225 requires vehicles with three or more forward-facing rear designated seating positions, manufactured on or after September 1, 2002, to be equipped with: (1) A LATCH system at not fewer than two forward-facing rear designated seating positions, with at least one system installed at a forward facing seating position in the second row in each vehicle that has three or more rows; and, (2) a tether anchorage at a third forward-facing rear designated seating position. Under S5(b) of FMVSS No. 225, a vehicle may be equipped with a built-in child restraint system conforming to the requirements of FMVSS No. 213, *Child restraint systems*, instead of one of the required tether anchorages or child restraint anchorage systems. These LATCH requirements provide a more uniform method of securing a child restraint system and reduce the likelihood that a child restraint will be installed incorrectly.

In its petition for rulemaking, the ADA stated that compliance with LATCH requirements would possibly not be feasible for businesses modifying motor vehicles to accommodate disabled drivers and passengers. The ADA explained that:

> When, as part of modifying a vehicle for a disabled individual, an entire row of seats needs to be modified or removed (*e.g.* to allow wheelchair egress and ingress), then Part 595 must permit removal of the tethers and child restraint anchorages at those modified or removed locations. Otherwise, vehicle modifiers will be required to reengineer child restraint anchorages for installation at locations not contemplated by [the vehicle manufacturers].

Modifying a vehicle to accommodate a wheelchair could result in seating configurations that would take the vehicle out of compliance with FMVSS No. 225. If a vehicle with three rows of seating were to have LATCH systems in the second and third rows, removal of that second row to permit wheelchair access to the driver's seat would remove the vehicle from compliance with FMVSS No. 225. Beyond this example, there are a myriad of van seating arrangements, desired wheelchair restraint positions, and vehicle entry/exit applications that could remove a vehicle from compliance with FMVSS No. 225.

Since the agency could not anticipate all of these potential combinations and provide modifiers specific instructions for each situation, NHTSA proposed in the NPRM an amendment that would establish flexibility in the modification configurations and still allow a child seat to be restrained safely. NHTSA proposed an exemption be added to 49 CFR 595.7, to read as follows:

> (c)(16) 49 CFR 571.225 in any case in which an existing child restraint anchorage system, or built-in child restraint system relied upon for compliance with 571.225, must be removed to accommodate a person with a disability, provided the vehicle contains at least one tether anchorage which complies with 49 CFR 571.225 S6, S7 and S8 in one of the rear passenger designated seating positions. If no rear designated seating position exists after the vehicle modification, a tether anchorage complying with the requirements described above must be located at a front passenger seat. Any tether anchorage attached to a seat that is relocated shall continue to comply with the requirements of 49 CFR 571.225 S6, S7 and S8.

A child seat could still be installed in a modified vehicle through the use of the vehicle's seat belt system and still have the advantage of the tether.

The proposed exemption was based on the approach suggested by the ADA. The ADA suggested that if a vehicle complies with FMVSS No. 225 by having two LATCH systems and a tether anchorage in the second row of seating and no LATCH anchorages in the third row of seating, any modification resulting in the removal of the second row of seating would require the modifier to install complete LATCH systems in the third row of seating. Under the agency's proposal, the modifier was only required to install a tether anchorage. NHTSA noted that if the proposal were made final, the tether anchorage(s) attached to any relocated seat would be required to remain compliant with 49 CFR 571.225 S6, S7 and S8 upon relocation. NHTSA tentatively concluded that this requirement was within the capabilities of modifiers.

FMVSS No. 225 requires that vehicles manufactured on or after September 1, 2002, that do not have any forward-facing rear designated seating positions must have a compliant tether anchorage at each front passenger designated seating position (S4.4(c)). In the September 17, 2004 NPRM, NHTSA stated that if a vehicle were to be modified such that only front designated seating positions remained, the agency expected that modifiers would be able to install conforming tether anchorages at the front forward-facing passenger designated seating positions (if not already provided by the original vehicle manufacturer).

NHTSA sought comment on whether modifiers should be required to add tether anchorages to designated seating positions that were not so equipped by the original vehicle manufacturer.

[7] "LATCH" stands for "Lower Anchors and Tethers for Children," a term that was developed by child restraint manufacturers and retailers to refer to the standardized child restraint anchorage system required by Federal Motor Vehicle Safety Standards No. 225, *Child Restraint Anchorage Systems* (49 CFR 571.225). This system has two lower anchorages and one tether anchorage. Each lower anchorage includes a rigid round rod or bar onto which the connector of a child restraint system can be snapped. The bars will be loated at the intersection of the vehicle seat cushion and seat back. The upper anchorage is a fixture to which the tether of a child restraint system can be hooked.

Upper Interior Head Protection Requirements

On August 18, 1995, the agency issued a final rule amending FMVSS No. 201 to improve head protection in impacts with upper interior components of certain vehicles (60 FR 43031). The final rule significantly expanded the scope of FMVSS No. 201. Previously, the standard applied to the instrument panel, seat backs, interior compartment doors, arm rests and sun visors only. To determine compliance with the upper interior impact requirements, the final rule added procedures for a new in-vehicle component test in which a Free Motion Headform (FMH) is fired at certain target locations on the upper interior of a vehicle at an impact speed of up to and including 24 km/h (15 mph). The resultant data must not exceed a Head Injury Criterion score of 1000.

The standard, as further amended on April 8, 1997 (67 FR 16718), provided manufacturers with four alternate phase-in schedules for complying with the upper interior impact requirements. Twice, the agency extended the effective date for manufacturers of vehicles built in two or more stages, which now must comply with the expanded FMVSS No. 201 requirements on and after September 1, 2006 (68 FR 51706; August 28, 2003).

In the rulemaking that established the make inoperative exemption, NHTSA recognized that compliance with FMVSS No. 201 at some target points could be problematic for certain modifications, specifically the installation of a platform lift. Thus, currently, Part 595 includes an exemption to FMVSS No. 201 with respect to:

(a) Targets located on the right siderail, the right B-pillar and the first right side "other" pillar adjacent to the stowed platform of a lift or ramp that stows vertically, inside the vehicle.

(b) Targets located on the left siderail, the left B-pillar and the first left side "other" pillar adjacent to the stowed platform of a lift or ramp that stows vertically, inside the vehicle.

(c) Targets located on the rear header and the rearmost pillars adjacent to the stowed platform of a lift or ramp that stows vertically, inside the vehicle (49 CFR 595.7(c)(7)).

The ADA and NMEDA each submitted a separate petition for rulemaking requesting that NHTSA expand the exemption of FMVSS No. 201 to include the provisions pertaining to upper interior head protection. The ADA requested that 49 CFR 595.7 be amended to include exemptions for requirements related to: (1) Targets located on any hand grip or vertical stanchion bar; and (2) all of S6 of 571.201 in any case in which accommodating a person's disability necessitates raising the roof or door, or lowering the floor of the vehicle.

In the NPRM, the agency proposed to amend the exemption from the make inoperative provision by adding a limited exemption from the upper interior head protection requirements of FMVSS No. 201. This amendment would facilitate the raising of a vehicle roof and the lowering of a vehicle floor in order to accommodate individuals with disabilities. Also, in instances where a vehicle is not equipped with a grab bar, or the originally equipped grab bar is insufficient to accommodate an individual with a disability, the proposal would facilitate the installing of handles or stanchion bars.

In the NPRM, the agency stated that it has already recognized the potential impact of the upper interior head protection requirements on manufacturers of vehicles manufactured in two or more stages and has provided additional lead time for compliance. The potential impacts of the upper interior head protection requirements on vehicle modifiers are analogous to those on manufacturers of vehicles manufactured in two or more stages.

Part 595 Title

The agency also proposed to amend the title of Part 595 from "Retrofit On-Off Switches for Air Bags," to "Make Inoperative Provisions." In the NPRM, NHTSA stated that this amendment would reflect the fact that 49 CFR Part 595 addresses more matters than the retrofit of motor vehicles with on-off switches for air bags.

III. Public Comments and Final Rule

In response to the NPRM, NHTSA received comments from: the Adaptive Driving Alliance (ADA); the California Department of Vocational Rehabilitation (CDVR), the National Automobile Dealers Association (NADA); and the National Mobility Equipment Dealers Association (NMEDA). The commenters supported the proposed changes, as discussed below.

Overview

In supporting the NPRM, the NADA stated that the proposed exemptions "would facilitate vehicle alterations and modifications designed to satisfy the needs of disabled customers." The NMEDA provided specific comments regarding the proposed changes regarding the LATCH requirements. NMEDA stated that requiring a tether anchorage in the second row will provide a means to secure a child seat in the vehicle, and that NMEDA will be able to provide guidance to the modifiers for installation of a tether anchorage in the event that the existing seat does not have one installed at the original equipment manufacturer's level. NMEDA further stated that considering the allowable area in which the tether anchorage may be installed, it did not foresee difficulty in locating or safely installing such an anchor. Since most of the "concerned vehicles" have a second row seat, NMEDA stated that it did not anticipate that the front row seat would have to be equipped with a tether anchorage.

Specific Questions

Although it supported the rulemaking, the ADA commented on the proposed changes affecting FMVSS No. 208 and No. 225. Regarding FMVSS No. 208, the ADA stated its belief that since S14 of FMVSS No. 208 "mandates compliance with the advanced air bag requirements," S14 should be added to the list of sections set forth in 49 CFR 595.7(c)(14). NHTSA agrees. We note that S14.5 of FMVSS No. 208 specifies differing requirements for meeting barrier test requirements using 50th percentile adult male dummies, depending on which S14 provision a vehicle is certified as meeting. Since some provisions mandate compliance, this final rule amends 49 CFR 595.7(c)(14) to include S14 of FMVSS No. 208.

The ADA also addressed the proposed inclusion in Part 595 of FMVSS No. 225 requirements, questioning whether the final sentence proposed for 49 CFR 595.7(c)(16): "Any tether anchorage attached to a seat that is relocated shall continue to comply with the requirements of 49 CFR 571.225 S6, S7 and S8" is appropriate. The ADA commented that:

> Proposed (c)(16) would require that "* * * the vehicle contain at least one tether anchorage which complies with 49 CFR 571.225 S6, S7 and S8 in one of the rear passenger designated seating positions. If no rear designated seating position exists after the vehicle modification, a tether anchorage complying with the requirements described above must be located at a front passenger seat." It is thus not clear why the proposed final sentence of (c)(16) is necessary, given that relocating a seat could cause issues as regards maintaining the tether.

NHTSA's response is that the ADA's comment appears to assume that after modification, only one tether anchorage will remain in the rear. Therefore, if a vehicle must have a compliant tether anchorage and there is only one tether

anchorage present, the last sentence of the proposed regulatory language would be redundant. However, there may be other tether anchorages in the vehicle, in addition to the tether anchorage in the relocated seat, that comply with S6, S7, and S8 at rear seating positions. Without the last sentence, if there are other tether anchorages, the relocated tether(s) would not have to comply with the applicable provisions of FMVSS No. 225. It is NHTSA's position, (with which NMEDA agreed in its comments) that vehicle modifiers should have the technical capability to relocate a tether anchorage such that the relocated tether anchorage complies with S6, S7, and S8 of FMVSS No. 225. Further, all tether anchorages should meet the requirements of FMVSS No. 225, since they will likely be used with the child restraint. For these reasons, in the final rule, the last sentence of 595.7(c)(16) is retained.

Upper Interior Head Protection Requirements

NHTSA received no public comments in response to the proposed exemption from the make inoperative provision by adding limited exemptions from the upper interior head protection requirements of FMVSS No. 201. Therefore, NHTSA adopts as final the language proposed at 595.7(c)(7)(iv) and (v).

Other Issues

The California Department of Vocational Rehabilitation (CDVR) sought to bring attention to issues involving side air bags and "transfer seat bases." The CDVR explained that these seat bases move the original equipment manufacturers' (OEM) seat back to allow a wheelchair user to move more easily from the wheelchair into the OEM seat. The OEM seat is then powered back into the driver's position. The CDVR noted that some of the OEM seats have side air bags in the seat backs, but there appeared to be nothing in the NPRM requiring the OEM wiring to the seat backs to be retained to maintain the functioning of the airbag.

Agency response: The "make inoperative" exemptions proposed in the NPRM did not include exemptions for the side air bags in the seat backs. Provisions relating to side air bags in seat backs is outside the scope of the rulemaking.

Conclusion

The comments supported the changes to Part 595. This final rule makes final the language (with the exception of adding an exception for S14 to S595.7(c)(14)) proposed in the NPRM of September 17, 2004. Further, since we received no comments on the proposed change to the title of Part 595, in this final rule, we are changing the title of Part 595 to: "Make Inoperative Provisions."

IV. Effective Date

In the NPRM, NHTSA proposed an effective date of 60 days after the final rule is published. None of the public comments addressed the effective date issue. NHTSA notes that this final rule removes a restriction on the modification of vehicles for persons with disabilities. To further the interest of providing vehicle modifiers the flexibility required to accommodate these individuals, since good cause has been shown to do so, and since NHTSA has determined it would be in the public interest to do so, the changes in this final rule becomes effective 60 days after the publication in the **Federal Register**.

V. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this final proposed rule under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under E.O. 12866, "Regulatory Planning and Review." This action has been determined to be "nonsignificant" under the Department of Transportation's regulatory policies and procedures. NHTSA has determined that the impacts of this rule are so minimal that a full regulatory evaluation is not warranted.

The agency believes that the expanded exemptions will not have any avoidable adverse safety effects on individuals with disabilities. The exemptions allow an individual with a disability to operate or ride in a motor vehicle, while maintaining the benefit of all of the compatible safety standards. Absent the modifications permitted by this rulemaking, individuals with disabilities might not be able to use the vehicles in question, resulting in less freedom of mobility.

Furthermore, NHTSA does not expect many individuals without a disability to use seating positions specially modified for individuals with a disability. As previously noted above, the number of affected standards remains small and the number of vehicles that modified in accordance with this final rule is relatively small.

B. Regulatory Flexibility Act

We have considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) Most motor vehicle modifiers affected by this final rule are considered small entities. I hereby certify that this final rule will not have a significant economic impact on a substantial number of small entities. The statement of the factual basis for this certification is that, as explained above, this final rule adds several occupant crash protection requirements, vehicle LATCH requirements, and upper interior head protection requirements to the current list of requirements exempted from the Make Inoperative Provision. While most modifiers are considered small entities, the final rule results in no significant economic impact on small entities since the final rule permits greater flexibility when modifying a vehicle to accommodate an individual with a disability. There may be slight economically beneficial effects of this final rule, because the affected small manufacturers would not have to ensure that they "make inoperative" compliance of a vehicle with provisions of the occupant crash protection requirements, vehicle LATCH requirements, and upper interior head protection requirements, when the vehicles are modified to accommodate an individual with a disability.

C. Paperwork Reduction Act

The collection of information burden under the labeling and recordkeeping requirements of 49 CFR 595.7, OMB clearance numbers 2127–0512 and 2127–0635, respectively, will not increase as a result of this final rule. The agency anticipates that any vehicle modification using one of the exemptions will be made in conjunction with one or more modifications based on the current exemptions. A vehicle modifier using one of the exemptions permitted in this final rule will only be required to list the exemption along with the other exemptions on the required disclosure label to the consumer. The vehicle labeling and recordkeeping requirements vary not according to the number of exemptions per vehicle, but by the total number of vehicles modified.

D. National Environmental Policy Act

NHTSA has analyzed this final rule for the purposes of the National Environmental Policy Act and determined that it will not have any significant impact on the quality of the human environment.

E. Executive Order 13132 (Federalism)

Executive Order 13132 requires NHTSA 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." The phrase "policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, the agency may not issue a regulation with Federalism implications, that imposes substantial direct costs, and that is not required by statute, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or the agency consults with State and local officials early in the process of developing the proposed regulation. NHTSA may also not issue a regulation with federalism implications and that preempts State law unless the agency consults with State and local officials early in the process of developing the proposed regulation.

The agency has analyzed this rulemaking action in accordance with the principles and criteria contained in Executive Order 13132 and has determined that it will not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The final rule will have no substantial effects on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials.

F. Executive Order 12988 (Civil Justice Reform)

Pursuant to Executive Order 12988 "Civil Justice Reform," we have considered whether this final rule would have any retroactive effect. NHTSA concludes that this final rule will not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the State requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending, or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272) directs us to use voluntary consensus standards in regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers (SAE). The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards. We have sought for but did not find any voluntary consensus standard bearing on this rulemaking.

H. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal 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 more than $100 million in any one year (adjusted for inflation with base year of 1995). Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires NHTSA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows NHTSA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes with the final rule an explanation why that alternative was not adopted.

This final rule will not impose any unfunded mandates under the Unfunded Mandates Reform Act of 1995. This final rule will not result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector of more than $100 million annually. Accordingly, this final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

I. Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

—Have we organized the material to suit the public's needs?
—Are the requirements in the rule clearly stated?
—Does the rule contain technical language or jargon that is not clear?
—Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
—Would more (but shorter sections be better?
—Could we improve clarity by adding tables, lists, or diagrams?
—What else could we do to make this rulemaking easier to understand?

If you have any responses to these questions, please address them to the persons listed in the **FOR FURTHER INFORMATION CONTACT:** section at the beginning of this document.

J. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) 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. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

List of Subjects in 49 CFR Part 595

Motor vehicle safety, Motor vehicles.

■ In consideration of the foregoing, NHTSA is amending 49 CFR part 595 as follows:

■ 1. The heading to Part 595 is revised to read as follows:

PART 595—MAKE INOPERATIVE EXEMPTIONS

■ 2. The authority citation for Part 595 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, 30122 and 30166; delegation of authority at 49 CFR 1.50.

■ 3. Section 595.7 is amended by adding paragraphs (c)(7)(iv) and (v), by revising paragraph (c)(14) and by adding paragraph (c)(16) to read as follows:

§ 595.7 Requirements for vehicle modifications to accommodate people with disabilities.

* * * * *

(c) * * *

* * * * *

(7) * * *

(iv) Targets located on any hand grip or vertical stanchion bar.

(v) All of S6 of 571.201 in any case in which the disability necessitates raising the roof or door, or lowering the floor of the vehicle.

* * * * *

(14) S4.1.5(a)(1), S4.1.5.1(a)(3), S4.2.6.2, S5, S7.1, S7.2, S7.4, S14, S15, S16, S17, S18, S19, S20, S21, S22, S23, S24, S25, S26 and S27 of 49 CFR 571.208 for the designated seating position modified, provided Type 2 or Type 2A seat belts meeting the requirements of 49 CFR 571.209 and 571.210 are installed at that position.

* * * * *

(16) 49 CFR 571.225 in any case in which an existing child restraint anchorage system, or built-in child restraint system relied upon for compliance with 571.225 must be removed to accommodate a person with a disability, provided the vehicle contains at least one tether anchorage which complies with 49 CFR 571.225 S6, S7 and S8 in one of the rear passenger designated seating positions. If no rear designated seating position exists after the vehicle modification, a tether anchorage complying with the requirements described above must be located at a front passenger seat. Any tether anchorage attached to a seat that is relocated shall continue to comply with the requirements of 49 CFR 571.225 S6, S7 and S8.

* * * * *

Issued on: August 25, 2005.

Jeffrey W. Runge,

Administrator.

[FR Doc. 05–17244 Filed 8–30–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

49 CFR Part 1540

RIN 1652–ZA05

Prohibited Items; Allowing Scissors for Ostomates

AGENCY: Transportation Security Administration (TSA), DHS.

ACTION: Interpretive rule.

SUMMARY: This document amends the Transportation Security Administration's (TSA) interpretive rule that provides guidance to the public on the types of property that TSA considers weapons, explosives, and incendiaries prohibited in airport sterile areas, in the cabins of aircraft, or in passengers' checked baggage. This document also amends TSA's guidance on the types of items permitted in sterile areas, the cabins of aircraft, and in passengers' checked baggage. This document adds as permitted items certain small scissors that persons with ostomies need.

DATES: Effective August 29, 2005.

FOR FURTHER INFORMATION CONTACT: Sandra Cammoroto, Office of the Chief Operating Officer, TSA–18, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220; telephone (571) 227–1823.

SUPPLEMENTARY INFORMATION:

Availability of 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) Accessing the Government Printing Office's Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html*; or

(3) Visiting TSA's Law and Policy Web page at *http://www.tsa.gov* and accessing the link for "Law and Policy" at the top of the page.

In addition, copies are available by writing or calling the individual in the **FOR FURTHER INFORMATION CONTACT** section. Make sure to identify the docket number of this rulemaking.

Statutory and Regulatory Background

TSA is an agency in the Department of Homeland Security (DHS), operating under the direction of the Assistant Secretary for Homeland Security (Transportation Security Administration). TSA is responsible for security in all modes of transportation, including aviation. See 49 U.S.C. 114(d). Under TSA's regulation on acceptance and screening of individuals and accessible property, 49 CFR 1540.111, an individual (other than a law enforcement or other authorized individual)—

"* * * may not have a weapon, explosive, or incendiary, on or about the individual's person or accessible property—

(1) When performance has begun of the inspection of the individual's person or accessible property before entering a sterile area, or before boarding an aircraft for which screening is conducted under § 1544.201 or § 1546.201 of this chapter;

(2) When the individual is entering or in a sterile area; or

(3) When the individual is attempting to board or onboard an aircraft for which screening is conducted under § 1544.201 or § 1546.201 of this chapter."

On February 14, 2003, TSA published an interpretive rule that provided guidance to the public on the types of property TSA considers to be weapons, explosives, and incendiaries prohibited on an individual's person or accessible property, items permitted on an individual's person or accessible property, and items prohibited in checked baggage (68 FR 7444). On March 3, 2003, TSA subsequently published technical corrections to the interpretive rule at 68 FR 9902.

On December 17, 2004, the President signed into law the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA) (Pub. L. 108–458). Section 4025 of IRTPA in part requires TSA to add butane lighters to its list of prohibited items and to make any other modifications to the prohibited items list that TSA considers appropriate. Accordingly, on March 1, 2005, TSA published an amendment to the interpretive rule (70 FR 9877) adding all lighters to the list of prohibited items. TSA now is modifying the interpretive rule to provide an exception for certain scissors used by ostomates.

Small Ostomy Scissors Are Now Permitted

Under the interpretive rule, TSA presently considers all metal scissors with pointed tips to be weapons. Therefore, individuals are prohibited from carrying these types of scissors in an airport sterile area or in the cabin of an aircraft. Metal scissors with blunt tips and plastic scissors are permitted.

TSA is modifying the interpretive rule to exempt from the prohibited items list ostomy scissors. An ostomate is a person who has undergone a surgical procedure known as ostomy, which involves creating an opening in the person's abdomen. The opening is called a stoma. Human waste passes through the stoma into a collection pouch. An ostomy appliance consists of a positioning plate (or wafer or flange) that attaches to the collection pouch surrounding the stoma. Because no two stomas are alike, few ostomates can use manufactured pre-cut wafers. The ostomate, by using a chart provided with the collection pouch, must use pointed scissors to cut out the appropriate size of the cut-to-fit positioning plate. Round or dull scissors will not easily penetrate or cut through the positioning plate's heavy rubber or neoprene material. The adhesive backing that attaches the plate to the skin around the stoma increases the solidity of the material.

The collection pouch must be changed, and the stoma cleaned, each time the pouch fills up. The schedule

for changing collection pouches varies for each person, from every 3 to 24 hours. If the collection pouch is not emptied when it fills, and the stoma cleaned thoroughly and timely, the accumulation of waste can lead to infection.

There are estimated to be 750,000 ostomates in the United States. While there are no statistics on the number of ostomates who use air transportation, it is likely that a large proportion of these individuals currently are unable to travel by air because they cannot carry scissors needed to care for their condition. TSA has heard from individuals with ostomies that they avoid air travel in part because they cannot have the scissors they need.

Allowing this limited exception to TSA's prohibition on metal pointed scissors removes a significant barrier to ostomates traveling by air without weakening aviation security. There have been a number of enhancements to civil aviation security since TSA first assumed responsibility for security screening. These improvements include improved screening procedures and equipment as well as better and more thorough training for security screeners. As mandated by the Federal Aviation Administration, domestic and foreign air carriers serving the United States have installed hardened cockpit doors on aircraft in order to protect and secure the flight deck. The Bureau of Immigration and Customs Enforcement has greatly increased the deployment of Federal Air Marshals to detect, deter, and defeat hostile acts onboard flights. Under the Federal Flight Deck Officer Program (FFDO) there are an increasing number of volunteer pilots who are trained and equipped to defend the flight decks of passenger aircraft against acts of criminal violence and air piracy. Based on these and other improvements to civil aviation security, TSA has determined that measures are in place to mitigate any threat posed by the limited number of scissors that may be carried aboard aircraft by ostomates.

This action is consistent with other exceptions TSA has created to address medical needs in other situations, such as the exception for syringes, jet injectors, lancets, and needles used by individuals in the treatment of diabetes. In recognition of the special needs of ostomates and in light of the additional security measures now in place, TSA is creating an exception to the prohibition against carrying metal pointed scissors. In general, metal scissors with pointed tips will continue to be prohibited. However, TSA will no longer prohibit ostomy scissors with pointed tips with an overall length, including blades and handle, of four inches or less, when accompanied by an ostomate supply kit containing related supplies, such as collection pouches, wafers, positioning plates, tubing, or adhesives.

Other Technical Changes

TSA also is making three technical changes to the interpretive rule. First, we are removing section III.5 (now section III. E.), because it duplicates section III.1 (now section III A.). Second, we are amending section II.B(2), which makes clear that toy Transformer(™) robots are permitted. The amendment broadens the current category to cover similar toys and adds a trademark designation. Finally, we are adjusting the format of section III in order to make it consistent with the other sections.

Regulatory Impact Analyses

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866, Regulatory Planning and Review (58 FR 51735, October 4, 1993), directs each Federal agency to 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 (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. Fourth, the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) 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).

Executive Order 12866 Assessment

This rule explains to the public, airport personnel, screeners, and airlines how TSA interprets certain terms used in an existing rule, 49 CFR 1540.111. This interpretative rule is not considered an economically significant regulatory action for purposes of Executive Order 12866. However, there has been significant public interest in aviation security issues since the terrorist attacks of September 11, 2001. Therefore, this rule is significant for purposes of Executive Order 12866 and has been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Determination

The Regulatory Flexibility Act (RFA) of 1980 requires that agencies 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 determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA. For purposes of the RFA, small entities include small businesses, not-for-profit organizations, and small governmental jurisdictions. Individuals and States are not included in the definition of a small entity.

The RFA does not apply to this interpretive rule and TSA is not preparing an analysis for the Act, since under 5 U.S.C. 553, TSA is not required to publish a notice of proposed rulemaking. Nonetheless, because this rule will not impose any costs on the public, we have determined and certify that this rule does not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

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. TSA has assessed the potential effect of this interpretative rule and has determined that it will impose the same costs on domestic and international entities and thus has a neutral trade impact.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 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 a $100 million or more expenditure (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."

This rulemaking does not contain such a mandate. The requirements of Title II of the Act, therefore, do not apply and TSA has not prepared a statement under the Act.

Executive Order 13132, Federalism

TSA has analyzed this interpretive rule under the principles and criteria of Executive Order 13132, Federalism. We have determined that this action will not have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore will not have federalism implications.

Environmental Analysis

TSA has reviewed this action for purposes of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4347) and has determined that this action will not have a significant effect on the human environment.

Energy Impact

The energy impact of this action has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Public Law 94–163, as amended (42 U.S.C. 6362). We have determined that this rulemaking is not a major regulatory action under the provisions of the EPCA.

Amendments to Interpretation

TSA is making the following changes to the prohibited items list:

1. Section I.B(10) is amended to read "Scissors, metal with pointed tips, except ostomy scissors with pointed tips with an overall length, including blades and handle, of four inches or less, when accompanied by an ostomate supply kit containing related supplies, such as collection pouches, wafers, positioning plates, tubing, or adhesives."

2. Section II.A(17) is amended to read "Scissors, plastic or metal with blunt tips; and ostomy scissors with pointed tips with an overall length, including blades and handle, of four inches or less, when accompanied by an ostomate supply kit containing related supplies, such as collection pouches, wafers, positioning plates, tubing, or adhesives."

3. Section II.B(2) is amended to read "Toy Transformer® robots and the like."

4. Section III(5) (now section III E.) is amended to read "Reserved."

5. Sections III(1) through (5) are redesignated as Sections III.A. through E.

Text of Interpretive Rule

The following is the list of prohibited items and permitted items reprinted in its entirety, with the changes inserted.

Prohibited Items and Permitted Items Interpretation

I. *Prohibited Items.* For purposes of 49 U.S.C. 40101 *et seq.* and 49 CFR 1540.111, TSA interprets the terms "weapons, explosives, and incendiaries" to include the items listed below. Accordingly, passengers may not carry these items as accessible property or on their person through passenger screening checkpoints or into airport sterile areas and the cabins of a passenger aircraft.

A. *Guns and Firearms.*
(1) BB guns.
(2) Compressed air guns.
(3) Firearms.
(4) Flare pistols.
(5) Gun lighters.
(6) Parts of guns and firearms.
(7) Pellet guns.
(8) Realistic replicas of firearms.
(9) Spear guns.
(10) Starter pistols.
(11) Stun guns/cattle prods/shocking devices.

B. *Sharp Objects.*
(1) Axes and hatchets.
(2) Bows and arrows.
(3) Drills, including cordless portable power drills.
(4) Ice axes/Ice picks.
(5) Knives of any length, except rounded-blade butter and plastic cutlery.
(6) Meat cleavers.
(7) Razor-type blades, such as box cutters, utility knives, and razor blades not in a cartridge, but excluding safety razors.
(8) Sabers.
(9) Saws, including cordless portable power saws.
(10) Scissors, metal with pointed tips, except ostomy scissors with pointed tips with an overall length, including blades and handle, of four inches or less, when accompanied by an ostomate supply kit containing related supplies, such as collection pouches, wafers, positioning plates, tubing, or adhesives.
(11) Screwdrivers (except those in eyeglass repair kits).
(12) Swords.
(13) Throwing stars (martial arts).

C. *Club-Like Items.*
(1) Baseball bats.
(2) Billy clubs.
(3) Blackjacks.
(4) Brass knuckles.
(5) Cricket bats.
(6) Crowbars.
(7) Golf clubs.
(8) Hammers.
(9) Hockey sticks.
(10) Lacrosse sticks.
(11) Martial arts weapons, including nunchucks, and kubatons.
(12) Night sticks.
(13) Pool cues.
(14) Ski poles.
(15) Tools including, but not limited to, wrenches and pliers.

D. *All Explosives, Including*
(1) Ammunition.
(2) Blasting caps.
(3) Dynamite.
(4) Fireworks.
(5) Flares in any form.
(6) Gunpowder.
(7) Hand grenades.
(8) Plastic explosives.
(9) Realistic replicas of explosives.

E. *Incendiaries.*
(1) Aerosol, any, except for personal care or toiletries in limited quantities.
(2) Fuels, including cooking fuels and any flammable liquid fuel.
(3) Gasoline.
(4) Gas torches, including micro-torches and torch lighters.
(5) Lighter fluid.
(6) Strike-anywhere matches.
(7) Turpentine and paint thinner.
(8) Realistic replicas of incendiaries.
(9) All lighters.

F. *Disabling Chemicals and Other Dangerous Items.*
(1) Chlorine for pools and spas.
(2) Compressed gas cylinders (including fire extinguishers).
(3) Liquid bleach.
(4) Mace.
(5) Pepper spray.
(6) Spillable batteries, except those in wheelchairs.
(7) Spray Paint.
(8) Tear gas.

II. *Permitted Items.* For purposes of 49 U.S.C. 40101 *et seq.* and 49 CFR 1540.111, TSA does not consider the items on the following lists as weapons, explosives, and incendiaries because of medical necessity or because they appear to pose little risk if, as is required, they have passed through screening. Therefore, passengers may carry these items as accessible property or on their person through passenger screening checkpoints and into airport sterile areas and the cabins of passenger aircraft.

A. *Medical and Personal Items.*
(1) Braille note taker, slate and stylus, and augmentation devices.
(2) Cigar cutters.
(3) Corkscrews.
(4) Cuticle cutters.
(5) Diabetes-related supplies/equipment (once inspected to ensure prohibited items are not concealed), including: insulin and insulin loaded dispensing products; vials or box of individual vials; jet injectors; pens; infusers; and preloaded syringes; and an unlimited number of unused syringes, when accompanied by insulin; lancets;

blood glucose meters; blood glucose meter test strips; insulin pumps; and insulin pump supplies.

Insulin in any form or dispenser must be properly marked with a professionally printed label identifying the medication or manufacturer's name or pharmaceutical label.

(6) Eyeglass repair tools, including screwdrivers.

(7) Eyelash curlers.

(8) Knives, round-bladed butter or plastic.

(9) [Reserved]

(10) Matches (maximum of four books, strike on cover, book type).

(11) Nail clippers.

(12) Nail files.

(13) Nitroglycerine pills or spray for medical use, if properly marked with a professionally printed label identifying the medication or manufacturer's name or pharmaceutical label.

(14) Personal care or toiletries with aerosols, in limited quantities.

(15) Prosthetic device tools and appliances (including drill, Allen wrenches, pullsleeves) used to put on or remove prosthetic devices, if carried by the individual with the prosthetic device or his or her companion.

(16) Safety razors (including disposable razors).

(17) Scissors, plastic or metal with blunt tips; and ostomy scissors with pointed tips with an overall length, including blades and handle, of four inches or less, when accompanied by an ostomate supply kit containing related supplies, such as collection pouches, wafers, positioning plates, tubing, or adhesives.

(18) Tweezers.

(19) Umbrellas (once inspected to ensure prohibited items are not concealed).

(20) Walking canes (once inspected to ensure prohibited items are not concealed).

B. *Toys, Hobby Items, and Other Items Posing Little Risk.*

(1) Knitting and crochet needles.

(2) Toy Transformer(R) robots and the like.

(3) Toy weapons (if not realistic replicas).

III. *Items Prohibited in Sterile and Cabin Areas, but that May Be Placed in Checked Baggage.* Passengers may place prohibited items other than explosives, incendiaries, disabling chemicals and other dangerous items (other than individual self-defense sprays as noted below), and loaded firearms in their checked baggage, subject to any limitations provided in DOT's hazardous materials regulation. 49 CFR part 175.

A. *Pepper spray or mace.* A passenger may have one self-defense spray, not exceeding 4 fluid ounces by volume that incorporates a positive means to prevent accidental discharge. See 49 CFR 175.10(a)(4)(ii).

B. *Small arms ammunition.* A passenger may place small arms ammunition for personal use in checked baggage, but only if securely packed in fiber, wood or metal boxes, or other packaging specifically designed to carry small amounts of ammunition. 49 CFR 175.10(a)(5).

C. *Unloaded firearms.* A passenger may place an unloaded firearm or starter pistol in a checked bag if the passenger declares to the airline operator, either orally or in writing, before checking the baggage, that the passenger has a firearm in his or her bag and that it is unloaded; the firearm is carried in a hard-sided container; and the container is locked, and only the passenger has the key or combination. 49 CFR 1540.111(c).

D. *Club-like items.* A passenger also may transport club-like objects and sharp objects in checked baggage, as long as they do not contain explosives or incendiaries.

E. [*Reserved.*]

IV. *Lists are not Exclusive.* Neither the prohibited items list nor the permitted items list contains all possible items. A screener has discretion to prohibit an individual from carrying an item into a sterile area or onboard an aircraft if the screener determines that the item is a weapon, explosive, or incendiary, regardless of whether the item is on the prohibited items list or the permitted items list. For example, if a cigar cutter or other article on the permitted list appears unusually dangerous, the screener may refuse to allow it in sterile areas. Similarly, screeners may allow individuals to bring items into the sterile area that are not on the permitted items list. In addition, items may be prohibited from the cabin of an aircraft, or allowed in only limited quantities, by Department of Transportation regulations governing hazardous materials. Individuals with questions about the carriage of hazardous materials on passenger aircraft may call the Hazardous Materials Information Center at 1–800–467–4922 for more information.

Issued in Arlington, Virginia, August 26, 2005.

Kip Hawley,

Assistant Secretary.

[FR Doc. 05–17392 Filed 8–29–05; 8:47 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 050816224–5224–01; I.D. 081005A]

RIN 0648–AT69

Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Pacific Whiting; Fishery Closure

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

ACTION: Temporary rule; request for comments.

SUMMARY: This emergency rule, implemented under the authority of the Pacific Coast groundfish fishery management plan (FMP), establishes a salmon conservation zone for the primary Pacific whiting (whiting) fishery, shoreward of a boundary line approximating the 100–fm (183–m) depth contour. Under this rule, fishing for Pacific whiting within the salmon conservation zone is prohibited.

DATES: Effective August 26, 2005, until February 27, 2006. Comments must be received no later than 5 p.m., local time on September 26, 2005.

ADDRESSES: You may submit comments, identified by I.D. 081105A by any of the following methods:

- E-mail: *2005hakesalmon.nwr@noaa.gov*: Include 081105A in the subject line of the message.
- Federal eRulemaking Portal: *www.regulations.gov*. Follow the instructions for submitting comments.
- Fax: 206–526–6736, Attn: Becky Renko
- Mail: D. Robert Lohn, Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115–0070, Attn: Becky Renko.

Copies of the Final Environmental Impact Statement (FEIS) for the harvest specifications and management measures for the 2005–2006 groundfish fisheries are available from Donald McIsaac, Executive Director, Pacific Fishery Management Council (Council), 7700 NE Ambassador Place, Portland, OR 97220, phone: 503–820–2280. Copies of the Record of Decision, final regulatory flexibility analysis (FRFA), and the Small Entity Compliance Guide for the groundfish harvest specifications for 2005–2006 are available from D.

Robert Lohn, Administrator, Northwest Region (Regional Administrator), NMFS, 7600 Sand Point Way, NE, Seattle, WA 98115–0070.

FOR FURTHER INFORMATION CONTACT: Becky Renko (Northwest Region, NMFS), phone: 206–526–6110; fax: 206–526–6736; and; email: *becky.renko@noaa.gov*, or Yvonne deReynier, phone: 206–526–6129; fax: 206–526–6736; and; e-mail: *yvonne.dereynier@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Access

This emergency rule is accessible via the Internet at the Office of the **Federal Register**'s website at *www.gpoaccess.gov/fr/index.html*. Background information and documents are available at the NMFS Northwest Region website at *www.nwr.noaa.gov/1sustfsh/gdfsh01.htm*.

Pacific Whiting Fishery

Pacific whiting (*Merluccius productus*) is a very productive species with highly variable recruitment (the biomass of fish that mature and enter the fishery each year) and a relatively short life span when compared to other groundfish species. Whiting has the largest (by volume) annual allowable harvest levels of the 90+ groundfish species managed under the FMP. The coastwide whiting stock is managed by both the United States and Canada, and mature whiting are commonly available to vessels operating in U.S. waters from April through October. Background on the stock assessment for and the establishment of the 2005 acceptable biological catch (ABC) and optimum yield (OY) for Pacific whiting is provided in the final rule for the 2005 whiting harvest specifications, published May 3, 2005 (70 FR 22808).

Whiting is taken by vessels using mid-water trawl gear in four commercial sectors: tribal trawl vessels (Makah Tribe); non-tribal trawl catcher boats delivering whiting to shore-based processing plants; non-tribal trawl catcher boats delivering whiting to motherships at sea; and, non-tribal catcher-processors. For 2005, using the sliding scale allocation method described in the final rule on the 2005 whiting harvest specifications, the tribal whiting allocation is 35,000 mt. The 2005 non-tribal commercial OY for whiting is 232,069 mt. This is calculated by deducting the 35,000–mt tribal allocation and 2,000 mt for research catch and bycatch in non-groundfish fisheries from the 269,069 mt total catch OY. Regulations at 50 CFR 660.323(a)(24) divide the commercial OY into separate allocations for the non-tribal catcher/processor, mothership, and shore-based sectors of the whiting fishery. Each sector receives a portion of the commercial OY, with the catcher/processors getting 34 percent (78,903 mt in 2005), motherships getting 24 percent (55,696 mt in 2005), and the shore-based sector getting 42 percent (97,469 mt in 2005).

The best available information as of August 11, 2005, indicates that the following amounts of whiting have been taken by the four whiting sectors participating in the 2005 primary whiting season: tribal, 28,325 mt (80.9 percent of allocation); non-tribal shore-based, 70,176 mt (71.9 percent of allocation); non-tribal mothership, 37,659 mt (67.6 percent of allocation); non-tribal catcher/processor, 48,006 mt (60.8 percent of allocation).

Salmon Bycatch in the 2005 Primary Whiting Season

Primary seasons for the non-tribal whiting fishery are provided at 50 CFR 660.373(b). In 2005, the primary seasons for the non-tribal whiting fishery started on the following dates: Catcher/processor sector May 15; Mothership sector May 15; Shore-based sector June 15; north of 42° N. lat., April 1 between 42° and 40°30′ N. lat., and April 15 south of 40°30′ N. lat. The tribal fishery, conducted by Makah Tribe members, began on May 1, 2005. The Makah Tribe's U&A fishing area is located within the U.S. West Coast exclusive economic zone (EEZ) north of 48°02′15″ N. lat. and east of 125°44′00″ W. long.

NMFS tracks catch levels of target and non-target species in the at-sea catcher-processor and mothership sectors inseason. The agency also receives inseason catch and bycatch data from the states of Oregon, California, and Washington on the shore-based sector and from the Makah Tribe on its whiting fishery. NMFS is responsible for closing the non-tribal fishing sectors when it estimates the whiting allocations for these sectors will be met.

Chinook bycatch in the non-tribal at-sea and tribal whiting fisheries is closely monitored. As in previous years, most shore-based whiting vessels were issued exempted fishing permits (EFPs) for landing unsorted whiting during the primary season. EFPs allow vessels delivering to shore-based harvesters to delay sorting the catch until offload. Delaying sorting until offload allows state biologists and industry-hired monitors to collect information on the incidental catch of prohibited species at the processing facilities. Since 2004, all EFP participants have been required to carry video cameras for monitoring catch retention at sea. To provide total catch data monitoring in the at-sea processing sectors of the fishery, all at-sea processing vessels carry two NMFS-trained observers while participating in the fishery. Total catch data from the whiting fisheries is available more swiftly for use in management decisions than data from many other West Coast groundfish fisheries.

ESA Consultation on the Whiting Fishery

The incidental take statement prepared pursuant to the Endangered Species Act requires reinitiation of consultation if the fishery exceeds an 11,000–Chinook salmon annual bycatch amount. In early July of the 2005 fisheries, NMFS first saw data on higher than expected salmon bycatch rates. By the end of July, primary whiting season data indicated that the fishery would likely exceed a bycatch of 11,000 salmon in 2005. The best available information as of August 11, 2005, indicates that the following numbers of Chinook salmon have been taken as bycatch in the whiting fishery by the four whiting sectors participating in the 2005 primary whiting season: tribal, 3,911 fish; non-tribal shore-based, 3,622 fish; non-tribal mothership, 2,143 fish; non-tribal catcher/processor, 1,607 fish. Therefore, NMFS has reinitiated consultation on the effect of the primary whiting fishery on salmon ESUs listed as endangered or threatened, and is taking this emergency action to reduce the effect of the whiting fishery on salmon for the remainder of the 2005 primary season.

NMFS reviewed 2001–2004 salmon bycatch data from the primary whiting season to determine if there were a depth at which whiting fishery participants could catch whiting, yet have lower salmon bycatch rates. Fishery data from those years indicate that salmon bycatch rates in the August-November period decline notably from the May-July bycatch rates and decrease for vessels fishing offshore of the 100-fm (183- m) depth contour. Therefore, NMFS is implementing an emergency rule that creates a salmon conservation zone for West Coast EEZ waters shoreward of a boundary line approximating the 100–fm (183–m) depth contour, wherein fishing for whiting is prohibited. Federal regulations at 50 CFR 660.393(a) provide latitude/longitude coordinates that define a boundary line at the 100–fm (183–m) depth contour; this boundary line is used, as necessary, to define the boundaries of trawl or non-trawl Rockfish Conservation Areas for the non-whiting groundfish fisheries.

This same boundary line is used as the offshore boundary of the Ocean Salmon Conservation Zone established by this rule.

Regulatory Changes put into Effect Through This Emergency Action

Federal regulations at 50 CFR 660.373(c) establish two closed areas for the Pacific whiting fishery that are intended to constrain the effects of the fishery on Klamath and Columbia River salmon. Additional salmon protection is provided at 50 CFR 660.373(d), which sets whiting trip limits for vessels operating shoreward of the 100–fm (183–m) depth contour in the Eureka management area (from 43°00′ to 40°30′ N. lat.) This emergency rule temporarily establishes a third salmon conservation zone for all West Coast waters shoreward of a boundary line approximating the 100–fm (183–m) depth contour. The latitude/longitude coordinates defining the boundary line that approximates the 100–fm (183–m) depth contour are provided at § 660.393(a).

Classification

This emergency rule establishes a coastwide salmon conservation zone for the Pacific whiting fishery. It is issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Act at section 305(c)(1) and is consistent with the regulations implementing the FMP at 50 CFR part 660.

The Assistant Administrator for Fisheries, NOAA (AA) finds good cause to waive the requirement to provide prior notice and comment on this action pursuant to 5 U.S.C. 553(b)(B)., because Pproviding prior notice and opportunity for public comment would be impracticable and contrary to the public interest for the following reasons. The information on which this action is based was not available to NMFS until July 2005 and the closed area implemented by this rule needs to be in place as soon as possible in August 2005 in order to provide additional protection for ESA-listed endangered and threatened salmon during the remainder of the 2005 primary primary whiting season, as well as during the ESA consultation that is currently ongoing for these salmon. If the agency were to conductundergo a proposed and final rulemaking for this action, the rule would not likely be finalized until after the whiting fisheries had achieved their 2005 whiting quotas. The bycatch of ESA-listed salmon could continue unabated during this time. Providing prior notice and comment would be impracticable because affording prior notice and opportunity for public comment would impede the agency's mandated duty to manage fisheries to protect endangered and threatened salmon.

For the reasons described above, pursuant to 5 U.S.C. 553(d)(3), the AA also finds good cause to waive the 30–day delay in effectiveness, so that this rule may become effective as soon as possible to provide immediate protection for ESA-listed endangered and threatened salmon.

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

This action is within the scope of the October 2004 Environmental Impact Statement (EIS) prepared by the Council for the 2005–2006 Pacific Coast groundfish ABCs, OYS, and management measures. Copies of this EIS are available from the Pacific Council (See **ADDRESSES**.)

This emergency rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior notice and opportunity for public comment.

The proposed and final rules to implement the 2005–2006 groundfish harvest specifications and management measures were developed after meaningful consultation and collaboration with tribal officials from the area covered by the FMP, per Executive Order 13175. Under the Magnuson-Stevens Act at 16 U.S.C. 1852(b)(5), one of the voting members of the Pacific Council must be a representative of an Indian tribe with federally recognized fishing rights from the area of the Council's jurisdiction. The tribal representative on the Council made a motion to adopt the 2005–2006 tribal management measures, which was passed by the Council. Of the four groundfish treaty tribes, only the Makah Tribe conducts a whiting fishery. NMFS consulted with the Makah Tribe on salmon bycatch in their whiting fishery and on implementing a fishery closure shoreward of a boundary line approximating the 100–fm (183–m) depth contour. The Makah Tribe is implementing tribal fishery regulations to close the tribal whiting fishery shoreward of 100- fm (183- m) and is beginning testing a salmon bycatch excluder device that has been successfully used to exclude salmon bycatch in Alaska pollock fisheries.

List of Subjects in 50 CFR Part 660

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

Dated: August 26, 2005.

James W. Balsiger,

Acting Deputy, Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

■ 1. The authority citation for part 660 continues to read as follows:

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

■ 2. In § 660.373, paragraph (c)(3) is added to read as follows:

§ 660.373 Pacific whiting (whiting) fishery management.

* * * * *

(c) * * *

(3) *Ocean Salmon Conservation Zone.* All waters shoreward of a boundary line approximating the 100- fm (183- m) depth contour. Latitude and longitude coordinates defining the boundary line approximating the 100–fm (183–m) depth contour are provided at § 660.393(a). This closure supplements the closures provided in this section at paragraphs (c)(1) and (c)(2).

* * * * *

[FR Doc. 05–17342 Filed 8–26–05; 2:26 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 041126332–5039–02; I.D. 082505A]

Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pollock in the Bering Sea Subarea

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

ACTION: Temporary rule; reallocation.

SUMMARY: NMFS is reallocating projected unused amounts of Bering Sea subarea (BS) pollock from the incidental catch allowance to the directed fisheries. This action is necessary to allow the 2005 total allowable catch (TAC) of pollock to be harvested.

DATES: Effective August 26, 2005, until 2400 hrs, A.l.t., December 31, 2005.

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 Groundfish of the Bering Sea and Aleutian Islands Management 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 2005 pollock incidental catch allowance in the BS was established as 44,577 metric tons by the 2005 and 2006 final harvest specifications for groundfish in the BSAI (70 FR 8979, February 24, 2005), in accordance with § 679.20(a)(5)(i)(A)(1) and the American Fisheries Act (AFA) (Public Law 105–277, Division C, Title II).

As of August 22, 2005, the Administrator, Alaska Region, NMFS, has determined that approximately 11,525 metric tons (mt) of pollock remain in the incidental catch allowance. Based on projected harvest rates of other groundfish species and the expected incidental catch of pollock in those fisheries, the Regional Administrator has determined that 7,000 mt of pollock specified in the incidental catch allowance will not be necessary as incidental catch. Therefore, NMFS is apportioning the projected unused amount, 7,000 mt, of pollock from the incidental catch allowance to the directed fishing allowances established pursuant to § 679.20(a)(5)(i)(A). Pursuant to the pollock allocation requirements set forth in § 679.20(a)(5)(i), this transfer will increase the allocation to catcher vessels harvesting pollock for processing by the inshore component by 3,500 mt, to catcher/processors and catcher vessels harvesting pollock for processing by catcher/processors in the offshore component by 2,800 mt and to catcher vessels harvesting pollock for processing by motherships in the offshore component by 700 mt. Pursuant to § 679.20(a)(5)(i)(A)(4), no less than 8.5 percent of the 2,800 mt allocated to catcher/processors in the offshore component, 238 mt, will be available for harvest only by eligible catcher vessels delivering to listed catcher/processors. Pursuant to § 679.20(a)(5)(i)(A)(4)(iii), an additional 14 mt or 0.5 percent of the catcher/processor sector allocation of pollock will be available to unlisted AFA catcher/processors.

Pursuant to § 679.20(a)(5)(I) (A), Tables 3 and 10 are revised for the 2005 B season consistent with this reallocation. Footnote 1 continues to state the allocations under regulations at § 679.20(a)(5).

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TABLE 3–2005 AND 2006 ALLOCATIONS OF POLLOCK TACS TO THE DIRECTED POLLOCK FISHERIES AND TO THE CDQ DIRECTED FISHING ALLOWANCES (DFA)[1]

[Amounts are in metric tons]

Area and sector	2005 Allocations	2005 A season[1]		2005 B season[1]	2006 Allocations	2006 A season[1]		2006 B season[1]
		A season DFA	SCA harvest limit[2]	B season DFA		A season DFA	SCA harvest limit[2]	B season DFA
Bering Sea subarea	1,494,900	.....	.....	.....	1,487,756	.....	.....	.....
CDQ DFA	149,750	59,140	41,398	90,610	148,776	59,510	41,657	89,265
ICA[1]	37,577	.....	.....	.....	44,856	.....	.....	.....
AFA Inshore	653,787	257,215	180,050	396,572	647,062	258,825	181,177	388,237
AFA Catcher/Processors[3]	523,029	205,772	144,040	317,258	517,650	207,060	144,942	310,590
Catch by C/Ps	478,572	188,281	.....	290,291	473,650	189,460	.....	284,190
Catch by CVs[3]	44,457	17,491	.....	26,967	44,000	17,600	.....	26,400
Unlisted C/P Limit[4]	2,615	1,029	.....	1,586	2,588	1,035	.....	1,553
AFA Motherships	130,757	51,443	36,010	79,314	129,412	51,765	36,235	77,647
Excessive Harvesting Limit[5]	228,825	.....	.....	.....	226,472	.....	.....	.....
Excessive Processing Limit[6]	392,272	.....	.....	.....	388,237	.....	.....	.....
Total Bering Sea DFA	1,457,323	573,570	401,498	883,754	1,442,900	577,160	404,012	865,740
Aleutian Islands subarea[1]	2,600	.....	.....	.....	19,000	.....	.....	.....
CDQ DFA	.....	.....	.....	.....	1,900	760	.....	1,140
ICA	1,400	740	.....	660	2,000	1,200	.....	800
Aleut Corporation	1,200	200	.....	1,000	15,100	9,800	.....	5,300
Bogoslof District ICA[7]	10	.....	.....	.....	10	.....	.....	.....

[1] Under § 679.20(a)(5)(i)(A), the Bering Sea subarea pollock after subtraction for the CDQ DFA - 10 percent and the ICA - 3.35 percent, the pollock TAC is allocated as a DFA as follows: inshore component - 50 percent, catcher/processor component - 40 percent, and mothership component - 10 percent. In the Bering Sea subarea, the A season, January 20 - June 10, is allocated 40 percent of the DFA and the B season, June 10 - November 1 is allocated 60 percent of the DFA. The Aleutian Islands (AI) directed pollock fishery allocation to the Aleut Corporation remains after first subtracting for the CDQ DFA - 10 percent and second the ICA - 2,000 mt. The Aleut Corporation directed pollock fishery is closed to directed fishing until the management provisions for the AI directed pollock fishery become effective under Amendment 82. In the AI subarea, the A season is allocated 40 percent of the ABC and the B season is allocated the remainder of the directed pollock fishery.

[2] In the Bering Sea subarea, no more than 28 percent of each sector's annual DFA may be taken from the SCA before April 1. The remaining 12 percent of the annual DFA allocated to the A season may be taken outside of SCA before April 1 or inside the SCA after April 1. If 28 percent of the annual DFA is not taken inside the SCA before April 1, the remainder is available to be taken inside the SCA after April 1.

[3] Under § 679.20(a)(5)(i)(A)(4), not less than 8.5 percent of the DFA allocated to listed catcher/processors shall be available for harvest only by eligible catcher vessels delivering to listed catcher/processors.

[4] Under § 679.20(a)(5)(i)(A)(4)(iii), the AFA unlisted catcher/processors are limited to harvesting not more than 0.5 percent of the catcher/processors sector's allocation of pollock.

[5] Under § 679.20(a)(5)(i)(A)(6) NMFS establishes an excessive harvesting share limit equal to 17.5 percent of the sum of the pollock DFAs.

[6] Under § 679.20(a)(5)(i)(A)(7) NMFS establishes an excessive processing share limit equal to 30.0 percent of the sum of the pollock DFAs.

[7] The Bogoslof District is closed by the final harvest specifications to directed fishing for pollock. The amounts specified are for ICA only, and are not apportioned by season or sector.

TABLE 10– 2005 AND 2006 BERING SEA SUBAREA INSHORE COOPERATIVE ALLOCATIONS
[Amounts are in metric tons]

Cooperative name and member vessels	Sum of member vessel's official catch histories[1]	Percentage of inshore sector allocation	2005 Annual cooperative allocation	2006 Annual cooperative allocation
Akutan Catcher Vessel Association ALDEBARAN, ARCTIC EXPLORER, ARCTURUS, BLUE FOX, CAPE KIWANDA, COLUMBIA, DOMINATOR, EXODUS, FLYING CLOUD, GOLDEN DAWN, GOLDEN PISCES, HAZEL LORRAINE, INTREPID EXPLORER, LESLIE LEE, LISA MELINDA, MARK I, MAJESTY, MARCY J, MARGARET LYN, NORDIC EXPLORER, NORTHERN PATRIOT, NORTHWEST EXPLORER, PACIFIC RAM, PACIFIC VIKING, PEGASUS, PEGGY JO, PERSEVERANCE, PREDATOR, RAVEN, ROYAL AMERICAN, SEEKER, SOVEREIGNTY, TRAVELER, VIKING EXPLORER	245,922	28.130%	183,910	182,018
Arctic Enterprise Association BRISTOL EXPLORER, OCEAN EXPLORER, PACIFIC EXPLORER	36,807	4.210%	27,525	27,242
Northern Victor Fleet Cooperative ANITA J, COLLIER BROTHERS, COMMODORE, EXCALIBUR II, GOLDRUSH, HALF MOON BAY, MISS BERDIE, NORDIC FURY, PACIFIC FURY, POSEIDON, ROYAL ATLANTIC, SUNSET BAY, STORM PETREL	73,656	8.425%	55,083	54,516
Peter Pan Fleet Cooperative AJ, AMBER DAWN, AMERICAN BEAUTY, ELIZABETH F, MORNING STAR, OCEAN LEADER, OCEANIC, PACIFIC CHALLENGER, PROVIDIAN, TOPAZ, WALTER N	23,850	2.728%	17,836	17,652

Unalaska Cooperative ALASKA ROSE, BERING ROSE, DESTINATION, GREAT PACIFIC, MESSIAH, MORNING STAR, MS AMY, PROGRESS, SEA WOLF, VANGUARD, WESTERN DAWN	106,737	12.209%	79,822	79,001
UniSea Fleet Cooperative ALSEA, AMERICAN EAGLE, ARGOSY, AURIGA, AURORA, DEFENDER, GUN-MAR, MAR-GUN, NORDIC STAR, PACIFIC MONARCH, SEADAWN, STARFISH, STARLITE, STARWARD	213,521	24.424%	159,679	158,037
Westward Fleet Cooperative ALASKAN COMMAND, ALYESKA, ARCTIC WIND, CAITLIN ANN, CHELSEA K, DONA MARTITA, FIERCE ALLEGIANCE, HICKORY WIND, OCEAN HOPE 3, PACIFIC KNIGHT, PACIFIC PRINCE, VIKING, WESTWARD I	173,744	19.874%	129,932	128,595
Open access AFA vessels	0	0.00%	0	0
Total inshore allocation	874,238	100%	653,787	647,062

[1]According to regulations at § 679.62(e)(1), the individual catch history for each vessel is equal to the vessel's best 2 of 3 years inshore pollock landings from 1995 through 1997 and includes landings to catcher/processors for vessels that made 500 or more mt of landings to catcher/processors from 1995 through 1997.

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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) and 679.20(b)(3)(iii)(A) 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 projected unused amounts of BS pollock from the incidental catch allowance to the directed fisheries. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of August 22, 2005.

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 taken under 50 CFR 679.20, and is exempt from review under Executive Order 12866.

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

Dated: August 26, 2005.

Alan D. Risenhoover,

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

[FR Doc. 05–17341 Filed 8–26–05; 2:26 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 70, No. 168
Wednesday, August 31, 2005

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 THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

[Docket No. TX–052–FOR]

Texas Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; withdrawal of proposed amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are announcing the withdrawal of an amendment to the Texas regulatory program (Texas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Texas proposed to add a new policy document to its program that describes mine permit implementation actions that would not, in the opinion of the Railroad Commission of Texas (Commission), be considered permit revisions and as such would not be subject to Commission review and approval. Texas intended to revise its program to improve operational efficiency. Texas is withdrawing the amendment at its own initiative.

DATES: This withdrawal is made on August 31, 2005.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Director, Tulsa Field Office. Telephone: (918) 581–6430. E-mail: *mwolfrom@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Texas Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Texas program effective February 16, 1980. You can find background information on the Texas program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Texas program in the February 27, 1980, **Federal Register** (45 FR 12998). You can also find later actions concerning the Texas program and program amendments at 30 CFR 943.10, 943.15 and 943.16.

II. Submission of the Proposed Amendment

By letter dated December 23, 2003 (Administrative Record No. TX–657), Texas sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Texas sent the amendment at its own initiative. Texas proposed to add a new policy document to its program that describes mine permit implementation actions that would not, in the opinion of the Commission, be considered permit revisions and as such would not be subject to Commission review and approval. If approved, the implementation of this policy would impact the way current mine permit applications are prepared and how revisions are processed. We announced receipt of the proposed amendment in the February 9, 2004, **Federal Register** (69 FR 5942). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendments adequacy. We held a public meeting in Mount Pleasant, Texas, on March 11, 2004, and entered a summary of this meeting into the administrative record (Administrative Record No. TX–657.14). The public comment period ended on March 10, 2004. We received comments from one industry group and one private citizen.

During our review of the amendment, we identified concerns regarding incomplete permit renewal applications and the revision of these permits without regulatory authority review and approval. We notified Texas of these concerns by fax dated April 19, 2004, (Administrative Record No. TX–657.15). In a letter dated July 12, 2005, (Administrative Record No. TX–657.17), Texas notified us that it was withdrawing the proposed amendment. Because the proposed amendment is not necessary to make the State's program consistent with SMCRA, we accepted the withdrawal. Therefore, the proposed amendment announced in the February 9, 2004, **Federal Register** is withdrawn.

List of Subjects in 30 CFR Part 943

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 17, 2005.

Ervin J. Barchenger,

Acting Regional Director, Mid-Continent Region.

[FR Doc. 05–17336 Filed 8–30–05; 8:45 am]
BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

[Docket No. TX–054–FOR]

Texas Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are announcing receipt of a proposed amendment to the Texas regulatory program (Texas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Texas proposes to revise its fish and wildlife habitat revegetation guidelines by adding technical standards for reclaiming mined land to habitat suitable for bobwhite quail and other grassland bird species and by making associated changes to existing guidelines. Texas intends to revise its program to encourage reclamation practices that are suitable for grassland bird species.

This document gives the times and locations that the Texas program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the

amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4 p.m., c.d.t., September 30, 2005. If requested, we will hold a public hearing on the amendment on September 26, 2005. We will accept requests to speak at a hearing until 4 p.m., c.d.t. on September 15, 2005.

ADDRESSES: You may submit comments, identified by Docket No. TX–054–FOR, by any of the following methods:

- E-mail: *mwolfrom@osmre.gov*. Include "Docket No. TX–054–FOR" in the subject line of the message.
- Mail/Hand Delivery: Michael C. Wolfrom, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135–6547.
- Fax: (918) 581–6419.
- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Comment Procedures" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to review copies of the Texas program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document, you must go to the address listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Tulsa Field Office.

Michael C. Wolfrom, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135–6547. Telephone: (918) 581–6430. E-mail: *mwolfrom@osmre.gov*.

In addition, you may review a copy of the amendment during regular business hours at the following location:

Surface Mining and Reclamation Division, Railroad Commission of Texas, 1701 North Congress Avenue, Austin, Texas 78711–2967. Telephone: (512) 463–6900.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Director, Tulsa Field Office. Telephone: (918) 581–6430. E-mail: *mwolfrom@osmre.gov*.

SUPPLEMENTARY INFORMATION:

I. Background on the Texas Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Texas program effective February 16, 1980. You can find background information on the Texas program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Texas program in the February 27, 1980, **Federal Register** (45 FR 12998). You can also find later actions concerning the Texas program and program amendments at 30 CFR 943.10, 943.15 and 943.16.

II. Description of the Proposed Amendment

By letter dated July 26, 2005 (Administrative Record No. TX–659), Texas sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Texas sent the amendment at its own initiative. Below is a summary of the changes proposed by Texas. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES.**

A. Section V. Revegetation Success Standards

At the request of the Texas Parks and Wildlife Department, Texas proposes to revise the following provisions in Section V of its April 1999 revegetation guidelines document entitled "Procedures and Standards for Determining Revegetation Success on Surface-Mined Lands in Texas":

1. D.1 Fish and Wildlife Habitat—Ground Cover

At Section V.D.1, Texas proposes to add a ground cover technical standard for bobwhite quail and other grassland bird species and other associated changes. Texas also proposed to make some minor clarifying changes to existing provisions.

a. Texas proposes to change the heading of the third paragraph from "Use of Technical Standard" to "Use of General Technical Standard."

b. Texas proposes to add two new paragraphs concerning the technical standard for bobwhite quail and other grassland bird species. They read as follows:

Use of Bobwhite Quail and Other Grassland Bird Species Technical Standard. The technical standard is 70% ground cover.

Erosion of landscapes is a natural process dependent on relief, type of geologic material, precipitation, and vegetative cover. Appropriate reclamation land use planning takes these factors into account and should ensure that in all cases ground cover will be adequate to control erosion.

c. Texas proposes to revise the second sentence of the paragraph entitled "Statistical Comparison" to read as follows:

Obtain the lowest acceptable value by multiplying the appropriate technical standard (re: precipitation level) by 0.9 (*i.e.*, General: 78% × 0.9 = 70% or Bobwhite Quail: 70% × 0.9 = 63%).

2. D.2 Fish and Wildlife Habitat—Woody-Plant Stocking

Texas proposes to add the following new paragraph under the heading "Use of Technical Standards."

Mottes locations planted to support Bobwhite Quail and other grassland bird species habitat shall be mapped at the time of planting. The success of woody plant stocking (stem count) will be based on meeting or exceeding the technical standard for motte density per acre and by counting the number of stems per motte.

B. Appendix B—Summary of Revegetation Success Standards—Fish and Wildlife Habitat Only

Texas proposes to revise revegetation parameters and performance standards for the ground cover and woody-plant stocking rate section of the table in Appendix B.

1. The first paragraph of the ground cover portion of the table is revised by adding the word "General." The revised paragraph reads as follows:

90% of the Following General Technical Standard: 78%

2. Texas proposes to add the following new paragraph:

90% of the Following Bobwhite Quail and Grassland Bird Species Technical Standard: 70%

3. The first paragraph of the Woody-Plant Stocking Rate portion of the table is revised by adding an exception to the 90% technical standard as follows:

90% of the Following Technical Standard except for mottes used to support Bobwhite Quail and Grassland Bird Species.

C. Attachment 2—Texas Parks and Wildlife Department (TPWD) Recommendations for the Development of Success Standards for Woody-Plant Stocking Rates

Texas proposes to make changes to the "Minimum Woody Vegetation Stocking Rates" table that is included in Attachment 2. The current table pertains to all fish and wildlife land use habitat categories. The revised table will include a general fish and wildlife land use habitat category and a specific fish and wildlife land use habitat category for bobwhite quail and other grassland bird species.

1. General Land Use Category and Planting Standards.

a. Texas added the headings "General Land Use Category" and "Planting Standards" to the existing table.

b. Under the "General Land Use Category" heading, Texas added the language "(See Note 1)" after the subheading of "Hardwood." Texas added "Note 1" to the bottom of the revised table. It reads as follows: "Note 1: Up to 30% of the planting standard can be pine. Longleaf pine is preferred, with native warm season grasses interspersed." Texas also removed the subheading of "Pine" along with the "Statewide" designation. Under the Planting Standards heading, Texas removed the language "0 stems per acre" for pine.

2. Fish & Wildlife Habitat—Bobwhite Quail and other Grassland Bird Species and Planting Standards

Texas added a new land use habitat category for bobwhite quail and other grassland bird species and the planting standards for the new habitat category to the existing table as shown below:

Fish and wildlife habitat—bobwhite quail and other grassland bird species	Planting standards
Native Brush:	
Statewide—Mottes	a. density of 2 mottes per acre. b. mottes 30–50 feet in diameter. c. 125 stems per motte or 250 stems per acre.
Hardwood or Pine Statewide.	0 to a maximum 20 stems per acre.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

Written Comments

Send your written or electronic comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (see **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Tulsa Field Office may not be logged in.

Electronic Comments

Please submit Internet comments as an ASCII or Word file avoiding the use of special characters and any form of encryption. Please also include "Attn: Docket No. TX–054–FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Tulsa Field Office at (918) 581–6430.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., c.d.t. on September 15, 2005. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT.** We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES.** We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. This determination is based on the fact that the Texas program does not regulate coal exploration and surface coal mining and reclamation operations on Indian lands. Therefore, the Texas program has no effect on Federally-recognized Indian tribes.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 943

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 17, 2005.

Ervin J. Barchenger,

Acting Regional Director, Mid-Continent Region.

[FR Doc. 05–17337 Filed 8–30–05; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

RIN 0720–AA92

TRICARE; Revision of Participating Providers Reimbursement Rate; TRICARE Dental Program (TDP)

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule.

SUMMARY: The Department is publishing this proposed rule to revise the requirements and procedures for the reimbursement of TRICARE Dental Program participating providers. Participating providers will no longer be reimbursed at the equivalent of a percentile of prevailing charges sufficiently above the 50th percentile of prevailing charges made for similar services in the same locality (region) or state, or the provider's actual charge, whichever is lower, less any cost-share amount due for authorized services. Specifically, the revision will require TRICARE Dental Program participating providers to be reimbursed in accordance with the contractor's network agreements, less any cost-share amount due for authorized services.

Public comments are invited and will be considered for possible revisions to the final rule.

DATES: Written comments received at the address indicated below by October 31, 2005 will be accepted.

ADDRESSES: Because of staff and resource limitations, we can only accept comments by mail or electronic bill (e-mail). We are unable to accept comments by facsimile (FAX) transmission. Send e-mail comments to *TDP.rule@tma.osd.mil.* Mail written comments to the following address only: TRICARE Management Activity, TRICARE Operations/Dental Division, Skyline 5, Suite 810, 5111 Leesburg Pike, Falls Church, VA 22041–3206; Attention: Col. Gary C. Martin, Director. Please allow sufficient time for mailed

comments to be timely received in the event of delivery delays.

FOR FURTHER INFORMATION CONTACT: Col. Gary C. Martin, Office of the Assistant Secretary of Defense (Health Affairs)/ TRICARE Management Activity, telephone (703) 681–0039.

SUPPLEMENTARY INFORMATION:

I. Background

Revision of Participating Providers Reimbursement Rate. Currently, 32 CFR 199.13 requires the TRICARE Dental Program contractor to reimburse participating providers at the equivalent of a percentile of prevailing charges sufficiently above the 50th percentile of prevailing charges made for similar services in the same locality (region) or state, or the provider's actual charge, whichever is lower, less any cost-share amount due for authorized services. This provision was included in the regulation to constitute a significant financial incentive for participation of providers in the contractor's network and to ensure a network of quality providers through use of a higher reimbursement rate. This provision, however, places an unnecessary restriction on contractors that already have established, high quality provider networks with reimbursement rates below the 50th percentile that are of sufficient size to meet the access requirements of the TRICARE Dental Program. The reimbursement rates that have been negotiated over the life of the dental contract represent the general market rates for dental insurance reimbursement, and the proposed rule change would bring DoD reimbursement rates into line with the broader insurance market. Elimination of the 50th percentile requirement will afford the Government and enrollees significant cost savings through lower provider reimbursement costs by the contractor. Additionally, contractors have other methods available to ensure the TDP members receive high quality dental services. These quality assurance methods include, but are not limited to, licensing and credentialing standards, patient satisfaction assessments, and provider trend analyses.

II. Regulatory Procedures

The Department of Defense (DoD) has examined the economic implications of this proposed rule as required by Executive Order 12866. Executive Order 12866 directs agencies to assess costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including: having an annual effect on the economy of $100 million or more, adversely affecting a sector of the economy in a material way, adversely affecting competition, or adversely affecting jobs. A regulation is also considered a significant regulatory action if it raises novel legal or policy issues.

DoD concludes that this proposed rule is a significant regulatory action under the Executive Order since it raises novel policy issues under Section 3(f)(4). DoD concludes, however, that this proposed rule does not meet the significance threshold of $100 million effect on the economy in any one year under Section 3(f)(1), with an estimated annual impact on the economy of $5 million (See attachment for details). The estimate annual impact was determined by comparing the current level of reimbursement for network dental providers in the TDP with the expected level of reimbursement under this Proposed Rule. The current rate of reimbursement was assessed by independent actuarial advisers. This rate is consistent with a market-driven level of payments that is necessary, on average, to maintain a large and stable network of dentists. The difference was multiplied by the projected level of utilization for network providers in 2006. In the aggregate, for all network TDP providers, the Proposed Rule is estimated to reduce network dental provider payments by $0–5 million in 2006. For the approximately 70,000 network dental providers, this impact averages $0–$70 per year per network dentist, which is less than 0.1 percent of the net income for the dentists in the U.S. (according to the American Dental Association's 2002 Survey of Dental Practice). Although the average impact is minimal, the upper end of the range for a network dentist is estimated to be as much as $1,700 per year. This assumes a decline of 2 percent in the reimbursement level for a network dentist whose practice consists of 15 percent TDP patients. The level of reimbursement required to have a stable network of providers is a percentile less than the current percentile of billed charges.

The Congressional Review Act establishes certain procedures for major rules, defined as those with similar major impacts. The Regulatory Flexibility Act (RFA) requires that each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation that would have significant impact on a substantial number of small entities. This is not a major rule under 5 U.S.C. 801. It is a significant regulatory action but not economically significant. In addition, we certify that this proposed rule will not significantly affect a substantial number of small entities for the reasons stated above. This rule has been designated and has been reviewed by the Office of Management and Budget as required under the provision of E.O. 12866.

Paperwork Reduction Act

This proposed rule contains a new information collection requirement. DoD has submitted the following proposal to OMB under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

Title: Claim Form.

Type of Request: New requirement.

Number of Respondents: 56,512.

Responses Per Respondent: 62.

Annual Responses: 3,503,744.

Average Burden Per Response: 15 minutes.

Annual Burden Hours: 875,936.

Needs and Uses: The TRICARE Management Activity (TMA) under the authority of the Office of the Assistant Secretary of Defense (Health Affairs)/ TMA Office of the Deputy Assistant Secretary of Defense has the responsibility for management of the TRICARE dental program as established in Title X, United States Code, section 1076a. The TDP claim form is required to gather information to make payment for legitimate dental claims, to assist in contractor surveillance and program integrity investigations and to audit financial transactions where the Department of Defense has a financial stake. The information from the claim form is also used to provide important cost share explanations to the beneficiary.

Affected Public: Business or other for-profit.

Frequency: 5 per month.

Respondent's Obligation: Voluntary.

Written comments and recommendations on the proposed information collection should be sent to the TRICARE Management Activity, Attn: Col Gary Martin, 5111 Leesburg Pike, Suite 810, Falls Church, VA 22041–3206 (703–681–0039). Comments should be received within 60 days of publication of this notice.

To request more information on this proposed information collection or to obtain a copy of the proposed and associated collection instruments, please write to TRICARE Management Activity, Attn: Col Gary Martin; 5111 Leesburg Pike, Suite 810, Falls Church, VA 22041–3206, or telephone Col Martin at 703–681–0039.

List of Subjects in 32 CFR Part 199

Claims, Dental health, Health care, Health insurance, Individuals with disabilities, Military personnel.

For the reasons set out in the preamble, 32 CFR part 199 is proposed to be amended as follows:

PART 199—[AMENDED]

1. The authority citation for Part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. Chapter 55.

2. Section 199.13(g)(2)(ii) is proposed to be revised to read as follows:

§ 199.13 TRICARE Dental Program.

* * * * *

(g) * * *

(2) * * *

(ii) Participating providers shall be reimbursed in accordance with the contractor's network agreements, less any cost-share amount due for authorized services.

* * * * *

Dated: August 25, 2005.

Jeannette Owings-Ballard,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–17299 Filed 8–30–05; 8:45 am]

BILLING CODE 5001–06–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[OAR–2005–0148; FRL–7963–1]

Advance Notice To Solicit Comments, Data and Information for Determining the Emissions Reductions Achieved in Ozone Nonattainment and Maintenance Areas From the Implementation of Rules Limiting the VOC Content of AIM Coatings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance notice of proposed rulemaking.

SUMMARY: By this action, EPA is soliciting comments, data and information for determining how to calculate the reductions in volatile organic compounds (VOC) emissions achieved in ozone nonattainment and maintenance areas from the implementation of rules which limit the VOC content of architectural coatings (commonly referred to as architectural industrial maintenance, or AIM, coatings). In addition to submitting comments, data and information, interested parties may also request to meet with EPA to present their recommended approaches and rationales.

DATES: Please submit comments, data, and information on or before October 17, 2005. Requests to meet with EPA should be made on or before September 30, 2005.

ADDRESSES: Submit your written comments, data and information, identified by Docket ID No. OAR–2005–0148, by one of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the on-line instructions for submitting comments.

Agency Web site: http://www.epa.gov/edocket. EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

E-mail: Send electronic mail (e-mail) to EPA Docket Center at *a-and-r-Docket@epa.gov.*

Fax: Send faxes to the EPA Docket Center at (202) 566–1741.

Mail: Air and Radiation Docket, U.S. Environmental Protection Agency, Mail Code 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Attn: Docket ID No. OAR–2005–0148, *Advance Notice for Information on Determining the Emissions Reductions Achieved from Limiting the VOC Content of Architectural Coating.* Please include a total of two copies.

Hand Delivery or Courier: EPA Docket Center (Air and Radiation Docket), U.S. Environmental Protection Agency, EPA West Building, Room B102, 1301 Constitution Avenue, NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for delivery of boxed information.

Instructions: Direct your comments to Docket ID No. OAR–2005–0148. The EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.epa.gov/edocket,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov or e-mail. The EPA EDOCKET and the federal regulations.gov websites are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic 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 during normal business hours at the Air and Radiation Docket, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave.,

NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Marcia L. Spink, Associate Director for Air Programs, Air Protection Division, Mail Code 3AP20, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103, telephone (215) 814–2104, or by e-mail at *spink.marcia@epa.gov*. To schedule a meeting with EPA, please contact David Sanders, U.S. EPA, Ozone Policy & Strategies Group, Air Quality Strategies & Standards Division, Mail Code C539–02, Office of Air Quality Planning & Standards, Research Triangle Park, NC 27711, telephone (919) 541–3356, or by e-mail at *sanders.dave@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, the terms "we" and "its" refer to the EPA.

I. Background

On May 13, 2005 (70 FR 25688), EPA published a final rule approving several State Implementation Plan (SIP) revisions for the District of Columbia, State of Maryland and Commonwealth of Virginia, including the post 1999–2005 Rate-of-Progress (ROP) plan for the Metropolitan Washington, DC 1-Hour Severe Ozone Nonattainment Area (the Washington area). That ROP plan relied upon, among other control measures, VOC emissions reductions from the District's, Maryland's and Virginia's SIP-approved AIM coatings rules to satisfy certain contingency measure requirements applicable to ROP plans.

These States' SIP-approved AIM coatings rules are based upon a model rule developed by the Ozone Transport Commission (OTC). The EPA's SIP approval of the District's, Virginia's and Maryland's AIM coating rules, themselves (70 FR 24959, 24970, 24979; May 12, 2005, respectively), involved no consideration or approval of an amount of VOC emissions reductions or credits achieved by those States' AIM coatings rules. Rather, EPA's basis for approval of these States' AIM coating rules, as well as Delaware's, Pennsylvania's and New York's OTC model rule-based AIM coatings rules (67 FR 70315, November 22, 2002; 69 FR 68080, November 23, 2004; and 69 FR 72118, December 13, 2004, respectively) as SIP revisions was its determination that those AIM rules are as stringent or more stringent than the otherwise applicable Federal AIM coatings rule.[1]

In publishing this action, EPA is not reopening its SIP approvals of any State AIM coatings rule or the Federal AIM coatings rule. The EPA is not reopening its determination that the SIP-approved State AIM rules are as stringent or more stringent than the otherwise applicable Federal AIM rule. Nor is EPA reopening its approval of the Washington area ROP plan, its decision with respect to credit for VOC reductions due to the State AIM rules in the Washington area ROP plan, or any SIP approval EPA has made to date in which credit for VOC reductions have been claimed due to either a State AIM coatings rule or the Federal AIM coatings rule. Please do not submit comments on any completed rulemakings.

As stated previously, however, the Washington area's post 1999–2005 ROP plan submitted by the District, Maryland and Virginia did rely upon, among other control measures, VOC emissions reductions from the three jurisdictions' AIM coatings rules to satisfy certain contingency measure requirements applicable to ROP plans. As part of EPA's proposed rulemaking process on the Washington area post 1999–2005 ROP plan, we independently performed calculations of the VOC emissions reductions achieved by implementation of the District's, Maryland's and Virginia's AIM coatings rules. The EPA did this analysis to confirm that implementation of the AIM coatings rules in Maryland, Virginia, and the District of Columbia would result in at least the amount of VOC emissions reductions relied upon by the States and the District of Columbia for those rules in the Washington area ROP plan.

During the public comment period of the proposed rule to approve the Washington area ROP plan (70 FR 2085; January 12, 2005), EPA received several comments, from both the regulated sector and the State of Maryland, related to the methodology and the associated baseline EPA employed to calculate the VOC emissions reductions from the three jurisdictions' AIM coatings rules. In the final rule approving the Washington area post 1999–2005 ROP plan (70 FR 25688; May 13, 2005), EPA explained that it was not necessary to choose a particular methodology or baseline in order to approve the ROP plan because all of the approaches presented by EPA or the commenters resulted in calculated VOC emissions reductions from implementation of Maryland, Virginia, and the District of Columbia's AIM coatings rules sufficient to satisfy the requirements of the ROP plan.

While it was not necessary to choose a particular methodology or baseline in order for EPA to approve the Washington area post 1999–2005 ROP plan, this may not always be the case. In the future, states may design reasonable further progress, attainment and maintenance plans for ozone nonattainment areas which rely upon VOC emissions reductions from the implementation of AIM coatings rules. For consistency from state to state in the development of such plans, and in EPA's subsequent evaluation of those plans, we are soliciting comments, data, information and recommendations as to the baseline and calculation methodology for determining the emission reductions achieved from the implementation of rules which limit the VOC content of AIM coatings. The EPA is commencing this process in recognition of the need to formulate a technically sound and consistent approach that states may use to account for the VOC emissions from the AIM coatings sector in compiling base year and projection emission inventories, demonstrating reasonable further progress, and conducting modeling analyses as part of their ozone SIP planning activities. The EPA included the following paragraph in its final rule approving the Washington area's post 1999–2005 ROP plan: "However, EPA recognizes the need to resolve conclusively how to determine the amount of VOC emission reductions achieved from the implementation of AIM coatings rules in a given ozone nonattainment area. This remains an issue of concern to the states, the regulated sector, and other interested parties. Therefore, EPA intends to conduct a separate process to solicit further comment, information and recommendations from all interested parties as to how to determine the amount of VOC emission reductions achieved from the implementation of AIM coatings rules in a given ozone nonattainment area." By publishing this Advance Notice to Solicit Comments, Data and Information for Determining the Emissions Reductions Achieved in Ozone Nonattainment and Maintenance Areas from the Implementation of Rules Limiting the VOC Content of AIM Coatings, EPA is hereby commencing the separate process referenced in our final approval of the ROP plan for the Washington area.

[1] See 40 CFR, part 59, subpart D—National Volatile Organic Compound Emission Standards for Architectural Coatings; source: 63 FR 48877, September 11, 1998.

Those parties interested in participating in this process by submitting comments, data information or recommendations may find the Supplementary Technical Support Document (TSD) which EPA prepared in support of the final rule approving the Washington area post 1999–2005 ROP plan (70 FR 25688; May 13, 2005) to be a useful reference with regard to these issues. This TSD presents some helpful examples of baselines and methodologies used to calculate the VOC emissions reductions achieved from the implementation of AIM coating rules.[2] This TSD is available, upon request, from the EPA Region 3 contact listed in the **FOR FURTHER INFORMATION CONTACT** section of this document, and is also in the EDOCKET (OAR–2005–0148–0002) for this action.

II. EPA's Intent Regarding the Comments, Data, Information and Recommendations

It is EPA's intent to consider all relevant comments, data, information, and recommendations submitted to us to formulate a practicable, technically sound approach for calculating the VOC emissions achieved and creditable from the implementation of an AIM coatings rule in a given ozone nonattainment or maintenance area. As previously stated, EPA is commencing this process in recognition of the need to formulate a technically sound and consistent approach that States may use to account for the VOC emissions from the AIM coatings sector in compiling base year and projection emission inventories, demonstrating reasonable further progress, and conducting modeling analyses as part of their ozone SIP planning activities. It would also provide for consistency in EPA's subsequent evaluations of states' attainment, maintenance and progress plans that rely upon emissions reductions from the AIM coatings sector.

Once EPA receives the comments, data, and information solicited herein, we will determine the appropriate next steps. The EPA believes, at this time, the next steps will likely include rulemaking and/or guidance to provide a practicable and technically sound approach for States, and other interested parties, to use in determining the VOC emissions reductions achieved by the implementation of AIM coating rules in ozone nonattainment and maintenance areas. Any such action will be conducted using notice and comment procedures. Once this rulemaking/guidance has been provided, it will be available for states to use in the development of future state implementation plan (SIP) revisions, if any, that rely upon VOC emissions reductions achieved by the implementation of AIM coating rules in ozone nonattainment and maintenance areas. This rulemaking/guidance will not require any state to amend previously approved SIP revisions, however, it may be used by states, at their discretion, to revise their current SIPs as they deem appropriate.

The EPA encourages all interested parties to participate in this process by submitting relevant comments, data, information and recommendations for how best to calculate the VOC emission reductions achieved from the adoption and implementation of an AIM coating rule in a given nonattainment or maintenance area.

III. Statutory and Executive Order Reviews

Under Executive Order (EO) 12866, Regulatory Planning and Review (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is, therefore, not subject to review by the Office of Management and Budget (OMB).

List of Subjects in 40 CFR Part 51

Environmental protection, Air pollution control, Ozone, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: August 24, 2005.

Stephen L. Johnson,

Administrator.

[FR Doc. 05–17357 Filed 8–30–05; 8:45 am]

BILLING CODE 6560–50–P

[2] By citing to this Supplementary TSD as a reference, EPA is not re-opening its final rule approving the Washington area post-1999–2005 ROP plan (70 FR 25688; May 13, 2005).

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[FRL–7961–4]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

AGENCY: The Environmental Protection Agency (the EPA).

ACTION: Proposed rule and request for comment.

SUMMARY: The EPA is proposing to grant a petition submitted by Saturn Corporation (Saturn) to exclude or "delist" wastewater treatment plant (WWTP) sludge generated from conversion coating on aluminum at Saturn's integrated automotive assembly facility located at 100 Saturn Parkway in Spring Hill, Tennessee, from the requirements of the hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA). This exclusion would be valid only when the sludge is disposed of in a Subtitle D landfill that is permitted, licensed, or registered by a state to manage industrial solid waste. The EPA used the Delisting Risk Assessment Software (DRAS) in the evaluation of the potential impact of the petitioned waste on human health and the environment.

The EPA bases its proposed decision to grant the petition based on an evaluation of waste-specific information provided by Saturn. This proposed decision, if finalized, conditionally excludes the petitioned waste from the requirements of the RCRA hazardous waste regulations.

If finalized, the EPA would conclude that Saturn's petitioned waste is nonhazardous with respect to the original listing criteria and that there are no other factors that would cause the waste to be hazardous.

DATES: The EPA will accept public comments on this proposed decision until October 17, 2005. The EPA will stamp comments received after the close of the comment period as late. These late comments may not be considered in formulating a final decision. Any person may request a hearing on this proposed decision by filing a request to EPA by September 15, 2005. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Please send three copies of your comments. You should send two copies to the Chief, North Section, RCRA Enforcement and Compliance Branch, Waste Division, U.S. Environmental Protection Agency Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street S.W., Atlanta, Georgia, 30303. You should also send one copy to Mike Apple, Director, Division of Solid Waste Management, Tennessee Department of Environment and Conservation, 5th Floor, L&C Tower, 401 Church Street, Nashville, Tennessee, 37243–1535. You should identify your comments at the top with this regulatory docket number: R4DLP–0502–Saturn. You may submit your comments electronically to Kristin Lippert at *Lippert.Kristin@epa.gov.*

You should address requests for a hearing to Narindar M. Kumar, Chief, RCRA Enforcement and Compliance Branch, Waste Division, U.S. Environmental Protection Agency

Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street SW., Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: For general and technical information about this final rule, contact Kristin Lippert, North Enforcement and Compliance Section, (Mail Code 4WD–RCRA), RCRA Enforcement and Compliance Branch, U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street S.W., Atlanta, Georgia 30303 or call (404) 562–8605.

SUPPLEMENTARY INFORMATION: The information in this section is organized as follows:

I. Background

A. What Is EPA's List of Hazardous Wastes?

The EPA published an amended list of hazardous wastes from nonspecific and specific sources on January 16, 1981, as part of its final and interim final regulations implementing Section 3001 of RCRA. The EPA has amended this list several times and published it in Title 40 Code of Federal Regulations (40 CFR) 261.31 and 261.32. The wastes are listed as hazardous because: (1) They typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in Subpart C of Part 261 (ignitability, corrosivity, reactivity, and toxicity) or (2) they meet the criteria for listing contained in 40 CFR 261.11(a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, a specific waste from an individual facility meeting the listing description may not be hazardous. For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, called delisting, which allows persons to prove that the EPA should not regulate a specific waste from a particular generating facility as a hazardous waste.

B. What Is a Delisting Petition, and What Does It Require of a Petitioner?

A delisting petition is a request from a facility to the EPA or an authorized State to exclude waste from the list of hazardous wastes pursuant to RCRA. The facility petitions the EPA because it does not consider the wastes hazardous under RCRA regulations. In a delisting petition, the petitioner must show that the waste, generated at a particular facility, does not meet any of the criteria for which EPA listed the waste as set forth in 40 CFR 261.11 and the background documents for the listed waste. In addition, a petitioner must demonstrate pursuant to 40 CFR 260.22 that the waste does not exhibit any of the hazardous waste characteristics (ignitability, reactivity, corrosivity, and toxicity) and must present sufficient information for the EPA to decide whether factors other than those for which the waste was listed warrant retaining it as a hazardous waste (see 40 CFR 260.22, 42 U.S.C. 6921(f), and the background documents for the listed waste).

Generators remain obligated under RCRA to confirm that their waste remains nonhazardous based on the hazardous waste characteristics even if the EPA has "delisted" the waste.

C. What Regulations Allow a Waste To Be Delisted?

Under 40 CFR 260.20, 260.22, and 42 U.S.C. 6921(f), a generator may petition the EPA to remove its waste from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. Specifically, 40 CFR 260.20 allows any person to petition the Administrator to modify or revoke any provisions of Parts 260 through 266, 268, and 273 of 40 CFR.

D. What Factors Must the EPA Consider in Deciding Whether To Grant a Delisting Petition?

Besides considering the criteria in 40 CFR 260.22(a) and Section 3001(f) of RCRA, 42 U.S.C. 6921(f), and information in the background documents for the listed waste, the EPA must consider any factors (including additional constituents) other than those for which the EPA listed the waste if a reasonable basis exists that the additional factors could cause the waste to be hazardous.

The EPA must also consider as hazardous waste mixtures containing listed hazardous wastes and wastes derived from treating, storing, or disposing of listed hazardous waste (see 40 CFR 261.3(a)(2)(iii) and (iv) and (c)(2)(i), called the "mixture" and "derived-from" rules, respectively). These wastes are also eligible for exclusion and remain hazardous wastes until excluded (see 66 FR 27266, May 16, 2001).

II. Saturn's Petition To Delist Its Waste

A. What Waste Did Saturn Petition the EPA To Delist?

On December 13, 2004, Saturn petitioned the EPA to exclude its dewatered WWTP sludge generated at its facility in Spring Hill, Tennessee, from the lists of hazardous waste contained in 40 CFR 261.31 and 261.32. The WWTP sludge (EPA Hazardous Waste No. F019) is generated by treating wastewater resulting from the chemical conversion coating of aluminum. In its petition, Saturn requested that the EPA grant an exclusion for 3,000 cubic yards per calendar year of dewatered WWTP sludge.

B. How Is the Petitioned Waste Generated?

Saturn is an integrated automobile production facility located in Spring Hill, Tennessee. Wastewater at the Saturn facility is generated from various manufacturing and assembly processes and includes oily wastewater from cooling and cutting operations associated with engine manufacturing, rinse waters and overflows from the

zinc phosphating and electrocoating processes, and wash water from paint spray booth operations. The process used to treat wastewater generated from the manufacturing and assembly operations consists of a complex system of primary and secondary pretreatment processes and controls. The process produces a sludge from the treatment of soluble metals in wastewater by equalization, pH adjustment, chemical treatment, and metals precipitation. The sludge is subsequently dewatered in a plate and frame filter press before it is transported off-site for disposal.

The production process at the Saturn facility includes the application of an aluminum sound-deadening patch to some production vehicles. Possible future changes to be made in the manufacturing process, which will not significantly affect the characteristics of the WWTP sludge, could involve the use of aluminum body components (and modification to the phosphate bath) in addition to the current steel components.

The conversion coating process is not regulated by RCRA when applied to steel but when aluminum components are incorporated into the automobile bodies, the WWTP sludge becomes regulated as RCRA hazardous waste F019. While the sludge may meet the definition of F019, the original listing of WWTP sludge from the conversion coating on aluminum was not based on a zinc phosphating process, and the addition of aluminum components on the automobile bodies does not introduce any constituents of concern into the sludge. However, before a waste can be delisted, the petitioner must demonstrate that there are no hazardous constituents in the sludge from other operations in the plant or other factors that might cause the waste to be hazardous.

The 40 CFR part 261 Appendix VIII hazardous constituents for which EPA listed F019 hazardous wastes as hazardous include hexavalent chromium and cyanide (complexed). The chemical conversion coating process performed by Saturn is a phosphating process that does not utilize materials containing salts of chromium or cyanide. Therefore, the WWTP sludge generated by Saturn would not contain the constituents for which F019 was listed as generated from its chemical conversion coating process.

C. What Information Did Saturn Submit in Support of Its Petition?

In support of its petition Saturn has submitted laboratory analysis of its WWTP sludge. The laboratory analysis submitted includes the following: (1) Analysis performed on samples of its dewatered WWTP sludge taken and analyzed by EPA: (2) analysis of the dewatered WWTP sludge performed by Saturn on split samples provided to the facility by EPA and (3) analysis of the dewatered WWTP sludge performed by Saturn on samples taken by the facility.

The analysis performed by Saturn on the split samples of the WWTP sludge provided to the facility by EPA was submitted for laboratory testing for the entire 40 CFR Part 264 Appendix IX constituent list (including volatile organic compounds (VOCs), semi-volatile organic compounds (SVOCs), metals, and PCBs) and hexavalent chromium, TCLP metals, cyanide, and total solids. Based on the laboratory data, data validation results, and Saturn's communications with the EPA, Saturn prepared a Sampling and Analysis Plan which was submitted to the EPA and approved.

In accordance with the approved Sampling and Analysis Plan and to support its petition, Saturn collected additional WWTP sludge samples for laboratory testing. The samples were collected from six roll-off containers representing waste generated at Saturn over a seven-week period. The samples were analyzed as follows: (1) Samples for VOC analyses (total and TCLP) were collected from six roll-off containers. The first sample was analyzed for the 40 CFR part 264 Appendix IX VOC constituent list (total and TCLP). VOCs (total and TCLP) detected in the first sample were tested in the samples collected from the second through the sixth roll-off containers. (2) Samples from the six roll-off containers were analyzed for total and TCLP bis(2-ethylhexyl)phthalate. (3) Samples from the six roll-off containers were analyzed for total and TCLP metals (antimony, arsenic, barium, beryllium, chromium, cobalt, copper, lead, mercury, nickel, thallium, tin, vanadium, and zinc) and for hexavalent chromium. (4) Samples from the six roll-off containers were analyzed for corrosivity, total and TCLP cyanide, ignitability, sulfide, oil and grease, and total solids. The Toxicity Characteristic Leaching Procedure (TCLP), SW–846 Method 1311, was used as the extraction procedure for testing the volatile and semi-volatile constituents of concerns. Leachable metals were tested using the Extraction Procedure for Oily Wastes (OWEP), SW–846 Method 1330A. The pH of each sample was measured using SW–846 Method 9045C, and a determination was made that the waste was not ignitable, corrosive, or reactive (see 40 CFR 261.21–261.23). Oil and grease was analyzed using SW–846 Method 9071B, total sulfide was tested using SW–846 Method 9034, and total cyanide was performed using Method SW–846 Method 9012A.

Composite and grab samples of dewatered WWTP sludge were collected in accordance with the approved Sampling and Analysis Plan on August 19, 2004 and submitted for laboratory testing. Upon receipt of the laboratory testing results, the data was validated by a third party. The maximum values of constituents detected in any sample of the WWTP sludge or in a TCLP extract of the WWTP sludge are summarized in Table 1.

TABLE 1.—MAXIMUM TOTAL AND TCLP CONCENTRATIONS IN THE DEWATERED WWTP SLUDGE AND CORRESPONDING DELISTING LIMITS

Constituent	Maximum concentration observed [1]		Maximum allowable delisting level (3,000 cubic yards)		Maximum allowable groundwater concentration (µg/l)
	Total (mg/kg)	TCLP (mg/l)	Total (mg/kg)	TCLP (mg/l)	
Volatile Organic Compounds					
Acetone	<7.5	1.7	141,000,000	171	3,750
Semi-Volatile Organic Compounds					
Bis(2-ethylhexyl)phthalate	<25	<0.0050	51,400	0.146	1.50

TABLE 1.—MAXIMUM TOTAL AND TCLP CONCENTRATIONS IN THE DEWATERED WWTP SLUDGE AND CORRESPONDING DELISTING LIMITS—Continued

Constituent	Maximum concentration observed [1]		Maximum allowable delisting level (3,000 cubic yards)		Maximum allowable groundwater concentration (µg/l)
	Total (mg/kg)	TCLP (mg/l)	Total (mg/kg)	TCLP (mg/l)	
Metals					
Antimony	56	<0.05 J	374,000	0.494	6.0
Arsenic	<50	<0.02	312,000	0.224	5.0
Barium	94	<0.35	10,400,000	100	2,000
Beryllium	3.1	<0.029	16,200	0.998	4.0
Chromium	1,310 J	<0.16	10,300,000	5.0	100
Chromium (hexavalent)	<4.2	NT	3,320	3.71	NA
Cobalt	3.6	<0.038	84,400,000	NA	2,250
Copper	91	0.25	56,300,000	21,800	1,300
Lead	108	<0.19	500,000	5.0	15.0
Mercury	0.47	<0.0006	1.82	0.195	2.00
Nickel	4,400	24.2 J	2,430,000	67.8	750
Thallium	<20	<0.026	2,140	0.211	2.00
Tin	<100	3.18	844,000,000	NA	22,500
Vanadium	9.9 J	<0.27	9,850,000	50.6	263
Zinc	17,200	5.72	17,200,000	673	11,300
Cyanide	0.52	<0.05	1,180,000	8.63	200

[1] These levels represent the highest concentration of each constituent found in any one sample and do not necessarily represent the specific levels found in one sample.
< Not detected at the specified concentration.
NA Not applicable.
NT Not tested.
J Estimated Concentration.

III. EPA's Evaluation of Saturn's Petition

A. How Did the EPA Evaluate the Information Submitted?

In developing this proposal, the EPA considered the original listing criteria and the additional factors required by the Hazard and Solid Waste Amendments of 1984 (HSWA). See Section 222 of HSWA, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(2)–(4). The EPA evaluated the petitioned waste against the listing criteria and factors cited in 40 CFR 261.11(a)(2) and (3). These factors include: (1) Whether the waste is considered acutely toxic; (2) the toxicity of the constituents; (3) the concentrations of the constituents in the waste; (4) the tendency of the hazardous constituents to migrate and to bioaccumulate; (5) its persistence in the environment once released from the waste; (6) plausible and specific types of management of the petitioned waste; (7) the quantity of waste produced; and (8) waste variability.

For this delisting determination, the EPA assumed that the WWTP sludge would be disposed in a Subtitle D landfill. Consistent with previous delistings, the EPA identified plausible exposure routes (groundwater, surface water and air) for hazardous constituents present in the petitioned waste based upon improper management of a Subtitle D landfill. To evaluate the waste, the EPA used the Delisting Risk Assessment Software program (DRAS), a Windows-based software tool, to estimate the potential release of hazardous constituents from the petitioned waste and to predict the risk associated with those releases.

A detailed description of the DRAS program and revisions is available at 65 FR 58015, 65 FR 59000, 65 FR 75879, and 67 FR 10341. The DRAS uses EPA's Composite Model for Leachate Migration with Transformation Products (EPACMTP) to predict the potential for release of hazardous constituents to groundwater from landfilled wastes and subsequent potential routes of exposure to a receptor. For a release to groundwater, the EPA considered routes of exposure to a human receptor from ingestion of contaminated groundwater, inhalation from groundwater via showering and dermal contact while bathing. The DRAS program also considers the surface water pathway from the potential erosion of waste from runoff from an open landfill. It evaluates the potential risk to a human receptor from potential ingestion of fish and potential ingestion of drinking water. DRAS also considers potential releases of waste particles and volatile emissions to air from the surface of an open landfill. For a potential release to air, the EPA considered potential risks from inhalation of particulates and absorption into the lungs, ingestion of particulates eliminated from respiratory passages and subsequently swallowed, air deposition of particulates and subsequent ingestion of the soil/waste mixture, and inhalation of volatile constituents.

In the DRAS model, the EPA used the maximum estimated waste volume and the maximum reported total and leachate concentration as inputs to estimate the potential constituent concentrations in the groundwater, soil, surface water or air. The DRAS program back calculated a maximum allowable concentration level that would not exceed protective levels in both the waste and the leachate for each constituent at the annual waste volume of 3,000 cubic yards.

B. What Did the EPA Conclude About This Waste?

After reviewing Saturn's manufacturing and wastewater treatment processes, the EPA concluded that no other hazardous constituents of concern, other than those for which the testing was performed, are likely to be present or formed as reaction products or by-products in Saturn's WWTP sludge. EPA also concluded on the basis of explanations and analytical data provided by Saturn pursuant to 40 CFR 260.22, that the WWTP sludge does not

exhibit the characteristics of ignitability, corrosivity, or reactivity (see 40 CFR 261.21, 261.22 and 261.23, respectively.)

The EPA compared the analytical results submitted by Saturn to the maximum allowable levels calculated by the DRAS for an annual volume of 3,000 cubic yards. The maximum allowable levels for constituents detected in the WWTP sludge or the leachate from the sludge are summarized in Table 1, above. All constituents of concern were within levels. Table 1 also includes the maximum allowable levels in groundwater at a potential receptor well, as evaluated by the DRAS. These levels are the more conservative of either the Safety Drinking Water Act Maximum Contaminant Level (MCL) or the health-based value calculated by DRAS based on the target cancer risk level of 10^{-6}. For arsenic, the target cancer risk was set at 10^{-4} in consideration of the MCL and the potential for natural occurrence. The maximum allowable groundwater concentration and delisting level for arsenic correspond to a drinking water concentration less than one half the current MCL of 10 µg/l.

EPA also used the DRAS program to estimate the aggregate cancer risk and hazard index of constituents detected in the waste. The aggregate cancer risk is the cumulative total of all individual constituent cancer risks. The hazard index is a similar cumulative total of non-cancer effects. The target aggregate cancer risk is 1×10^{-5} and the target hazard index is one. The Saturn WWTP sludge met both of these criteria.

C. What Other Factors Did the EPA Consider in Its Evaluation?

During the evaluation of this petition, the EPA also considered the potential impact of the hazardous constituents from WWTP sludge via non-groundwater routes (*i.e.*, air emissions and surface runoff).

In regard to potential airborne emissions, the EPA evaluated the potential risk resulting from the unlikely scenario of airborne exposure to hazardous constituents released from the WWTP sludge in an open landfill. The results of this unlikely worst-case analysis indicated that there is no substantial present or potential hazard to human health and the environment from airborne emissions from the WWTP sludge.

The EPA also considered the potential impact of releases of hazardous constituents from the WWTP sludge via surface water runoff. The EPA believes that containment structures at municipal solid waste landfills can effectively control surface water runoff, as the Subtitle D regulations (see 56 FR 50978, October 9, 1991) prohibit pollutant discharges into surface waters. Furthermore, and in the unlikely event of surface water runoff at municipal solid waste landfills, the concentrations of any soluble hazardous constituents in runoff will tend to be lower than the levels in the TCLP leachate analyses reported in this proposal due to the aggressive acidic medium used in the TCLP extraction. For these reasons, the EPA believes that contamination of surface water through runoff from the waste disposal area is very unlikely. Nevertheless, the EPA evaluated the potential impacts on surface water if the dewatered WWTP sludge was released from a municipal solid waste landfill through runoff and erosion. The estimated levels of the hazardous constituents of concern in surface water would be well below health-based levels for human health, as well as below the EPA Chronic Water Quality Criteria for aquatic organisms (US EPA, OWRS, 1987).

The EPA concluded that the WWTP sludge is not a present or potential hazard to human health and the environment from airborne emissions and surface water runoff.

IV. Proposal To Delist WWTP Sludge From Saturn's Automobile Assembly Facility

A. What Action Is EPA Proposing?

Today the EPA is proposing to conditionally exclude or delist 3,000 cubic yards annually of WWTP sludge generated at Saturn's Spring Hill, Tennessee, automotive assembly facility.

B. What Are the Terms for Disposal of Saturn's WWTP Sludge Pursuant to This Exclusion?

Saturn must dispose of the WWTP sludge in a lined Subtitle D landfill which is permitted, licensed, or registered by a state to manage industrial waste. This exclusion applies only to a maximum annual volume of 3,000 cubic yards and is effective only if all conditions contained in this rule are satisfied.

C. With What Conditions Must Saturn Comply for Its WWTP Sludge To Be Delisted?

The petitioner, Saturn, must comply with the requirements in 40 CFR part 261, Appendix IX, Table 1 as amended by this proposal. The text below gives the rationale and details of those requirements.

(1) Delisting Levels:

Saturn must sample and analyze the dewatered WWTP sludge in accordance with Paragraph (3) and 40 CFR part 261, Appendix IX, Table 1 to ensure that the criteria for delisting continues to be met. The constituents for which Saturn must test the leachate from the dewatered WWTP sludge are provided in Paragraph (7) and in 40 CFR part 261, Appendix IX, Table 1. The EPA selected the constituents based upon the descriptions of the manufacturing process used by Saturn, previous test data provided for the waste, and the respective health-based levels used in delisting decision-making.

To meet the conditions of this delisting, the constituent concentrations in the leachate from the dewatered WWTP sludge must not exceed the concentrations provided in Paragraph (7) and in 40 CFR part 261, Appendix IX, Table 1. The delisting levels represent the maximum allowable concentrations in the leachate from the testing of the WWTP sludge.

(2) Waste Holding and Handling:

Saturn will manage accumulated WWTP sludge in accordance with the applicable regulations and continue to dispose of the WWTP sludge as a hazardous waste until the first quarterly verification testing has been completed. If the results of the first quarterly test indicate that no constituent is present in the sludge at a concentration that exceeds the delisting level, Saturn can manage and dispose of the sludge as a nonhazardous waste. Holding the dewatered WWTP sludge until characterization is complete will ensure that the waste is managed properly.

(3) Verification Testing Requirements:

Saturn must complete a testing program to verify that the dewatered WWTP sludge does not exceed the maximum delisting levels. If the EPA determines that the data from the verification testing program exceeds the maximum delisting levels, this exclusion does not apply to the tested waste. The verification testing program operates on a quarterly basis for one year, followed by testing on an annual basis.

The first part of the verification testing program consists of testing the dewatered WWTP sludge for the constituents specified in Paragraph (7) on a quarterly basis for a period of one year. The quarterly testing will be performed by collecting and analyzing one composite sample on a quarterly basis for one year. Each composite sample will consist of four (4) grab samples collected from an individual roll-off container. The first sample can be collected at any time after EPA has

finalized this rule. The remaining three quarterly samples will be collected at approximately ninety (90)-day intervals from the collection of the first quarterly sample.

The second part of the verification testing program is the annual testing of one composite sample (consisting of four grab samples from one roll-off container) of dewatered WWTP sludge for the constituents specified in Paragraph (7). The annual tests will be performed by collecting a composite sample during the same month as the final quarterly (first annual) sample was collected.

If the constituent concentrations in the dewatered WWTP sludge in any roll-off container exceed the delisting levels, then Saturn must dispose of the waste as hazardous. Saturn must submit the data obtained from its quarterly and annual verification testing to EPA. If the data exceeds the delisting criteria, then Saturn must notify the EPA according to the requirements in Paragraph (6). After notification, EPA will make a decision as to whether the reported information requires further EPA action to protect human health and the environment.

This exclusion is effective upon publication in the **Federal Register** but disposal of the WWTP sludge as a nonhazardous waste cannot begin until the first quarterly verification testing has been completed and the data has been submitted to EPA. If the quarterly or annual verification testing is not performed, the dewatered WWTP sludge cannot be disposed as a delisted waste until Saturn obtains the written approval of the EPA.

(4) Changes in Operating Conditions:

Paragraph (4) requires Saturn to notify EPA in writing if the manufacturing process, the wastewater treatment process, or the chemicals used in the processes significantly change, including but not limited to the type, composition, and amount of waste generated. If there is a significant change, Saturn must handle the WWTP sludge after the process change as hazardous until Saturn has demonstrated to the EPA that the waste continues to meet the delisting levels and that no new hazardous constituents listed in Appendix VIII of 40 CFR part 261 have been introduced and Saturn has received written approval from the EPA.

(5) Data Submittals:

As indicated in Paragraph (3) above, Saturn is required to submit the data obtained from its quarterly and annual verification testing to the EPA. To document that Saturn is appropriately managing the dewatered WWTP sludge, Saturn must also compile, summarize, and maintain delisting records and analytical data on-site for a minimum period of five years. Paragraph (5) requires Saturn to furnish the data upon request for inspection by any employee or representative of the EPA or the State of Tennessee.

If the proposed exclusion is made final, then it will apply only to 3,000 cubic yards per calendar year of dewatered WWTP sludge generated at the Saturn facility after the first successful quarterly verification test.

(6) Reopener:

The purpose of Paragraph (6) is to require Saturn to disclose new or different information related to a condition at the facility or disposal of the waste if it is pertinent to the delisting. Saturn must also use this procedure if the waste sample in the annual testing fails to meet the levels found in Paragraph (1). This provision will allow the EPA to reevaluate the exclusion if a source provides new or additional information to the EPA. The EPA will evaluate the information on which it based the decision to see if it is still correct, or if circumstances have changed so that the information is no longer correct or would cause the EPA to deny the petition if presented.

This provision expressly requires Saturn to report differing site conditions or assumptions used in the petition in addition to failure to meet the annual testing conditions within ten (10) days of discovery. If the EPA discovers such information itself or from a third party, it can act on it as appropriate. The language being proposed is similar to those provisions found in RCRA regulations governing no-migration petitions at § 268.6.

(7) Notification Requirements:

In order to adequately track wastes that have been delisted, the EPA is requiring that Saturn provide a one-time notification to any State regulatory agency through which or to which the delisted waste is being carried. Saturn must provide this notification within sixty (60) days of commencing this activity.

D. What Are the Maximum Allowable Concentrations of Hazardous Constituents in the Waste?

Concentrations of the following constituents measured in the TCLP (or OWEP, where appropriate) extract of the waste must not exceed the following levels (mg/l): antimony—0.494; arsenic—0.224; total chromium—3.71; lead—5.0; nickel—67.8; thallium—0.211; and zinc—673.

E. What Happens if Saturn Is Unable To Meet the Terms and Conditions of This Delisting?

If Saturn violates the terms and conditions established in the exclusion, the EPA will initiate procedures to withdraw the exclusion. Where there is an immediate threat to human health and the environment, the EPA will evaluate the need for enforcement activities on a case-by-case basis. The EPA expects Saturn to conduct the appropriate waste analysis and comply with the criteria explained above in Paragraph (1) of the exclusion.

V. Public Comments

A. How May Interested Parties Submit Comments?

The EPA is requesting public comments on this proposed decision. Please send three copies of your comments. You should send two copies to the Chief, North Section, RCRA Enforcement and Compliance Branch, Waste Division, U.S. Environmental Protection Agency Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street S.W., Atlanta, Georgia 30303. You should also send a copy to Mr. Mike Apple, Director, Division of Solid Waste Management, Tennessee Department of Environment and Conservation, 5th Floor, L&C Tower, 401 Church Street, Nashville, Tennessee 37243–1535. You should identify your comments at the top with this regulatory docket number: R4DLP–0502-Saturn. You may submit your comments electronically to Kristin Lippert at *Lippert.kristin@epa.gov*.

You should submit requests for a hearing to Narindar M. Kumar, Chief, RCRA Enforcement and Compliance Branch, Waste Division, U. S. Environmental Protection Agency Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street S.W., Atlanta, Georgia 30303.

B. How May Interested Parties Review the Docket or Obtain Copies of the Proposed Exclusion?

You may review the RCRA regulatory docket for this proposed rule at the U. S. Environmental Protection Agency Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street S.W., Atlanta, Georgia 30303. It is available for viewing in the EPA Freedom of Information Act Review Room from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. You may call (404) 562–8605 for appointments. The public may copy material from any regulatory docket at no cost for the first one hundred (100) pages, and at fifteen (15) cents per page for additional copies.

VI. Regulatory Impact

Because EPA is issuing today's exclusion under the federal RCRA delisting program, only states subject to federal RCRA delisting provisions would be affected. This exclusion may not be effective in states that have received EPA's authorization to make their own delisting decisions.

Under Section 3009 of RCRA, EPA allows states to impose their own non-RCRA regulatory requirements that are more stringent than EPA's. These more stringent requirements may include a provision that prohibits a federally issued exclusion from taking effect in the state. The EPA urges petitioners to contact the state regulatory authority to establish the status of their wastes under the state law.

The EPA has also authorized some states to administer a delisting program in place of the federal program, that is, to make state delisting decisions. Therefore, this exclusion does not apply in those authorized states. If Saturn manages the WWTP sludge in any state with delisting authorization, Saturn must obtain delisting authorization from the state before it can manage the WWTP sludge as nonhazardous in that state.

Under Executive Order 12866, the EPA must conduct an "assessment of the potential costs and benefits' for all "significant" regulatory actions. The proposal to grant an exclusion is not significant, since its effect, if promulgated, would be to reduce the overall costs and economic impact of the EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from the EPA's lists of hazardous wastes, thus enabling a facility to manage its waste as nonhazardous.

Because there is no additional impact from this proposed rule, this proposal would not be a significant regulation, and no cost/benefit assessment is required. The Office of Management and Budget (OMB) has also exempted this rule from the requirement for OMB review under Section (6) of Executive Order 12866.

VII. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. Sections 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (that is, small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the Administrator or delegated representative certifies that the rule will not have any impact on small entities.

This rule, if promulgated, will not have an adverse economic impact on small entities since its effect would be to reduce the overall costs of the EPA's hazardous waste regulations and would be limited to one facility. Accordingly, the EPA hereby certifies that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VIII. Paperwork Reduction Act

Information collection and record keeping requirements associated with this proposed rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

IX. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, which was signed into law on March 22, 1995, the EPA generally must prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year.

When such a statement is required for the EPA rules, under section 205 of the UMRA the EPA must identify and consider alternatives, including the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law.

Before the EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, the EPA must develop under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of the EPA's regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

The UMRA generally defines a Federal mandate for regulatory purposes as one that imposes an enforceable duty upon state, local, or tribal governments or the private sector.

The EPA finds that this delisting decision is deregulatory in nature and does not impose any enforceable duty on any State, local, or tribal governments or the private sector. In addition, the proposed delisting decision does not establish any regulatory requirements for small governments and so does not require a small government agency plan under UMRA section 203.

X. Executive Order 13045

The Executive Order 13045 is entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997). This order applies to any rule that the EPA determines (1) is economically significant as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the EPA. This proposed rule is not subject to Executive Order 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866.

XI. Executive Order 13084

Under Executive Order 13084, the EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments.

If the mandate is unfunded, the EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of the EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires the EPA to develop an effective process permitting elected and other

representatives of Indian tribal governments to have "meaningful and timely input" in the development of regulatory policies on matters that significantly or uniquely affect their communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

XII. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act, the EPA is directed to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (for example, materials specifications, test methods, sampling procedures, business practices, etc.) developed or adopted by voluntary consensus standard bodies. Where available and potentially applicable voluntary consensus standards are not used by the EPA, the Act requires that the EPA provide Congress, through the OMB, an explanation of the reasons for not using such standards.

This rule does not establish any new technical standards and thus, the EPA has no need to consider the use of voluntary consensus standards in developing this final rule.

XIII. Executive Order 13132 Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999) requires the 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" are defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of Executive Order 13132, the EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or the EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the EPA consults with State and local officials early in the process of developing the proposed regulation.

This action does not have federalism implications. It 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, because it affects only one facility.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, and Reporting and recordkeeping requirements.

Authority: Section 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: August 15, 2005.

Alan Farmer,

Acting Director, Waste Management Division, Region 4.

For the reasons set out in the preamble, 40 CFR part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In Table 1 of Appendix IX of Part 261, the following waste is added in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Waste Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
*	*	*
Saturn Corporation	Spring Hill, TN	Dewatered wastewater treatment plant (WWTP) sludge (EPA Hazardous Waste No. F019) generated at a maximum rate of 3,000 cubic yards per calendar year. The sludge must be disposed in a lined, Subtitle D landfill with leachate collection that is licensed, permitted, or otherwise authorized to accept the delisted WWTP sludge in accordance with 40 CFR part 258. The exclusion becomes effective on [insert publication date of the final rule]. For the exclusion to be valid, Saturn must implement a verification testing program that meets the following conditions: (1) Delisting Levels: The constituent concentrations in an extract of the waste must not exceed the following maximum allowable concentrations in mg/l: antimony—0.494; arsenic—0.224; total chromium—3.71; lead—5.0; nickel—68; thallium—0.211; and zinc—673. Sample collection and analyses, including quality control procedures, must be performed using appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW–846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A, (uses EPA Method 1664, Rev. A), 9071B, and 9095B. Methods must meet Performance Based Measurement System Criteria in which the Data Quality Objectives are to demonstrate that representative samples of Saturn's sludge meet the delisting levels in this condition. (2) Waste Holding and Handling: (A) Saturn must accumulate the hazardous waste dewatered WWTP sludge in accordance with the applicable regulations of 40 CFR 262.34 and continue to dispose of the dewatered WWTP sludge as hazardous waste.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(B) After the first quarterly verification sampling event described in Condition (3) has been completed and the laboratory data demonstrates that no constituent is present in the sample at a level which exceeds the delisting levels set in Condition (1), Saturn can manage and dispose of the dewatered WWTP sludge as nonhazardous according to all applicable solid waste regulations. (C) If constituent levels in any sample taken by Saturn exceed any of the delisting levels set in Condition (1), Saturn must do the following: (i) notify EPA in accordance with Condition (6) and (ii) manage and dispose the dewatered WWTP sludge as hazardous waste generated under Subtitle C of RCRA. (3) Quarterly Testing Requirements: Upon this exclusion becoming final, Saturn may perform quarterly analytical testing by sampling and analyzing the dewatered WWTP sludge as follows: (i) Collect one representative composite sample (consisting of four grab samples) of the hazardous waste dewatered WWTP sludge at any time after EPA grants the final delisting. In addition, collect the second, third, and fourth quarterly samples at approximately ninety (90)-day intervals after EPA grants the final exclusion. (ii) Analyze the samples for all constituents listed in Condition (1). Any roll-offs from which the composite sample is taken exceeding the delisting levels listed in Condition (1) must be disposed as hazardous waste in a Subtitle C landfill. (iii) Within forty-five (45) days after taking its first quarterly sample, Saturn will report its first quarterly analytical test data to EPA. If levels of constituents measured in the sample of the dewatered WWTP sludge do not exceed the levels set forth in Condition (1) of this exclusion, Saturn can manage and dispose the nonhazardous dewatered WWTP sludge according to all applicable solid waste regulations. (4) Annual Verification Testing: (i) If Saturn completes the quarterly testing specified in Condition (3) above, and no sample contains a constituent with a level which exceeds the limits set forth in Condition (1), Saturn may begin annual verification testing on an annual basis. Saturn must collect and analyze one sample of the WWTP sludge on an annual basis. as follows: Saturn must test one representative composite sample of the dewatered WWTP sludge for all constituents listed in Condition (1) at least once per calendar year. (ii) The sample collected for annual verification testing shall be a representative composite sample consisting of four grab samples that will be collected in accordance with the appropriate methods described in Condition (1). (iii) The sample for the annual testing for the second and subsequent annual testing events shall be collected within the same calendar month as the first annual verification sample. (5) Changes in Operating Conditions: Saturn must notify EPA in writing when significant changes in the manufacturing or wastewater treatment processes are implemented. EPA will determine whether these changes will result in additional constituents of concern. If so, EPA will notify Saturn in writing that Saturn's sludge must be managed as hazardous waste F019 until Saturn has demonstrated that the wastes meet the delisting levels set forth in Condition (1) and any levels established by EPA for the additional constituents of concern, and Saturn has received written approval from EPA. If EPA determines that the changes do not result in additional constituents of concern, EPA will notify Saturn, in writing, that Saturn must verify that Saturn's sludge continues to meet Condition (1) delisting levels. (6) Data Submittals: Saturn must submit the data obtained through verification testing at Saturn or as required by other conditions of this rule to: information described below. If Saturn fails to submit the required data within the specified time or maintain the required records on-site for the specified time, the EPA, at its discretion, will consider this sufficient basis to re-open the exclusion as described in Condition (6). Saturn must: (A) Submit the data obtained through Condition (3) to the Chief, North Section, RCRA Enforcement and Compliance Branch, Waste Division, U.S. Environmental Protection Agency Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street S.W., Atlanta, Georgia, 30303, within the time specified. The quarterly verification data, annual verification data, and certification of proper disposal must be submitted to EPA annually upon the anniversary of the effective date of this exclusion. All data must be accompanied by a signed copy of the certification statement in 40 CFR 260.22(i)(12). (B) Compile, Summarize, and Maintain Records: Saturn must compile, summarize, and maintain at Saturn records of operating conditions and analytical data records of analytical data from Condition (3), summarized, and maintained on-site for a minimum of five years. Saturn must furnish these records and data when either the EPA or the State of Tennessee request them for inspection. (C) Send along with all data a signed copy of the following certification statement, to attest to the truth and accuracy of the data submitted: "I certify under penalty of law that I have personally examined and am familiar with the information submitted in this demonstration and all attached documents, and that, based on my inquiry of those individuals immediately responsible for getting the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for sending false information, including the possibility of fine and imprisonment." (6) Reopener.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(A) If, at any time after disposal of the delisted waste, Saturn possesses or is otherwise made aware of any data (including but not limited to leachate data or groundwater monitoring data) relevant to the delisted WWTP sludge at Saturn indicating that any constituent is at a level in the leachate higher than the specified delisting level or TCLP regulatory level, then Saturn must report the data, in writing, to the Regional Administrator within ten (10) days of first possessing or being made aware of that data. (B) Based upon the information described in Paragraph (A) and any other information received from any source, the EPA Regional Administrator will make a preliminary determination as to whether the reported information requires EPA action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (C) If the Regional Administrator determines that the reported information does require EPA action, the Regional Administrator will notify Saturn in writing of the actions the Regional Administrator believes are necessary to protect human health and the environment. The notification shall include a statement of the proposed action and a statement providing Saturn with an opportunity to present information as to why the proposed EPA action is not necessary. Saturn shall have ten (10) days from the date of the Regional Administrator's notice to present the information. (D) Following the receipt of information from Saturn, or if Saturn presents no further information after 10 days, the Regional Administrator will issue a final written determination describing the EPA actions that are necessary to protect human health or the environment. Any required action described in the Regional Administrator's determination shall become effective immediately, unless the Regional Administrator provides otherwise. (7) Notification Requirements: Before transporting the delisted waste, Saturn must provide a one-time written notification to any State Regulatory Agency to which or through which it will transport the delisted WWTP sludge for disposal. The notification will be updated if Saturn transports the delisted WWTP sludge to a different disposal facility. Failure to provide this notification will result in a violation of the delisting variance and a possible revocation of the decision.

[FR Doc. 05–17364 Filed 8–30–05; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 97

[WT Docket No. 05–235; FCC 05–143]

Amateur Service Rules

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the amateur radio service rules to eliminate the requirement that individuals pass a telegraphy examination in order to qualify for any amateur radio operator license.

DATES: Submit comments on or before October 31, 2005 and reply comments are due November 14, 2005.

ADDRESSES: You may submit comments, identified by WT Docket No. 05–235; FCC 05–143, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Federal Communications Commission's Web site: *http://www.fcc.gov/cgb/ecfs/*. Follow the instructions for submitting comments.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone (202) 418–0530 or TTY: (202) 418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: William T. Cross, *William.Cross@fcc.gov*, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau, (202) 418–0680, TTY (202) 418–7233.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's *Notice of Proposed Rulemaking and Order* (NPRM), WT Docket No. 05–235, FCC 05–143, adopted July 15, 2005, and released July 19, 2005. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street SW., Room CY–A257, Washington, DC 20554. The complete text may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, Suite CY–B402, Washington, DC 20554. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an e-mail to *FCC504@fcc.gov* or calling the Consumer and Government Affairs Bureau at (202) 418–0530 (voice). (202) 418–0432 (TTY).

1. The Commission initiated this proceeding to amend the part 97 Amateur Radio Service rules in response to eighteen petitions for rulemaking. The petitioners request that we amend the Commission's amateur radio service rules to implement revised international *Radio Regulations* that were adopted at the 2003 World Radiocommunication Conference (WRC–03). The Commission found that some of the petitions have presented sufficient evidence to warrant proposing rule changes, and in the interest of administrative efficiency, it consolidated these proposals in this *NPRM*. Specifically, the Commission proposed to amend its amateur service rules to eliminate the requirement that individuals pass a telegraphy examination in order to qualify for any amateur radio operator license.

I. Procedural Matters

A. Ex Parte Rules—Permit-but-Disclose Proceeding

2. This is a permit-but-disclose notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules.

B. Comment Dates

3. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before October 31, 2005, and reply comments are due November 14, 2005.

4. Commenters may file comments electronically using the Commission's Electronic Comment Filing System (ECFS), the Federal Government's eRulemaking Portal, or by filing paper copies. Commenters filing through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. If multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Commenters may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, "get form." Commenters will receive a sample form and directions in reply. Commenters filing through the Federal eRulemaking Portal *http://www.regulations.gov*, should follow the instructions provided on the Web site for submitting comments.

5. Commenters who chose to file paper comments must file an original and four copies of each comment. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554.

6. Commenters may send filings by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. Commenters must bind all hand deliveries together with rubber bands or fasteners and must dispose of any envelopes before entering the building. This facility is the only location where the Commission's Secretary will accept hand-delivered or messenger-delivered paper filings. Commenters must send commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) to 9300 East Hampton Drive, Capitol Heights, MD 20743. Commenters should address U.S. Postal Service first-class mail, Express Mail, and Priority Mail to 445 12th Street, SW., Washington, DC 20554.

C. Paperwork Reduction Act

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

II. Initial Regulatory Flexibility Analysis

8. The Regulatory Flexibility Act requires an initial regulatory flexibility analysis to be prepared for notice and comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

9. In this *NPRM*, we propose to amend the amateur service rules that presently require a person to demonstrate his or her ability to send and receive correctly a Morse code telegraphy message in order to qualify for certain amateur service operator licenses. Because "small entities," as defined in the RFA, are not persons eligible for licensing in the amateur service, this proposed rule does not apply to "small entities." Rather, it applies exclusively to individuals who are taking an examination for an amateur radio operator license. Such amendment would be in the public interest because we believe that the present requirement is unnecessary and that eliminating the requirement would make the amateur service more attractive to individuals with a non-pecuniary interest in radio.

10. In addition, the rules proposed in this *NPRM* potentially could affect publishers of amateur radio examination study material. Based on past inquiries and advertisements in communication-related magazines from these publishers, we estimate that there are between five and ten such publishers. The proposed rule changes, if adopted, would apply to individuals rather than publishers and would not result in a mandatory change in products offered by publishers of examination study material. (Because use of Morse code for amateur service communications would still be permitted even if the testing requirement is eliminated, a market would still exist for Morse code training material.) Therefore, we certify that the proposals in this *NPRM*, if adopted, will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the *NPRM*, including a copy of this Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the SBA. This initial certification will also be published in the **Federal Register**.

III. Ordering Clauses

11. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Notice of Proposed Rulemaking and Order*, including the Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 97

Communications equipment, Radio.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 97 as follows:

PART 97—AMATEUR RADIO SERVICE

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

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as

amended; 47 U.S.C. 151–155, 301–609, unless otherwise noted.

2. Section 97.501 is amended by revising paragraphs (a) and (b) to read as follows:

§ 97.501 Qualifying for an amateur operator license.

* * * * *

(a) Amateur Extra Class operator: Elements 2, 3, and 4;

(b) General Class operator: Elements 2 and 3;

* * * * *

§ 97.503 [Amended]

3. Section 97.503 is amended by removing paragraph (a), redesignating paragraph (b) as an undesignated introductory paragraph, and redesignating paragraphs (b)(1) through (3) as paragraphs (a) through (c), respectively.

4. Section 97.505 is amended by removing paragraphs (a)(5) and (a)(7) through (9), redesignating paragraph (a)(6) as (a)(5), and revising paragraphs (a)(1) through (4) to read as follows:

§ 97.505 Element credit.

(a) * * *

(1) An unexpired (or expired but within the grace period for renewal) FCC-granted Advanced Class operator license grant: Elements 2 and 3.

(2) An unexpired (or expired but within the grace period for renewal) FCC-granted General Class operator license grant: Elements 2 and 3.

(3) An unexpired (or expired but within the grace period for renewal) FCC-granted Technician or Technician Plus Class operator (including a Technician Class operator license granted before February 14, 1991) license grant: Element 2.

(4) An expired FCC-issued Technician Class operator license document granted before March 21, 1987: Element 3.

* * * * *

5. Section 97.507 is amended by removing paragraph (d) and revising paragraphs (a) introductory text, (a)(2) and (c) to read as follows:

§ 97.507 Preparing an examination.

(a) Each written question set administered to an examinee must be prepared by a VE holding an Amateur Extra Class operator license. A written question set may also be prepared for the following elements by a VE holding an operator license of the class indicated:

* * * * *

(2) Element 2: Advanced, General, or Technician Plus Class operators.

* * * * *

(c) Each written question set administered to an examinee for an amateur operator license must be prepared, or obtained from a supplier, by the administering VEs according to instructions from the coordinating VEC.

6. Section 97.509 is amended by revising paragraph (f), removing paragraph (g), redesignating paragraphs (h) through (m) as paragraphs (g) through (l) respectively, to read as follows:

§ 97.509 Administering VE requirements.

* * * * *

(f) No examination that has been compromised shall be administered to any examinee. The same question set may not be re-administered to the same examinee.

* * * * *

[FR Doc. 05–17226 Filed 8–30–05; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[DOT Docket No. NHTSA–2005–22242]

RIN 2127–AJ57

Federal Motor Vehicle Safety Standards; Cargo Carrying Capacity

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: In this notice of proposed rulemaking (NPRM), we (NHTSA) seek to address the problem of motor home and travel trailer overloading by proposing to amend the Federal motor vehicle safety standard (FMVSS) on tire selection and rims for motor vehicles other than passenger cars. We are also proposing a related amendment to our safety standard for tire selection and rims for light vehicles.

We propose to require manufacturers of motor homes and travel trailers over 4,536 kilograms (10,000 pounds) GVWR to provide information to consumers in a label that is intended to inform the consumer about the vehicle's cargo carrying capacity (CCC). This information would be helpful both at the time the consumer is making a purchase decision and also as the consumer uses his or her vehicle. We also propose to require that the size of tires on the same motor homes and travel trailers be the same as the size of the tires listed on the tire information label required by the standard on tire selection and rims for motor vehicles other than passenger cars.

We are limiting our CCC label to motor homes and travel trailers with a GVWR greater than 4,536 kilograms (10,000 pounds) as these are the vehicles that have large open interior areas that consumers fill with cargo. Recreational vehicles (RV) with GVWRs equal to or less than 4,536 kilograms (10,000 pounds) will be required to have less detailed CCC information as a result of an amendment to the FMVSS on tire selection and rims, which becomes effective September 1, 2005. It should be noted that on June 1, 2007, the FMVSS on tire selection and rims for motor vehicles other than passenger cars will apply to vehicles with a GVWR greater than 4,536 kilograms (10,000 pounds) and the FMVSS on tire selection and rims will apply to vehicles with a GVWR equal to or less than 4,536 kilograms (10,000 pounds).

It is our belief that this proposed rule complements the efforts of the recreational vehicle industry to provide consumers with information in order to help reduce overloading motor homes and travel trailers. This rulemaking responds to a petition from Ms. Justine May.

In addition, this proposed rule would provide regulatory relief for dealers from a labeling requirement in the safety standard on tire selection and rims for light vehicles. The standard's requirement may currently require dealers which add even small amounts of weight to re-label the vehicles. Under the proposed amendment, dealers that add weight in excess of 0.5 percent of the vehicles' gross vehicle weight ratings would be required to disclose this extra weight on labels affixed to the vehicles. Dealers could add lesser amounts of weight without needing to change or add labels.

DATES: You should submit your comments early enough to ensure that Docket Management receives them not later than October 31, 2005.

ADDRESSES: You may submit your comments in writing to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC, 20590. Alternatively, you may submit your comments electronically by logging onto the Docket Management System Web site at *http://dms.dot.gov*. Click on "Help & Information" or "Help/Info" to view instructions for filing your comments electronically. Regardless of how you submit your comments, you should mention the docket number of this document.

You may call the Docket at 202–366–9324. You may visit the Docket from 10 a.m. to 5 p.m., Monday through Friday, except for Federal holidays.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Mr. William D. Evans, Office of Crash Avoidance Standards at (202) 366–2272. His FAX number is (202) 366–7002.

For legal issues, you may call Ms. Dorothy Nakama, Office of the Chief Counsel at (202) 366–2992. Her FAX number is (202) 366–3820.

You may send mail to both of these officials at National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

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I. How Did This Rulemaking Begin?—The May Petition

In a petition dated January 21, 2000, Ms. Justine May petitioned NHTSA to amend Federal Motor Vehicle Safety Standard (FMVSS) Number 120, *Tire selection and rims for motor vehicles other than passenger cars.* Ms. May requested that FMVSS No. 120 be revised in such a way that motor vehicles would be equipped with tires that meet maximum load standards when the vehicle is loaded with a reasonable amount of luggage and the total number of passengers the vehicle is designed to carry. The petition suggested that the language added to FMVSS No. 120 be sufficient to allow for enforcement and for appropriate penalties when non-compliance exists. Ms. May's stated reason for her petition is her family's personal experience with a fifth-wheel travel trailer. She stated that there was no information provided with her trailer stating its cargo carrying capacity (CCC). Ms. May believes that loading her vehicle with cargo for a trip placed it in an overloaded condition, resulting in tire blowouts.

We granted Ms. May's petition for rulemaking.

II. What Is the Safety Need for the Proposed Rule?—Helping To Prevent Motor Home and Travel Trailer Overloading

A. Background—Over the years, the agency has received inquiries and complaints from the public about problems resulting from motor home and travel trailer overloading. Many overloading problems surface in the form of complaints about poor handling, reduced braking capabilities, tire failure and the premature failure of suspension components. NHTSA believes that this proposal will address the problem of overloading, by helping consumers have a better idea of when the cargo carrying capacities of their motor homes and travel trailers are being met, and exceeded.

This proposed rule addresses motor homes and travel trailers. Based on NHTSA staff's discussions with motor home/travel trailer owners, representatives of the recreational vehicle industry and other recreational vehicle groups, the agency has tentatively concluded that many motor home and travel trailer owners are unaware of their vehicle's cargo carrying capacity until a problem becomes apparent. State laws do not require motor homes and travel trailers to use roadside weighing stations as they do for heavy commercial vehicles. NHTSA believes that consumer information in the form of a required label will reinforce existing efforts by the industry to inform consumers of a motor home or travel trailer's cargo carrying capacity.

The Recreation Vehicle Industry Association (RVIA) (*http://www.rvia.org*) reports that the sales of recreational vehicles (motor homes, travel trailers, fifth wheel trailers, truck campers, and folding camping trailers) totaled approximately 325,000 units in 2003, an increase of approximately 2.5 percent over the previous year. The RVIA cited a 2001 University of Michigan study that shows there are a record 7.2 million recreational vehicles on the roads in the United States and an estimated 30 million recreational vehicle enthusiasts, including renters. Long-term signs indicate substantial recreational vehicle market growth because of favorable demographic trends. As baby boomers enter their prime recreational vehicle buying years over the next decade, the RVIA estimates that the number of recreational vehicle-owning households will rise by 15 percent to nearly 8 million in 2010.

Data published in November 2003 by the Recreation Vehicle Safety Education Foundation (RVSEF)(*http://www.rvsafety.org*) provides an indication of the size of the overloading problem. Although not a random sample for all recreational vehicles,[1] the following data are somewhat representative of motor home and travel trailer-type recreational vehicles. The following numbers were extracted from the RVSEF 2003 Annual Report to the Industry:

- 60 percent of 14,606 motor homes weighed since 1993 were overloaded.
- 56 percent of 2,533 fifth wheel travel trailers weighed since 1993 were overloaded.
- 51 percent of 827 non-fifth wheel travel trailers weighed since 1993 were overloaded.
- 54 percent of 2,460 motor homes weighed in 2003 were overloaded.
- 47 percent of 334 fifth wheel travel trailers weighed in 2003 were overloaded.
- 47 percent of 108 non-fifth wheel travel trailers weighed in 2003 were overloaded.

The data presented above appear to show that the problem of overloading has persisted over a ten-year period. As

[1] The RVSEF tends to weigh heavier vehicles.

earlier indicated, overloaded recreational vehicles can cause tire failures and blowouts, which can lead to loss of control, extensive vehicle damage, injuries, and fatalities.

To help address this problem, in this NPRM, NHTSA proposes a consumer-information safety label that would adopt the recommended practices of an industry-sponsored organization, the Recreation Vehicle Industry Association (RVIA).

Since this rulemaking addresses motor homes and travel trailers, the following describes characteristics of these vehicles, and explains how they may become overloaded.

B. Motor Homes—Motor homes are usually manufactured in two or more stages, with the final stage manufacturer using a pass-through certification of the chassis manufacturer by staying within the guidelines of the incomplete vehicle document specified by the chassis manufacturer. In some cases, a final stage manufacturer may complete a vehicle so that its unloaded vehicle weight (UVW) plus occupant capacity weight (OCW) is just under the GVWR certified by the chassis manufacturer. The GVWR is the value specified by the manufacturer as the maximum loaded weight of the vehicle.

NHTSA's present certification label requirement (49 CFR 567.4) specifies that the GVWR include the "rated cargo load," but it does not provide criteria for determining the rated cargo load or specify a minimum required cargo load. The rated cargo load may be very low or even zero. Motor homes have large, open interior spaces that owners may erroneously believe can safely be used for large amounts of cargo. If the rated cargo load is low, when a consumer loads even a small amount of cargo such as clothing, food, water and small appliances, the vehicle may become overloaded. We believe that better consumer information can help avoid this situation.

C. Travel Trailers—Travel trailers are built on trailer chassis that can have one axle or multiple axles. The GVWR of the trailer chassis, the size of body that is built onto it and the number of options put into the trailer determine how much rated cargo load remains. Without information from the manufacturer, the consumer cannot determine a particular model's rated cargo load. Like motor homes, travel trailers also have large, open interior spaces that consumers may believe can safely be used to carry large amounts of cargo. The lack of consumer information indicating the travel trailer's rated cargo load can lead to overloading situations.

D. How Motor Homes and Travel Trailers Can Become Overloaded—There are several ways in which vehicles such as motor homes and travel trailers can become overloaded. A vehicle becomes overloaded when any of its tire load ratings, GAWRs or GVWRs are exceeded. Overloading places stress on the vehicle's chassis, suspension components, axles, tires, brakes, and other vehicle systems.

In certain cases, non-uniform side-to-side and/or non-uniform forward/aft overloading occurs. In some cases, overloading may occur when a final stage manufacturer installs furniture, appliances, room extensions, and other fixtures or accessories in a non-symmetrical fashion and/or when consumers place cargo in a non-uniform fashion. Although the GVWR may not be exceeded, individual tires or axles may become overloaded as a result of non-uniform loading.

At present, NHTSA does not regulate the load applied to individual tires on any vehicle. FMVSS No. 120, which at present applies to all vehicles except passenger cars,[2] states that the sum of the maximum load ratings of the tires fitted to an axle shall not be less than the GAWR. If the load is non-uniform, an individual tire can be overloaded without exceeding the GAWR, and FMVSS No. 120 requirements would still be met. Overloaded, unbalanced vehicles, especially large vehicles such as motor homes and travel trailers, are difficult to maneuver and may require longer stopping distances. When a vehicle is unbalanced and overloaded, the chances of a crash caused by poor handling or component failure increase. Components subject to failure include springs, shock absorbers, brakes, frame components, steering components, axles, rims and tires.

The consumer information label we are proposing would also advise recreational vehicle owners to distribute cargo appropriately in order to prevent non-uniform loading.

III. Previous NHTSA Rulemaking on Cargo Load Information

On April 16, 1991, NHTSA published an NPRM (56 FR 15315) to require the disclosure of information about a vehicle's rated cargo load. The NPRM responded to a petition filed by Mr. Stephen Durkovich on May 22, 1990. NHTSA proposed amending the labeling requirements in FMVSS No. 120, concerning tire selection and rims for vehicles other than passenger cars, to require information about the vehicle capacity weight and designated seating capacity. The agency further proposed to modify the definition of vehicle capacity weight to clarify that the rated cargo load includes luggage.

All the public comments in response to the NPRM opposed the proposal to require labeling of vehicle capacity weight and designated seating capacity. Additionally, commenters stated that there was a lack of statistical data and demonstrated safety need, and that providing information about vehicle capacity weight and designated seating capacity would not be useful to consumers.

In the **Federal Register** of March 4, 1992 (57 FR 7712), NHTSA terminated the rulemaking.

IV. Cargo Carrying Capacity-Related Consumer Information and Labels Currently Required by NHTSA

The following FMVSSs and other NHTSA regulations currently require vehicle manufacturers to provide information to the public on labels or tags affixed to vehicles.

A. 49 CFR Part 567, Certification—Part 567 requires motor vehicle manufacturers to affix to each vehicle, a certification label containing the following information: the manufacturer's name; the month and year of manufacture; the Gross Vehicle Weight Rating (GVWR) (which cannot be less than the sum of the unloaded vehicle weight, rated cargo load, and 68 kg (150 lb) times the number of designated seating positions in the vehicle); the Gross Axle Weight Rating (GAWR) for each axle (the value specified by the vehicle manufacturer as the load carrying capacity of a single axle system, as measured at the tire/ground interface); a statement that the vehicle conforms to applicable Federal motor vehicle safety standards; the vehicle identification number; and the vehicle type classification.

B. 49 CFR 571.120 (FMVSS No. 120), Tire selection and rims for motor vehicles other than passenger cars—FMVSS No. 120 requires manufacturers of applicable vehicles to include certain information on either the Part 567 vehicle certification label or on a separate tire information label on the vehicle. The required information includes the GVWR, GAWR, the appropriate tire and rim combination and the recommended cold inflation pressure.

The information is intended to provide the consumer with a recommended tire size, rim size and cold inflation tire pressure appropriate for the vehicle certified GAWRs. FMVSS

[2] On June 1, 2007, FMVSS No. 120 will apply only to vehicles with GVWRs greater than 4,536 kilograms (10,000 pounds).

No. 120 also requires that the sum of the maximum load ratings of the tires fitted to an axle shall not be less than the GAWR of the axle system. However, it presently does not require that when delivered to the customer, the size of the tires on the vehicle be the same as the tire size on the tire information label. On June 1, 2007, an amendment to FMVSS No. 120 will take effect, which will change its applicability from "tire selection and rims for motor vehicles other than passenger cars" to "tire selection and rims for motor vehicles with a GVWR of more than 4,536 kilograms (10,000 pounds)." It is anticipated that, if made final, this proposed rule will take effect on or after June 1, 2007, and therefore, the labeling in this proposed rule will apply to motor homes and travel trailers with GVWRs greater than 4,536 kilograms (10,000 pounds).

C. 49 CFR 571.110 (FMVSS No. 110), Tire selection and rims, requires passenger cars to have a label affixed to the glove compartment door or an equally accessible location that contains the following information: vehicle capacity weight; designated seating capacity; vehicle manufacturer's recommended cold tire inflation pressure; and vehicle manufacturer's recommended tire size designation. FMVSS No. 110 also requires that the maximum load on each tire at vehicle GVWR shall not be greater than the applicable maximum load rating as marked on the sidewall of the tire.

On September 1, 2005, an amendment will take effect that will require a placard to be affixed to the vehicle's driver side B-pillar (on the edge of the driver's door if no B-pillar exists) that adds the following information: the vehicle capacity weight expressed as "The combined weight of occupants and cargo should never exceed XXX kilograms or XXX pounds." S4.3.5 *Requirements for trailers,* states that each trailer must on its placard contain a cargo capacity statement expressed as "The weight of cargo should never exceed XXX kilograms or XXX pounds" in the same location on the placard specified for the "vehicle capacity weight" statement required by this standard.

On June 1, 2007, FMVSS No. 110 will apply to all motor vehicles with a GVWR of 4,536 kilograms (10,000 pounds) or less, except motorcycles.

D. 49 CFR 575.6 Consumer Information Requirements—49 CFR 575.6 requires manufacturers to provide consumers with written information on tire labeling, tire care, vehicle load limits and explanations of the information provided. Manufacturers must also provide a discussion and sample calculation for determining the cargo and luggage load capacity.

E. 49 CFR 575.103, Truck-camper loading requires manufacturers of slide-in campers to affix to each camper, a label that contains information relating to the identification and proper loading of the camper, and to provide more detailed loading information in the owner's manual. The label must state the maximum weight of the slide-in camper, which must include the weight of water, bottled gas, and the refrigerator or ice box. In addition, it requires truck manufacturers that would accommodate slide-in campers to specify the cargo weight ratings and the longitudinal limits within the center of gravity for where the cargo weight should be located.

V. Cargo Carrying Capacity Consumer Information and Labels Currently Required or Recommended by Others

A. Transport Canada—Transport Canada amended its motor vehicle safety regulations on April 1, 1999 by requiring manufacturers to provide additional information on their certification labels or on a separate label. The amendment addresses the inadvertent overloading of altered vehicles, recreational vehicles, and those vehicles built in stages (including multipurpose passenger vehicles, buses, and trailers) by different manufacturers. The amendment requires:

- Alterers and intermediate/final stage manufacturers to respect the gross axle weight ratings and gross vehicle weight ratings determined by the original manufacturer.
- Manufacturers of multipurpose passenger vehicles or buses manufactured from cutaway chassis, motor homes and recreational trailers, to state the cargo-carrying capacity and designated seating capacity as required on the compliance label or on a separate label placed beside the compliance label.
- Information on motor homes and recreational trailers, which specifies the mass of the fresh water, hot water and waste tank, when full, and which states that the cargo-carrying capacity of the vehicle was determined when fresh-water and hot water tanks were full and the waste water tanks empty.
- The number of seat belts installed to be no less than the number of sleeping positions.

B. Recreation Vehicle Industry Association (RVIA)—RVIA has established provisions for labels that provide motor home and recreational trailer weight information. To qualify as members in good standing, manufacturers must post the label information on their vehicles. According to the RVIA, over 95 percent of recreational vehicle manufacturers are RVIA members and comply with their labeling requirements. RVIA visits their members several times per year to verify that the RVIA labels are placed on recreational vehicles. The following information is required on the RVIA label for motor homes and recreational vehicle trailers:

- Vehicle Identification Number (VIN) or serial number.
- Definitions of Gross Vehicle Weight Rating (GVWR), Unloaded Vehicle Weight (UVW), Sleeping Capacity Weight Rating (SCWR) [for motor homes only] and Cargo Carrying Capacity (CCC).
- The weights in pounds (and kilograms) for GVWR, UVW, fresh water, propane, SCWR [for motor homes only] and CCC.
- An advisory that dealer installed equipment will reduce the CCC. [Motor homes must include "and towed vehicle tongue weight" after "equipment."]
- An advisory to consult the owner's manual for specific weighing instructions and towing guidelines.

VI. Notice of Proposed Rulemaking

A. Definitions—This proposed rule would apply to motor homes and travel trailers. A definition of "motor home" is already included in 49 CFR 571.3. In this NPRM, we propose to revise the definition of "motor home" (to refer to "propane" rather than "LP gas supply") and to propose to define "travel trailer" as follows:

Motor home means a multi-purpose vehicle with motive power that is designed to provide temporary residential accommodations, as evidenced by the presence of at least four of the following facilities: cooking; refrigeration or ice box; self-contained toilet; heating and/or air conditioning; a potable water supply system including a faucet and a sink; and a separate 110–125 volt electrical power supply and/or propane.

Travel trailer means a trailer designed to be drawn by a vehicle with motive power by means of a bumper or frame hitch or a special hitch in a truck bed and is designed to provide temporary residential accommodations, as evidenced by the presence of at least four of the following facilities: cooking; refrigeration or ice box; self-contained toilet; heating and/or air conditioning; a potable water supply system including a faucet and a sink; and a separate 110–125 volt electrical power supply and/or propane.

If it should be made final, the definition of "travel trailer" will be placed in 49 CFR 571.3.

B. GVWR, GAWR and Tire Load Information for Motor Homes and

Travel Trailers—In this NPRM, we propose to amend FMVSS No. 120 to require that the sum of the GAWRs of all the axles on a motor home and that the sum of the GAWRs of all the axles on a travel trailer plus the tongue load rating, must not be less than the GVWR of each respective vehicle. We note that the proposed requirement would not prevent individual tires on motor homes and travel trailers from being overloaded.

NHTSA is concerned about the issue of individual tire overloading, as some of the complaints we receive concern tire safety issues such as premature tire failure and blowouts. In FMVSS No. 110, the vehicle maximum load on an individual tire is determined by distributing to each axle its share of the maximum loaded vehicle weight and dividing by two. This vehicle maximum load on the tire shall not be greater than the maximum load rating marked on the sidewall of the tire. In FMVSS No. 120, the sum of the maximum load ratings of the tires fitted to an axle shall not be less than the GAWR. (Neither standard requires that the actual load on an individual tire not exceed the installed tire load rating.) While we are not proposing to address individual tire loading in this NPRM, we are seeking data on the magnitude of the safety problem. In some cases, new vehicles can have an overloaded axle or tire caused by unbalanced loading, without passengers or cargo. In some cases, individual axles or tires may not be overloaded; in this situation, however, when passengers and cargo are loaded, a tire or axle may become overloaded.

NHTSA plans to monitor complaint and crash data resulting from reported overloading of individual tires and axles on motor homes and travel trailers. The agency requests input from manufacturers and other commenters regarding the issue of regulating tire and axle loads on motor homes and travel trailers.

In this proposed rulemaking, NHTSA proposes to require that the size of the tires that are on motor homes and travel trailers at the time of first retail sale be the same size as the tires on the tire label required by FMVSS No. 120. Since inflation tire pressure is critical to tire loading, the tire label provides the recommended tire size and cold inflation pressure for the vehicle. If a different tire is placed on the vehicle, it may require a different tire inflation pressure. Consumers generally refer to the tire label for inflation pressures. If the size of the tire on the label and the size of the tire on the vehicle are not the same, the consumer may inflate the vehicle's tires to the wrong pressure. In some cases, inflating vehicle tires to the wrong pressure can intensify the effects of overloading.

The proposed rule would also require manufacturers to disclose CCC of motor homes and travel trailers. It is anticipated that consumers will use this information both to purchase vehicles with CCCs that will meet their needs and as guidance for how they may subsequently load their vehicles in a safe manner. This proposed rule would not specify a minimum required CCC for any motor home or travel trailer.

C. Determining Occupant Capacity Weight—In order to determine the CCC of a motor home, the occupant capacity weight (OCW) must be determined. The OCW is then grouped with the other weight factors (such as weight of full fresh water, propane and the unloaded vehicle weight) that must be subtracted from the vehicle's GVWR in order to determine the portion of the GVWR available for carrying cargo.

The RVIA uses sleeping capacity weight rating (SCWR) on its label to account for OCW. SCWR is the number of sleeping positions times 68 kilograms (150 pounds). The premise is that the motor home will usually not be carrying more passengers than there are places for the passengers to sleep. However, the number of safety belt equipped positions, which are seating positions equipped with type 1 or type 2 safety belts, can be greater than the number of sleeping positions used in the CCC calculation. If these seating positions are all occupied, there may be an overload condition, as there then may be occupants in the vehicle not included in the CCC calculation.

Another method of determining OCW would be to simply use the total number of safety belt-equipped seating positions. However, simply requiring that the total number of safety belt-equipped seating positions be used when calculating CCC may encourage manufacturers to reduce the number of safety belt-equipped seating positions. Fewer safety belt-equipped seating positions means that a motor home or travel trailer may have greater CCC.

In this NPRM, NHTSA proposes that the greater of the total number of safety belt-equipped seating positions or the total number of sleeping positions be multiplied by 68 kilograms (150 pounds) to determine the OCW.

D. Location of Labels—The RVIA requires that labels be affixed to the vehicle in a conspicuous location. Motor home labels are sometimes found in the driver's compartment and trailer labels are sometimes found on the inside of kitchen cabinet doors. Nonuniform label locations may cause consumers to miss the label when shopping for a vehicle. Also, the label should be in a location where consumers can repeatedly see it, so the label serves as a reminder of CCC and overloading issues. In order to promote a consistent label location, which may increase the number of times consumers see the label and thus, increase label effectiveness, in this NPRM, we propose that the label be affixed to the interior of the forwardmost exterior passenger door on the right side of the vehicle. Such a door is used repeatedly when entering, exiting, and loading the vehicle. In addition, such a door will have the surface area to accommodate the size of the required label.

E. Proposed Label Format and Content—NHTSA seeks to provide purchasers of motor homes and travel trailers with information of the vehicles' CCC. NHTSA believes the labels should also provide consumers with a detailed explanation of how the CCC is calculated, thus enabling each consumer to adjust the values according to their particular applications. For example, if there are only two occupants riding in a motor home designed for six occupants, there would be more capacity for cargo. NHTSA's proposed label is similar to the RVIA label that is currently used by many companies on a voluntary basis.

NHTSA also believes the proposed label formats have information consumers can use while comparison shopping for motor homes or travel trailers. The labels would also serve as a reference to recreational vehicle owners when the owners are loading cargo.

The proposed label for travel trailers would include the trailer tongue load rating and the statement: "The weight of cargo should never exceed XXX kilograms (XXX pounds)" in black lettering on yellow background. The travel trailer manufacturer would be responsible for determining the trailer tongue load rating and the cargo carrying capacity of its travel trailer, and for providing this information on its travel trailer label.

The proposed label for motor homes would include the statement: "The combined weight of occupants and cargo should never exceed XXX kilograms (XXX pounds)" in black lettering on yellow background. This statement is the same as will be required for vehicles with GVWRs of 4,536 kilograms (10,000 pounds) or less under the required FMVSS No. 110 vehicle placard, which becomes effective on September 1, 2005. The proposed motor home label would use the greater of the total number of safety belt-equipped

seating positions or sleeping positions times 68 kilograms (150 pounds) to determine OCW. The motor home manufacturer would be responsible for determining the cargo carrying capacity of its motor home, and for providing this information on its motor home label.

All information on each of the proposed motor home and travel trailer labels would be required to be a minimum print size of 2.4 millimeters (3/32 inches) high and be printed on a contrasting background. The weights on the label would be required to be displayed to the nearest kilogram (with conversion to the nearest pound in parentheses) and must reflect the particular weight specifications of the motor home or travel trailer to which it is affixed as the vehicle leaves the factory. Both labels will advise the purchaser that the weight of any dealer-installed equipment must be subtracted from the manufacturer's value of CCC and will advise consumers to load cargo appropriately to prevent non-uniform side-to-side and forward-aft loading. In the case of motor homes, the label will contain the weight of the maximum hitch load and the purchaser will be advised that the tongue weight of trailers or vehicles being towed also subtracts from the manufacturer's value of CCC. If the motor home is not delivered with a hitch, this block will be left blank.

While the proposed label will not refer to the owner's manual, the standard would not prohibit manufacturers from adding references on the label that refer to specific information that is included in the owner's manual. NHTSA believes that the labels will be helpful to consumers in making purchasing decisions and can also be used by recreational vehicle owners to calculate the amount of cargo that can be carried in situations where there may be a reduced number of passengers and/or reduced quantities of water or propane.

F. Addition of Weight to FMVSS No. 110 Vehicles and to FMVSS No. 120 Motor Homes and Travel Trailers Between Vehicle Certification and First Retail Sale of the Vehicle.

1. FMVSS No. 110—September 1, 2005 is the effective date of an amendment to FMVSS 110, *Tire selection and rims*, which will require manufacturers to affix a tire placard to the vehicle's driver-side B-pillar or to the edge of the driver's door (if no B-pillar exists) which adds the statement: "The combined weight of occupants and cargo should never exceed XXX kg or XXX lbs." to the information previously required on the existing tire placard. Vehicle manufacturers will be required to disclose the amount of weight carrying capacity that is available on the vehicle for passengers and cargo. The vehicle manufacturer installs this label when the vehicle is certified.

Recently, manufacturers and dealers have inquired as to what must be done when optional equipment and accessories are added to a vehicle before first retail sale, which increases the vehicle's weight and decreases the weight allotted for passengers and cargo. NHTSA's response to such inquiries has been that the label must be replaced as necessary so that the vehicle has a label with accurate information. NHTSA believes, however, that small increases in weight are insignificant. Moreover, requiring dealers to reprint labels with new information each time a small amount of weight is added to a vehicle is unnecessarily burdensome.

To address the issues, in this NPRM, NHTSA proposes that for FMVSS No. 110 vehicles, if weight equal to or less than 0.5 percent of gross vehicle weight rating (GVWR) is added by the dealer before first retail sale, no additional action is required. If weight greater than 0.5 percent of GVWR is added by the dealer before first retail sale, the dealer must add the following label to the vehicle within 25 millimeters (1 inch) of the FMVSS No. 110 tire placard, which discloses the total weight of added items to the nearest kilogram (pound). The characters of this label must have a minimum print size of 2.4 millimeters (3/32 inches) high and be black printed on a yellow background. The label must be visible when the FMVSS No. 110 tire placard is read:

"Caution—Cargo Carrying Capacity Reduced" Modifications to this vehicle have reduced the original cargo carrying capacity _____ by kilograms (_____ pounds)

This label may be printed as shown above and the value for total added weight is provided by the dealer when it installs optional accessories and equipment in excess of 0.5 percent of the vehicle's GVWR. To fill out the additional label, dealers need to know only the total weight effect of added items. Dealers can provide the information without weighing vehicles. The following is the proposed regulatory text at S4.3(a) of FMVSS No. 110.

(a) Vehicle capacity weight:

(1) If weight greater than 0.5 percent GVWR is added to a vehicle between vehicle certification and first retail sale, of the vehicle, the following label meeting the following criteria shall be affixed to the vehicle within 25 millimeters (1 inch) of the tire placard such that it is visible when the tire placard is read.

"Caution—Cargo Carrying Capacity Reduced" Modifications to this vehicle have reduced the original cargo carrying capacity _____ by kilograms (_____ pounds)

(2) The label must disclose to the nearest kilogram (pound), the total weight added.

(3) The characters of the label must be presented in the English language, have a minimum print size of 2.4 millimeters (3/32 inches) high, and be black printed on a yellow background. The label must be moisture resistant and permanently affixed to the vehicle.

2. FMVSS No. 120—NHTSA believes the proposed changes to FMVSS No. 110 concerning additional dealer-added weight are also appropriate for FMVSS No. 120. As previously discussed, the proposed language for FMVSS 120 requires an RVIA type label, which includes a statement similar to the cargo carrying capacity statement that appears on the FMVSS No. 110 label. The proposed FMVSS No. 120 motor home label would state: "The combined weight of occupants and cargo should never exceed XXX kilograms (XXX pounds)." The proposed FMVSS No. 120 travel trailer label would state: "The weight of cargo should never exceed XXX kilograms (XXX pounds)." For motor homes and travel trailers, cargo carrying capacity will be determined by the final stage vehicle manufacturer and will be printed on the FMVSS No. 120 cargo carrying capacity label for motor homes and travel trailers. If the weight of optional accessory items and equipment installed by dealers is not disclosed, the cargo carrying capacity value on the manufacturer's label may be incorrect.

Therefore, in this NPRM, NHTSA proposes that the same method proposed for FMVSS No. 110 vehicles above also be used for motor homes and travel trailers in FMVSS No. 120. If weight equal to or less than 0.5 percent of GVWR is added by the dealer to a FMVSS No. 120 motor home or travel trailer between certification and first retail sale, no additional action is required. If weight greater than 0.5 percent of GVWR is added by the dealer to a FMVSS No. 120 motor home or travel trailer between certification and first retail sale, the dealer must add the following label within 25 millimeters (1 inch) of the FMVSS No. 120 motor home or travel trailer cargo carrying capacity label which discloses the total weight of added items to the nearest kilogram (pound). The characters of this label must have a minimum print size of 2.4 millimeters (3/32 inches) high and

be black printed on a yellow background. The label must also be visible when the FMVSS No. 120 motor home or travel trailer cargo carrying capacity label is read.

"Caution—Cargo Carrying Capacity Reduced" Modifications to this vehicle have reduced the original cargo carrying capacity by _____ kilograms (_____ pounds)

This label may be printed as shown above and the value of total weight added may be written on the label by the dealer when optional accessories and equipment are installed. To fill out the additional label, dealers need only know the total weight effect of added items. Dealers can provide the information without weighing vehicles. The following regulatory text for FMVSS No. 120 on dealer-added weight between certification and first retail sale is proposed:

S10.4.5 Weight added to motor homes and travel trailers between vehicle certification and first vehicle sale.

(a) If weight greater than 0.5 percent of GVWR is added to a motor home or travel trailer between vehicle certification and first retail sale, a label as shown in Figure 3 and meeting the following criteria shall be affixed to the vehicle within 25 millimeters of the cargo carrying capacity label required by S10.3.3 or S10.3.4 such that it is visible when reading the cargo carrying capacity label.

(1) The label must disclose the total weight added to the nearest kilogram (pound).

(2) The characters of the label must be presented in the English language, have a minimum print size of 2.4 millimeters (3/32 inches) high, be black printed on a yellow background and the label must be moisture resistant and permanently affixed to the vehicle.

VII. Leadtime

We propose to make the amendments effective 180 days (approximately six months) after the final rule is published but, as discussed above, not before June 1, 2007. We note that the proposed labeling requirements would not require manufacturers to collect or provide any information other than that already voluntarily provided by motor home and travel trailer manufacturers that are members of the Recreational Vehicle Industry Association. Public comment is sought whether 180 days would be enough lead time for industry to comply with the NHTSA's new requirements.

In addition, the provisions in the proposed rule to amend FMVSS No. 110 are intended to provide regulatory relief to dealers that may add weight less than 0.5 percent of gross vehicle weight rating after certification of vehicles and before first retail sale of the vehicles. Thus, we propose, for the FMVSS No. 110 provisions, if made final, that dealers be given the option of immediate compliance.

VIII. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

We have considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed by the Office of Management and Budget under E.O. 12866, "Regulatory Planning and Review." The rulemaking action is also not considered to be significant under the Department's Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

For the following reasons, we believe that this proposal, if made final, would not have any quantifiable cost effect on manufacturers of motor homes or travel trailers. If made final, this rule would have no substantive effect on 95 percent of motor homes and travel trailers that are already manufactured for the U.S. market. As discussed earlier, the labeling requirements in this proposed rule parallels the labels already required by the Recreational Vehicle Industry Association (RVIA) for RIVA members. Approximately 95 percent of affected motor home and travel trailer manufacturers are RVIA members. Thus, if made final, the proposed rule would in effect impose new requirements on only approximately 5 percent of recreational vehicle manufacturers.

In addition, this proposed rule would provide regulatory relief for dealers from an existing labeling requirement in the safety standard on tire selection and rims. Dealers that add items to covered vehicles in excess of 0.5 percent of the vehicles' gross vehicle weight ratings would be required to disclose this extra weight on labels affixed to the vehicles. No labels would be required for the addition of lesser weight.

Because the economic impacts of this proposal are so minimal, no separate regulatory evaluation is necessary.

B. Executive Order 13132 (Federalism)

Executive Order 13132 requires us to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, we may not issue a regulation with federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or unless we consult with State and local governments, or unless we consult with State and local officials early in the process of developing the proposed regulation. We also may not issue a regulation with federalism implications and that preempts State law unless we consult with State and local officials early in the process of developing the proposed regulation.

This proposed rule would not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The reason is that this proposed rule, if made final, would apply to motor home manufacturers and to travel trailer manufacturers, not to the States or local governments. Thus, the requirements of

Section 6 of the Executive Order do not apply to this proposed rule.

C. Executive Order 13045 (Economically Significant Rules Affecting Children)

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

This proposed rule is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866 and does not involve decisions based on environmental, health or safety risks that disproportionately affect children. This proposed rule, if made final, would make changes affecting only motor home manufacturers and travel trailer manufacturers.

D. Executive Order 12988 (Civil Justice Reform)

Pursuant to Executive Order 12988, "Civil Justice Reform," we have considered whether this proposed rule would have any retroactive effect or any preemptive effect. We conclude that it would have no retroactive effect.

Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

For this proposed rule, we propose a definition of "travel trailer."

E. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule would not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities.

The Administrator considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and certifies that this proposal would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification is that this proposal, if made final, would minimally affect small U.S. motor home manufacturers or small U.S. travel trailer manufacturers. The U.S. Small Business Administration's regulations at 13 CFR 121.201 defines a small "motor home manufacturer" (NAICS Code 336213) as a "business entity organized for profit, with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor." (See 13 CFR 121.105) that employs fewer than 1,000 employees. Travel trailer and camper manufacturers (NAICS Code 336214) on the other hand, have a size standard of fewer than 500 employees.

NHTSA believes that most RVIA members are small businesses. As earlier discussed, 95 percent of RVIA members are already providing to their customers, labeling information that parallel the information specified in this NPRM. Thus, if made final, this proposed rule would impose new labeling information requirements on only 5 percent of small businesses that manufacture motor homes or travel trailers.

F. National Environmental Policy Act

We have analyzed this proposal for the purposes of the National Environmental Policy Act and determined that it would not have any significant impact on the quality of the human environment.

G. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid Office of Management and Budget (OMB) control number. This proposal introduces new information collection requirements in that the new regulation would require certain disclosures to third parties. Our estimates of the burden that this rulemaking imparts on motor home and travel trailer manufacturers are given below. There is no burden to the general public. These estimates are based on the fact that approximately 95% of motor home and travel trailer manufacturers currently belong to RVIA and apply the RVIA label to the vehicles they produce. The physical make-up of the RVIA label, as well as the information it provides are similar to the label required by this proposed regulation. Therefore, the cost and hour burden for making/purchasing and applying the RVIA label is essentially the same as the cost and hour burden for the label proposed in this rulemaking. When this rulemaking becomes a final rule, all manufacturers will be using the label specified by this NHTSA regulation. We expect that the NHTSA label will replace a current label of the same cost for most RVs. This rule does not prohibit manufacturers from adding any information, such as references to the owner's manual, that appear on present labels to the NHTSA label. Therefore, we do not believe the rule will cause the need for an additional label on those vehicles.

Because 95% of manufacturers are currently using a similar label (the RVIA label), which has a similar cost and hour burden, the only additional burden imparted by this rulemaking would be the cost of the remaining 5% of manufacturers to comply. The following are the hour burden and cost estimates, which will result when the remaining 5% of motor home and travel trailer manufacturers had to comply with labeling requirements.

This proposal also introduces an additional label to be applied by dealers in cases where weight totaling more than 0.5 percent of the vehicle's GVWR is added between vehicle certification by the manufacturer and first retail sale. Such added weight is usually in the form of equipment or accessories added by the dealer at the request of the purchaser. If weight in excess of 0.5 percent of GVWR is added the dealer would write on the label the total weight of added items and apply the label next to the cargo carrying capacity label. This being a new label would

apply to 100 percent of the RVs to which this proposed rulemaking applies. The estimated cost of labels are based on costs obtained from a leading label manufacturer.

The following information and hardware are already available to manufacturers and therefore would not impose additional cost or burden.

- VIN or serial number
- Definitions of GVWR, UVW, OCW, CCC
- Value of GVWR
- Value of UVW
- Value of the maximum quantity of fresh water and its weight
- Value of the maximum quantity of propane and its weight
- Value of OCW
- Value of CCC
- Advisory statements at the bottom of the label
- Scale system for weighing vehicles as practically all manufacturers own or have access to a scale system in order to monitor the load of the body verses the GVWR of the chassis. Scale systems usually cost between $10,000 and $15,000.

Estimated annual burden to motor home and travel trailer manufacturers to determine the Unloaded Vehicle Weight (UVW).

Motor Homes

- Estimated labor hours to weigh a motor home = .10 hours
- Approximately 61,527 motor homes shipped in 2003
- It is estimated that 95% currently use the RVIA label and weigh their motor homes which leaves 5% or 3076 additional motor homes per year to be weighed as a result of this rulemaking
- 3076 additional motor homes/year × .10 hours/motor home = 308 hours/year

Travel Trailers

- Estimated hours to weigh a travel trailer = .16 hours
- Approximately 264,109 travel trailers shipped in 2003
- It is estimated that 95% currently use the RVIA label and weigh their travel trailers which leaves 5% or 13,205 additional travel trailers per year to be weighed
- 13,205 additional travel trailers/year × .16 hours/travel trailer = 2113 hours/year

Total estimated additional hour burden to weigh additional vehicles per year as a result of this rulemaking = 308 hours + 2113 hours = 2421 hours/year.

Estimated annual burden and cost to motor home and travel trailer manufacturers to produce/purchase and install the label.

- Estimated cost to produce the label = $0.10 per label
- Estimated labor hours to install label = .02 hours per label
- Approximately 61,527 motor homes and 264,109 travel trailers were shipped in 2003 for a total of 325,636 units/year.
- It is estimated that 95% of these vehicles are currently shipped with the RVIA label, which leaves 5% or 16,282 motor homes, and travel trailers/year that will require labels.

Total estimated additional hour burden per year to install the labels = 16,282 labels/year × .02 hours/label = 326 hours/year.

Total estimated additional cost of labels per year = 16,282 labels/year × $0.10/label = $1,628/year.

Estimated annual burden and cost to motor home and travel trailer dealers to produce/purchase and install the label identifying additional weight added.

- Estimated cost to produce the label = $0.02 per label
- Estimated labor hours to install label = .02 hours per label
- Approximately 61,527 motor homes and 264,109 travel trailers were shipped in 2003 for a total of 325,636 units/year.
- It is estimated that 50% of these vehicles will receive enough additional weight before first retail sale to require them to bear the additional label. The number of vehicles would be 50% of 325,636 vehicles, which equals 162,818 vehicles that will require the additional label.

Total estimated additional hour burden per year to install the additional labels = 162,818 labels/year × .02 hours/label = 3256 hours/year.

Total estimated additional cost of additional labels per year = 162,818 labels/year × $0.02/label = $3256/year.

Total annual hour burden and cost to the industry as a result of this proposal is 6003 hours and $4,884 per year.

NHTSA will consider comments by the public on this proposed collection of information in evaluating:

- Whether the proposed collection of information is necessary for the safe use of motor homes and travel trailers,
- The accuracy of the agency's estimate of the burden of the proposed collection of information,
- The quality, utility, and clarity of the information to be collected, and
- The opportunities to minimize the information collection burden.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272) directs us to use voluntary consensus standards in our regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers (SAE). The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

After conducting a search of available sources, we have decided to propose labels similar to that used by the Recreational Vehicle Industry Association, advising consumers of cargo carrying capacity for motor homes and travel trailers, and providing advisories.

I. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal 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 more than $100 million in any one year (adjusted for inflation with base year of 1995). Before promulgating a NHTSA rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if we publish with the final rule an explanation why that alternative was not adopted.

This proposal would not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector. Thus, this proposal is not subject to the requirements of sections 202 and 205 of the UMRA.

J. Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

—Have we organized the material to suit the public's needs?
—Are the requirements in the rule clearly stated?
—Does the rule contain technical language or jargon that is not clear?
—Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
—Would more (but shorter) sections be better?
—Could we improve clarity by adding tables, lists, or diagrams?
—What else could we do to make this rulemaking easier to understand?

If you have any responses to these questions, please include them in your comments on this NPRM.

K. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) 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. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

Comments

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES.**

You may also submit your comments to the docket electronically by logging onto the Dockets Management System Web site at *http://dms.dot.gov*. Click on "Help & Information" or "Help/Info" to obtain instructions for filing the document electronically.

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR Part 512.)

Will the agency consider late comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider it in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

How can I read the comments submitted by other people?

You may read the comments received by Docket Management at the address given above under **ADDRESSES**. The hours of the Docket are indicated above in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

1. Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov/*).
2. On that page, click on "search."
3. On the next page (*http://dms.dot.gov/search/*), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were "NHTSA–1998–1234," you would type "1234." After typing the docket number, click on "search."
4. On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments. Although the comments are imaged documents, instead of word processing documents, the "pdf" versions of the documents are word searchable.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

How does the Federal Privacy Act apply to my public comments?

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; pages 19477–78) or you may visit *http://dms.dot.gov*.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, it is proposed that the Federal Motor Vehicle Safety Standards (49 CFR Part 571), be amended as set forth below.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 would continue to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.3(b) of title 49, Code of Federal Regulations, would be amended by revising the definition of "motor home" and adding a definition of "travel trailer," in the appropriate alphabetical order, to read as follows:

§ 571.3 Definitions.

* * * * *

(b) * * *

Motor Home means a multi-purpose vehicle with motive power that is designed to provide temporary residential accommodations, as evidenced by the presence of at least four of the following facilities: cooking; refrigeration or ice box; self-contained toilet; heating and/or air conditioning; a potable water supply system including

a faucet and a sink; and a separate 110–125 volt electrical power supply and/or propane.

* * * * *

Travel Trailer means a trailer designed to be drawn by a vehicle with motive power by means of a bumper or frame hitch or a special hitch in a truck bed and is designed to provide temporary residential accommodations, as evidenced by the presence of at least four of the following facilities: cooking; refrigeration or ice box; self-contained toilet; heating and/or air conditioning; a potable water supply system including a faucet and a sink; and a separate 110–125 volt electrical power supply and/or propane.

* * * * *

3. Section 571.110 of title 49, Code of Federal Regulations, would be amended by revising S4.3(a) to read as follows:

§ 571.110 Tire selection and rims.

* * * * *

S4.3 * * *

(a) Vehicle capacity weight:

(1) If weight greater than 0.5 percent of the gross vehicle weight rating (GVWR) is added to a vehicle between vehicle certification and the first retail sale of the vehicle, the following label meeting the following criteria shall be affixed to the vehicle within 25 millimeters (one inch) of the tire placard such that it is visible when the tire placard is read.

"Caution—Cargo Carrying Capacity Reduced" Modifications to this vehicle have reduced the original cargo carrying capacity by_____kilograms (_____pounds)

(2) The label must disclose the total weight added to the nearest kilogram with conversion to the nearest pound in parentheses.

(3) The characters of the label must be presented in the English language, have a minimum print size of 2.4 millimeters (3/32 inches) high, and be black printed on a yellow background. The label must be moisture resistant and permanently affixed to the vehicle.

* * * * *

3. Section 571.120 of title 49, Code of Federal Regulations, would be amended by revising the section heading, by revising S1, by revising S2, by adding S10, and by adding Figures 1, 2, and 3 to read as follows:

§ 571.120 Tire selection and rims for motor vehicles with GVWRs of more than 4,536 kilograms (10,000 pounds).

S1. This standard specifies tire and rim selection requirements, rim marking requirements and motor home/travel trailer cargo carrying capacity information.

S2. The purpose of this standard is to provide safe operational performance by ensuring that vehicles to which it applies are equipped with tires of adequate size and load rating and with rims of appropriate size and type designation, and ensuring that consumers are informed of motor home/travel trailer cargo carrying capacity.

* * * * *

S10. Each motor home and travel trailer must meet the applicable requirements in S10.

S10.1 On motor homes, the sum of the GAWRs of all axles on the vehicle must not be less than the GVWR.

S10.2 On travel trailers, the sum of the GAWRs of all axles on the vehicle plus the tongue load rating must not be less than the GVWR.

S10.3 The tires on each motor home and travel trailer at first retail sale must be the same size as the tire size on the labeling required by S5.3.

S10.4 Each motor home and travel trailer final stage manufacturer must affix a cargo carrying capacity label to its vehicles that meets the following criteria:

S10.4.1 The label must be moisture resistant, and must be permanently affixed to the interior of the forward most exterior passenger door on the right side of the vehicle.

S10.4.2 The label must be presented in the English language with a minimum print size of 2.4 millimeters (3/32 inches high).

S10.4.3 The label for motor homes must contain the following information in accordance with Figure 1:

(a) The statement: "THE COMBINED WEIGHT OF OCCUPANTS AND CARGO SHOULD NEVER EXCEED XXX kilograms (XXX pounds)" in block letters with appropriate values included in place of "XXX". The letters shall be black and the block in which the statement is located shall have a yellow background.

(b) The Vehicle Identification Number (VIN) of the motor home.

(c) Definitions of GVWR, UVW, OCW, and CCC as specified in Figure 1.

(d) The weights for the GVWR, UVW, fresh water, propane, OCW, CCC and maximum hitch load.

Weights must be provided to the nearest kilogram with conversion to the nearest pound in parentheses. Weights must be measured with scales that have a minimum accuracy of plus or minus one percent of the actual reading. Label weights must reflect the weights of the motor home as configured for delivery to the dealer.

(e) The following advisory statements must appear verbatim on the label:

(1) "Dealer installed equipment and towed vehicle tongue weight will reduce the CCC."

(2) "Distribute cargo appropriately to prevent non-uniform side-to-side and/or forward/aft loading."

S10.4.4 The label for travel trailers must contain the following information in accordance with Figure 2:

(a) The statement: "THE WEIGHT OF CARGO SHOULD NEVER EXCEED XXX kilograms (XXX pounds)" in block letters, with the travel trailer manufacturer providing the appropriate values in place of "XXX." The letters shall be black and the block in which the statement is located shall have a yellow background.

(b) The VIN of the travel trailer.

(c) Definitions for GVWR, UVW, and CCC as specified in Figure 2.

(d) The tongue load rating.

(e) The weights for the GVWR, UVW, fresh water, propane, and CCC.

Weights must be provided to the nearest kilogram, with conversion to the nearest pound in parentheses. Weights must be accurate within a tolerance of plus or minus one percent. Label weights must reflect the weights of the travel trailer as configured for delivery to the dealer.

(f) The following advisory statements must appear verbatim on the label:

(1) "Dealer installed equipment will reduce the CCC."

(2) "Distribute cargo appropriately to prevent non-uniform side-to-side and/or forward/aft loading."

S10.4.5 Weight added to motor homes and travel trailers between vehicle certification and first retail sale of the vehicle.

(a) If weight greater than 0.5 percent of gross vehicle weight rating (GVWR) is added to a motor home or travel trailer between vehicle certification and first retail sale of the vehicle, a label as shown in Figure 3 and meeting the following criteria shall be affixed to the vehicle within 25 millimeters of the cargo carrying capacity label required by S10.4.3 or S10.4.4 such that the label specified in Figure 3 is visible when reading the cargo carrying capacity label.

(1) The label must disclose the total weight added to the nearest kilogram with conversion to the nearest pound in parentheses.

(2) The characters of the label must be presented in the English language, have a minimum print size of 2.4 millimeters (3/32 inches) high, and be black printed on a yellow background. The label must be moisture resistant and permanently affixed to the vehicle.

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MOTOR HOME CARGO CARRYING CAPACITY **THE COMBINED WEIGHT OF OCCUPANTS AND CARGO SHOULD NEVER EXCEED** **XXXX kilograms (XXXX pounds)**	
VIN:	
GVWR (Gross Vehicle Weight Rating) is the maximum permissible weight of this fully loaded motor home.	
UVW (Unloaded Vehicle Weight) is the weight of this motor home as manufactured at the factory with full fuel, engine oil, coolants.	
OCW (occupant capacity weight) is 68 kg (150 lb) times the greater of the number of sleeping positions or the number of safety belt equipped seating positions.	
CCC (Cargo Carrying Capacity) is equal to the GVWR minus each of the following: UVW, full fresh (potable) water weight (including water heater), full propane weight and OCW.	
Motor home maximum hitch load _____ (_____) kilograms (pounds)	
CARGO CARRYING CAPACITY (CCC) COMPUTATION	kilograms (pounds)
GVWR	_____ (_____)
minus UVW	_____ (_____)
minus fresh water weight of _____ liters (gallons) @ 1 kg/L (8.3 lb/gal)	_____ (_____)
minus propane weight of _____ liters (gallons) @ .539 kg/L (4.2 lb/gal)	_____ (_____)
minus the OCW	_____ (_____)
CCC for this motor home*	_____ (_____)

* Dealer installed equipment and towed vehicle tongue weight will reduce the CCC.

Distribute cargo appropriately to prevent non-uniform side-to-side and/or forward/aft loading.

Figure 1

TRAVEL TRAILER CARGO CARRYING CAPACITY THE WEIGHT OF CARGO SHOULD NEVER EXCEED XXXX kilograms (XXXX pounds)	
VIN:	
GVWR (Gross Vehicle Weight Rating) is the maximum permissible weight of this trailer when fully loaded. It includes all weight at the trailer axle(s) and tongue or pin.	
UVW (Unloaded Vehicle Weight) is the weight of this trailer as manufactured at the factory. It includes all weight at the trailer axle(s) and tongue or pin.	
CCC (Cargo Carrying Capacity) is equal to the GVWR minus each of the following: UVW, full fresh (potable) water weight (including water heater) and full propane weight.	
Tongue load rating _____ (_____) kilograms (pounds)	
CARGO CARRYING CAPACITY (CCC) COMPUTATION	kilograms (pounds)
GVWR	_____ (_____)
minus UVW	_____ (_____)
minus fresh water weight of _____ liters (gallons) @ 1 kg/L (8.3 lb/gal)	_____ (_____)
minus propane weight of _____ liters (gallons) @ .539 kg/L (4.2 lb/gal)	_____ (_____)
CCC for this trailer*	_____ (_____)

* Dealer installed equipment will reduce the CCC.

Distribute cargo appropriately to prevent non-uniform side-to-side and/or forward/aft loading.

Figure 2

"Caution – Cargo Carrying Capacity Reduced"
Modifications to this vehicle have reduced the original cargo carrying capacity by _____ kilograms _____ pounds

Figure 3

* * * * *

Issued on: August 25, 2005.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 05–17245 Filed 8–30–05; 8:45 am]

BILLING CODE 4910–59–C

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2005–21245]

RIN 2127–AJ44

Federal Motor Vehicle Safety Standards; Child Restraint Systems

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document responds to Section 4(b) and Section 3(b)(2) of Anton's Law, which directed NHTSA to initiate rulemaking on child restraint system safety, with a specific focus on booster seats and restraints for children who weigh more than 50 pounds (lb). After the enactment of Anton's Law, this agency increased the applicability of Federal Motor Vehicle Safety Standard (FMVSS) No. 213, *Child restraint systems*, from restraints recommended for children up to 50 lb to restraints recommended for children up to 65 lb. Today's document proposes a further expansion, to restraints recommended for children up to 80 lb. It also proposes to require booster seats and other restraints to meet performance criteria when tested with a crash test dummy representative of a 10-year-old child. Section 4(a) and all other provisions of Section 3 were addressed in rulemaking documents issued previously by NHTSA.

DATES: You should submit comments early enough to ensure that Docket Management receives them not later than October 31, 2005.

ADDRESSES: You may submit comments [identified by DOT DMS number in the heading of this document] by any of the following methods:

- *Web site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* (202) 493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

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

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

FOR FURTHER INFORMATION CONTACT: The following persons at the National Highway Traffic Safety Administration:

For non-legal issues: Mr. George Mouchahoir of the NHTSA Office of Rulemaking at (202) 366–4919.

For legal issues: Mr. Christopher Calamita of the NHTSA Office of Chief Counsel at (202) 366–2992 and at (202) 366–3820 by facsimile.

You may send mail to both of these officials at the National Highway Traffic and Safety Administration, 400 Seventh St., SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Anton's Law

On December 4, 2002, President Bush signed Public Law 107–318, 116 Stat. 2772, ("Anton's Law [1]"), which provides for the improvement of the safety of child restraints in passenger motor vehicles. Section 3 of Anton's Law directed NHTSA to initiate a rulemaking for the purpose of improving the safety of child restraints, and to complete it by June 4, 2005. Section 4 directed NHTSA to develop and evaluate a test dummy that represents a 10-year-old child for use in testing child restraints, and to initiate a rulemaking proceeding for the adoption of the dummy within 1 year following that evaluation.

More specifically, Sections 3 and 4 of Anton's Law provide as follows:

Section 3. *Improvement of Safety of Child Restraints in Passenger Motor Vehicles.*

(a) In General. The Secretary of Transportation (hereafter referred to as the "Secretary") shall initiate a rulemaking proceeding to establish performance requirements for child restraints, including booster seats, for the restraint of children weighing more than 50 pounds.

(b) Elements for Consideration. In the rulemaking proceeding required by subsection (a), the Secretary shall—

(1) consider whether to include injury performance criteria for child restraints, including booster seats and other products for use in passenger motor vehicles for the restraint of children weighing more than 50 pounds, under the requirements established in the rulemaking proceeding;

(2) consider whether to establish performance requirements for seat belt fit when used with booster seats and other belt guidance devices;

(3) consider whether to address situations where children weighing more than 50 pounds only have access to seating positions with lap belts, such as allowing tethered child restraints for such children; and

(4) review the definition of the term "booster seat" in Federal motor vehicle safety standard No. 213 under section 571.213 of title 49, Code of Federal Regulations, to determine if it is sufficiently comprehensive.

(c) Completion. The Secretary shall complete the rulemaking proceeding required by subsection (a) not later than 30 months after the date of the enactment of this Act.

Section 4. Development of Anthropomorphic Test Device Simulating a 10-Year-Old Child.

(a) Development and Evaluation. Not later than 24 months after the date of the enactment of this Act, the Secretary shall develop and evaluate an anthropomorphic test device that simulates a 10-year-old child

[1] Named in memory of Anton Skeen, a 4-year-old who was killed in a car crash in Washington State.

for use in testing child restraints used in passenger motor vehicles.

(b) Adoption by Rulemaking. Within 1 year following the development and evaluation carried out under subsection (a), the Secretary shall initiate a rulemaking proceeding for the adoption of an anthropomorphic test device as developed under subsection (a).

II. Overview of NHTSA's Responses to Sections 3 and 4 of Anton's Law

Prior to the enactment of Anton's Law, the agency began several rulemaking proceedings on matters that were later included in sections 3 and 4 of the Act. The agency continued work on those rulemakings following enactment of Anton's Law and later made final decisions in those rulemakings, taking into consideration the elements specified in the statute. As a result of those deliberations, NHTSA considered and addressed all but section 3(b)(2) of the statute and has responded to one of the two elements of section 4. The following discussion describes the elements of section 3 and section 4 of Anton's Law that have already been addressed by NHTSA, and the outstanding elements that are now addressed in this NPRM.

a. Sections Already Addressed

Sections 3(b)(1), 4(a) and 4(b)

Subsequent to the enactment of Anton's Law, the agency amended FMVSS No. 213 to expand the applicability of the standard from child restraints recommended for use by children weighing up to 50 lb to restraints recommended for children weighing up to 65 lb (30 kilograms) (June 2, 2003; 68 FR 37620; Docket No. NHTSA–03–15351). The rulemaking was part of a planned agency upgrade to FMVSS No. 213, and also related to provisions in the Transportation Recall Enhancement, Accountability and Documentation Act (TREAD Act; Pub. L. 106–414, 114 Stat. 1800) addressing child passenger safety.[2] The agency expressly considered the directive of Anton's Law in that TREAD Act final rule, determining that extending the scope of the standard to 65 lb accorded with section 3(b)(1). (68 FR at 37645.) The TREAD Act final rule adopted the weighted 6-year-old dummy for use in FMVSS No. 213 testing after the agency concluded that the dummy was suitable for testing the structural integrity of child restraints (68 FR at 37647) and that use of the dummy would ensure that booster seats certified up to 65 lb would not fail structurally in a crash. The agency codified the weighted 6-year-old dummy at 49 CFR part 572, Subpart S (69 FR 42595; July 16, 2004).

In the TREAD Act final rule, the agency considered the merits of extending the standard to restraints recommended for use by children weighing up to 80 lb, but decided against that action because there was not then any test dummy that could adequately assess the dynamic performance of a child restraint in restraining an 80 lb child. Although work was underway on the Hybrid III 10-year-old child test dummy, the dummy was not ready in time for incorporation into that rulemaking. NHTSA believed that expanding the standard to restraints for children weighing up to 80 lb would not be meaningful in the absence of a dummy of suitable size and weight that could assess the conformance of the restraints with the performance requirements of the standard.

In September 2004, the agency completed its evaluation of the suitability of the Hybrid III 10-year-old dummy as a compliance test device, in accordance with section 4(a) of Anton's Law.[3] NHTSA determined the dummy was sufficiently sound to be proposed as an FMVSS No. 213 test dummy for testing child restraints recommended for children who weigh up to 80 lb. Accordingly, the agency is issuing today's NPRM to incorporate the dummy into FMVSS No. 213 as a test instrument. This proposal is part of a long-term agency plan on child passenger safety (Planning Document, 65 FR 70687; November 27, 2000; Docket NHTSA 7938), and also fulfills section 4(b) of Anton's Law.

Section 3(b)(3)

NHTSA began a rulemaking in 1999 exploring whether to permit child restraints to be tethered in certain FMVSS No. 213 compliance tests in which they must now pass untethered. This rulemaking related to whether there are child restraints for children who only have access to lap belts. After considering all available data and information and section 3(b)(3) of Anton's Law, the agency decided that an amendment was not appropriate and withdrew the rulemaking in 2004 (see 69 FR 16202; March 29, 2004, Docket No. 5891).

A number of restraints are available that can accommodate a child weighing 50 lb (22 kg) or more at a seating position equipped with a lap belt only. The Britax Wizard and the Britax Marathon are convertible child restraints with 5-point harnesses that are recommended for use in a forward-facing configuration by children weighing up to 65 lb (29.5 kg). The Britax Husky is a forward-facing only child restraint with a 5-point harness that is certified for children weighing up to 80 lb (36.3 kg). The Nania Airway LX Booster is a forward-facing child restraint that can be used with its 5-point harness by children weighing up to 50 lb (22 kg) with a lap belt. This availability illustrates that FMVSS No. 213 is not a deterrent in the production of child restraints for children who only have access to lap belts.

Section 3(b)(4)

When Anton's Law was enacted, FMVSS No. 213 applied to child restraints recommended for children who weigh up to 50 lb. As noted above, following enactment of Anton's Law, NHTSA expanded the applicability of the standard to child restraints recommended for children who weigh up to 65 lb. An effect of expanding the standard's application was to expand also the category of "booster seats" subject to FMVSS No. 213 to boosters recommended for children up to 65 lb (68 FR 37620, *supra*). That is, FMVSS No. 213 would apply not only to boosters recommended for children up to 50 lb, but to boosters recommended for use up to 65 lb as well.

The "booster seat" term was made more comprehensive in that rulemaking, and would be made even more so by today's NPRM. In proposing to expand the applicability of FMVSS No. 213 to restraints recommended for use by children weighing up to 80 lb, NHTSA believes that the term "booster seat" would be sufficiently comprehensive to encompass the overwhelming majority of booster seats manufactured for and used by children.

b. Sections Not Previously Addressed in Rulemaking

Section 3(b)(2)

Prior to the enactment of Anton's Law, NHTSA issued an NPRM exploring the issue of whether to require seat belt positioning devices to be labeled with a warning that the devices should not be used with children under the age of 6 (64 FR 44164; August 13, 1999; Docket No. 99–5100). The rulemaking was withdrawn in 2004 because there did not appear to be sufficient safety need for the requirement and because the agency planned to conduct up-to-date

[2] The rule also updated procedures for testing child restraints, including incorporating other improved test dummies for performance testing and updating the bench seat used to test restraints to the requirements of FMVSS No. 213.

[3] "Technical Evaluation of the Hybrid III Ten Year Old Dummy (HIII–10C)," Stammen; Vehicle Research and Test Center, National Highway Traffic Safety Administration (September 2004).

research on current devices (69 FR 13503; March 23, 2004; Docket No. 5100). As discussed in today's NPRM, the agency has considered performance requirements for seat belt fit for booster seats or for belt guidance devices in accordance with section 3(b)(2) of Anton's Law and has decided against such rulemaking at this time.

Section 4(b)

Section 4(b) of Anton's Law requires the initiation of a rulemaking proceeding for the adoption of an anthropomorphic test device that simulates a 10-year-old child for use in testing child restraints used in passenger motor vehicles. Today's NPRM responds to section 4(b) by proposing to adopt the Hybrid III 10-year-old dummy into FMVSS No. 213 as a test device used to test child restraints recommended for children weighing over 50 lb. NHTSA is also issuing an NPRM proposing to adopt specifications and performance requirements for the dummy into 49 CFR Part 572, Subpart T.

c. Summary of Responses to Public Law 107–318

In summary, NHTSA has considered and addressed all but one of the elements set forth in section 3 of the statute and has responded to section 4(a). Today's NPRM addresses the one outstanding element of section 3 (whether there should be belt fit performance requirements), and responds to section 4(b) by initiating rulemaking for the adoption of the Hybrid III 10-year-old dummy into FMVSS No. 213. It also would further expand the applicability of FMVSS No. 213 to restraints recommended for children up to 80 lb.

III. Expanded Coverage and Improved Evaluation of Booster Seats

a. Introduction

There has been considerable interest over the years in expanding the applicability of FMVSS No. 213 to increase the likelihood that child restraints (booster seats) that are recommended for older children will perform adequately in a crash. This interest goes hand-in-hand with efforts to increase booster seat use among children who have outgrown their child safety seat, but who cannot adequately fit a vehicle's lap and shoulder belt system. NHTSA recommends that children who have outgrown child safety seats should be properly restrained in booster seats until they are at least 8 years old, unless they are at least 4'9 inches tall. The goal of expanding the applicability of FMVSS No. 213 is to ensure booster seats that are recommended for children over the current weight limit meet the dynamic test requirements of the standard.

In the TREAD Act final rule, the applicability of FMVSS No. 213 was expanded to child restraint systems for children who weigh up to 65 lb. The agency also specified the use of the weighted 6-year-old (62-lb) test dummy to test restraints at the upper weight range. Use of the weighted dummy was viewed as an interim measure until the Hybrid III 10-year-old dummy was available.

The agency has completed its evaluation of the Hybrid III 10-year-old test dummy and is satisfied that the dummy's performance merits its proposal for use in FMVSS No. 213 compliance tests. (Hereinafter, the 10-year-old dummy is referred to as the "HIII–10C dummy.") In a separate NPRM published on July 13, 2005 (70 FR 40281; Docket No. NHTSA 2004–24217), the agency has proposed incorporation of the HIII–10C into 49 CFR part 572, "Anthropomorphic test dummies."

Today's NPRM seeks to enhance child passenger safety by way of the proposals discussed below. It should be noted, however, that data indicate that booster seats are generally very effective items of equipment. Based on its survey of vehicle crashes,[4] Children's Hospital of Philadelphia found that the odds of injury, adjusting for child, driver, crash, and vehicle characteristics, were 59 percent lower for children between the ages of 4 and 7 years in belt positioning booster seats than in seat belts alone. Children in belt positioning booster seats experienced no abdomen, neck/spine/back, or lower extremity injuries, while children in seat belts alone suffered injuries to all body regions.

Generally, current booster seat designs provide a high level of protection. Today's proposals are intended to ensure that all booster seats maintain this level of safety. If made final, the proposals would ensure that booster seats are robustly assessed to make sure that they would perform soundly in a 30 mile per hour (mph) crash when used by children at the upper limit of their recommended weight range, typically up to 80 lb. Booster seats recommended for children weighing up to 65 lb are now subject to FMVSS No. 213 testing, but they are now tested with a 50-lb instrumented dummy and with a 62-lb uninstrumented dummy. The standard does not now evaluate the boosters' performance with an instrumented test dummy weighing between 62 and 80 lb. Under today's NPRM, the ability of the boosters recommended for children weighing up to 80 lb to meet the performance requirements of FMVSS No. 213 would be assessed with the 77-lb Hybrid III 10-year-old dummy.

This notice addresses three issues. First, we propose to test restraints with the HIII–10C dummy, *i.e.*, the dummy itself and how FMVSS No. 213 would be amended to reflect use of the dummy. Second, we explore whether the mass of belt-positioning boosters with seat backs should be limited, *i.e.*, whether in a frontal crash, forces generated by the mass of the seat back could overload the child occupant's chest. Third and last, in Appendix A to this NPRM, we discuss the agency's consideration of whether FMVSS No. 213 should be extended to belt-positioning devices.

b. Proposed Amendments to FMVSS No. 213

1. Hybrid III–10C Test Dummy

NHTSA has been interested in a test dummy between the sizes of a 6-year-old and a 5th percentile adult female for several years.[5] In early 2000, NHTSA asked the Society of Automotive Engineers (SAE) Dummy Family Task Group (DFTG) to develop a test dummy representative of a 10-year-old child. The agency wanted a dummy with a basic construction that would allow the dummy to be positioned in erect seated, slouched seated, standing, and kneeling postures. The ability of the test dummy to be positioned in a slouched posture was of particular importance because children whose legs are too short to allow them to bend their knees when sitting upright against a vehicle seat back will slouch down when seated directly on a vehicle seat in order to bend their knees over the edge of the seat for comfort.[6] It was thought that slouching could affect the placement of the lap belt portion of the seat belt on the abdomen[7] and thereby affect real-world performance of the seat belt in a vehicle.

The HIII–10C dummy was envisioned as having the same general construction

[4] Children's Hospital of Philadelphia performed a cross sectional study of children ages 4 to 7 years in crashes of insured vehicles in 15 states. Data was collected via telephone and insurance claims records for 3616 crashes involving 4243 children.

[5] A 5th percentile adult female is approximately the size of a 12-year-old.

[6] "Study of Older Child Restraint/Booster Seat Fit and NASS Injury Analysis," Klinich *et al.*, DOT HS 808 248, November 1994.

[7] Discussion of the slouch factor's contribution to poor belt fit can also be found at 64 FR at 44164, 44169 (August 13, 1999; Docket No. NHTSA 99–5100).

as the adult dummies of the Hybrid III dummy family, but scaled to the average dimensions of a 10-year-old child. The most recent growth charts for children in the USA, developed by the National Center for Health Statistics (NCHS) for the Center for Disease Control (CDC 2000) indicate that the average 10-year-old child weighs 79.3 lb (36.05 kg), has a standing height of 56 in (1,422 mm) and a seated height of 28 in (711 mm). The Hybrid III–10C is close to its human counterpart with a weight of 77.6 lb, a standing height of 51 inches and a seated height of 28 inches. The dummy was developed with instrumentation measuring injury parameters for the head, neck, shoulder, thorax, pelvis, femur, and tibia.

The agency began evaluating the first production prototype of the HIII–10C test dummy in 2002. Extensive evaluation of the dummy continued through mid-2004. The evaluation has demonstrated good biofidelity, repeatability, reproducibility, and durability. [8] The agency has tentatively concluded that the Hybrid III–10C would provide an accurate representation of a 10-year-old child for the testing proposed in this NPRM. The agency is concurrently proposing incorporation of the Hybrid III–10C test dummy 49 CFR part 572, *Anthropomorphic test devices*, by way of an NPRM published on July 13, 2005 (70 FR 40281; Docket No. NHTSA 2004–24217).

2. Extending the Applicability of the Standard

Based on the availability of the Hybrid III–10C test dummy, the agency is now proposing to extend the applicability of FMVSS No. 213 to include child restraint systems, including booster seats, recommended for use by children weighing up to 80 lb (36 kg).[9] Under the proposal, all child restraint systems, including booster seats, recommended for children weighing more than 50 lb, would be required to meet the specified injury criteria when tested with both the Hybrid III 6-year-old dummy (49 CFR part 572, Subpart N) (HIII–6C) and the HIII–10C test dummies. All child restraint systems, including booster seats, certified for use by children weighing between 40 and 50 lb would be required to meet the specified injury criteria when tested with the HIII–6C test dummy.

For convenience, Table 1 sets forth how test dummies are currently used in FMVSS No. 213, and the changes being proposed by this NPRM.

TABLE 1.—USE OF DUMMIES

Recommended mass range (Kilograms)	Dummies currently used in compliance testing	Proposed change
Not greater than 5 kg (0 to 11 lb)	Newborn	Unchanged
Greater than 5 but not greater than 10 kg (11 to 22 lb).	Newborn, CRABI	Unchanged.
Greater than 10 but not greater than 18 kg (22 to 40 lb).	CRABI, HIII 3-year-old	Unchanged.
Greater than 18 kg but not greater than 22.7 kg (40 to 50 lb).	HIII 6-year-old	Unchanged.
Greater than 22.7 kg (50 to 80 lb)	Weighted HIII 6-year-old	HIII 6-year-old, HIII–10C.

The agency has tentatively decided that it would no longer use the weighted HIII 6-year-old dummy (which weighs 62 lb) to test child restraints because HIII 6-year-old and the HIII–10C dummies appear sufficient to evaluate the performance of a child restraint recommended for children weighing over 50 lb.[10] Comments are also requested on whether the HIII–10C dummy should be used to test any child restraint that is recommended for use by children weighing over 50 lb.

The agency proposes to provide manufacturers with two years of lead time from the date of a final rule. Optional early compliance with the requirements would be permitted.

3. Injury Criteria for the Hybrid III–10C Test Dummy

a. Proposed Criteria

The performance criteria that a child restraint must meet when restraining a test dummy would generally be unchanged, except for the buckle release requirements as described below. The requirements regarding dynamic performance, force distribution, installation, child restraint belts and buckles and flammability would thus be generally uniform for all restraints, including those tested with the HIII–10C dummy.

Consistent with current FMVSS No. 213 requirements, we are proposing to adopt the following maximums for the injury criteria measurements for the Hybrid III–10C: HIC_{36} = 1000; chest acceleration = 60 g's (3 millisecond clip); head excursion = 813 millimeters (mm) for untethered condition,[11] head excursion = 720 mm for tethered condition; and knee excursion = 915 mm. Given the effectiveness of booster seats currently in use, the agency tentatively concludes the proposed injury values would be appropriate to ensure the continued effectiveness of child restraints recommended for children weighing up to 80 lb. While injury data for older children in booster seats is very limited at this time, the agency is not aware of injuries unique to children in booster seats that would necessitate separate and differing injury criteria limits. The agency believes that the injury criteria proposed in this document would ensure that the effectiveness seen across all types of child restraint systems would be maintained for restraints recommended for children weighing up to 80 lb.

In December 2003, the agency's Vehicle Research and Test Center (VRTC) tested eight booster seat models with the HIII–10C dummy in sled tests replicating the FMVSS No. 213 test configuration. Tests were also performed on two HIII–10C test dummies restrained by a lap/shoulder belt only, one was seated upright and

[8] "Technical Evaluation of the Hybrid III Ten Year Old Dummy (HIII–10C)," supra.

[9] It is noted that the proposed extension would harmonize FMVSS No. 213 with ECE Regulation 44, in that both standards would regulate child restraint systems recommended for use by children weighing up to 36 kg.

[10] While provisions providing for using the weighted Hybrid III–6C test dummy in testing would be eliminated from FMVSS No. 213 under the proposal, specification for the test dummy would be maintained in Part 572 because of the potential for future research and evaluation involving the dummy.

[11] In adopting more stringent head excursion regulations, boosters were excluded from the more stringent head excursion requirements because they are not tethered (*see*, 64 FR 10786; March 5, 1999; Docket No. 98–3390).

one slouched. There was only one failure in the test series, a booster seat with a measured HIC (36) value of 1018, just marginally above the 1000 limit. Chest resultant accelerations and head and knee excursions were all well within the proposed limits in all tests with the FMVSS No. 213 pulse.[12] Test results are shown in Table 2.

TABLE 2.—HIII–10C INJURY RESPONSE

Test No.	Seat	HIC 36	Chest Acc (G)	Head (mm)	Knee (mm)
EFF1	Cosco Gnd Explorer	679	44.4	353	665
EFF1	Evenflo Right Fit	568	43.8	371	687
EFF2	Century Next Step	607	46.8	438	710
EFF2	Cosco Voyager	1018	50.3	434	750
EFF3	Graco Grand Cargo	993	54.6	444	745
EFF3	Century Breverra	659	45.7	422	714
EFF4	Britax Bodyguard	480	39.5	410	743
EFF4	Baby Trend Recaro	356	45.5	513	738
EFF5	No Booster	1105	45.7	445	801
EFF5	No Booster	855	42.2	385	768

The post-impact buckle force release requirement (S5.4.3.5(b)) currently differs according to the mass of the test dummy or dummies used in testing a child restraint, and would continue to do so under this proposal. Currently, S5.4.3.5(b) requires each child seat belt buckle to release when a force of not more than 71 N is applied, while tension (simulating a child restrained in the child seat) is applied to the buckle. Tension is applied because a child in the seat could impose a load on the belt buckle, which increases the difficulty of releasing it. (This requirement typically does not apply to a booster seat because boosters do not generally include a buckle as part of its structure.) If a child restraint were designed such that it would be tested with the HIII–10C dummy under this NPRM and had a buckle as part of the restraint's belt assembly, a tension of 437[13] Newtons would be applied when the buckle is tested according to the test procedures (S6.2).

b. Criteria Under Development

In developing injury criteria, VRTC also recognized a need to explore development of abdominal injury criteria for the HIII–10C. The kinematics that result in this type of injury are commonly referred to as "submarining." Submarining is when the pelvis becomes unrestrained by the lap belt portion of a safety belt assembly and then slides under the lap belt in a frontal impact. As a result, the belt is free to enter the abdominal cavity and cause injury to the unprotected internal organs and lumbar spine.

VRTC developed a ratio, the abdominal injury ratio (AIR), which uses impulse calculations from the iliac compressive and lumbar shear forces to identify dummy kinematics associated with submarining. Preliminary testing indicated that the AIR might provide a basis for evaluating submarining potential.

At this time the agency is not proposing to establish injury criteria based on the AIR calculation. The agency has limited data with respect to the AIR parameter and additional testing is needed to evaluate its effectiveness in predicting abdominal loading in a consistent and accurate manner. However, the agency intends to continue efforts in developing an objective means to measure and evaluate abdominal loading, both through continued evaluation of the AIR parameter as well as alternative methods of measurement.

We note that when knee excursion was originally established in FMVSS No. 213, we stated that its purpose was to prevent manufacturers from controlling the amount of head excursion by designing restraints that permit an occupant to slide downward and forward, legs first (44 FR 72133). In the context of knee excursion, the agency referred to an occupant sliding legs first under a lap belt as "submarining." However, knee excursion is one of two potential major consequences of "submarining." Regarding AIR parameters, "submarining" can also result in movement of the belt from the pelvic area into the abdominal cavity. This does not necessarily result in excessive knee excursion. Discussions of "submarining" in the remainder of this document focus on the factors related to the AIR parameters.

c. Chest Deflection and Mass Limit for Boosters

We are requesting comment on eliminating the 4.4 kg mass limit for belt-positioning boosters. In place of the mass limit, we are considering the incorporation of the in-position chest deflection requirements from FMVSS No. 208 for the Hybrid III–3C, –6C, and 10C test dummies. The agency believes that chest deflection requirements may provide an alternative to the use of a mass limit for preventing excessive belt forces from being loaded on a child occupant.

Background

Presently, S5.4.3.2, *Direct restraint,* of FMVSS No. 213 requires that:

> Except for a child restraint system whose mass is less than 4.4 kg, * * * each Type I and lap portion of a Type II vehicle belt that is used to attach the system to the vehicle shall, when tested in accordance with S6.1, impose no loads on the child that result from the mass of the system[.]

In a March 16, 1994 notice of proposed rulemaking, the agency proposed to prohibit child restraint designs that would result in a vehicle's lap belt, or lap portion of a lap/shoulder belt belts, imposing any load on a child resulting from the mass of the restraint system (59 FR 12225; Docket No. 74–09; Notice 35). In response, several commenters stated that the proposal would eliminate high-back belt positioning booster seats from the market because these restraint systems impose a load on a child through the lap belt portion of a vehicle's belt assembly. Commenters also stated that there was

[12] See "Hybrid III 10-Year-Old Dummy (HIII–10C) Injury Criteria," Stammen; Vehicle Research and Test Center, National Highway Traffic Safety Administration (September 2004).

[13] This value was calculated using the same ratio of dummy mass vs. applied tension used when the agency adopted the weighted 6-year-old dummy into FMVSS No. 213 for use in compliance testing.

no apparent safety problem with belt-positioning boosters that would justify a prohibition. Additionally, they stated that there would be no practical way to measure the load imposed on a test dummy seated in a belt-positioning booster.

In response to these comments, the agency excluded child restraints with a mass less than 4 kg from the belt loading provisions in S5.4.3.2 (60 FR 35126; July 6, 1995; Docket No. 74–09, Notice 42). In that final rule, we explained that it was not our intention to prohibit belt-positioning boosters, nor did we believe that there was a sufficient safety problem to warrant such a prohibition. At the time of the March 1995 final rule, as currently, there was no test dummy available to measure abdominal loading reliably. Additionally, there was no established method for measuring seatback load on a child dummy or an associated injury correlation. Nonetheless, the agency stated that seat back loads could, at some level, injure a child occupant in a crash.

As an alternative to developing a method to measure and identify excessive loads, the agency established the mass limit to prevent future injuries resulting from overloading a child occupant from a "massive seat back" on a child restraint. The 4 kg mass limit was based on the agency's understanding of the mass range of belt-positioning boosters then on the U.S. market and the absence of indication of a safety problem with such restraints, and was consistent with requirements in Europe. The limit was later increased to 4.4 kg after a child restraint manufacturer petitioned the agency, stating that it also marketed a seat with a mass of almost 4.4 kg and that the seat should have been a part of the assessment (61 FR 30824; June 18, 1996; Docket No. 74–09, Notice 46).

Since that time, the agency decided that it would not enforce the requirements of S5.4.3.2 against belt-positioning seats that have a mass greater than 4.4 kg until further notice (Letter to John Stipancich; April 11, 2003; Docket No. NHTSA 2003–15005–1).

Recent Developments

Recent agency research has tentatively led us to reconsider the current mass limit. In developing the injury criteria for the Hybrid III–10C [14], VRTC conducted a number of tests to examine the impact of belt-positioning booster seat mass on child occupants. VRTC conducted tests to explore the potential for more massive booster seats to cause excessive belt forces. The following Table 4 provides the data collected.

TABLE 4.—LAP AND SHOULDER BELT FORCES FOR BOOSTER AND NON-BOOSTER TESTS

Seat	Mass (kg)	Mass (lb)	Weight rating	Lap force (N)	Shoulder force (N)
Cosco Grand Explorer	1.50	3.30	40–80 lb	4707	5833
Evenflo Right Fit	1.42	3.12	40–80 lb	4238	6446
Century Next Step	4.28	9.42	30–100 lb	2125	5525
Cosco Voyager	3.09	6.80	30–80 lb	2739	6494
Graco Grand Cargo	3.44	7.57	30–80 lb	1454	5987
Century Breverra	4.25	9.35	30–80 lb	1269	5665
Britax Bodyguard	5.98	13.16	40–100 lb	1690	6108
Baby Trend Recaro	8.87	19.51	30–80 lb	2283	6436
No Booster				2781	5684
No Booster				1965	5348

Note: The Cosco Grand Explorer and the Evenflo Right Fit have no back. All other booster seats in this evaluation are high-back belt-positioning booster seats.

While limited, the VRTC data did not demonstrate a correlation between seat mass and belt force. Because the VRTC tests provide a limited data set, we are requesting data on the relationship between the mass of belt-positioning boosters and belt loads on child occupants.

Although the VRTC data did not demonstrate a mass-belt force correlation, we are still concerned about the potential for excessively heavy high-back belt-positioning seats to cause loading on a child, crushing the chest between the booster seat back and the shoulder belt. To explore this concern, VRTC also examined the relationship between seat mass and the measured chest deflection of a child test dummy. VRTC ran tests with various booster seats installed according to the restraint manufacturers' instructions, except that if a booster seat was equipped with a tether the tether was not employed.

TABLE 5.—BOOSTER SEAT MASS VERSUS CHEST DEFLECTION

Seat	Mass (kg)	Chest deflection (mm)
Century Next Step	4.28	34.1
Cosco Voyager	3.09	33.7
Graco Grand Cargo	3.44	38.1
Century Breverra	4.25	33.4
Britax Bodyguard	5.98	28.7
Baby Trend Recaro	8.87	41

Initial data show that the heaviest booster tested in the agency's limited test series resulted in the highest measured chest deflection with the HIII–10C test dummy. However, the second heaviest booster resulted in the lowest measured chest deflection. Injury assessment reference values (IARVs) for the 10-year-old dummy have been developed for FMVSS Nos. 208 and 213 research testing.[15] The agency is considering proposing a chest deflection limit of 44 mm, which is a value that falls between the IARV for the 6-year-old out-of-position test requirement and the 5th percentile female in-position limits. All of the booster seats tested measured below the chest deflection limit of 44 mm.

In the TREAD Act final rule, the agency declined to adopt chest deflection as a measured injury parameter in FMVSS No. 213 because of the lack of evidence that chest injuries are occurring in the real world. Further, existing restraints were shown generally to have difficulty in meeting the FMVSS No. 208 chest deflection requirements. The agency stated in the TREAD Act

[14] "Hybrid III 10-Year-Old Dummy (HIII–10C) Injury Criteria Development," supra.

[15] "Hybrid III 10 Year Old Dummy (HIII–10C) Injury Criteria," *supra.*

final rule that we were concerned that restraint redesigns for the purposes of meeting chest injury criteria could compromise other aspects of injury protection.

However, the recent data are causing the agency to reconsider chest deflection criteria for belt-positioning boosters, particularly if there is a possibility that these boosters may become more massive in the future to accommodate larger children. To address the potential of booster seat mass loading a child through the lap/shoulder belt, we are considering establishing chest deflection criteria. We request comment on the merits of this approach.

IV. Performance Criteria for Belt Fit

Section 3(b)(2) of Anton's Law directs the agency to consider establishing performance requirements for booster seats and other belt guidance devices regarding belt fit. Several studies, described below, have explored the extent to which booster seats differ in how they affect the fit of a vehicle's belts on a child. The agency has analyzed the belt fit studies and is unable to demonstrate that small differences in belt fit resulting from various booster seats translate into associated improvements in the dynamic performance of a belt system in a crash. Therefore, the agency is not proposing performance criteria for safety belt fit for booster seats or other belt guidance devices, but will continue development of tools necessary to identify improper belt loading: *e.g.* development of AIR injury criteria.

a. IIHS Study

In a small-scale study involving static testing, the Insurance Institute for Highway Safety[16] (IIHS) noted that belt fit varies depending upon a child's physique and belt-positioning booster design.[17] IIHS evaluated belt-fit with and without booster seats in the rear seats of three different vehicles (two sedans and a minivan) using a Hybrid III 6-year-old child dummy (HIII–6C), along with three children of varying ages, heights and weights: a 4 year old child, 39 inches tall, 39 pounds; a 5 year 4 month old child, 45 inches tall, 42 pounds; and a 6 year 11 month old child, 45 inches tall, 62 pounds. Each child was positioned in each vehicle while seated in each of six booster seats selected by IIHS, and in one trial positioned directly on the vehicle seat cushion. The test dummy was positioned in each vehicle while seated in each of 25 booster seats selected by IIHS.

IIHS's data demonstrated that some booster seats improved the belt fit for all of the children in the study, some booster seats did not improve fit, and some worsened belt fit. In determining a "good fit," IIHS relied on NHTSA's guidelines regarding proper fit of a child restraint device, *i.e.*, that the lap portion of a belt system should rest on the upper thighs to minimize instances of submarining and abdominal injury. In evaluation with the HIII–6C, IIHS determined that only a small number of the booster seats tested routed the lap belt properly. In some instances, the booster seat routed the lap portion of the belt directly over test dummy's abdomen.

The IIHS report expressed concern that poor belt fit may not be identified through dynamic testing of child restraint systems because dynamic testing may not replicate some critical occupant kinematics and injury patterns of real children. IIHS cited the inability of current test dummies to assess abdominal injury risk from improperly positioned lap belts. IIHS concluded that even if a new test dummy were to include instrumentation to measure abdominal loads, it is unlikely that a test dummy would submarine in a dynamic test because a dummy typically has a rigid spine and molded hips.

b. NHTSA Studies

In response to Anton's Law, the agency conducted two studies to examine the static belt fit of a vehicle's safety belt given various seating positions, dummies, and restraint types. The reports can be found in the docket for this rulemaking.

1. "Static Evaluation of Belt Fit for Hybrid III 6- and 10-year-old and 5th Female Dummies in Rear Outboard Seating Positions"[18]

i. Survey Approach. The first study examined belt fit in 20 passenger vehicles, ranging from model year (MY) 1999 to 2004, for lap and shoulder belts in the outboard rear position. To achieve a representative sample of the vehicle fleet, the survey fleet was comprised of three compact cars, three mid-size cars, five large size cars, five sport utility vehicles (SUVs), and four minivans. Some of these vehicles had adjustable shoulder belts.

The vehicle seats were evaluated with a combination of the Hybrid III 5th percentile adult female, the HIII–6C and the HIII–10C test dummies, with each dummy seated directly on the seat cushion and properly buckled. The female test dummy was tested in all of the vehicles, while the child test dummies were tested at an outboard seating position in 12 of the 20 test vehicles.

In addition to determining belt fit with the dummies seated directly on a vehicle seat, we also used a small number of belt positioning boosters with the HIII–6C and HIII–10C test dummies. The test employed three booster seats: a high back booster without a lap belt guide, a high back booster with a lap belt guide, and a backless booster seat.[19] The HIII–6C test dummy was tested in all of the booster seats, while the HIII–10C test dummy was tested only in the backless booster seat.

The seating procedure used for each dummy was the same. The dummies were placed in the center of the seating position with their backs touching the seat back. The legs were bent over the front edge of the seat, if possible. Otherwise, the legs were positioned straight out in front of the dummy. The belt was then placed over the test dummy's torso and buckled. The shoulder belt was pulled out two to three times and allowed to fall naturally onto the torso. When a booster seat was used, it was positioned in the center of the seating position, the dummy was placed in the booster seat, and the vehicle belt was routed per the child restraint manufacturer's instructions.

Based on a 1992–1993 survey, VRTC determined proper belt fit on the dummy as the shoulder belt's fitting between the neck and shoulder at an angle of approximately 55–56 degrees from the centerline of the test dummy, and the lap belt's fitting over the pelvic area and upper thigh.[20] Each dummy was marked with tape showing where the belts should be properly positioned on each dummy. A good belt fit was determined by comparing the position of a vehicle's belt to the tape markings. Both seating position and belt fit were judged to be good when (1) A dummy's back was against the seatback, (2) its legs were bent at the knee joint over the front edge of the seat without slouching, (3) the shoulder belt remained across the torso without getting onto the neck or out onto the shoulder, and (4) the lap belt was on the pelvic bone or top of the

[16] IIHS is a non-profit group focused on motor vehicle safety and is funded by the insurance industry.

[17] See Docket No. NHTSA–2001–10359–10.

[18] Louden, VRTC NHTSA, November 2003.

[19] A backless booster seat may list a maximum recommended height, but are only recommended for use in a seating position that has a head rest or where a child's ears are below the top of a vehicle's seat back.

[20] "Improved design for safety belts," Chambers, Sullivan and Duffy, June 1993. DOT HS 808–082.

thighs. The quality of belt fit was then quantitatively rated based on the difference between the location of the belt compared to the location of the tape markings on the test dummy at three critical points: The shoulder belt at the neckline, the shoulder belt at the torso, and the lap belt at the center of the pelvis. These three numbers were then averaged to produce a rating of poor, fair, or good.

ii. Results: The results of the survey demonstrated that generally, booster seats improved the rating for the child dummies. Adjustable upper anchorages in the rear seat also generally improved shoulder belt fit for all occupant sizes, particularly when used in conjunction with a booster seat. In virtually all of the vehicles surveyed, belt fit for the HIII–6C and HIII–10C test dummies in the outboard seating position improved when belt-positioning devices were used.

For the HIII–10C test dummy, use of a seat belt alone resulted in at least a fair rating 66 percent of the time. Use of the backless booster seat improved the seat belt fit from "fair" to "good" by 62 percent for the HIll–10C test dummy. For both child test dummies, the booster seats had the potential to reduce the incidence of slouching by permitting the dummy's legs to bend at the knees for comfort, which is not possible when seated directly on the vehicle seat in the belt only.

While use of booster seats generally improved the rating for the child test dummies, not all booster seats equally affected belt fit on the two child test dummies. Overall, the HIII–6C fit best in both a backless booster seat and a high back booster seat. However, in one vehicle, the use of the backless booster seat actually decreased the rating for the HIII–10C when compared to the belt only. In that test, the backless booster seat raised the test dummy up too high for a proper belt fit given the anchorage placement in that vehicle, resulting in a "poor" rating. This was because the placement of the shoulder belt was somewhat suspended in the rear window.

2. "Static Evaluation of Belt Fit for Hybrid lll 6- and 10-Year-Olds" [21]

i. Survey approach. The second study evaluated belt fit with and without booster seats and with aftermarket belt positioning devices in the center rear seating position for two different sized child dummies.

[21] "Static Evaluation of Belt Fit for Hybrid III 6-Year-Old and 10-Year-Old," Louden, VRTC NHTSA, August 2003.

The procedure for this study was similar to that in the first study. VRTC evaluated the belt fit with three booster seats: a high back booster without lap belt guide, a high back booster with lap guide, and a backless booster seat. Also evaluated were three aftermarket belt positioning devices. Each belt positioning device was recommended by its manufacturer for occupants weighing more than 50 lb. Each manufacturer recommended that children under 50 lb be restrained in a convertible or booster seat. To provide for a vehicle sample population representative of the vehicle fleet, the surveyed vehicles ranged from MY 1999 to 2004 and consisted of three compact cars, three mid-sized cars, three large size cars, five SUVs, and three minivans. Each vehicle was equipped with a lap and shoulder belt in the center rear position. The study used the Hybrid III–6C and -10C test dummies. Dummy seating procedures and determination of belt fit were the same as in the first VRTC study.

ii. Results: The second survey also demonstrated that booster seats generally improved the belt fit rating for both the Hybrid III 6-year-old and 10-year-old test dummies. As in the first survey, belt fit for the 6-year-old test dummy was generally poor when restrained only with a vehicle's belt assembly. In approximately 76 percent of the vehicles tested, when the Hybrid III–6C was restrained using only the vehicle belt system, the shoulder belt interacted with the neck and/or the lap belt was above the pelvic area. In all of the vehicles used in this study, the Hybrid III–6C test dummy's legs could not bend at the seat edge.

Belt fit for the HIII–10C was also generally poor when restrained with the vehicle's belts only. Approximately 53 percent of the positions evaluated resulted in a "poor" rating for the HIII–10C test dummy and the dummy's legs could only be bent over the vehicle's seat edge in 40 percent of the positions.

With the HIII–6C test dummy, use of a booster seat resulted in approximately 82 percent of the positions being evaluated as having a "fair" to "good" fit. However, as in the first survey, the improvement was not uniform among the three booster seat models. The high back booster with lap belt guide resulted in 76 percent of the positions evaluated with the HIII–6C dummy being rated "good," the high back booster without a lap belt guide resulted in approximately 71 percent of the positions tested with the HIII–6C being rated "fair" to "good," and the backless booster seat resulted in 76 percent of the positions evaluated being rated "fair" to "good."

In some vehicles, positioning the HIII–6C dummy in a booster seat resulted in problems. In one instance, use of the backless booster seat caused the shoulder belt to come across the neck of the dummy, resulting in a "poor" fit. The high back booster seat without guides had a head restraint that, in some vehicles, interacted with the shoulder belt, resulting in a "poor" rating.

For the HIII–10C test dummy, the use of a booster seat improved the belt fit from "poor" to "good" by 90 percent.

Overall, the belt positioning devices improved belt fit. However, it is not known how these devices would affect belt performance when tested dynamically. Additionally, there were several issues of concern with the devices. Some of the devices wrap the vehicle's shoulder belt around them, which can add up to several inches of slack to the belt if the device were to fail in a crash. Use of a device that was equipped with a hard metal clip with a plastic coating often resulted in the belt's becoming twisted near the retractor, the clip being positioned close to the center of the dummy (on an area of soft tissue), and the lap belt frequently being raised off of the pelvis.

c. Discussion of Static Belt Fit Studies

The static belt fit surveys generally demonstrated that booster seats improve belt fit, but they also demonstrated variation in fit that was attributable to the interaction between restraints and vehicle designs. Both studies demonstrated that some vehicle-booster seat combinations were not as good as others. Some boosters made the belts fit the child dummy better in some vehicles than in others.

While these surveys identified potential for variation, it is unknown whether the small variations in belt fit between the restraint configurations evaluated in the studies would translate into variations in safety benefits in an actual vehicle crash. The point at which belt fit degrades the performance of the belts from the point of "acceptable" to "unacceptable" has not been determined. Although NHTSA believes that belts are better positioned over bony structure of the body than over soft tissue, how much variation from the optimal placement of the belt should be permitted by a performance standard for the fit to be considered "passing" is unknown.

Nor does the agency believe there is a need to make that known. The agency believes that the dynamic performance requirements for child restraint systems, including booster seats, provide for a better evaluation of injury potential than

a static belt fit test. The standardized test seat assembly specified in FMVSS No. 213 has been developed to be representative of existing vehicle seat geometries; *e.g.*, seat back and cushion angles, safety belt anchorage location, and spacing, and cushion force/deflection characteristics. All child restraint systems must meet the injury performance criteria in a 30 mph simulated frontal crash on the test seat assembly. The seat assembly was updated in the TREAD Act rulemaking, *supra*, and will be used to test child restraints manufactured on or after August 1, 2005. We believe that as child restraint manufacturers optimize their restraint designs to meet the performance requirements of FMVSS No. 213 using the updated configuration of the standard test seat assembly, the fit of child restraints in real-world vehicles may improve. While NHTSA believes that "proper" belt fit, especially shoulder belt fit, is largely dependent on vehicle design characteristics, the agency also believes that this optimization of child restraint design to current vehicle seat designs may translate into improved belt fit for children in booster seats. In any event, NHTSA believes that FMVSS No. 213's dynamic testing requirements provide a true and thorough evaluation of the performance of the restraints. Accordingly, a static belt fit performance requirement would not provide an additional safety benefit commensurate with the burdens of such a rulemaking.

It should be noted that, as part of the agency's work in response to the TREAD Act, we evaluated child restraint performance in vehicles tested to the frontal crash program of the New Car Assessment Program (NCAP). NCAP placed child restraint systems in the rear seat of vehicles that undergo frontal barrier crash tests at 35 mph. Data generated to date by testing with the HIII–3C dummy placed in a forward-facing child restraint indicate that the performance of a child restraint is largely dependent on the vehicle crash parameters, such as the vehicle crash pulse, and less dependent on differences in design between various restraints.[22] Accordingly, for the reasons stated above, the agency has decided that establishing performance requirements for seat belt fit is not warranted.

V. Benefits and Costs

The agency cannot quantify the benefits of this rulemaking. However, the agency believes benefits will accrue by assuring child restraints can meet the FMVSS No. 213 requirements over the range of sizes of children for which they are recommended. Currently, booster seats are required to use only a dummy representative of a 3-year-old child at the lower end of the weight range and the weighted 6-year-old dummy at the upper weight limit per configuration. The weighted 6-year-old dummy is limited in representing heavier children that the booster seats are labeled to accommodate. Inclusion of a test dummy representative of a 10-year-old child would facilitate the testing of booster seats and other child restraints by causing each restraint to be tested with a test dummy better representative of children at the upper limit of a specified weight range.

If adopted, this proposed rule would generally not increase the testing that NHTSA conducts of child restraints.[23] Currently, restraints recommended for children weighing up to 65 lb are tested with a weighted 6-year-old test dummy. The NPRM proposes to replace the weighted 6-year-old dummy with the HIII–10C, rather than add a test with the HIII–10C. Thus, the certification responsibilities of manufacturers would not generally be affected. The 2004 price of an uninstrumented 10-year-old dummy is about $36,550. The specified instrumentation costs approximately $59,297.

Additionally, we do not believe that the proposed requirements would require extensive redesign of existing booster seat designs. We tentatively determined that any redesign required would be of minimal cost. For further discussion of the benefits and costs, please refer to the preliminary regulatory evaluation placed in the docket for this rulemaking.

VI. Submission Of Comments

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are filed correctly in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21) NHTSA established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES.** You may also submit your comments to the docket electronically by logging onto the Docket Management System (DMS) Web site at *http://dms.dot.gov*. Click on "Help & Information" or "Help/Info" to obtain instructions for filing your comments electronically. Please note, if you are submitting comments electronically as a PDF (Adobe) file, we ask that the documents submitted be scanned using Optical Character Recognition (OCR) process, thus allowing the agency to search and copy certain portions of your submissions.[24]

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT.** In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES.** When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in NHTSA's confidential business information regulation (49 CFR part 512).

Will the Agency Consider Late Comments?

NHTSA will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES.** To the extent possible, the agency will also consider comments that Docket Management receives after that

[22] Docket NHTSA–04–18682.

[23] There are no child restraints that are made only for children weighing between 65 and 80 lb that arguable would be newly subject to FMVSS No. 213.

[24] Optical character recognition (OCR) is the process of converting an image of text, such as a scanned paper document or electronic fax file, into computer-editable text.

date. If Docket Management receives a comment too late for the agency to consider it in developing a final rule (assuming that one is issued), the agency will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESSES.** The hours of the Docket are indicated above in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

1. Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov*).

2. On that page, click on "simple search."

3. On the next page (*http://dms.dot.gov/search/searchFormSimple.cfm*) type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were "NHTSA–1998–1234," you would type "1234." After typing the docket number, click on "search."

4. On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments. Although the comments are imaged documents, instead of word processing documents, the "pdf" versions of the documents are word searchable.

Please note that even after the comment closing date, NHTSA will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, the agency recommends that you periodically check the Docket for new material.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit http://dms.dot.gov.

VII. Rulemaking Analyses and Notices

A. Vehicle Safety Act

Under 49 U.S.C. Chapter 301, *Motor Vehicle Safety* (49 U.S.C. 30101 *et seq.*), the Secretary of Transportation is responsible for prescribing motor vehicle safety standards that are practicable, meet the need for motor vehicle safety, and are stated in objective terms. 49 U.S.C. 30111(a). As defined by statute, motor vehicle safety standards are to provide minimum standards for motor vehicle or motor vehicle equipment performance. 49 U.S.C. 30102(a)(9). When prescribing such standards, the Secretary must consider all relevant, available motor vehicle safety information. 49 U.S.C. 30111(b). The Secretary must also consider whether a proposed standard is reasonable, practicable, and appropriate for the type of motor vehicle or motor vehicle equipment for which it is prescribed and the extent to which the standard will further the statutory purpose of reducing traffic accidents and associated deaths. *Id.* Responsibility for promulgation of Federal motor vehicle safety standards was subsequently delegated to NHTSA. 49 U.S.C. 105 and 322; delegation of authority at 49 CFR 1.50.

The agency carefully considered these statutory requirements in proposing these amendments to FMVSS No. 213.

We believe that the proposed amendments to FMVSS No. 213 would be practicable. The proposed performance requirements are based on existing requirements. Additionally, agency testing has demonstrated that child restraint systems currently on the market would be able to comply with the proposed requirements.

We believe that this proposed rule is appropriate for child restraints recommended for use by children weighing up to 80 lb. The establishment of performance criteria for these restraint systems would help ensure that they provide optimized safety benefits for their intended occupants, children weighing up to 80 lb. Accordingly, the NPRM would meet the need for motor vehicle safety.

Further, the agency has tentatively determined that the HIII–10C test dummy provides an objective tool for determining compliance of a child restraint with the proposed requirements. Agency evaluation has demonstrated the HIII–10C test dummy provides results that are valid, repeatable and reliable.

Further, as stated above, we are proposing to establish performance criteria for child restraint systems intended for children weighing up to 80 lb. If made final, the proposed rulemaking would extend current performance requirements to these child restraint systems intended for heavier children.

With regard to Anton's Law, we have discussed those statutory requirements above. As directed by Anton's Law, the agency has initiated and completed rulemaking that (1) considered whether to include injury performance criteria for child restraints, including booster seats and other products for use in passenger motor vehicles for the restraint of children weighing more than 50 pounds (see 68 FR 37620, *supra*), (2) considered whether to address situations where children weighing more than 50 pounds only have access to seating positions with lap belts, such as allowing tethered child restraints for such children (see 69 FR 16202, *supra*), and (3) reviewed the definition of the term "booster seat" in the Federal motor vehicle safety standards to determine if it is sufficiently comprehensive (see 68 FR 37620, *supra*).

The outstanding element in section 3 of Anton's Law directing the agency to consider whether to establish performance requirements for seat belt fit when used with booster seats and other belt guidance devices is addressed in this notice. The agency has considered performance requirements for seat belt fit for booster seats or for belt guidance devices in accordance with § 3(b)(2) of Anton's Law and has decided against such rulemaking at this time. Currently, field data does not indicate a need for performance requirements for seat belt fit for booster seats or for belt guidance devices.

B. Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the

President's priorities, or the principles set forth in the Executive Order.

NHTSA has considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's (DOT) regulatory policies and procedures (44 FR 11034, February 26, 1979). The Office of Management and Budget did not review this rulemaking document under Executive Order 12866.

We cannot quantify the benefits of this rulemaking. However, the agency believes this rulemaking would improve the safety of child restraint systems by providing for their more thorough compliance testing. The result of this rule would be to provide better assurance that each child restraint safely restrains the children for whom the restraint is recommended.

The costs associated with the proposed rulemaking are largely attributable to the expense of an instrumented HIII–10YO. The 2004 price of an uninstrumented 10-year-old dummy is about $36,550. The specified instrumentation costs approximately $59,297. This NPRM does not require manufacturers to use the test dummy in certifying their child restraints. Rather, this NPRM proposes changes to how NHTSA would conduct compliance testing under FMVSS No. 213. A complete discussion of the costs is provided in the preliminary regulatory evaluation that has been included in the docket for this rulemaking.

C. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR part 121 define a small business, in part, as a business entity "which operates primarily within the United States." (13 CFR 121.105(a)). No regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. NHTSA estimates there to be 13 manufacturers of child restraints, four or five of which could be small businesses.

If adopted, this proposed rule would generally not increase the testing that NHTSA conducts of child restraints. The proposal would replace testing performed on restraints recommend for children weighing up to 65 lb with a weighted 6-year-old test dummy with testing using the HIII–10C. Thus, the certification responsibilities of manufacturers would not generally be affected. I certify that this NPRM would not impose a significant economic impact on a substantial number of small entities, because these businesses currently must certify their products to the dynamic test of Standard No. 213. They typically provide the basis for those certifications by dynamically testing their products using child test dummies. The effect of this NPRM on most child restraints would be to subject them to testing with a new dummy in place of an existing one. Testing child restraints on an updated seat assembly is not expected to affect the performance of the restraints significantly.

D. National Environmental Policy Act

NHTSA has analyzed this proposed rule for the purposes of the National Environmental Policy Act and determined that it would not have any significant impact on the quality of the human environment.

E. Executive Order 13132 (Federalism)

Executive Order 13132 requires NHTSA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, the agency may not issue a regulation with Federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, the agency consults with State and local governments, or the agency consults with State and local officials early in the process of developing the proposed regulation. NHTSA also may not issue a regulation with Federalism implications and that preempts State law unless the agency consults with State and local officials early in the process of developing the proposed regulation.

NHTSA has analyzed this NPRM in accordance with the principles and criteria set forth in Executive Order 13132. The agency has determined that this proposal would not have sufficient federalism implications to warrant consultation and the preparation of a Federalism Assessment.

F. Civil Justice Reform

This NPRM would not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending, or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

G. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid control number from the Office of Management and Budget (OMB). This proposed rule would not establish any requirements that are considered to be information collection requirements as defined by the OMB in 5 CFR part 1320.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272) directs NHTSA to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers (SAE). The NTTAA directs NHTSA to provide Congress, through OMB, explanations when the agency decides not to use

available and applicable voluntary consensus standards.

The agency searched for, but did not find, any voluntary consensus standards applicable to this proposed rulemaking.

I. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, Federal 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 more than $100 million annually (adjusted for inflation with base year of 1995). (Adjusting this amount by the implicit gross domestic product price deflator for the year 2000 increases it to $109 million.) This NPRM would not result in a cost of $109 million or more to either State, local, or tribal governments, in the aggregate, or the private sector. Thus, this NPRM is not subject to the requirements of sections 202 of the UMRA.

J. Regulation Identifier Number

The Department of Transportation assigns a regulation identifier number (RIN) 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. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

VIII. Appendix A—Extending FMVSS No. 213 to Belt-Positioning Devices

Over the years, the agency has considered whether to extend FMVSS No. 213 to belt-positioning devices. Belt positioning devices alter the position of a vehicle lap and shoulder belt and in some cases are marketed for the purpose of improving belt fit on children seated directly on a vehicle seat without the use of a child restraint system.

The agency first addressed this issue in the context of responding to a petition for rulemaking from the American Academy of Pediatrics (AAP). In 1996, the AAP requested that the agency regulate aftermarket belt positioning devices under FMVSS No. 213. The AAP stated that because such devices are generally marketed as child occupant protection devices, the products should be subject to the same testing and certification to which child restraints are subject. The AAP was concerned that some belt positioning devices "appear to interfere with proper lap and shoulder harness fit by positioning the lap belt too high across the abdomen, the shoulder harness too low across the shoulder, and by allowing too much slack in the shoulder harness."

On August 13, 1999, the agency granted the petition and published an NPRM that proposed to regulate belt positioning devices by way of a consumer information regulation (64 FR 44164). The NPRM proposed to require labeling of belt positioning devices with a statement warning against use of the device by children under the age of 6 (alternative, or additionally, under the height of 47.5 inches (1206 mm)).

In 1994, the agency released a report regarding tests that the agency had conducted on three belt positioning devices that were then on the market.[25] The agency dynamically tested the belt positioning devices under the conditions then specified for testing child restraints under FMVSS No. 213. Hybrid II 3-year-old and 6-year-old dummies were used (which, in 1994, were the state-of-the-art dummies used to test child restraints), and a Hybrid III 5th percentile female adult dummy. Dummies were restrained in lap/shoulder belts with, and without the devices. A comparison of the test results revealed that in many of the tests with the 3-year-old dummy, the belt positioning devices reduced belt performance and contributed toward high HIC measurements (HIC values greater than 1000). In one case, the measured chest acceleration exceeded the FMVSS No. 213 limit of 60 g's. The devices generally performed adequately with the 6-year-old dummy with respect to HIC, *i.e.*, the performance criteria of FMVSS No. 213 were not exceeded. However, one device resulted in chest g measurements that exceeded the FMVSS No. 213 limit in both frontal and offset sled tests.

Notwithstanding the results of the study, there was no evidence of a real-world problem. Only one case has been identified in which a child using a belt positioning device suffered injuries from the lap/shoulder belt.[26] Additionally, we were concerned that the proposed label might encourage parents to rely on a belt positioning device as opposed to a booster seat. Required labels could lead parents to believe that belt positioning devices are certified to the same performance criteria as child restraint systems.

In the absence of real-world data and given the concerns of improper restraint choice, we terminated the rulemaking regarding belt positioning devices (69 FR 13503; March 23, 2004; Docket No. NHTSA–99–5100). However, while we are not pursuing rulemaking, we have initiated a testing program to allow us to use the most advanced test procedures and equipment to gain up-to-date research on current belt positioning devices. We are particularly interested in the potential use of the HIII–10C test dummy in evaluating forces that such devices could redirect to a child's abdominal and lumbar areas in a crash. The anterior superior iliac spine load cell attachment locations on the test dummy provide an opportunity to evaluate belt loading of the abdomen. Further, because the HIII–10C can be positioned in a slouched or upright posture, the dummy can be used to assess performance of the belts and belt positioning devices with slouching children. We believe that the research program will provide useful data that will enhance our ability to determine what regulatory approach, if any, would be most appropriate to address belt positioning devices.

For these reasons, the agency has decided not to regulate belt positioning devices under FMVSS No. 213 in this NPRM.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR Part 571 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 would continue to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.213 would be amended by revising the definition of *Child restraint system* in S4, and revising S6.1.1(d)(2), S6.2.3, S7.1.2(e), S9.1(f), S9.3.2 introductory text, and S10.2.2 and adding S7.1.2(f), to read as follows:

§ 571.213 Standard No. 213; Child restraint systems.

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S4. *Definitions.*

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Child restraint system means any device, except Type I or Type II seat belts, designed for use in a motor

[25] "Evaluation of Devices to Improve Shoulder Belt Fit," DOT HS 808 383, Sullivan and Chambers, August 1994.

[26] See "Performance and Use of Child Restraint Systems, Seatbelts, and Air Bags for Children in Passenger Vehicles, Volume 1," National Transportation Safety Board (1996). (*http://www.ntsb.gov/Publictn/1996/SS9601.pdf*).

vehicle or aircraft to restrain, seat, or position children who weigh 36 kilograms (kg) or less.

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S6.1.1 *Test conditions.*

* * * * *

(d)(1) * * *

(2) When using the test dummies specified in 49 CFR part 572, subparts N, P, R, or T, performance tests under S6.1 are conducted at any ambient temperature from 20.6 °C to 22.2 °C and at any relative humidity from 10 percent to 70 percent.

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S6.2.3 Pull the sling tied to the dummy restrained in the child restraint system and apply the following force: 50 N for a system tested with a newborn dummy; 90 N for a system tested with a 9-month-old dummy; 90 N for a system tested with a 12-month-old dummy; 200 N for a system tested with a 3-year-old dummy; 270 N for a system tested with a 6-year-old dummy; 350 N for a system tested with a weighted 6-year-old dummy; or 437 N for a system tested with a 10-year-old dummy. The force is applied in the manner illustrated in Figure 4 and as follows:

(a) *Add-on Child Restraints.* For an add-on child restraint other than a car bed, apply the specified force by pulling the sling horizontally and parallel to the SORL of the standard seat assembly. For a car bed, apply the force by pulling the sling vertically.

(b) *Built-in Child Restraints.* For a built-in child restraint other than a car bed, apply the force by pulling the sling parallel to the longitudinal centerline of the specific vehicle shell or the specific vehicle. In the case of a car bed, apply the force by pulling the sling vertically.

S7.1.2 * * *

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(e) A child restraint that is manufactured on or after August 1, 2005 and before (two years after publication of a final rule; for illustration purposes, August 1, 2007), and that is recommended by its manufacturer in accordance with S5.5 for use either by children in a specified mass range that includes any children having a mass greater than 22.7 kg or by children in a specified height range that includes any children whose height is greater than 1100 mm is tested with a 49 CFR part 572, subpart S dummy.

(f) A child restraint that is manufactured after August 1, 2007, and that is recommended by its manufacturer in accordance with S5.5 for use either by children in a specified mass range that includes any children having a mass greater than 22.7 kg or by children in a specified height range that includes any children whose height is greater than 1100 mm is tested with a 10-year-old child dummy conforming to the applicable specifications in 49 CFR part 572, subpart T.

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S9.1 *Type of clothing.*

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(f) *Hybrid III 6-year-old dummy (49 CFR Part 572, Subpart N), Hybrid III 6-year-old weighted dummy (49 CFR Part 572, Subpart S), and Hybrid III 10-year-old dummy (49 CFR Part 572, Subpart T).* When used in testing under this standard, the dummy specified in 49 CFR part 572, subpart N, weighted and unweighted, is clothed in a light-weight cotton stretch short-sleeve shirt and above-the-knee pants, and size 12½ M sneakers with rubber toe caps, uppers of dacron and cotton or nylon and a total mass of 0.453 kg.

* * * * *

S9.3.2 When using the test dummies conforming to Part 572 Subparts N, P, R, S, or T (10-year-old dummy), prepare the dummies as specified in this paragraph. Before being used in testing under this standard, dummies must be conditioned at any ambient temperature from 20.6 °C to 22.2 °C and at any relative humidity from 10 percent to 70 percent, for at least 4 hours.

* * * * *

S10.2.2 *Three-year-old, six-year-old test and ten-year-old test dummy.* Position the test dummy according to the instructions for child positioning that the restraint manufacturer provided with the system in accordance with S5.6.1 or S5.6.2, while conforming to the following:

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Issued: August 24, 2005.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 05–17218 Filed 8–30–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AG16

Endangered and Threatened Wildlife and Plants; Listing the Gila Chub as Endangered With Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Revised proposed rule; notice of availability of draft economic analysis and draft environmental assessment, reopening of public comment period, notice of public hearings, and updated legal descriptions for critical habitat units.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of the draft economic analysis and draft environmental assessment for the proposal to list as endangered and designate critical habitat for the Gila chub *(Gila intermedia)* under the Endangered Species Act of 1973, as amended (Act). We are also reopening the public comment period for the proposal to list the Gila chub as endangered with critical habitat to allow all interested parties an opportunity to comment on and request changes to the proposed listing and critical habitat designation, as well as the associated draft economic analysis and draft environmental assessment.

The draft economic analysis finds that costs associated with Gila chub conservation activities are forecast to range from $11.3 million to $28.1 million in constant dollars over 20 years ($0.8 million to $1.9 million annually). In addition, we are proposing corrected legal descriptions for the critical habitat units. Comments previously submitted on the August 9, 2002, proposed rule need not be resubmitted as they have been incorporated into the public record and will be fully considered in preparation of the final rule. We will hold three public informational sessions and hearings (see **DATES** and **ADDRESSES** sections).

DATES: Comments must be submitted directly to the Service (see **ADDRESSES** section) on or before September 30, 2005, or at the public hearings.

We will hold public informational sessions from 3 p.m. to 4:30 p.m., followed by a public hearing from 6:30 p.m. to 8 p.m., on the following dates:

1. September 13, 2005: Silver City, New Mexico.
2. September 14, 2005: Thatcher, Arizona.
3. September 15, 2005: Camp Verde, Arizona.

ADDRESSES: *Meetings.* The public informational sessions and hearings will be held at the following locations:

1. Silver City, NM: Flame Convention Center, 2800 Pinos Altos Road, Silver City, New Mexico.
2. Thatcher, AZ: Eastern Arizona College Activity Center, Lee Little Theater (Information Session—Activity Center Quiet Lounge), 1014 North College Avenue, Thatcher, Arizona.
3. Camp Verde, AZ: Camp Verde Unified School District Multi-Use Complex Theater, 280 Camp Lincoln Road, Camp Verde, Arizona.

For information on requesting reasonable accommodations to attend a session, see the "Public Comments Solicited" section below.

Comments. If you wish to comment on the proposed rule, draft economic analysis, or draft environmental assessment, you may submit your comments and materials by any one of several methods:

1. You may submit written comments and information by mail or hand-delivery to the Field Supervisor, Arizona Ecological Services Field Office, 2321 W. Royal Palm Road, Suite 103, Phoenix, Arizona 85021.

2. Written comments may be sent by facsimile to (602) 242–2513.

3. You may send your comments by electronic mail (e-mail) to *gilachubcomments@fws.gov*. For directions on how to submit electronic filing of comments, see the "Public Comments Solicited" section below.

You may obtain copies of the proposed rule, draft economic analysis, and draft environmental assessment by mail or by visiting our Web site at *http://arizonaes.fws.gov/*. You may review comments and materials received and review supporting documentation used in preparation of this proposed rule by appointment, during normal business hours, at the Arizona Ecological Services Field Office (address provided above).

FOR FURTHER INFORMATION CONTACT: Steve Spangle, Field Supervisor, Arizona Ecological Services Field Office (telephone, 602–242–0210; facsimile, 602–242–2513; or electronic mail, *steve_spangle@fws.gov*).

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning the proposed rule, the draft economic analysis, and the draft environmental assessment. On the basis of public comment on the proposed rule analysis, the draft economic analysis and the environmental assessment, and the final economic analysis and environmental assessment, we may during the development of our final determination find that areas proposed are not essential, are appropriate for exclusion under section 4(b)(2) of the Act, or not appropriate for exclusion. We particularly seek comments concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefits of designation will outweigh any threats to the species resulting from designation;

(2) Specific information on the distribution of the Gila chub, the amount and distribution of the species' habitat, and which habitat is essential to the conservation of the species and why;

(3) Land-use designations and current or planned activities in the subject area and their possible impacts on the species or proposed critical habitat;

(4) Whether our approach to listing or critical habitat designation could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments;

(5) Any foreseeable environmental impacts directly or indirectly resulting from the proposed designation of critical habitat;

(6) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat or coextensively from the proposed listing, and in particular, any impacts on small entities or families;

(7) Whether the economic analysis identifies all State and local costs, and if not, what other costs should be included;

(8) Whether the economic analysis makes appropriate assumptions regarding current practices and likely regulatory changes imposed as a result of the listing of the species or the designation of critical habitat;

(9) Whether the economic analysis correctly assesses the effect on regional costs associated with land- and water-use controls that derive from the designation;

(10) Whether the critical habitat designation will result in disproportionate economic impacts to specific areas that should be evaluated for possible exclusion from the final designation; and

(11) Whether the economic analysis appropriately identifies all costs that could result from the designation or coextensively from the listing.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the Arizona Ecological Servies Field Office (see **ADDRESSES** section above).

All previous comments and information submitted during the initial comment period on the proposed rule need not be resubmitted. If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods (see **ADDRESSES** section). Our final designation of critical habitat for the Gila chub will take into consideration all comments and any additional information received during both comment periods. Please submit electronic comments in ASCII file format and avoid the use of special characters or any form of encryption. Please also include your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly by calling our Arizona Ecological Services Field Office at (602) 242–0210.

Persons needing reasonable accommodations in order to attend and participate in a public hearing should contact Steve Spangle, Field Supervisor, Arizona Ecological Services Field Office at the phone number or address listed in the **ADDRESSES** section as soon as possible. In order to allow sufficient time to process requests, please call no later than one week before the hearing. Information regarding this proposal is available in alternative formats upon request.

Background

We proposed to list the Gila chub as endangered, and to designate approximately 211.9 stream miles (mi) (340.9 stream kilometers (km)) of critical habitat, which includes various stream segments and their associated riparian areas, including the stream at bankfull width and a 300-foot buffer on either side of the stream banks. The designation includes Federal, State, tribal, and private lands in Arizona and New Mexico. The proposed rule was published in the **Federal Register** on August 9, 2002 (67 FR 51948), pursuant

to a settlement agreement resulting from litigation by the Center for Biological Diversity and others. The proposed rule also constituted our 12-month finding for the petition to list the Gila chub.

Critical habitat identifies specific areas containing features essential to the conservation of a listed species and that may require special management considerations or protection. If the proposed listing and critical habitat designation is finalized, section 7(a)(2) of the Act would require that Federal agencies ensure that actions they fund, authorize, or carry out are not likely to jeopardize the continued existence of the species or result in the destruction or adverse modification of critical habitat.

Section 4 of the Act requires that we consider economic and other relevant impacts prior to making a final decision on what areas to designate as critical habitat. We may revise the proposal, or its supporting documents, to incorporate or address new information received during the comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species.

The draft economic analysis considers and attempts to quantify the potential economic effects of efforts to protect the Gila chub and its habitat, collectively referred to as "Gila chub conservation activities," in the proposed critical habitat designation, as well as the economic effects of protective measures taken as a result of the listing or other Federal, State, and local laws that aid habitat conservation in the areas proposed for designation. In the case of habitat conservation, these costs would reflect the costs associated with the commitment of resources to comply with habitat protection measures. The analysis also addresses how potential economic impacts are likely to be distributed.

Corrected Coordinates for Proposed Units of Critical Habitat

Below we provide corrected legal descriptions for the Gila chub proposed critical habitat designation. Following the publication of the proposed rule on August 9, 2002, and in part through comments we received during the subsequent comment period, we discovered that some of the critical habitat units were incorrectly described. We have since corrected the descriptions to accurately reflect what we are considering for designation of critical habitat, and we provide the corrected descriptions for all critical habitat units below. Corrected Geographic Information System (GIS) layers are available at *http://criticalhabitat.fws.gov/*. The total corrected amount of critical habitat being proposed is approximately 211.9 stream mi (340.9 stream km). Tables 1 and 2 below provide approximate distances by major landowner type.

All legal descriptions for New Mexico and Arizona are based on the Public Lands Survey System (PLSS). Within this system, all coordinates reported for New Mexico are in the New Mexico Principal Meridian (NMPM), while those in Arizona are in the Gila and Salt River Meridian (GSRM). Township has been abbreviated as "T," Range as "R," and section as "sec." Where possible, the ending or starting points have been described to the nearest quarter-section, abbreviated as "¼." Cardinal directions are also abbreviated (N = North, S = South, W = West, and E = East). All mileage calculations were performed using GIS.

TABLE 1.—APPROXIMATE CRITICAL HABITAT IN STREAM KILOMETERS AND MILES (7 RIVER UNITS)

Land owner	New Mexico km (mi)	Arizona km (mi)	Total km (mi)
Federal	18.9 (11.7)	171.1 (106.4)	190.0 (118.1)
State	0	17.1 (10.6)	17.1 (10.6)
County	0	17.2 (10.7)	17.2 (10.7)
Private	3.4 (2.1)	66.1 (41.1)	69.5 (43.2)
Tribal	0	47.1 (29.3)	47.1 (29.3)
Total	22.3 (13.8)	318.6 (198.1)	340.9 (211.9)

TABLE 2.—APPROXIMATE CRITICAL HABITAT IN STREAM KILOMETERS AND MILES (7 RIVER UNITS), BY INDIVIDUAL LANDOWNERS

Land owner	New Mexico	Arizona	Total
Gila National Forest	18.9 (11.7)	0	18.9 (11.7)
Apache-Sitgreaves National Forest	0	50.5 (31.4)	50.5 (31.4)
Coconino National Forest	0	16.9 (10.5)	16.9 (10.5)
Coronado National Forest	0	15.4 (9.6)	15.4 (9.6)
Prescott National Forest	0	21.0 (13.1)	21.0 (13.1)
Tonto National Forest	0	7.4 (4.6)	7.4 (4.6)
SUBTOTAL	18.9 (11.7)	111.2 (69.2)	130.1 (80.9)
BLM—Phoenix District	0	7.7 (4.8)	7.7 (4.8)
BLM—Safford District	0	27.7 (17.2)	27.7 (17.2)
BLM—Tucson District	0	24.5 (15.2)	24.5 (15.2)
SUBTOTAL	0	59.9 (37.2)	59.9 (37.2)
TOTAL	18.9 (11.7)	171.1 (106.4)	190.0 (118.1)

Required Determinations—Amended

This revised proposed rule affirms the information contained in the August 9, 2002, proposed rule (67 FR 51948) concerning Executive Orders 13132 and 12988; the Paperwork Reduction Act; the National Environmental Policy Act; and the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951). Based on the draft economic analysis, we are amending our required determinations, as provided below, concerning Executive Order 12866 and the Regulatory Flexibility Act; Executive Orders 13211 and 12630; and the Unfunded Mandates Reform Act.

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule because it may raise novel legal and policy issues. However, based on our draft economic analysis, it is not anticipated that the proposed designation of critical habitat for the Gila chub would result in an annual effect on the economy of $100 million or more or affect the economy in a material way. Due to the timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) has not formally reviewed the proposed rule or accompanying economic analysis.

Further, Executive Order 12866 directs Federal Agencies promulgating regulations to evaluate regulatory alternatives (Office of Management and Budget, Circular A–4, September 17, 2003). Pursuant to Circular A–4, once it has been determined that the Federal regulatory action is appropriate, then the agency will need to consider alternative regulatory approaches. Since the determination of critical habitat is a statutory requirement pursuant to the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), we must then evaluate alternative regulatory approaches, where feasible, when promulgating a designation of critical habitat.

In developing our designations of critical habitat, we consider economic impacts, impacts to national security, and other relevant impacts pursuant to section 4(b)(2) of the Act. Based on the discretion allowable under this provision, we may exclude any particular area from the designation of critical habitat, providing that the benefits of such exclusion outweigh the benefits of specifying the area as critical habitat and that such exclusion would not result in the extinction of the species. As such, we believe that the evaluation of the inclusion or exclusion of particular areas, or combination thereof, in a designation constitutes our regulatory alternative analysis.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 802(2)) (SBREFA), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. Based upon our draft economic analysis of the proposed designation, we provide our factual basis for determining that this rule will not result in a significant economic impact on a substantial number of small entities.

According to the Small Business Administration (SBA), small entities include small organizations, such as independent nonprofit organizations and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term significant economic impact is meant to apply to a typical small business firm's business operations.

To determine if this proposed designation of critical habitat for the Gila chub would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities (*e.g.*, water management and use, livestock grazing, San Carlos Apache Tribal activities, residential and related development, Gila chub-specific management activities, recreation activities, fire management activities, mining, and transportation). We considered each industry or category individually to determine if certification is appropriate. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and so will not be affected by the designation of critical habitat. Designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies; non-Federal activities are not affected by the designation.

If this proposed critical habitat designation is made final, Federal agencies must consult with us if their activities may affect designated critical habitat. Consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

Our economic analysis of this proposed designation evaluated the potential economic effects on small business entities and small governments resulting from conservation actions related to the proposed listing of this species and proposed designation of its critical habitat. We evaluated small business entities in nine categories: water management and use, livestock grazing activities, San Carlos Apache Tribal activities, residential and related development, Gila chub-specific management activities, recreation activities, fire management activities, mining, and transportation. Based on our analysis, impacts are anticipated to occur in water management, livestock grazing, and tribal enterprises of the San Carlos Apache Tribe. The following is a summary of the information contained in Appendix B of the draft economic analysis:

(a) Water Management. Two water supply entities could potentially be impacted by conservation activities related to water supply for the Gila chub, both of which are small entities: the City of Safford, Arizona, and Vail Water Company. The Vail Water Company is considered a small business because its annual revenues are $99,000. The potential restriction to this company relates to its ability to sell water from one of its seven wells. This well is not currently used by Vail Water Company for domestic supply due to high levels of certain constituents. The company could begin pumping water from the well for non-potable uses or for

potable uses with some treatment. The economic analysis estimates that the total annualized replacement costs to the company if it is not able to pump water from the well is $73,000 and $171,000 (discounted at 3 and 7 percent, over 20 years; using high-end estimates of water replacement needs). If the Vail Water Company's ability to sell non-potable water from this well is restricted, we find that it would be a significant effect on the Company.

The potential restriction to the City of Safford as a result of Gila chub conservation measures is related to its ability to make use of its water source in Bonita Creek. The annualized water replacement cost to the City of Safford is $287,000 and $669,000 (discounted at 3 and 7 percent, over 20 years). In the case of Safford, data on the City's current overall budget is unknown. However, annualized impacts could represent approximately between 2.3 and 5.3 percent of annual revenues to the City of Safford's utilities department. If the City is required to locate a replacement source of water, we find that would be a significant effect on the City. A section 7 consultation is currently being developed with the Bureau of Reclamation to expand the City's use of the infiltration gallery, which may allow the City to continue to withdraw water from the Creek. However, the consultation is in its early stages and the outcome is unknown.

(b) Livestock Grazing Activities. Ranching operations are anticipated to be impacted by conservation activities for the Gila chub. Approximately 16 ranching operations may be impacted annually. Annual costs to each of these 16 ranching operations may be between $1,400 and $11,700. Average revenues of a ranch in the region of the proposed critical habitat designation are $144,000. These potential losses represent between 1 and 8 percent of each ranch's estimated average revenues. Exhibit B–2 in the draft economic analysis presents the average revenues of ranches by county. Of the 118 beef cattle ranching and farming operations (NAICS 112111) in Arizona counties with proposed Gila chub critical habitat, 92 percent are considered small businesses. Therefore, 15 small ranching operations (92 percent of 16 operations) may experience a reduction in revenues of between 1 and 8 percent annually. The extent to which these impacts are significant to any of these ranching operations will depend on the individual financial conditions of the ranch.

(c) Tribal Enterprises. As explained in Appendix B of the draft economic analysis, Tribal governments are not considered small governments under RFA/SBREFA but rather as independent sovereigns. However, tribal enterprises can be considered small entities under the RFA/SFREFA. For the purpose of this analysis we find that approximately three livestock associations and one timber operation are considered to be small entities. Quantified impacts to tribal livestock grazing activities are estimated to range from $22,000 to $306,000 annually using a seven percent discount rate ($18,000 to $274,000 discounted at three percent), or between one percent and 57 percent of annual revenues to each of the three livestock associations. Quantified impacts of reduced lumber production are estimated to be approximately $15,000 annually. These impacts could be borne by a Tribally-owned timber mill, a private leasee of the mill, and/or a small logging contractor. There are 25 forestry and logging companies in Arizona.

Based on these data, we have determined that this proposed designation would not affect a substantial number of small businesses involved in or affected by water management activities, timber harvest, or livestock grazing. As such, we are certifying that this proposed designation of critical habitat would not result in a significant economic impact on a substantial number of small entities. Please refer to Appendix B of our draft economic analysis of this designation for a more detailed discussion of potential economic impacts to small business entities.

Executive Order 13211

On May 18, 2001, the President issued Executive Order (E.O.) 13211 on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule is considered a significant regulatory action under E.O. 12866 due to its potentially raising novel legal and policy issues, but it is not expected to significantly affect energy supplies, distribution, or use. Appendix B of the draft economic analysis provides a discussion and analysis of this determination. The Office of Management and Budget has provided guidance for implementing this Executive Order that outlines nine outcomes that may constitute "a significant adverse effect" when compared without the regulatory action under consideration. The draft economic analysis finds that none of these criteria are relevant to this analysis; thus, energy-related impacts associated with Gila chub conservation activities within proposed critical habitat are not expected.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501), the Service makes the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)–"Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or tribal governments," with two exceptions. It excludes "a condition of federal assistance." It also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding" and the State, local, or tribal governments "lack authority" to adjust accordingly. (At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement.) "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program."

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. Non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat. However, the legally

binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) The economic analysis discusses potential impacts of critical habitat designation for the Gila chub on water management activities, livestock grazing, Tribes, residential and commercial development activities, recreation activities, fire management activities, mining, and transportation activities. The analysis estimates that annual costs of the rule could range from $11.3 million to $28.1 million in constant dollars over 20 years ($0.8 million to $1.9 million annually). Impacts are largely anticipated to affect water operators and Federal and State agencies, with some effects on livestock grazing operations. Impacts on small governments are not anticipated, or they are anticipated to be passed through to consumers. For example, costs to water operations would be expected to be passed on to consumers in the form of price changes. Consequently, for the reasons discussed above, we do not believe that the designation of critical habitat for the Gila chub will significantly or uniquely affect small government entities. As such, a Small Government Agency Plan is not required.

Takings

In accordance with Executive Order 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), we have analyzed the potential takings implications of proposing critical habitat for the Gila chub in a takings implications assessment. The takings implications assessment concludes that this proposed designation of critical habitat for the Gila chub does not pose significant takings implications.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Rule Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. As proposed on August 9, 2002, at 67 FR 51948, amend § 17.11(h) by adding Gila chub, in alphabetical order under "FISHES", to the List of Endangered and Threatened Wildlife, to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	*
FISHES							
*	*	*	*	*	*	*	*
Chub, Gila	*Gila intermedia*	U.S.A. (AZ, NM), Mexico.	Entire	E	NA	17.95(e)	NA
*	*	*	*	*	*	*	*

3. Critical habitat for the Gila chub (*Gila intermedia*) in § 17.95 (e), which was proposed to be added on August 9, 2002, at 67 FR 51948, is proposed to be amended by revising the critical habitat unit descriptions as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(e) *Fishes.*

* * * * *

Gila chub (Gila intermedia)

1. Critical habitat for the Gila chub in Arizona and New Mexico is depicted on the following overview map and described in detail following the map.

* * * * *

Upper Gila River Area 1

a. Turkey Creek—13.7 km (8.5 mi) of creek extending from the edge of the Gila Wilderness boundary at T14S, R16W, sec. 15 NW¼ and continuing upstream to T13S, R15W, sec. 30 NE¼. Land ownership: Gila National Forest.

b. Eagle Creek and East Eagle Creek—39.2 km (24.4 mi) of creek extending from its confluence with an unnamed tributary at T1N, R28E, sec. 31 SW¼ upstream to the headwaters of East Eagle Creek just south of Highway 191 in T3N, R29E, sec. 28 SE¼. Land ownership: Apache-Sitgreaves National Forest and private.

c. Harden Cienega Creek—22.6 km (14.0 mi) of creek extending from its confluence with the San Francisco in GSRM T3S, R31E, sec. 3 SE¼ continuing upstream to the headwaters in NMPM T14S R21W sec. 6 NE¼. Land ownership: Apache-Sitgreaves National Forest, Gila National Forest, and private.

d. Dix Creek—Portions of the Creek beginning 1.0 mi upstream from its confluence with the San Francisco River at a natural rock barrier in T3S, R31E, sec. 9 NE¼ continuing upstream for 0.9 km (0.6 mi.) to the confluence of the right and left forks of Dix Creek in T3S, R31E, sec. 9 center. Left Fork Dix Creek continues upstream 2.0 km (1.24 mi) to T3S, R31E, section 15 NW¼. Land ownership: Apache-Sitgreaves National Forest. Right Fork Dix Creek continues upstream 4.8 km (3.0 mi) to T3S, R31E, section 20 SE¼. Land ownership: Apache-Sitgreaves National Forest.

* * * * *

Middle Gila River Area 2

a. Mineral Creek—14.4 km (9.0 mi) of creek extending from its confluence with Devil's Canyon in T2S, R13E, section 35 NW¼ continuing upstream to its headwaters in T2S, R14E, sec. 15 center at the confluence of Mineral Creek and an unknown drainage. Land ownership: Tonto National Forest, State Lands, and private.

b. Blue River—40.5 km (25.2 mi) of creek extending from its confluence

with the San Carlos River in T1N R19E, sec. 20 on the border of section 20 and 29, continuing upstream to T3N, R20E, sec. 21 NE¼. Land ownership: San Carlos Apache Reservation.

c. Bonita Creek—30.6 km (19.0 mi) of Creek extending from T6S, R28E, sec. 21 SE¼ continuing upstream to T4S, R27E, sec. 18 SW¼. Land ownership: Bureau of Land Management, Tribal, and private.

* * * * *

Babocomari River Area 3

a. O'Donnell Canyon—10.0 km (6.2 mi) of creek extending from its confluence with Turkey Creek at T21S, R18E, sec. 22 SE¼ upstream to the confluences of Western, Middle, and Pauline Canyons in T22S, R18E, sec. 17 NE¼. Land ownership: Bureau of Land Management, Coronado National Forest, and private.

b. Turkey Creek—6.3 km (3.9 mi) of creek extending from its confluence with O'Donnell Canyon in T21S, R18E, sec. 22 SE¼ upstream to where Turkey Creek crosses AZ Highway 83 in T22S, R18E, sec. 9 NE¼. Land ownership: Coronado National Forest and private.

c. Post Canyon—4.6 km (2.8 mi) of creek extending from its confluence with O'Donnell Canyon in T21S, R18E, sec. 22 SE¼ upstream to Welch Spring at T21S, R18E, sec. 29 NW¼. Land ownership: Coronado National Forest, Bureau of Land Management, and private.

* * * * *

Lower San Pedro River Area 4

a. Bass Canyon—5.5 km (3.4 mi) of creek extending from its confluence with Hot Springs Canyon in T12S, R20E, sec. 36 NE¼ upstream to the confluence with Pine Canyon in T12S, R21E, sec. 20 SW¼. Land ownership: Bureau of Land Management and private.

b. Hot Springs Canyon—10.5 km (6.5 mi) of creek extending from T13S R20E, sec. 5 NW¼ continuing upstream to its confluence with Bass Canyon in T12S, R20E, sec. 36 NE¼. Land ownership: Bureau of Land Management, State Lands, private (The Nature Conservancy).

c. Redfield Canyon—11.6 km (7.2 mi) of creek extending from the western boundary of T11S, R19E, section 35 upstream to its confluence with Sycamore Canyon in T11S, R20E, sec. 20 NE¼. Land ownership: Bureau of Land Management, State Lands, and private.

* * * * *

Lower Santa Cruz River Area 5

a. Cienega Creek—(Two Segments) First segment includes 17.2 km (10.7 mi) of creek extending from where Cienega Creek becomes Pantano Wash in T16S, R16E, sec. 10, S½ to where it crosses I–10 at T17S, R17E, sec. 1 NW¼. Land ownership: County. Second segment includes 13.6 km (8.4 mi) of creek extending from T18S, R18E, sec. 6 S½ to its confluence with an unnamed stream at T19S, R17E, sec. 3 SW¼. Land ownership: Bureau of Land Management.

b. Mattie Canyon—4.0 km (2.5 mi) of creek extending from its confluence with Cienega Creek in T18S, R17E, sec. 23 NE¼ upstream to the Bureau of Land Management Boundary in T18S, R17E, sec. 25 SW¼. Land ownership: Bureau of Land Management.

c. Empire Gulch—5.2 km (3.2 mi) of creek extending from its confluence with Cienega Creek in T19S, R17E, sec. 3 SE¼ continuing upstream to T19S, R17E, sec. 16 NW¼ on the western boundary of section 16. Land ownership: Bureau of Land Management and State.

d. Sabino Canyon—11.1 km (6.9 mi) of creek extending from the southern boundary of the Coronado National Forest in T13S, R15E, sec. 9 SE¼ upstream to its confluence with the West Fork of Sabino Canyon in T12S, R15E, sec. 22 NE¼. Land ownership: Coronado National Forest.

* * * * *

Verde River Area 6

a. Walker Creek—7.6 km (4.7 mi) of creek extending from Prescott National Forest Road 618 in T15N, R6E, sec. 33 SW¼ upstream to its confluence with Spring Creek in T14N, R6E, sec. 1, SE¼. Land ownership: Coconino National Forest and private lands.

b. Red Tank Draw—11.1 km (6.9 mi) of creek extending from the National Park Service boundary just upstream of its confluence with Wet Beaver Creek in T15N, R6E, sec. 31 NE¼ upstream to the confluence of Mullican and Rarick canyons in T15N, R6E, sec. 2 NW¼. Land ownership: Coconino National Forest and private.

c. Spring Creek—5.7 km (3.6 mi) of creek extending from T16N, R4E, sec. 27 SE¼ at the boundary of Forest Service land and continuing upstream to the Arizona Highway 89A crossing in T16N, R4E, sec. 16 SE¼. Land ownership: Coconino National Forest, State Lands, and private.

d. Williamson Valley Wash—7.2 km (4.4 mi) of creek extending from the gauging station in T17N, R3W, sec. 7 SE¼ upstream to the crossing of the Williamson Valley Road in T17N, R4W, sec. 36 NE¼. Land ownership: private.

* * * * *

Agua Fria River Area 7

a. Little Sycamore Creek—4.7 km (2.9 mi) of creek extending from its confluence with Sycamore Creek in T11N, R4E, sec. 6 SW¼ upstream to T11N, R4E, sec. 4 NE¼. Land ownership: Prescott National Forest and private.

b. Sycamore Creek—18.3 km (11.4 mi) of creek extending from its confluence with Little Sycamore Creek at T11N, R4E, sec. 6 SW¼ upstream to Nelson Place Spring in T11N, R5E, sec. 21 NE¼. Land ownership: Prescott National Forest and private.

c. Indian Creek—8.4 km (5.2 mi) of creek extending from T11N, R3E, sec. 35 NE¼ to Upper Water Springs in T11N, R4E, sec. 16 SE¼. Land ownership: Bureau of Land Management, Prescott National Forest, and private.

d. Silver Creek—8.5 km (5.3 mi) of creek extending from T10N, R3E, sec. 10 SE¼ continuing upstream to the spring in T10N, R4E, Sec. 4 SW¼. Land ownership: Tonto National Forest and Bureau of Land Management.

e. Larry Creek—Portions of the creek from an unnamed tributary and continuing upstream 0.7 km (0.4 mi) to the confluence of two adjoining unnamed tributaries, entirely within T9N, R3E, sec. 9 NW¼. Land ownership: Bureau of Land Management.

f. Lousy Canyon—Portions of the creek from the confluence of an unnamed tributary upstream to the fork with an unnamed tributary approximately 0.6 km (0.4 mi) upstream, all entirely within T9N, R3E, sec. 5 NW¼. Land ownership: Bureau of Land Management.

* * * * *

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: August 23, 2005.

Paul Hoffman,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 05–17450 Filed 8–29–05; 2:55 pm]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AJ11

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for *Atriplex coronata* var. *notatior* (San Jacinto Valley crownscale)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of public comment period and notice of availability of draft economic analysis.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period on the proposed designation of critical habitat for *Atriplex coronata* var. *notatior* under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), and the availability of a draft economic analysis of the proposed designation of critical habitat. We are reopening the comment period to allow all interested parties an opportunity to comment simultaneously on the proposed rule and the associated draft economic analysis. Comments previously submitted on this proposed rule need not be resubmitted as they have already been incorporated into the public record and will be fully considered in our final determination of critical habitat for this taxon.

DATES: We will accept public comments and information until September 14, 2005.

ADDRESSES: Written comments and materials may be submitted to us by any one of the following methods:

1. You may submit written comments and information to Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, CA 92011;

2. You may hand-deliver written comments and information to our Carlsbad Fish and Wildlife Office at the above address, or fax your comments to 760/431–9624; or

3. You may send your comments by electronic mail (e-mail) to *FW1CFWO_SJVC@fws.gov*. For directions on how to submit electronic comments, see the "Public Comments Solicited" section. In the event that our internet connection is not functional, please submit your comments by the alternate methods mentioned above.

FOR FURTHER INFORMATION CONTACT: Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office, at the above address (telephone 760/431–9440; facsimile 760/431–9624).

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We will accept written comments and information during this reopened comment period. We solicit comments on the original proposed critical habitat designation, published in the **Federal Register** on October 6, 2004 (69 FR 59844), and on our draft economic analysis of the proposed designation. We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefits of exclusion outweigh the benefits of specifying such area as part of the critical habitat;

(2) Specific information on the amount and distribution of *Atriplex coronata* var. *notatior* and its habitat, and habitat features and geographic areas essential to the conservation of this species and why;

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(4) Information on how many of the State and local environmental protection measures referenced in the draft economic analysis were adopted largely as a result of the listing of *Atriplex coronata* var. *notatior*, and how many were either already in place or enacted for other reasons;

(5) Any foreseeable economic, environmental, or other impacts resulting from the proposed designation or coextensively from the proposed listing;

(6) Whether the draft economic analysis identifies all State and local costs attributable to the proposed critical habitat designation, and information on any costs that have been inadvertently overlooked;

(7) Whether the draft economic analysis makes appropriate assumptions regarding current practices and likely regulatory changes imposed as a result of the designation of critical habitat;

(8) Whether the draft economic analysis correctly assesses the effect on regional costs associated with land use controls that derive from the designation of critical habitat;

(9) Whether the economic analysis appropriately identifies all costs that could result from the designation, in particular, any impacts on small entities or families;

(10) Whether the designation would result in disproportionate economic impacts to specific areas that should be evaluated for possible exclusion under 4(b)(2) of the Act from the final designation;

(11) Whether it is appropriate that the analysis does not include the cost of project modifications that are the result of informal consultation only;

(12) Whether there is information about areas that could be used as substitutes for the economic activities planned in critical habitat areas that would offset the costs and allow for the conservation of critical habitat areas; and

(13) How our approach to critical habitat designation could be improved or modified to provide for greater public participation and understanding, or to assist us in accommodating public concern and comments.

All previous comments and information submitted during the initial comment period on the proposed rule need not be resubmitted. If you wish to comment, you may submit your comments and materials concerning the draft economic analysis and the proposed rule by any one of several methods (see **ADDRESSES** section). Our final determination regarding designation of critical habitat for *Atriplex coronata* var. *notatior* will take into consideration all comments and any additional information received during both comment periods. On the basis of public comment on this analysis and on the critical habitat proposal, and on the final economic analysis, we may during the development of our final determination find that areas proposed are not essential, are appropriate for exclusion under section 4(b)(2) of the Act, or are not appropriate for exclusion.

Please submit electronic comments in an ASCII file and avoid the use of any special characters or any form of encryption. Also, please include "Attn: *Atriplex coronata* var. *notatior*" and your name and return address in your e-mail message regarding the *Atriplex coronata* var. *notatior* proposed rule or the draft economic analysis. If you do not receive a confirmation from the system that we have received your e-mail message, please submit your comments in writing using one of the alternate methods described in the **ADDRESSES** section.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address, which we will honor to the extent allowable by

law. There also may be circumstances in which we would withhold a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Comments and materials received, as well as supporting documentation used in preparation of the proposal to designate critical habitat, will be available for public inspection, by appointment, during normal business hours at the Carlsbad Fish and Wildlife Office at the address listed under **ADDRESSES**. Copies of the proposed critical habitat rule for *Atriplex coronata* var. *notatior* and the draft economic analysis are also available on the Internet at *http://www.fws.gov/pacific/carlsbad/SJVC.htm*. In the event that our internet connection is not functional, please obtain copies of documents directly from the Carlsbad Fish and Wildlife Office.

Background

On October 6, 2004, we published a proposed rule in the **Federal Register** (69 FR 59844) to designate critical habitat for *Atriplex coronata* var. *notatior* pursuant to the Act. We proposed to designate no lands as critical habitat. The entire range for this species is in Western Riverside County, CA, and as such will be conserved by the approved Western Riverside Multiple Species Habitat Conservation Plan. Therefore, we proposed to exclude all 15,232 acres (ac) (6,164.4 hectares (ha)) of habitat with features essential to the conservation of this species under section 4(b)(2) of the Act. The initial public comment period for the *Atriplex coronata* var. *notatior* proposed critical habitat rule closed on December 6, 2004. For more information on this species, refer to the final rule listing this species as endangered, published in the **Federal Register** on October 13, 1998 (63 FR 54975).

Critical habitat is defined in section 3 of the Act as the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection, and specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. If the proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting areas designated as critical habitat must consult with us on the effects of their proposed actions, pursuant to section 7(a)(2) of the Act.

Section 4(b)(2) of the Act requires that we designate or revise critical habitat on the basis of the best scientific and commercial data available, after taking into consideration the economic impact, impact to national security, and any other relevant impacts of specifying any particular area as critical habitat. We have prepared a draft economic analysis of the October 6, 2004 (69 FR 59844), proposed designation of critical habitat for *Atriplex coronata* var. *notatior*.

The draft economic analysis considers the potential economic effects of actions relating to the conservation of *Atriplex coronata* var. *notatior*, including costs associated with sections 4, 7, and 10 of the Act, and including those attributable to designating critical habitat. It further considers the economic effects of protective measures taken as a result of other Federal, State, and local laws that aid habitat conservation for *Atriplex coronata* var. *notatior* in habitat areas with features essential to the conservation of this taxon. The analysis considers both economic efficiency and distributional effects. In the case of habitat conservation, efficiency effects generally reflect the "opportunity costs" associated with the commitment of resources to comply with habitat protection measures (*e.g.*, lost economic opportunities associated with restrictions on land use). This analysis also addresses how potential economic impacts are likely to be distributed, including an assessment of any local or regional impacts of habitat conservation and the potential effects of conservation activities on small entities and the energy industry. This information can be used by decision-makers to assess whether the effects of the designation might unduly burden a particular group or economic sector. Finally, this analysis looks retrospectively at costs that have been incurred since the date the species was listed as an endangered species and considers those costs that may occur in the 20 years following the designation of critical habitat.

Pre-designation costs include those *Atriplex coronata* var. *notatior*-related conservation activities associated with sections 4, 7, and 10 of the Act that have accrued since the time that *Atriplex coronata* var. *notatior* was listed as endangered (63 FR 54975; October 13, 1998), but prior to the final designation of critical habitat. These pre-designation costs are estimated at $3.9 million.

Post-designation effects would include likely future costs associated with *Atriplex coronata* var. *notatior* conservation efforts in the 20-year period following the final designation of critical habitat in October 2005 (effectively 2006 through 2025). In the event that no land is designated as critical habitat, there will be no additional costs associated with the designation. However, if all habitat with features essential to the conservation of the taxon were designated critical habitat in a final rule, total costs would be expected to range between $16.8 and $58.8 million over the next 20 years (an annualized cost of $1.6 to $5.5 million).

Required Determinations—Amended

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule in that it may raise novel legal and policy issues. However, because the draft economic analysis indicates that the potential economic impact associated with designation as critical habitat of all habitat with features essential to the conservation of this species would total no more than $5.5 million per year, we do not anticipate that this designation would have an annual effect on the economy of $100 million or more or affect the economy in a material way. Due to the time line for publication in the **Federal Register**, the Office of Management and Budget (OMB) did not formally review the proposed rule.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. In our proposed rule, we withheld our determination of whether

this designation would result in a significant effect as defined under SBREFA until we completed our draft economic analysis of the proposed designation so that we would have the factual basis for our determination.

According to the Small Business Administration (SBA), small entities include small organizations, such as independent nonprofit organizations, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term significant economic impact is meant to apply to a typical small business firm's business operations.

To determine if this proposed designation of critical habitat for *Atriplex coronata* var. *notatior* would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities (*e.g.*, residential and commercial development). We considered each industry or category individually to determine if certification is appropriate. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and so will not be affected by the designation of critical habitat. Designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies; non-Federal activities are not affected by the designation. Typically, when proposed critical habitat designations are made final, Federal agencies must consult with us if their activities may affect that designated critical habitat. Consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process. However, since no critical habitat is being proposed for designation, no consultations would be necessary.

In our economic analysis of this proposed designation, we evaluated the potential economic effects on small business entities resulting from conservation actions related to the listing of this species and proposed designation of its critical habitat. Designation of critical habitat on all lands with features essential to the conservation of the taxon would be expected to result in some additional costs to real estate development projects due to conservation that may be required. The affected land is located within Riverside County, CA, and under private ownership by individuals who will either undertake a development project on their own or sell the land to developers for development. However, the potential number of small businesses impacted by development-related *Atriplex coronata* var. *notatior* conservation efforts is considered to be minimal, since only 342 ac (138.4 ha) of privately-owned developable land within the essential habitat (approximately 8,100 ac (3,278 ha)) are forecast to be developed between 2006 and 2025. This comprises less than one-hundredth of one percent of the land area in Riverside County (1,780,220 ac (720,455 ha)). We have determined from our analysis that this rule would not result in a "significant effect" for the small business entities in Riverside County. As such, we are certifying that this proposed designation of critical habitat would not result in a significant economic impact on a substantial number of small entities. Please refer to Appendix A of our draft economic analysis of this proposed designation for a more detailed discussion of potential economic impacts to small business entities.

Executive Order 13211

On May 18, 2001, the President issued Executive Order (E.O.) 13211 on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule is considered a significant regulatory action under E.O. 12866 because it raises novel legal and policy issues, but it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant action, and no Statement of Energy Effects is required. Please refer to Appendix A of our draft economic analysis of this proposed designation for a more detailed discussion of potential effects on energy supply.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501), the Service makes the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, tribal governments, or the private sector and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)–(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or tribal governments" with two exceptions. It excludes "a condition of federal assistance." It also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding" and the State, local, or tribal governments "lack authority" to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program."

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. Non-Federal entities that receive Federal funding, assistance, permits, or otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat. However, the legally binding

duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) We do not believe that this rule will significantly or uniquely affect small governments. As discussed in the draft economic analysis, five small local governments, the City of Perris (population 36,189), Lake Elsinore (population 28,928), Lakeview (population 1,619), Nuevo (population 4,135), and Winchester (population 2,155), are located adjacent to habitat that has features essential to the conservation of this taxon. There is no record of consultations between the Service and these cities since *Atriplex coronata* var. *notatior* was listed in 1998. It is unlikely that these cities would be involved in a land development project involving a section 7 consultation, although a city may be involved in land use planning or permitting, and may play a role as an interested party in infrastructure projects (such as the City of Perris with the San Jacinto River Flood Control Project). Any cost associated with this activity/involvement is anticipated to be a very small portion of the city's budget. Consequently, we do not believe that critical habitat designation would significantly or uniquely affect small government entities. As such, Small Government Agency Plan is not required.

Takings

In accordance with Executive Order 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), we have analyzed the potential takings implications of proposing critical habitat for *Atriplex coronata* var. *notatior*. Critical habitat designation does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. In conclusion, the designation of critical habitat for *Atriplex coronata* var. *notatior* does not pose significant takings implications.

Author

The primary authors of this notice are the staff of the Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: August 23, 2005.

Paul Hoffman,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 05–17451 Filed 8–29–05; 3:05 pm]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AT86

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for *Navarretia fossalis* (spreading navarretia)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of public comment period and notice of availability of draft economic analysis.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period on the proposed designation of critical habitat for *Navarretia fossalis*, and the availability of a draft economic analysis of the proposed designation of critical habitat. We are reopening the comment period to allow all interested parties an opportunity to comment simultaneously on the proposed rule and the associated draft economic analysis. Comments previously submitted on this proposed rule need not be resubmitted as they have already been incorporated into the public record and will be fully considered in our final determination.

DATES: We will accept public comments and information until September 14, 2005.

ADDRESSES: Written comments and materials may be submitted to us by any one of the following methods:

1. You may submit written comments and information to Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, CA 92011;

2. You may hand-deliver written comments and information to our Carlsbad Fish and Wildlife Office at the above address, or fax your comments to 760/431–9624; or

3. You may send your comments by electronic mail (e-mail) to *fw1cfwo_nafo@fws.gov*. For directions on how to submit electronic comments, see the "Public Comments Solicited" section. In the event that our internet connection is not functional, please submit your comments by the alternate methods mentioned above.

FOR FURTHER INFORMATION CONTACT: Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office, at the above address (telephone 760/431–9440; facsimile 760/431–9624).

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We will accept written comments and information during this reopened comment period. We solicit comments on the original proposed critical habitat designation, published in the **Federal Register** on October 7, 2004 (69 FR 60110), and on our draft economic analysis of the proposed designation. We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), including whether the benefits of exclusion outweigh the benefits of specifying such area as part of the critical habitat;

(2) Specific information on the amount and distribution of *Navarretia fossalis* and its habitat, and which habitat features and geographic areas essential to the conservation of this species and why;

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(4) Information on how many of the State and local environmental protection measures referenced in the draft economic analysis were adopted largely as a result of the listing of *Navarretia fossalis*, and how many were either already in place or enacted for other reasons;

(5) Any foreseeable economic, environmental, or other impacts resulting from the proposed designation or coextensively from the proposed listing;

(6) Whether the draft economic analysis identifies all State and local costs attributable to the proposed critical habitat designation, and information on any costs that have been inadvertently overlooked;

(7) Whether the draft economic analysis makes appropriate assumptions regarding current practices and likely

regulatory changes imposed as a result of the designation of critical habitat;

(8) Whether the draft economic analysis correctly assesses the effect on regional costs associated with land use controls that derive from the designation of critical habitat;

(9) Whether the economic analysis appropriately identifies all costs that could result from the designation, in particular, any impacts on small entities or families;

(10) Whether the designation would result in disproportionate economic impacts to specific areas that should be evaluated for possible exclusion under 4(b)(2) of the Act from the final designation;

(11) Whether it is appropriate that the analysis does not include the costs of project modification that are the result of informal consultation only;

(12) Whether there is information about areas that could be used as substitutes for the economic activities planned in critical habitat areas that would offset the costs and allow for the conservation of critical habitat areas; and

(13) How our approach to critical habitat designation could be improved or modified to provide for greater public participation and understanding, or to assist us in accommodating public concern and comments.

All previous comments and information submitted during the initial comment period on the proposed rule need not be resubmitted. If you wish to comment, you may submit your comments and materials concerning the draft economic analysis and the proposed rule by any one of several methods (see **ADDRESSES** section). Our final determination regarding designation of critical habitat for *Navarretia fossalis* will take into consideration all comments and any additional information received during both comment periods. On the basis of public comment on this analysis and on the critical habitat proposal, and on the final economic analysis, we may, during the development of our final determination, find that areas proposed are not essential, are appropriate for exclusion under section 4(b)(2) of the Act, or are not appropriate for exclusion.

Please submit electronic comments in an ASCII file and avoid the use of any special characters or any form of encryption. Also, please include "Attn: *Navarretia fossalis*" and your name and return address in your e-mail message regarding the *Navarretia fossalis* proposed rule or the draft economic analysis. If you do not receive a confirmation from the system that we have received your e-mail message, please submit your comments in writing using one of the alternate methods described in the **ADDRESSES** section.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Comments and materials received, as well as supporting documentation used in preparation of the proposal to designate critical habitat, will be available for public inspection, by appointment, during normal business hours at the Carlsbad Fish and Wildlife Office at the address listed under **ADDRESSES.** Copies of the proposed critical habitat rule for *Navarretia fossalis* and the draft economic analysis are also available on the Internet at *http://www.fws.gov/pacific/carlsbad/NAFO.htm.* In the event that our internet connection is not functional, please obtain copies of documents directly from the Carlsbad Fish and Wildlife Office.

Background

On October 7, 2004, we published a proposed rule in the **Federal Register** (69 FR 60110) to designate critical habitat for *Navarretia fossalis* pursuant to the Act. We proposed to designate a total of approximately 4,301 acres (ac) (1,741 hectares (ha)) of critical habitat in San Diego and Los Angeles Counties, California. The first comment period for the *Navarretia fossalis* proposed critical habitat rule closed on December 6, 2004. For more information on this species, refer to the final rule listing this species as threatened, published in the **Federal Register** on October 13, 1998 (63 FR 54975), and the Recovery Plan for the Vernal Pools of Southern California (Recovery Plan) finalized on September 3, 1998 (Service 1998).

Critical habitat is defined in section 3 of the Act as the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection, and specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. If the proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting areas designated as critical habitat must consult with us on the effects of their proposed actions, pursuant to section 7(a)(2) of the Act.

Section 4(b)(2) of the Act requires that we designate or revise critical habitat on the basis of the best scientific and commercial data available, after taking into consideration the economic impact, impact to national security, and any other relevant impacts of specifying any particular area as critical habitat. We have prepared a draft economic analysis of the October 7, 2004 (69 FR 60110), proposed designation of critical habitat for *Navarretia fossalis.*

The draft economic analysis considers the potential economic effects of actions relating to the conservation of *Navarretia fossalis,* including costs associated with sections 4, 7, and 10 of the Act, and including those attributable to designating critical habitat. It further considers the economic effects of protective measures taken as a result of other Federal, State, and local laws that aid habitat conservation for *Navarretia fossalis* in habitat areas with features essential to the conservation of this taxon. The analysis considers both economic efficiency and distributional effects. In the case of habitat conservation, efficiency effects generally reflect the "opportunity costs" associated with the commitment of resources to comply with habitat protection measures (*e.g.,* lost economic opportunities associated with restrictions on land use). This analysis also addresses how potential economic impacts are likely to be distributed, including an assessment of any local or regional impacts of habitat conservation and the potential effects of conservation activities on small entities and the energy industry. This information can be used by decision-makers to assess whether the effects of the designation might unduly burden a particular group or economic sector. Finally, this analysis looks retrospectively at costs that have been incurred since the date the species was listed as an endangered

species and considers those costs that may occur in the 20 years following the designation of critical habitat.

This analysis determined that costs involving conservation measures for *Navarretia fossalis* would be incurred for activities involving residential, industrial, and commercial development; water supply; flood control; transportation; agriculture; the development of HCPs; and the management of military bases, other Federal lands, and other public or conservation lands.

Pre-designation costs include those *Navarretia fossalis*-related conservation activities associated with sections 4, 7, and 10 of the Act that have accrued since the time that *Navarretia fossalis* was listed as threatened (63 FR 54975; October 13, 1998), but prior to the final designation of critical habitat. The total pre-designation costs are estimated at $7.9 million.

Post-designation effects would include likely future costs associated with *Navarretia fossalis* conservation efforts in the 20-year period following the final designation of critical habitat in October 2005 (effectively 2006 through 2025). If critical habitat is designated as proposed, total costs would be expected to range between $13.9 and $32.1 million over the next 20 years (an annualized cost of $1.3 to $3.0 million). However, if all habitat with features essential to the conservation of the taxon were designated critical habitat in a final rule, total costs would be expected to range between $48.6 and $129.0 million over the next 20 years (an annualized cost of $4.6 to $12.2 million).

Required Determinations—Amended

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule in that it may raise novel legal and policy issues. However, because the draft economic analysis indicates the potential economic impact associated with a designation of all habitat with features essential to the conservation of this species would total no more than $12.2 million per year, we do not anticipate that this rule would have an annual effect on the economy of $100 million or more or affect the economy in a material way. Due to the time line for publication in the **Federal Register**, the Office of Management and Budget (OMB) did not formally review the proposed rule.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. In our proposed rule, we withheld our determination of whether this designation would result in a significant effect as defined under SBREFA until we completed our draft economic analysis of the proposed designation so that we would have the factual basis for our determination.

According to the Small Business Administration (SBA), small entities include small organizations, such as independent nonprofit organizations, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term significant economic impact is meant to apply to a typical small business firm's business operations.

To determine if this proposed designation of critical habitat for *Navarretia fossalis* would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities (*e.g.*, residential, industrial, and commercial development). We considered each industry or category individually to determine if certification is appropriate. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and so will not be affected by the designation of critical habitat. Designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies; non-Federal activities are not affected by the designation.

If this proposed critical habitat designation is made final, Federal agencies must consult with us if their activities may affect designated critical habitat. Consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process. Our analysis determined that costs involving conservation measures for *Navarretia fossalis* would be incurred for activities involving residential, industrial, and commercial development; water supply; flood control; transportation; agriculture; the development of HCPs; and the management of military bases, other Federal lands, and other public or conservation lands.

In our economic analysis of this proposed designation, we evaluated the potential economic effects on small business entities resulting from conservation actions related to the listing of this species and proposed designation of its critical habitat. Critical habitat designation is expected to result in additional costs to real estate development projects due to mitigation and other conservation costs that may be required. The affected land is located within Riverside, San Diego, and Los Angeles Counties (although the proposed designation is contained in only Los Angeles and San Diego Counties), and under private ownership by individuals who will either undertake a development project on their own or sell the land to developers for development. For businesses involved with land development, the relevant threshold for "small" is annual revenues of $6 million or less. The North American Industry Classification System (NAICS) code 237210 is comprised of establishments primarily engaged in servicing land (*e.g.*, excavation, installing roads and utilities) and subdividing real property into lots for subsequent sale to builders. Land subdivision precedes actual construction, and typically includes residential properties, but may also include industrial and commercial properties.

It is likely that development companies, the entities directly impacted by the regulation, would not bear the additional cost of *Navarretia fossalis* conservation (approximately $2.3 to $6.7 million annualized) within the essential habitat, but pass these costs to the landowner through a lower land purchase price. Considering approximately 65 percent of the developable land within the essential habitat is classified as agriculture land, it is likely that farmers will bear some of the costs. The remaining 35 percent of the potentially developable land is privately owned and classified as vacant. To comply with the SBA recommendation that Federal agencies consider impacts to entities that may be indirectly affected by the proposed regulation, this screening level analysis presents information on land subdivision and farming businesses for Riverside, San Diego, and Los Angeles Counties as these are the businesses that would likely be impacted directly or indirectly by the regulation. The majority of the land subdivision and farming businesses within the counties are considered small businesses.

It is important to note that the identity and number of land subdivision and farming businesses potentially impacted by the critical habitat designation is not known. In addition, the identity and number of affected businesses classified as "small" is also not known. Nevertheless, the county-level information is the smallest region for which data relevant to this analysis exist (see Table A–1 in the draft economic analysis). This clearly over-represents the potential number of small businesses impacted by development-related *Navarretia fossalis* conservation efforts as the privately owned developable land within the essential habitat (approximately 15,084 ac (6,104.5 ha)) comprises less than two-tenths of one percent of the land area in the counties (9,908,520 ac (4,009,978 ha)), and only 2,969 ac (1,201.6 ha) of this private land is forecasted to be developed between 2006 and 2025. The effects on small businesses in the land development sector would be concentrated in San Diego County, where more than 65 percent of the development is expected to take place. Within the proposed critical habitat designation, the effects on small businesses in the land development sector would be concentrated in Ramona, where approximately 30 percent of the development in the proposed critical habitat designation is forecast to take place (Unit 4E).

While the identity and number of land subdivision and farming business impacted by the critical habitat designation is not known, this analysis relates the economic impacts to real estate prices in the three counties that encompass the essential habitat (see Table A–2 in the draft economic analysis). *Navarretia fossalis*-related conservation efforts are expected to cost between $390 and $11,300 per residential dwelling unit developed, $0.81 to $5.90 per square foot of commercial property developed, and $0.53 to $3.82 per square foot of industrial property developed, depending on residential dwelling unit density, lot coverage (*i.e.*, the percent of the lot developed), and conservation and mitigation activities required. The median sales price for single family residences in the counties ranged from $315,000 to $460,000 in 2004, and the weighted average sales price of commercial and industrial properties in 2004 ranged from $130 to $293 and $50 to $180 per square foot, respectively. Thus, the economic impacts of *Navarretia fossalis* conservation to the development industry are equal to 0.1 percent to 2.9 percent of the 2004 median price of a single family residence, 0.4 percent to 4.5 percent of the 2004 weighted average sales price of commercial property, and 0.4 percent to 5.4 percent of the 2004 weighted average sales price of industrial property. These costs may be borne by the developer or passed on to the landowner through a lower land purchase price.

Based on these data, we have determined that this proposed designation would not result in a significant economic impact on a substantial number of small entities, in particular to land developers or farmers in Los Angeles, Riverside, or San Diego Counties. We may also exclude areas from the final designation if it is determined that these localized areas have an impact to a substantial number of businesses and a significant proportion of their annual revenues. As such, we are certifying that this proposed designation of critical habitat would not result in a significant economic impact on a substantial number of small entities. Please refer to Appendix A of our draft economic analysis of this designation for a more detailed discussion of potential economic impacts to small business entities.

Executive Order 13211

On May 18, 2001, the President issued Executive Order (E.O.) 13211 on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule is considered a significant regulatory action under E.O. 12866 because it raises novel legal and policy issues, but it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant action, and no Statement of Energy Effects is required. Please refer to Appendix A of our draft economic analysis of this proposed designation for a more detailed discussion of potential effects on energy supply.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501), the Service makes the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, tribal governments, or the private sector and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)–(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or tribal governments" with two exceptions. It excludes "a condition of federal assistance." It also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding" and the State, local, or tribal governments "lack authority" to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program."

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. Non-Federal entities that receive Federal funding, assistance, permits, or otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat. However, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) As discussed in the draft economic analysis of the proposed designation of critical habitat for *Navarretia fossalis*, there are 12 city governments are either adjacent to or bisect the essential habitat: Moreno Valley (population 142,381), Perris (population 36,189), Lakeview (population 1,619), Nuevo (population 4,135), Winchester (population 2,155), Hemet (population 58,812), Temecula (population 57,716), San Marcos (population 54,977), Carlsbad (population 78,247), Ramona (population 15,691), San Diego (population 1,223,400), and Chula Vista (population 173,556). Moreno Valley, Hemet, Temecula, San Marcos, Carlsbad, San Diego, and Chula Vista exceed the criteria (service population of 50,000 or less) for small entity. However, there is no record of consultation between the Service and the five remaining "small" governments, the City of Perris, Lakeview, Nuevo, Winchester, and Ramona, since the *Navarretia fossalis* was listed in 1998. Indeed, it is not likely that these cities would be involved in a land development project involving a section 7 consultation, although a city may be involved in land use planning or permitting, and may play a role as an interested party in infrastructure projects (such as the City of Perris with the San Jacinto River Flood Control Project). Any cost associated with this activity/involvement is anticipated to be a very small portion of the city's budget. Consequently, we do not believe that the designation of critical habitat for *Navarretia fossalis* will significantly or uniquely affect these small governmental entities. As such, a Small Government Agency Plan is not required.

Takings

In accordance with Executive Order 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), we have analyzed the potential takings implications of proposing critical habitat for *Navarretia fossalis*. Critical habitat designation does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. In conclusion, the designation of critical habitat for *Navarretia fossalis* does not pose significant takings implications.

Author

The primary authors of this notice are the staff of the Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: August 23, 2005.

Paul Hoffman,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 05–17452 Filed 8–29–05; 3:05 pm]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 70, No. 168
Wednesday, August 31, 2005

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

Submission for OMB Review; Comment Request

August 25, 2005.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of 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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Farm Service Agency

Title: Emergency Conservation Program.

OMB Control Number: 0560–0082.

Summary of Collection: The Farm Service Agency (FSA), in cooperation with the Natural Resources Conservation Service, the Forest Service, and other agencies and organizations, provides eligible producers and landowners cost-share incentives and technical assistance through several conservation and environmental programs to help farmers, ranchers, and other eligible landowners and operators conserve soil, improve water quality, develop forests, and rehabilitate farmland severely damaged by natural disasters. The authorities to collect information for this collection are found under the Food Security Act of 1985, as amended, and the Agricultural Credit Act of 1978 (16 U.S.C. 2201–2205).

Need and Use of the Information: FSA will collect information using forms AD–245, Practice Approval and Payment Application and FSA–18, Applicant's Agreement to Complete an Uncompleted Practice. The collected information will be used to determine if the person, land, and practices are eligible for participation in the respective program and to receive cost-share assistance.

Description of Respondents: Farms.

Number of Respondents: 100,000.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 75,040.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 05–17272 Filed 8–30–05; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Number DA–03–07]

Milk for Manufacturing Purposes and Its Production and Processing: Requirements Recommended for Adoption by State Regulatory Agencies

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final notice.

SUMMARY: This document is a final notice that modifies the recommended manufacturing milk requirements (Recommended Requirements) by establishing provisions for sheep milk, modifying follow-up procedures when plant-commingled milk in storage tanks exceeds the maximum allowable bacterial estimate, and defining heat-treated cream. The notice to modify the Recommended Requirements was requested by the Dairy Division of the National Association of State Departments of Agriculture (NASDA). This document makes certain other changes to the Recommended Requirements for clarity and consistency. Also, a second notice published in error on August 18, 2005, in the **Federal Register** is withdrawn.

EFFECTIVE DATE: September 1, 2005.

FOR FURTHER INFORMATION CONTACT: Reginald Pasteur, Marketing Specialist, Standardization Branch, Dairy Programs, AMS, USDA, telephone (202) 720–7473 or email *Reginald.Pasteur@usda.gov.*

SUPPLEMENTARY INFORMATION: Under the authority of the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627), the United States Department of Agriculture maintains a set of model regulations relating to quality and sanitation requirements for the production and processing of manufacturing grade milk. These Recommended Requirements are developed by AMS and recommended for adoption and enforcement by the various States that regulate manufacturing grade milk. The purpose of the model requirements is to promote uniformity in State dairy laws and regulations relating to manufacturing grade milk.

In consultation with representatives from NASDA, State regulatory agencies,

Food and Drug Administration, and dairy industry trade associations, the Department prepared the Recommended Requirements to promote uniformity in State dairy laws and regulations for manufacturing grade milk. To accommodate changes that have occurred in the dairy industry, NASDA and various State officials have from time-to-time requested USDA to update the Recommended Requirements.

During its July 2003 annual meeting, the Dairy Division of NASDA passed resolutions requesting USDA to provide provisions for sheep milk, add follow-up procedures used when plant-commingled milk in storage tanks exceeds the maximum allowable bacterial estimate, and providing a definition for heat-treated cream. AMS reviewed these resolutions and developed a draft that identified the changes associated with this request. This draft was provided to State regulatory officials and dairy trade association representatives for informal discussion prior to publication in the **Federal Register**.

Subsequently, a notice of proposal to change the document, "Milk for Manufacturing Purposes and Its Production and Processing Requirements Recommended for Adoption by State Regulatory Agencies" was published in the **Federal Register** on Thursday, April 21, 2005 (70 FR 20730). The notice of proposal to change the document provided for a 60-day comment period that ended on June 20, 2005. No comments were received. A second notice published on August 18, 2005 (70 FR 48515) is hereby withdrawn. The August 18th notice duplicates the original notice and was published in error.

Accordingly, the changes proposed in the Milk for Manufacturing Purposes and It's Production and Processing: Recommended Requirements for Adoption by State Regulatory Agencies are incorporated in the revised Recommended Requirements. The Recommended Requirements (incorporating the changes herein adopted) are available either from the above address or by accessing the information on the Internet at the following address: *http://www.ams.usda.gov/dairy/manufmlk.pdf.*

Authority: (7 U.S.C. 1621–1627).

Dated: August 25, 2005.

Kenneth C. Clayton,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 05–17268 Filed 8–30–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

Tehama County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Tehama County Resource Advisory Committee (RAC) will meet in Red Bluff, California. Agenda items to be covered include: (1) Introductions, (2) Approval of Minutes, (3) Public Comment, (4) Project Proposal/Possible Action, (5) Sub-Committee Reports, (6) Chairman's Perspective, (7) General Discussion, (8) County Update, (9) Next Agenda.

DATES: The meeting will be held on September 8, 2005 from 9 a.m. and end at approximately 12 p.m.

ADDRESSES: The meeting will be held at the Lincoln Street School, Conference Room A, 1135 Lincoln Street, Red Bluff, CA. Individuals wishing to speak or propose agenda items must send their names and proposals to Jim Giachino, DFO, 825 N. Humboldt Ave., Willows, CA 95988.

FOR FURTHER INFORMATION CONTACT: Bobbin Gaddini, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, P.O. Box 164, Elk Creek, CA 95939; (530) 968–5329; E-mail *ggaddini@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service Staff and Committee members. However, persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by September 6, 2005 will have the opportunity to address the committee at those sessions.

Dated: August 24, 2005.

Art Quintana,

Acting Designated Federal Official.

[FR Doc. 05–17262 Filed 8–30–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Socio-economic Assessment of Marine Protected Areas Management Preferences.

Form Number(s): None.

OMB Approval Number: 0648–0494.

Type of Request: Regular submission.

Burden Hours: 234

Number of Respondents: 234.

Average Hours Per Response: 1 hour.

Needs and Uses: Several studies have shown that the haphazard placement of traps damages hard corals and gorgonians. In addition, to physically damaging hard corals and gorgonians traps target various overexploited reef fish species, which further threaten the health and stability of coral reef habitats. To protect coral reef habitats and ensure the sustainable use reef fish resources, the Caribbean Fishery Management Council (CFMC) is considering limiting the total number of traps in the fishery. The goal of the proposed survey is to gather socioeconomic information on the Caribbean (Puerto Rico, St. Thomas, St. John, and St. Croix) trap fishery to support the management and conservation efforts of the CFMC. The information collected will be used to satisfy regulatory objectives and analytical requirements, and to assist the CFMC in selecting policies that meet conservation and management goals and minimize to the extent possible any adverse economic impacts on fishery participants.

Affected Public: Business or other for-profit.

Frequency: One-time survey.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Fax number (202) 395–7285, or *David_Rostker@omb.eop.gov.*

Dated: August 25, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–17282 Filed 8–30–05; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Scientific Research, Exempted Fishing, and Exempted Educational Activity Submissions.

Form Number(s): None.

OMB Approval Number: 0648–0309.

Type of Request: Regular submission.

Burden Hours: 1,357.

Number of Respondents: 124.

Average Hours per Response: Scientific research plans, 35 minutes; scientific research reports, 30 minutes; exempted fishing permit requests, 20 hours and 30 minutes; exempted fishing reports, 2 hours; exempted educational requests, 4 hours and 30 minutes; and exempted educational reports, 2 hours.

Needs and Uses: The Magnuson-Stevens Fishery Conservation and Management Act (MSA) and its regulations do not apply to scientific research activities conducted on board a scientific research vessel. Persons planning to conduct such research are encouraged to submit a research plan to ensure that the activities are considered research and not fishing. The National Marine Fisheries Service may also grant exemptions, through an application process, from fishery regulations for educational or other activities (*e.g.*, testing of fishing gear). Those granted exemptions for any of these activities must submit annual reports.

Affected Public: Business or other for-profit; individuals or households; not-for-profit institutions, Federal Government, State, local or tribal government.

Frequency: Annually and on occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, fax number (202) 395–7285, or *David_Rostker@omb.eop.gov*.

Dated: August 25, 2005

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–17283 Filed 8–30–05; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Aleutian Islands Pollock Fishery Requirements.

Form Number(s): None.

OMB Approval Number: 0648–0513.

Type of Request: Regular submission.

Burden Hours: 40.

Number of Respondents: 1.

Average Hours Per Response: 45 minutes.

Needs and Uses: The Consolidated Appropriations Act of 2004 requires the Aleutian Islands pollock fishery to be allocated to the Aleut Corporation for economic development of Adak, Alaska. The statute requires the Aleut Corporation's approval for participants and limits participation to American Fisheries Act qualified entities and vessels less than or equal to 60 ft overall length with certain endorsements.

Affected Public: Business or other for-profit organizations; individuals or households.

Frequency: Annually and may provide revisions.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David_Rostker@omb.eop.gov*.

Dated: August 25, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–17285 Filed 8–30–05; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Application for Commercial Fisheries Authorization under Section 118 of the Marine Mammal Protection Act.

Form Number(s): None.

OMB Approval Number: 0648–0293.

Type of Request: Regular submission.

Burden Hours: 2,800.

Number of Respondents: 12,000.

Average Hours Per Response: 14 minutes.

Needs and Uses: The Marine Mammal Protection Act (MMPA) requires any commercial fisher operating in a Category I and II fishery to register for a certificate of authorization that will allow the fisher to take marine mammals incidental to commercial fishing operations. Category I and II fisheries are those identified by NOAA as have either frequent or occasional takings of marine mammals.

Affected Public: Business or other for-profit organizations; individuals or households.

Frequency: Annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David_Rostker@omb.eop.gov*.

Dated: August 25, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–17286 Filed 8–30–05; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Census Bureau

Survey of State Research and Development

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continued information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before October 31, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *Dhynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to James R. Berry, Jr., U.S. Census Bureau, Governments Division, Washington, DC 20233–6800 (or via the Internet at *james.r.berry.jr@census.gov*).

SUPPLEMENTARY INFORMATION

I. Abstract

The U.S. Census Bureau plans to conduct a new survey to measure research and development supported and performed by State Governments in the United States. This survey will be a joint effort between the Census Bureau and the National Science Foundation (NSF).

The NSF Act of 1950 includes a statutory charge to "provide a central clearinghouse for the collection, interpretation, and analysis of data on scientific and engineering resources and to provide a source of information for policy formulation by other agencies in the Federal Government." Under the aegis of this legislative mandate, NSF and its predecessors have sponsored surveys of research and development since 1953, including the Survey of Industrial Research and Development. This new survey will expand the scope of research and development collections to include State governments, for which there are no established collection efforts.

Items on the survey form will include sources of funding for research and development, recipients of funding (if external to the government agency), and type of research and development by character (*i.e.*, basic, applied, or developmental). Final results produced by NSF will contain State and national estimates useful to a variety of data users interested in research and development performance including: the National Science Board; the Office of Management and Budget; the Office of Science and Technology Policy and other science policy makers; institutional researchers; and private organizations.

II. Method of Collection

The survey will be mailed to the universe of approximately 1000 non-educational State government agencies. All respondents will be sent a mailed questionnaire, but will have the option of choosing a preferred submission method. Respondents will have the option of submitting data by completing and returning the mailed questionnaire, or by completing a Web form over the Internet.

III. Data

OMB Number: None.
Form Number: SRD–1.
Type of Review: Regular.
Affected Public: State government agencies.
Estimated Number of Respondents: 1,000.
Estimated Time Per Response: 1.0 hour.
Estimated Total Annual Burden Hours: 1,000.
Estimated Total Cost: $19,000.
Respondent's Obligation: Voluntary.
Legal Authority: Title 13 United States Code, Sections 8(b), 161, and 182. Title 15 United States Code, Section 1525.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. These comments will also become a matter of public record.

Dated: August 25, 2005.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–17291 Filed 3–30–05; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Assistance Center Internet Web Site Form

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burdens, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506 (c)(2)(A)).

DATES: Written comments must be submitted on or before October 31, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th & Constitution Avenue, NW., Washington, DC 20230 or via the Internet at *dHynek@doc.gov*.

FOR FURTHER INFORMATION CONTACT: Request for additional information or copies of the information collection instrument and instructions should be directed to: Jason Sproule, U.S. Department of Commerce, Newport Beach U.S. Export Assistance Center, 3300 Irvine Avenue, Suite 305, Newport Beach, CA 92660; Phone Number: (949) 660–1668, and fax number: (949) 660–8039.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Newport Beach U.S. Export Assistance Center, which is a combined effort of the U.S. Department of Commerce, Export-Import Bank, and

Small Business Administration provides a comprehensive array of export counseling and trade finance services to small and medium-sized U.S. exporting firms. It proposes the extension of the Office of Management and Budget's authorization for this information collection form to continue the usefulness of its interactive website. In addition, this generic form will be used in its entirety or with minor modifications by all U.S. Export Assistance Centers and the Office of Domestic Operations. The form will ask U.S, exporting firm respondents to provide general background information and identify which services (s) they are interested in.

II. Method of Collection

The form is submitted via Internet, telephone, fax, or e-mail.

III. Data

OMB Number: 0625–0237.
Form Number: ITA–4148P.
Type of Review: Regular Submission.
Affected Public: Business or other for-profit.
Estimated Number of Respondents: 7,000.
Estimated Time Per Response: 5–20 minutes.
Estimated Total Annual Burden Hours: 700 hours.
Estimated Total Annual Costs: The estimated annual cost for this collection is $41,000.00 ($24,000.00 for respondents and $17,000.00 for Federal government).

IV. Request for Comments

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and costs) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information techniques or forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 25, 2005.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–17290 Filed 8–30–05; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–839]

Notice of Extension of Time Limit for Final Results of Countervailing Duty Administrative Review: Certain Softwood Lumber from Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 31, 2005.

FOR FURTHER INFORMATION CONTACT: Robert Copyak or Eric Greynolds, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–2209 and (202) 482–6071, respectively.

SUPPLEMENTARY INFORMATION:

Background Information

On June 30, 2005, the U.S. Department of Commerce ("Department") published a notice of initiation of administrative review on the countervailing duty order of certain softwood lumber from Canada, covering the period April 1, 2003, through March 31, 2004. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 69 FR 39409 (June 30, 2005). The preliminary results of this administrative review were published on June 7, 2005. *See Notice of Preliminary Results of Countervailing Duty Administrative Review: Certain Softwood Lumber Products from Canada*, 70 FR 33088 (June 7, 2005). On July 1, 2005, at the request of the parties, the time periods for filing case briefs and rebuttal briefs was extended to August 11, 2005, and August 18, 2005, respectively. *See* memorandum from Eric B. Greynolds to file, dated July 1, 2005, and titled "Briefing Schedule," which is on file in the public file room in room B–099 of the main Commerce building.

Extension of Time Limit for Final Results of Review

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), requires the Department to issue final results in an administrative review within 120 days after the date on which the preliminary results were published. However, if it is not practicable to complete the final results of review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the final results to 180 days from the date of publication of the preliminary results.

Due to the extension of time periods for filing case briefs and rebuttal briefs, the large volume of issues raised by parties in their briefs, and the complexity of these issues, we find that it is not practicable for the Department to complete the final results of the administrative review within the 120-day statutory time frame. Therefore, the Department is extending the time limit for completion of the final results until December 4, 2005, which is 180 days from the date of publication of the preliminary results. However, December 4 falls on Sunday, and it is the Department's long–standing practice to issue a determination the next business day when the statutory deadline falls on a weekend, federal holiday, or any other day when the Department is closed. *See Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005). Accordingly, the deadline for completion of the final results is December 5, 2005.

This notice is issued and published in accordance with section 751(a)(3)(A) of the Act.

Dated: August 25, 2005.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–4769 Filed 8–30–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–848]

Notice of Rescission of Antidumping Duty New Shipper Review: Freshwater Crawfish Tail Meat from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On November 3, 2004, in response to requests from Dafeng Shunli Import & Export Co., Ltd., and Shanghai Blessing Trade Co. Ltd., the Department of Commerce ("the Department") initiated new shipper reviews of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China. The period of review is September 1, 2003, through August 31, 2004. For the reasons discussed below, we are rescinding these new shipper reviews.

EFFECTIVE DATE: August 31, 2005.

FOR FURTHER INFORMATION CONTACT: Scot Fullerton or Bobby Wong, 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) 482–1386 and (202) 482–0409, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The product covered by this 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 (HTS) under subheadings 1605.40.10.10 and 1605.40.10.90, which are the new HTS subheadings for prepared foodstuffs, indicating peeled crawfish tail meat and other, as introduced by the U.S. Customs Service in 2000, and HTS subheadings 0306.19.00.10 and 0306.29.00, which are reserved for fish and crustaceans in general. The HTS subheadings are provided for convenience and customs purposes only. The written description of the scope of this order is dispositive.

Background

On September 15, 2004, and September 30, 2004, the Department received requests for new shipper reviews from Shanghai Blessing Trade Co., Ltd. ("Shanghai Blessing") and Dafeng Shunli Import & Export Co., Ltd. ("Dafeng Shunli") respectively. On November 3, 2004, the Department initiated both new shipper reviews for the period of review ("POR") September 1, 2003, through August 31, 2004. *See Freshwater Crawfish Tail Meat from the People's Republic of China: Initiation of Antidumping New Shipper Review*, 69 FR 64028 (November 3, 2004). On November 9, 2004, we issued a questionnaire to Shanghai Blessing and Dafeng Shunli. In addition to Sections A, C, and D, the Department's questionnaire to both respondents included questions regarding each respondent's importer. On December 27, 2004, and January 5, 2005, we received Shanghai Blessing and Dafeng Shunli's respective responses to Sections A, C, and D of the Department's questionnaire, including a response regarding each respondent's importer.

We issued and received supplemental questionnaires from Shanghai Blessing and Dafeng Shunli in February, March, and April 2005. On March 23, 2005, the Department extended the time limit for the completion of the preliminary results of review by 66 days from the original April 25, 2005 deadline, in accordance with section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended ("the Act"), and section 351.214(i)(2) of the Department's regulations. *See Notice of Extension of the Preliminary Results of New Shipper Antidumping Duty Reviews: Crawfish Tail Meat from the People's Republic of China*, 70 FR 14648 (March 23, 2005). On June 23, 2005, the Department further extended the time limit for the completion of the preliminary results of review until August 23, 2005. *See Notice of Extension of the Preliminary Results of New Shipper Antidumping Duty Reviews: Crawfish Tail Meat from the People's Republic of China*, 70 FR 37327 (June 29, 2005).

On June 8, 2005, and July 19, 2005, respectively, the Department completed its preliminary bona fides analysis for both Dafeng Shunli and Shanghai Blessing's single sales to the United States and stated the Department's preliminary intention to rescind the new shipper reviews of both companies. *See Memorandum from James C. Doyle to Barbara E. Tillman: The Bona Fides Analysis for Dafeng Shunli Import & Export Co., Ltd.'s Sale in the New Shipper Review of Freshwater Crawfish Tail Meat from the People's Republic of China, ("DF Bona Fides Analysis Memo"), and Memorandum from James C. Doyle to Barbara E. Tillman: The Bona Fides Analysis for Shanghai Blessing Trade Co., Ltd.'s Sale in the New Shipper Review of Freshwater Crawfish Tail Meat from the People's Republic of China*, ("*SB Bona Fides Analysis Memo*"). The Department allowed interested parties an opportunity to provide comments on the Department's bona fides analysis memos, as well as the new factual information placed on the record of review as attachments to the memo. Dafeng Shunli provided comments on the Department's *DF Bona Fides Analysis Memo* on June 24, 2005, and the Louisiana Crawfish Processors Alliance provided rebuttal comments on June 30, 2005. Shanghai Blessing provided comments on the Department's *SB Bona Fides Analysis Memo* on August 2, 2005, and the Louisiana Crawfish Processors Alliance provided rebuttal comments on August 5, 2005.

Rescission of Review

Concurrent with this notice, we are issuing two memoranda detailing our analysis of the *bona fides* of both Shanghai Blessing and Dafeng Shunli's U.S. sales and our decision to rescind the reviews for both companies based on the totality of the circumstances. *See Memorandum from James C. Doyle, Director, Office 9, to Barbara E. Tillman, Acting DAS for Operations: Bona Fides Analysis and Rescission of New Shipper Review of Freshwater Crawfish Tail Meat from the People's Republic of China for Dafeng Shunli Import & Export Co., Ltd.*, dated August 23, 2005 ("*DF Rescission Memo*") and *Memorandum from James C. Doyle, Director, Office 9, to Barbara E. Tillman, Acting DAS for Operations: Bona Fides Analysis and Rescission of New Shipper Review of Freshwater Crawfish Tail Meat from the People's Republic of China for Shanghai Blessing Co., Ltd.*, dated August 23, 2005 ("*SB Rescission Memo*").

In evaluating whether or not a single sale in a new shipper review is commercially reasonable, and therefore *bona fide*, the Department has considered, *inter alia*, such factors as (1) the timing of the sale; (2) the price and quantity; (3) the expenses arising from the transaction; (4) whether the goods were resold at a profit; and (5) whether the transaction was at an arms–length basis. *See Tianjin Tiancheng Pharmaceutical Co., Ltd. v. U.S.*, Slip Op. 05–29, at 9 (CIT Mar. 9, 2005) ("*TTPC*"), citing *Am. Silicon Techs. v. U.S.*, 110 F. Supp. 2d 992, 995 (CIT 2000). However, the analysis is not limited to these factors alone. The Department examines a number of factors, all of which may speak to the commercial realities surrounding the sale of subject merchandise. While some *bona fides* issues may share commonalities across various Department cases, each one is company–specific and may vary with the facts surrounding each sale. *See Certain Preserved Mushrooms From the People's Republic of China: Final Results and Partial Rescission of the New Shipper Review and Final Results and Partial Rescission of the Third Antidumping Duty Administrative Review*, 68 FR 41304 (July 11, 2003) and accompanying Issues and Decision Memorandum, at 20. The weight given to each factor investigated will depend on the circumstances surrounding the sale. *See TTPC*, at 39.

As discussed in detail in the Department's *DF Rescission Memo*, the

Department has determined that the new shipper sale made by Dafeng Shunli was not *bona fide* because of, (1) the inconsistencies in the import documentation; (2) the circumstances surrounding payment for the single POR sale; (3) the aberrantly low quantity of the single sale, in comparison with other shipments from China; (4) the inconsistencies and irregularities regarding the information provided regarding Dafeng Shunli's importer as compared to information obtained by the Department; (5) information gaps regarding the actual capital investors in Dafeng Shunli; and (6) an unreported relationship between Dafeng Shunli and Yancheng Yaou Seafood Co., Ltd. As discussed in détail in the Department's SB Rescission Memo, the Department has determined that the new shipper sale made by Shanghai Blessing was not bona fide because, (1) the circumstances obscuring the identity of the producer of the subject merchandise; (2) the circumstances surrounding Shanghai Blessing's knowledge of the ultimate customer; (3) the atypical quantity of the single sale in comparison with other shipments during the POR and Shanghai Blessing's post–POR shipments; (4) the decreases in the entered value and sales price for post–POR shipments; (5) the inconsistencies and irregularities regarding the affiliations of the majority owner of Shanghai Blessing's producer; and (6). the incomplete and inaccurate responses in the information provided to the Department. Since the Department is rescinding the new shipper reviews, we are not making a determination as to whether Dafeng Shunli and Shanghai Blessing qualify for separate rates. Therefore, Shanghai Blessing and Dafeng Shunli will remain part of the PRC–wide entity.

Notification

The Department will notify the U.S. Customs and Border Protection that bonding is no longer permitted to fulfill security requirements for shipments by Shanghai Blessing and Dafeng Shunli of freshwater crawfish tail meat from the PRC entered, or withdrawn from warehouse, for consumption in the United States on or after the publication of this rescission notice in the **Federal Register**, and that a cash deposit of 223.01 percent *ad valorem* should be collected for any entries exported by Shanghai Blessing and Dafeng Shunli.

This notice also serves as the only reminder to parties subject to administrative protective orders ("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/destruction of APO material 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 sanctions.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(2)(B) and 777(i) of the Act.

Dated: August 23, 2005.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–4768 Filed 8–30–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–838]

Certain Softwood Lumber Products from Canada: Extension of the Time Limit for the Final Results of Antidumping Duty Administrative Review

AGENCY: AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 31, 2005.

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

On June 30, 2004, the Department of Commerce (the Department) published a notice of initiation of administrative review of the antidumping duty order on certain softwood lumber products from Canada, covering the period May 1, 2003, through April 30, 2004. *See Notice of Initiation of Antidumping Duty Administrative Review*, 69 FR 39409 (June 30, 2004). The review covers the sales of over four hundred producers/exporters of subject merchandise to the United States. Eight of these producers/exporters are being individually examined. On June 7, 2005, the Department published the preliminary results of the antidumping duty administrative review. *See Notice of Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission: Certain Softwood Lumber Products from Canada*, 70 FR 33063 (June 7, 2005).

Extension of Time Limit for Final Results of Review

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to complete the final results of an administrative review within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the final results to 180 days from the date of publication of the preliminary results.

We determine that it is not practicable to complete the final results of this review within the original time limit. The Department must address a number of significant and complex issues prior to the issuance of the final results. For example, to address thoroughly comments by interested parties in their case briefs, the Department must analyze the overall cost of production calculation methodology employed for the preliminary results of the review. Therefore, the Department is extending the time limit for completion of the final results of this administrative review until no later than December 4, 2005, which is 180 days from the date of publication of the preliminary results. However, December 4 falls on Sunday, and it is the Department's long–standing practice to issue a determination the next business day when the statutory deadline falls on a weekend, federal holiday, or any other day when the Department is closed. *See Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005). Accordingly, the deadline for completion of the final results is December 5, 2005.

This notice is issued and published in accordance with section 751(a)(3)(A) of the Act.

Dated: August 25, 2005.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–4767 Filed 8–30–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Highly Migratory Species Scientific Research Permits, Exempted Fishing Permits, and Letters of Authorization

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before October 31, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Heather Stirratt, National Marine Fisheries, 1315 East-West Highway, Silver Spring, MD 20910 or (301) 713–2347.

SUPPLEMENTARY INFORMATION:

I. Abstract

The information requested will be used in support of the National Marine Fisheries Service's (NMFS) issuing Scientific Research Permits (SRP), Exempted Fishing Permits (EFP), and Letters of Authorization (LOA) regarding highly migratory species (HMS). This information will also enhance and facilitate NMFS' compliance enforcement capabilities regarding HMS scientific research and exempted fishing activities. In addition, the information will assist with future stock assessments.

II. Method of Collection

Information is submitted on forms or other written format, and may be submitted electronically by e-mail.

III. Data

OMB Number: 0648–0471.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Business and other for-profit organizations; individuals or households; not-for-profit institutions; State, local, and tribal government.
Estimated Number of Respondents: 45.
Estimated Time per Response: 2 hours for a scientific research plan; 40 minutes for an application for an EFP, display, SRP, chartering permit, or LOA for Highly Migratory Species; 1 hour for an interim report; 30 minutes for an annual fishing report; 15 minutes for an application for an amendment to an EFP; 5 minutes for notification of departure phone calls to NMFS Enforcement; 2 minutes for "no-catch" reports; and 2 minutes for tag applications.
Estimated Total Annual Burden Hours: 169.
Estimated Total Annual Cost to Public: $68.45.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 25, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–17284 Filed 8–30–05; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Application Form for Membership on a National Marine Sanctuary Advisory Council

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before October 31, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Karen M. Brubeck, 206–842–6084 or *Karen.brubeck@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Section 315 of the National Marine Sanctuaries Act (16 U.S.C. 1445a) allows the Secretary of Commerce to establish one or more advisory councils to provide advice to the Secretary regarding the designation and management of national marine sanctuaries. The councils are individually chartered for each sanctuary to meet the needs of the sanctuary. Once a council has been chartered, the sanctuary manager starts a process to recruit members for that Council by providing notice to the public and asking interested parties to apply for the available seats.

II. Method of Collection

An application form and guidelines for a narrative submission must be submitted to the sanctuary manager. Submissions may be made electronically.

III. Data

OMB Number: 0648–0397.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Individuals or households; business or other for-profit organizations; not-for-profit institutions.
Estimated Number of Respondents: 500.
Estimated Time Per Response: 1 hour.
Estimated Total Annual Burden Hours: 500 hours.
Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 25, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–17287 Filed 8–30–05; 8:45 am]

BILLING CODE 3510–NK–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Protocol for Access to Tissue Specimen Samples From the National Marine Mammal Tissue Bank

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before October 31, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Patricia Lawson, (301) 713–2322 or *Patricia.Lawson@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Marine Mammal Tissue Bank (NMMTB) was established in 1992 and provides protocols, techniques, and physical facilities for the long-term storage of tissues from marine mammals. Scientists can request tissues from this repository for retrospective analyses to determine environmental trends of contaminants and other substances of interest. The NMMTB collects, processes, and stores tissues from specific indicator species (*e.g.*, Atlantic bottlenose dolphins, Atlantic white sided dolphins, pilot whales, harbor porpoise), animals from mass strandings, animals that have been obtained incidental to commercial fisheries, animals taken for subsistence purposes, biopsies, and animals from unusual mortality events.

The purpose of this collection of information is to enable NOAA to allow the scientific community the opportunity to request tissue specimen samples from the NMMTB.

II. Method of Collection

Electronic and paper applications are acceptable from participants, and methods of submittal include Internet, mail and facsimile transmission of paper forms.

III. Data

OMB Number: 0648–0468.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Not-for-profit institutions; business or other for-profit organizations.

Estimated Number of Respondents: 20.

Estimated Time Per Response: 2 hours.

Estimated Total Annual Burden Hours: 40.

Estimated Total Annual Cost to Public: $33.60.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 25, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–17288 Filed 8–30–05; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Sawfish Encounter Survey

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before October 31, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Shelley Norton, (727) 824–5312 or *shelley.norton@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Marine Fisheries Service (NMFS) is seeking information from permitted commercial reef, reef charter, charter coastal pelagic, shark, and shrimp fishers on the location of historic and current encounters with sawfish within the Gulf of Mexico and the Atlantic Ocean. The NMFS plans to

conduct a survey to collect data that will be used to develop recovery actions for the federally endangered U.S. distinct population segment (DPS) of smalltooth sawfish. The National Marine Fisheries Service works to conserve and recovery listed species protected under the Endangered Species Act (ESA).

II. Method of Collection

The data will be collected through a mail survey. Permitted Commercial Gulf of Mexico Reef Fish, Gulf of Mexico Charter/Head boat for Reef Fish, Commercial Shark Directed and Incidental, Coastal Migratory Pelagic, South Atlantic Rock Shrimp Endorsement And Permit, and Gulf of Mexico Shrimp fishers will receive the survey.

III. Data

OMB Number: None.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Not-for-profit institutions; and business or other for-profit organizations.
Estimated Number of Respondents: 5,153.
Estimated Time Per Response: 30 minutes.
Estimated Total Annual Burden Hours: 2,577.
Estimated Total Annual Cost to Public: $1,907.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 25, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–17289 Filed 8–30–05; 8:45 am]
BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 082205A]

Issuance of an Incidental Take Permit (1529)

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

ACTION: Notice of permit issuance.

SUMMARY: Notice is hereby given of that NMFS issued on August 17, 2005, an incidental take permit 1529 to David N. Hata, Ph.D., Virginia Polytechnic Institute and State University (Virginia Tech) pursuant to the Endangered Species Act of 1973, as amended (ESA). As required by the ESA, the application includes a conservation plan designed to minimize and mitigate any such take of endangered or threatened species. The Permit application is for the incidental take of ESA-listed sea turtles associated with otherwise lawful research to assess horseshoe crab abundance from Cape Cod, Massachusetts south to the Georgia-Florida border. The duration of the proposed Permit is for 7 years.

ADDRESSES: The application, permit, and related documents are available in the following office by appointment:

Marine Mammal and Turtle Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. The application and conservation plan is also available for download at *http://www.nmfs.noaa.gov/prot_res/PR3/Permits/ESAPermit.html.*

FOR FURTHER INFORMATION CONTACT: Therese Conant (ph. 301–713–1401, fax 301–427–2522, e-mail Therese.Conant@noaa.gov.)

SUPPLEMENTARY INFORMATION: Section 9 of the ESA and Federal regulations prohibit the "taking" of a species listed as endangered or threatened. The term "take" is defined under the ESA to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. NMFS may issue permits, under limited circumstances, to take listed species incidental to, and not the purpose of, otherwise lawful activities. Section 10(a)(1)(B) of the ESA provides for authorizing incidental take of listed species. NMFS regulations governing permits for threatened and endangered species are promulgated at 50 CFR 222.307.

Species Covered in This Notice

The following species are included in the conservation plan and Permit application: Loggerhead (*Caretta caretta*), green (*Chelonia mydas*), leatherback (*Dermochelys coriacea*), hawksbill (*Eretmochelys imbricata*), and Kemp's ridley (*Lepidochelys kempii*) sea turtles.

Background

NMFS received an application from Dr. Hata on April 2, 2004. Based on a review of the application, NMFS determined that the application was incomplete and requested further information. The applicant submitted a revised application on January 10, 2005. NMFS published a notice of receipt and requested comment on the revised application (70 FR 19733, April 14, 2005). No comments were received.

The application is for incidental take of ESA-listed species that may result from proposed research. The proposed research activity will consist of annual horseshoe crab abundance monitoring surveys and associated studies to evaluate survey methodology. The annual trawl surveys will provide abundance, distribution and demographic information in support of the horseshoe crab Fishery Management Plan of the Atlantic States Marine Fisheries Commission. The surveys will be conducted from Cape Cod, Massachusetts to the Georgia-Florida border. Sampling consists of approximately 48 days at sea for a total of 250 tows deploying flounder and whelk trawls intended to capture horseshoe crabs for examination and enumeration. Tows will be no longer than 15 minutes of bottom time and will be conducted at night from mid-August through mid-November. Turtle excluder devices will not be installed in the trawl gear because these devices may hinder capture of horseshoe crabs. Thus, it is anticipated that fish and sea turtles will be captured by the unmodified gears. The application anticipates the annual capture of one lethal or non-lethal leatherback, one lethal or non-lethal hawksbill, one lethal and 3 non-lethal green, 2 lethal and 34 non-lethal loggerheads, one lethal and 15 non-lethal Kemp's ridley sea turtles in 48 days of sampling. The lethal take numbers are based on a 3 percent mortality rate which is the rate published for trawl fisheries with less than a 40 minute tow time (NMFS Southeast Fisheries Science Center Tech. Memo. NMFS-SEFSC–455 2002).

Conservation Plan

The conservation plan prepared by the applicant describes measures designed to monitor, minimize, and mitigate the incidental takes of ESA-listed sea turtles. The conservation plan includes limiting sampling effort in areas and times where sea turtles are likely to be present; avoiding coral and rock habitats associated with hawksbills and areas of submerged aquatic vegetation associated with green turtles; using minimal tow durations; avoiding areas of high fishing vessel activity which may attract foraging sea turtles and may increase the chance of multiple captures.

All activities will be conducted under the direct supervision of scientific parties from Virginia Tech. Sampling will not be conducted when sea turtles are observed in the area. If a sea turtle is captured, all efforts will be made to release the turtle as quickly as possible with minimal trauma. If necessary, resuscitation will be attempted as proscribed by 50 CFR 223.206. Scientific parties will be familiarized with resuscitation techniques prior to surveys, and a copy of the resuscitation guidelines will be carried aboard the vessel during survey activities. In the event resuscitation is unsuccessful, the sea turtle will be transferred to the sea turtle stranding network of the appropriate jurisdiction. Other monitoring or mitigation actions will be undertaken as required.

The applicant considered and rejected three other alternatives: Not applying for a permit; conducting the research in an area where ESA-listed species do not occur; and using different sampling gear when developing their conservation plan.

Upon a review of the application, relevant documents, public comments, and further discussions with NCDMF, NMFS found that the application met the criteria for issuance of 50 CFR 222.307(c). Permit 1529 was issued on August 17, 2005, and expires on December 15, 2011.

Dated: August 26, 2005.

Thomas C. Eagle,

Acting Chief, Marine Mammal and Turtle Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 05–17343 Filed 8–30–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 080305C]

Endangered Species; File No. 1537

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

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that Guam Division of Aquatic and Wildlife Resources (DAWR), 142 Dairy Road, Mangilao, Guam 96913, has been issued a permit to take green (Chelonia mydas) and hawksbill (*Eretmochelys imbricata*) sea turtles for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521; and

Pacific Islands Region, NMFS, 1601 Kapiolani Blvd., Rm 1110, Honolulu, HI 96814–4700; phone (808)973–2935; fax (808)973–2941.

FOR FURTHER INFORMATION CONTACT: Patrick Opay or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: On June 3, 2005, notice was published in the **Federal Register** (70 FR 32582) that a request for a scientific research permit to take green and hawksbill sea turtles had been submitted by the above-named organization. The requested permit has been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Researchers will annually capture 63 green and 30 hawksbill sea turtles by hand or by tangle net. Turtles will be measured, flipper tagged, Passive Integrated Transponder tagged, tissue sampled, and released. A subset of individuals of each species will also have a satellite transmitter attached to their carapace. The research will gather information on turtle population size and stratification, species distribution, and health status. This information will be used to develop conservation management measures for these species. The research will occur in the waters off of Guam. The permit is issued for a 5–year period.

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of any endangered or threatened species, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: August 26, 2005.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 05–17344 Filed 8–30–05; 8:45 am]

BILLING CODE 3510–22–S

COMMISSION OF FINE ARTS

Notice of Meeting

The next meeting of the Commission of Fine Arts is scheduled for 15 September 2005 at 9 a.m. in the Commission's offices at the National Building Museum, Suite 312, Judiciary Square, 401 F Street, NW., Washington, DC 20001–2728. Items of discussion affecting the appearance of Washington, DC, may include buildings, parks and memorials.

Draft agendas and additional information regarding the Commission are available on our Web site: *http://www.cfa.gov*. Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Thomas Luebke, Secretary, Commission of Fine Arts, at the above address or call 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated in Washington, DC, 25 August 2005.

Thomas Luebke,

Secretary.

[FR Doc. 05–17322 Filed 8–30–05; 8:45 am]

BILLING CODE 6330–01–M

DEPARTMENT OF DEFENSE

Negotiation of a Reciprocal Defense Procurement Memorandum of Understanding With Argentina

AGENCY: Department of Defense (DoD).

ACTION: Request for industry feedback regarding experience in public (defense) procurements conducted by Argentina.

SUMMARY: DoD is commencing negotiation of a Reciprocal Defense Procurement Memorandum of Understanding (MOU) with Argentina. DoD is soliciting input from U.S. industry that has had experience

participating in public defense procurements conducted by or on behalf of the Argentine Ministry of Defense or Armed Forces. The contemplated MOU would involve reciprocal waivers of buy-national laws by each country. This would mean that Argentina would be added to the list of "qualifying countries" in the Defense Federal Acquisition Regulation Supplement (DFARS) and that U.S. products and services would be exempt from "Buy Argentine" laws applicable to procurements by the Argentine Ministry of Defense and Armed Forces.

DATES: Comments must be received by September 30, 2005.

ADDRESSES: You may submit comments to Director, Defense Procurement and Acquisition Policy, 3060 Defense Pentagon, Attn: Mr. Daniel C. Nielsen, Washington, DC 20301–3060; or by e-mail to *barbara.glotfelty@osd.mil*.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Glotfelty, OUSD(AT&L), Director of Defense Procurement and Acquisition Policy, Program Acquisition and International Contracting, Room 5E581, 3060 Defense Pentagon, Washington, DC 20301–3060; telephone (703) 697–9351.

SUPPLEMENTARY INFORMATION: The Reciprocal Defense Procurement MOUs DoD has with 21 countries are signed at the level of the Secretary of Defense and his counterpart. The purpose of these MOUs is to promote rationalization, standardization, and interoperability of defense equipment with allies and friendly governments. It provides a framework for ongoing communication regarding market access and procurement matters that affect effective defense cooperation. Based on the MOU, each country affords the other certain benefits on a reciprocal basis, consistent with national laws and regulations. For 19 of the 21 MOU countries, these include evaluation of offers without applying price differentials under "Buy National" laws (e.g., the Buy American Act), and making provision for duty-free certificates.

Argentina was designated a Major Non-NATO Ally by the United States in January 1998, in recognition of its contributions to international security and peacekeeping.

The countries with which DoD has Reciprocal Defense Procurement MOUs are identified in DFARS 225.872–1. Should an MOU be concluded with Argentina, Argentina would be added to the list of qualifying countries. If, based on and in conjunction with the MOU, DoD determines that it would be inconsistent with the public interest to apply the restrictions of the Buy American Act to the acquisition of Argentine defense equipment and supplies, Argentina would be listed in DFARS 225.872–1(a). If a determination will be made on a purchase-by-purchase basis, Argentina would be listed in DFARS 225.872–1(b).

MOUs generally include language by which the parties agree that their procurements will be conducted in accordance with certain implementing procedures. These procedures include publication of notices of proposed purchases; the content and availability of solicitations for proposed purchases; notification to each unsuccessful offeror; feedback, upon request, to unsuccessful offerors concerning the reasons they were not allowed to participate in a procurement or were not awarded a contract; and providing for the hearing and review of complaints arising in connection with any phase of the procurement process to ensure that, to the extent possible, complaints are equitably and expeditiously resolved between an offeror and the procuring activity.

While DoD has evaluated Argentine laws and regulations regarding public procurements, DoD would benefit from knowledge of U.S. industry experience in participating in Argentine public defense procurements. We are, therefore, asking U.S. firms that have participated or attempted to participate in procurements by or on behalf of Argentina's Ministry of Defense or Armed Forces to let us know if the procurements were conducted in accordance with published procedures with fairness and due process, and if not, the nature of the problems encountered.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

[FR Doc. 05–17348 Filed 8–30–05; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Office of the Secretary

National Security Education Board Group of Advisors Meeting

AGENCY: National Defense University.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of a forthcoming meeting of the National Security Education Board Group of Advisors. The purpose of the meeting is to review and make recommendations to the Board concerning requirements established by the David L. Boren National Security Education Act, Title VIII of Public Law 102–183, as amended. The National Security Education Board Group of Advisors meeting is open to the public. The delay of this notice resulted from the short time-frame needed to coordinate the schedules of the various officials whose participation was judged essential to a meaningful public discussion.

DATES: September 13, 2005.

ADDRESSES: The Academy for Educational Development, Conference Center, 8th Floor, 1825 Connecticut Avenue, NW., Washington, DC 20009.

FOR FURTHER INFORMATION CONTACT: Dr. Edmond J. Collier, Director for Programs, National Security Education Program, 1101 Wilson Boulevard, Suite 1210, Rosslyn P.O. Box 20010, Arlington, Virginia 22209–2248; (703) 696–1991. Electronic mail address: *colliere@ndu.edu*.

Dated: August 25, 2005.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–17310 Filed 8–30–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Threat Reduction Advisory Committee

AGENCY: Department of Defense, Office of the Under Secretary of Defense (Acquisition, Technology and Logistics).

ACTION: Notice of Advisory Committee meeting.

SUMMARY: The Threat Reduction Advisory Committee will meet in closed session on Thursday, November 3, 2005, at the Institute for Defense Analyses (IDA), and on Friday, November 4, 2005 in the Pentagon, Washington, DC.

The mission of the Committee is to advise the Under Secretary of Defense (Acquisition, Technology and Logistics) on technology security, combating weapons of mass destruction, chemical and biological defense, transformation of the nuclear weapons stockpile, and other matters related to the Defense Threat Reduction Agency's mission.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. Appendix II), it has been determined that this Committee meeting concerns matters listed in 5 U.S.C. 552b(c)(1), and that accordingly the meeting will be closed to the public.

DATES: Thursday, November 3, 2005, (8 a.m. to 4 p.m.) and Friday November 4, 2005, (8 a.m. to 9:30 a.m.)

ADDRESSES: Institute for Defense Analyses, Board Room, 4850 Mark Center Drive, Alexandria, Virginia and the USD (AT&L) Conference Room (3D1019), the Pentagon, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Contact Lieutenant Colonel Don Culp, USAF, Defense Threat Reduction Agency/AST, 8725 John J. Kingman Road MS 6201, Fort Belvoir, VA 22060–6201. Phone: (703) 767–5717.

Dated: August 25, 2005.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–17315 Filed 8–30–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 31, 2005.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.*, new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: August 25, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Office of Innovation and Improvement

Type of Review: Extension.
Title: Parental Information and Resource Center Annual and Final Performance Report.
Frequency: Annually.
Affected Public: Not-for-profit institutions.
Reporting and Recordkeeping Hour Burden:
Responses: 84.
Burden Hours: 504.
Abstract: Recipients of grants under the Parental Information and Resource Center program must submit an annual performance report that establishes substantial progress toward meeting their project objectives to receive a continuation award.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2869. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to (202) 245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy.Axt@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 05–17297 Filed 8–30–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by October 13, 2005.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Rachel Potter, Desk Officer, Department of Education, Office of Management and Budget; 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information

collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.*, new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. ED invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: August 26, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Office of Safe and Drug Free Schools

Type of Review: New.

Title: Alcohol, Other Drug, and Violence Prevention Survey of American College Campuses.

Abstract: This survey's purpose is to determine the state of alcohol and other drug abuse and violence prevention in higher education and assess current and emerging needs of institutions of higher education and their surrounding communities. A Notice of Proposed Information Collection Requests, for a 60-day comment period, was published in the **Federal Register** on August 12, 2005.

Additional Information: ED is requesting emergency processing for the Alcohol, Other Drug, and Violence Prevention Survey of American College Campuses. There is a risk for public harm if this collection is not approved by October 13, 2005. There would be a loss of substantial time (in effect, the entire fall semester) during which the Center can compile and analyze valuable information related to the needs of the field in preventing drug abuse and violent behavior among college students. If the survey cannot be administered with OMB's approval by the requested time, the next window of opportunity for administering the survey is spring 2006, which negatively affects planning prevention services and providing critical assessment data to the field. The public benefits from the Center planning services for potential implementation based on an analysis of data in November and December 2005. A delay in the survey administration means that such planning would not occur until May and June 2006, when two semesters have lapsed.

Frequency: On occasion.

Affected Public: Not-for-profit institutions (primary).

Reporting and Recordkeeping Hour Burden:

Responses: 1,050.

Burden Hours: 871.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2815. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements, contact Kathy Axt at her e-mail address *Kathy.Axt@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 05–17298 Filed 8–30–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Savannah River

AGENCY: Department of Energy.

ACTION: Notice of open meeting and retreat.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EMSSAB), Savannah River. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, October 6, 2005, 8:30 a.m.–4:45 p.m.; Friday, October 7, 2005, 8:30 a.m.–12 p.m.

ADDRESSES: Wild Dunes, 5757 Palm Boulevard, Isle of Palms, SC 29451.

FOR FURTHER INFORMATION CONTACT: Gerri Flemming, Closure Project Office, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, SC, 29802; Phone: (803) 952–7886.

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

Thursday, October 6, 2005

8:30 a.m.—Small Group Discussions
- CAB Organizational Structure
- Public Outreach
- Board Communications

12:00 p.m.—Lunch Break
1 p.m.—Large Group Discussions
2:15 p.m.—Break
2:30 p.m.—Small Group Discussions
- Membership Process
- Improving Meeting Productivity
- Public Participation
- Recommendation Process

4:45 p.m.—Adjourn

Friday October 7, 2005

8:30 a.m.—Large Group Discussion and Decisions
12 p.m.—Adjourn

If needed, time will be allotted after public comments for items added to the agenda, and administrative details. A final agenda will be available at the meeting Thursday, October 6, 2005.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Gerri Flemming's office at the address or telephone 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. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the U.S. Department of Energy's 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 through Friday, except Federal holidays. Minutes will also be available by writing to Gerri Flemming, Department of Energy Savannah River Operations

Office, P.O. Box A, Aiken, SC, 29802, or by calling her at (803) 952–7886.

Issued at Washington, DC, on August 26, 2005.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 05–17307 Filed 8–30–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Proposed Collection; Cancellation of Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency Information Collection Activities: Proposed Collection; Cancellation of Comment Request.

SUMMARY: On June 30, 2005, the EIA issued a **Federal Register** notice (70 FR 37798) soliciting comments on EIA's Voluntary Reporting of Greenhouse Gases Program (Form EIA–1605). Upon further consideration, EIA has decided to cancel the request for comments on the proposed revised form and instructions for the Program.

DATES: Cancellation of the comment request is effective as of August 31, 2005.

ADDRESSES: Questions or comments regarding this cancellation should be directed to Stephen E. Calopedis. Contact by e-mail (*stephen.calopedis@eia.doe.gov*) or fax (202–586–3045) is recommended. Questions or comments submitted by mail should be sent to Stephen E. Calopedis, U.S. Department of Energy, Energy Information Administration, EI–81, 1000 Independence Avenue, SW., Washington, DC 20585. Mr. Calopedis may also be contacted at 202–586–1156.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Mr. Calopedis at the address above.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Energy Administration Act of 1974 (Pub. L. 93–275, 15 U.S.C. 761 *et seq.*) and the DOE Organization Act (Pub. L. 95–91, 42 U.S.C. 7101 *et seq.*) require the EIA to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer-term domestic demands.

The EIA, as part of its effort to comply with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35), provides the general public and other Federal agencies with opportunities to comment on collections of information conducted by or in conjunction with the EIA. Any comments received help the EIA to prepare data requests that maximize the utility of the information collected, and to assess the impact of collection requirements on the public.

The Voluntary Reporting of Greenhouse Gases Program information collection is conducted pursuant to section 1605(b) of the Energy Policy Act of 1992 (Pub. L. 102–486, 42 U.S.C. 13385). The Program is currently operated under General Guidelines issued in October 1994 (59 FR 52769) by the DOE's Office of Policy and International Affairs. The Program's existing EIA–1605 and EIA–1605EZ forms were designed to collect voluntarily reported data on greenhouse gas emissions, reductions of these emissions, and increased carbon fixation, as well as information on commitments to reduce greenhouse gas emissions and sequester carbon in future years.

On June 30, 2005, the EIA issued a **Federal Register** notice (70 FR 37798) soliciting comments on a proposed revised Form EIA–1605 and instructions that were developed to conform to revised Interim Final General Guidelines and Draft Technical Guidelines proposed by the DOE's Office of Policy and International Affairs on March 24, 2005 (70 FR 15169). The comment period on the revised Interim Final General Guidelines and Draft Technical Guidelines closed on June 22, 2005, while the comment period on EIA's proposed revised Form EIA–1605 and instructions closed on August 29, 2005.

II. Current Actions

Upon further consideration, EIA has decided to cancel the request for comments on the proposed revised Form EIA–1605 and instructions. EIA will instead wait for the process of developing the general and technical guidelines to progress before soliciting comments on revised draft versions of the Program's form and instructions. EIA will, however, where appropriate, take into consideration comments received in response to its June 29, 2005 **Federal Register** notice in developing revised draft forms and instructions. After EIA drafts revised forms and instructions, EIA will issue a new **Federal Register** notice requesting public comments.

Statutory Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35).

Issued in Washington, DC, August 25, 2005.

Jay H. Casselberry,

Agency Clearance Officer, Energy Information Administration.

[FR Doc. 05–17306 Filed 8–30–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–424–001]

Chandeleur Pipe Line Company; Notice of Compliance Filing

August 24, 2005.

Take notice that, on August 19, 2005, Chandeleur Pipe Line Company (Chandeleur) submitted a compliance filing pursuant to the Commission's Letter Order issued August 12, 2005 in Docket No. RP05–424–000.

Chandeleur states that copies of the filing were served on parties on the official service list.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public

Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4743 Filed 8–30–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–472–001]

Dominion Cove Point LNG, LP; Notice of Compliance Filing

August 24, 2005.

Take notice that on August 19, 2005, Dominion Cove Point LNG, LP (Cove Point) submitted a compliance filing to the Commission's letter order issued August 15, 2005, in Docket No. RP05–472–000.

Cove Point states that copies of the filing were served on parties on the official service list.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4745 Filed 8–30–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–400–000]

Dominion Transmission, Inc.; Notice of Application for Abandonment

August 23, 2005.

Take notice that on August 8, 2005, Dominion Transmission, Inc. (DTI) tendered for filing an application under section 7 of the Natural Gas Act to abandon Rate Schedule X–5, which involved a 1968 exchange agreement between DTI and Equitrans, LP.

Any questions regarding this application should be directed to Matthew R. Bley, Certificates Manager, Dominion Transmission, Inc., 120 Tredegar Street, Richmond, Virginia 23210 or call (804) 819–2877.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on September 9, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4738 Filed 8–30–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–423–001]

Dominion Transmission, Inc.; Notice of Compliance Filing

August 24, 2005.

Take notice that on August 19, 2005, Dominion Transmission, Inc. (DTI) submitted a compliance filing to the Commission's letter order issued August 17, 2005, in Docket No. RP05–423–000.

DTI Point states that copies of the filing were served on parties on the official service list.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for

review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4742 Filed 8–30–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–403–000]

Dominion Transmission, Inc.; Notice of Filing

August 24, 2005.

Take notice that on August 16, 2005, Dominion Transmission, Inc. (DTI), 120 Tredegar Street, Richmond, Virginia 23219, filed an abbreviated application, pursuant to section 7(b) of the Natural Gas Act (NGA) and part 157 of the Commission's Rules and Regulations, for an order permitting DTI to reclassify a compressor station, from transmission to gathering, exempt from the Commission's jurisdiction under section 1(b) of the NGA. The application is on file with the Commission and open for public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

A recent review by DTI of its transmission and gathering systems in the Barbour County, West Virginia area revealed that changes in the gathering system had resulted in Pepper Station now exclusively serving a gathering function. DTI seeks to reclassify the Pepper Station as a gathering facility. Pepper Station is located in Barbour County, West Virginia. The proposed reclassification will have no environmental impact because no facilities will be removed or modified.

Any questions regarding the application are to be directed to Karin L. Larson, Hogan & Hartson L.L.P., 555 13th Street, NW., Washington, DC 20004; phone number (202) 637–6861.

Any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the below listed comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

Motions to intervene, protests and comments may be filed electronically via the Internet in lieu of paper, see, 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: September 14, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4748 Filed 8–30–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–523–002]

Eastern Shore Natural Gas Company ; Notice of Proposed Changes in FERC Gas Tariff

August 25, 2005.

Take notice that on August 19, 2005, Eastern Shore Natural Gas Company (ESNG) tendered for filing the following revised tariff sheets as part of its FERC Gas Tariff, Second Revised Volume No. 1, with a proposed effective date of September 1, 2005.

Sub Original Sheet No. 100A
First Revised Sheet No. 141A
Seventh Revised Sheet No. 143
Sub First Revised Sheet No. 146
Sub First Revised Sheet No. 147
Sub 2nd Revised Sheet No. 155D
Second Revised Sheet No. 158
Sub 7th Revised Sheet No. 160A
Sub 2nd Revised Sheet No. 169B
Sub First Revised Sheet No. 193B
Sub First Revised Sheet No. 193C
Sub First Revised Sheet No. 193D
Sub First Revised Sheet No. 193E
Sub First Revised Sheet No. 193F
Sub Original Sheet No. 194A
Sub 7th Revised Sheet No. 210
Sub Original Sheet No. 210A
Sub 7th Revised Sheet No. 215
Sub First Revised Sheet No. 233

ESNG states that copies of the filing have been served upon its affected customers and interested State commissions.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4765 Filed 8–30–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–387–001]

Enbridge Pipelines (AlaTenn) L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

August 24, 2005.

Take notice that on August 19, 2005, Enbridge Pipelines (AlaTenn) L.L.C. (AlaTenn) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheets, to become effective September 19, 2005:

Second Revised Sheet No. 104
Second Revised Sheet No. 144
First Revised Sheet No. 145
First Revised Sheet No. 307
First Revised Sheet No. 318

AlaTenn states that copies of its filing have been mailed to all customers, interested State regulatory commissions, and any parties on the Commission's official service list.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,
Secretary.
[FR Doc. E5–4741 Filed 8–30–05; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–421–001]

KO Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

August 25, 2005.

Take notice that on August 22, 2005, KO Transmission Company (KOT) tendered for filing the following tariff sheets as part of its FERC Gas Tariff, Original Volume No. 1, with a proposed effective date of October 1, 2005:

First Revised Sheet No. 57A Substitute Fifth Revised Sheet No. 147

KOT states that these proposed changes are made to comply with the Commission's Letter Order dated June 27, 2003 in Docket No. RP03–421–000.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,
Secretary.
[FR Doc. E5–4760 Filed 8–30–05; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–391–001]

Natural Gas Pipeline Company of America; Notice of Application

August 25, 2005.

On August 18, 2005, Natural Gas Pipeline Company of America (Natural) filed an application pursuant to section 7(c) of the Natural Gas Act and part 157 of the regulations of the Federal Energy Regulatory Commission (Commission) requesting to amend the certificate of public convenience and necessity issued to Natural on December 24, 2002 to permit Natural to utilize five "withdrawal only" wells at the North Lansing storage facility in Harrison County, Texas as injection/withdrawal wells. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "e-Library" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676, or for TTY, (202) 502–8659.

Any questions regarding this application should be directed to Bruce H. Newsome, Vice President, Natural Gas Pipeline Company of America, 747 East 22nd Street, Lombard, Illinois 60148, telephone (630) 691–3525.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and

by all other parties. A party must submit 14 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Protests and interventions may be filed electronically via the Internet in lieu of paper; see, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: September 15, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4766 Filed 8–30–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–469–001]

Panhandle Eastern Pipe Line Company, LP; Notice of Compliance Filing

August 25, 2005.

Take notice that on August 19, 2005, Panhandle Eastern Pipe Line Company, LP (Panhandle) submitted a compliance filing pursuant to the Commission's Letter Order dated August 4, 2005 in Docket No. RP05–469–000.

Panhandle states that copies of the filing were served on parties on the official service list.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4763 Filed 8–30–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–462–001]

Panther Interstate Pipeline Energy, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

August 25, 2005.

Take notice that on August 22, 2005, Panther Interstate Pipeline Energy, L.L.C. (Panther) tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, Substitute First Revised Sheet No. 58, which has a proposed effective date of September 1, 2005. Panther states that this filing was submitted in compliance with the order issued by the Commission in the above-referenced docket on August 12, 2005.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4762 Filed 8–30–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER05–1146–000; ER05–1146–001]

Shiloh I Wind Project, LLC; Notice of Issuance of Order

August 25, 2005.

Shiloh I Project, LLC (Shiloh) filed an application for market-based rate authority, with an accompanying rate tariff. The proposed rate tariff provides for the sale of energy, capacity, and ancillary services at market-based rates, the reassignment of transmission capacity, and the resale of firm transmission rights. Shiloh also requested waiver of various Commission regulations. In particular, Shiloh requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Shiloh.

On August 24, 2005, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—South, granted the request for blanket approval under part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Shiloh should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is September 23, 2005.

Absent a request to be heard in opposition by the deadline above, Shiloh is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Shiloh, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Shiloh issuances of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4755 Filed 8–30–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–205–010]

Southern Natural Gas Company; Notice of Negotiated Rate Tariff Filing

August 25, 2005.

Take notice that on August 18, 2005, Southern Natural Gas Company (Southern) tendered for filing an original and five copies of the tariff sheets set forth below to reflect the implementation of Southern's comprehensive settlement with the Commission in Docket No. RP05–423 dated April 29, 2005:

Eighth Revised Sheet No. 23—September 1, 2005
Fourth Revised Sheet No. 23A—September 1, 2005
Third Revised Sheet No. 23B—September 1, 2005
First Revised Sheet No. 23C—September 1, 2005
Second Revised Sheet No. 23D—September 1, 2005
Second Revised Sheet No. 23E—September 1, 2005
Second Revised Sheet No. 23F—September 1, 2005
Third Revised Sheet No. 23F—October 1, 2005
Third Revised Sheet No. 23G—September 1, 2005
Fourth Revised Sheet No. 23G—October 1, 2005
Third Revised Sheet No. 23H—September 1, 2005
Fourth Revised Sheet No. 23H—October 1, 2005
Second Revised Sheet No. 23I—September 1, 2005
Fifth Revised Sheet No. 23J—September 1, 2005
Third Revised Sheet No. 23K—September 1, 2005
Third Revised Sheet No. 23L—September 1, 2005
Fourth Revised Sheet No. 23L—October 1, 2005
Second Revised Sheet No. 23M—September 1, 2005
Third Revised Sheet No. 23M—October 1, 2005
Second Revised Sheet No. 23N—October 1, 2005
Second Revised Sheet No. 23O—October 1, 2005 .

Southern requests approval of the tariff sheets effective September 1, 2005 or October 1, 2005.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4759 Filed 8–30–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–523–009]

Southern Natural Gas Company; Notice of Negotiated Rate Tariff Filing

August 25, 2005.

Take notice that on August 18, 2005, Southern Natural Gas Company (Southern) tendered for filing tariff sheets set forth below to finalize the implementation of Southern's comprehensive settlement with the Commission in Docket No. RP04–523 dated April 29, 2005 (Settlement). Southern states that the Settlement was approved by a Commission Order dated July 13, 2005. Southern requests an effective date of March 1, 2005.

Substitute Sixth Revised Sheet No. 51A
Fourth Revised Sheet No. 160
Second Revised Sheet No. 210

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4761 Filed 8–30–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–427–001]

Southern Star Central Gas Pipeline, Inc.; Notice of Compliance Filing

August 24, 2005.

Take notice that, on August 15, 2005, Southern Star Central Gas Pipeline, Inc. (Southern Star) submitted a compliance filing pursuant to Order No. 587–S, Final Rule, in Docket No. RM96–1–026 issued May 9, 2005 (111 FERC ¶ 61,203), and in accordance with Commission Letter Order issued on August 2, 2005, including the following revised tariff sheets:

First Revised Sheet No. 231
First Revised Sheet No. 232
Substitute Second Revised Sheet No. 289
Substitute First Revised Sheet No. 291

Southern Star states that copies of the filing were distributed to Southern Star's jurisdictional customers and interested state commissions and all parties on the official service list.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4744 Filed 8–30–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–474–001]

Southwest Gas Storage Company; Notice of Compliance Filing

August 24, 2005.

Take notice that on August 19, 2005, Southwest Gas Storage Company (Southwest) submitted a compliance filing pursuant to the Commission's Letter Order dated August 4, 2005 in Docket No. RP05–474–000.

Southwest states that copies of the filing were served on parties on the official service list in the above-captioned proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" *link at http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call

(866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4746 Filed 8–30–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–148]

Tennessee Gas Pipeline Company; Notice of Proposed Changes in Ferc Gas Tariff

August 25, 2005.

Take notice that on August 12, 2005, Tennessee Gas Pipeline Company (Tennessee) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following agreements and requests an effective date of September 12, 2005:

(1) A gas transportation agreement between Tennessee and Wyeth Pharmaceuticals Inc., acting through the Wyeth BioPharma business unit of its Wyeth Research Division ("Wyeth") pursuant to Tennessee's Rate Schedule FT–IL dated March 2, 2005;

(2) An amended and restated negotiated rate letter agreement between Tennessee and Wyeth dated February 25, 2005;

(3) A gas transportation agreement between Tennessee and Bay State Gas Company ("Bay State") pursuant to Tennessee's Rate Schedule FT–IL dated March 2, 2005;

(4) A negotiated rate letter agreement between Tennessee and Bay State dated February 25, 2005; and

(5) A gas transportation agreement between Tennessee and Bay State pursuant to Tennessee's Rate Schedule FT–A dated March 2, 2005.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4752 Filed 8–30–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–566–000]

Trailblazer Pipeline Company; Notice of Revenue Report

August 24, 2005.

Take notice that on August 17, 2005, Trailblazer Pipeline Company (Trailblazer) tendered for filing its penalty revenue report. Trailblazer states that purpose of this filing is to inform the Commission that Trailblazer collected no penalty revenues in the quarter ending June 30, 2005.

Trailblazer states that copies of the filing are being mailed to its customers and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4739 Filed 8–30–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–564–000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

August 24, 2005.

Take notice that on August 16, 2005, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Fifty-Eighth Revised Sheet No. 50, to become effective July 1, 2005.

Transco states that copies of the filing are being mailed to each of its FT–NT customers and interested State commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or

protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4747 Filed 8–30–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–493–001]

Trunkline Gas Company, LLC; Notice of Compliance Filing

August 25, 2005.

Take notice that on August 19, 2005, Trunkline Gas Company, LLC (Trunkline) submitted a compliance filing pursuant to the Commission's Letter Order dated August 4, 2005, in Docket No. RP05–493–000.

Trunkline states that copies of the filing were served on parties on the official service list in the above-captioned proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4764 Filed 8–30–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL05–145–000]

Emergency Petition and Complaint of District of Columbia Public Service Commission; Notice of Filing of Emergency Petition and Complaint

August 25, 2005.

Take notice that on August 25, 2005, the District of Columbia Public Service Commission (DC Commission) filed an emergency petition and complaint. The DC Commission seeks action by the U.S. Department of Energy under section 202(c) of the Federal Power Act (FPA) and by this Commission under FPA sections 207 and 309 requiring the operation of the Potomac River Generating Station power plant owned and operated by Mirant Corporation and its public utility subsidiaries.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: No later than 5 p.m. Eastern Time on August 29, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. 05–17267 Filed 8–30–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL05–145–000]

Emergency Petition and Complaint of District of Columbia Public Service Commission; Notice of Filing of Emergency Petition and Complaint

August 25, 2005.

Take notice that on August 25, 2005, the District of Columbia Public Service Commission (DC Commission) filed an emergency petition and complaint. The DC Commission seeks action by the U.S. Department of Energy under section 202(c) of the Federal Power Act (FPA) and by this Commission under FPA

sections 207 and 309 requiring the operation of the Potomac River Generating Station power plant owned and operated by Mirant Corporation and its public utility subsidiaries.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: No later than 5 p.m. eastern time on August 29, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4753 Filed 8–30–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2232–478]

Duke Power Company; Notice of Availability of Environmental Assessment

August 24, 2005.

In accordance with the National Environmental Policy Act of 1969, as amended, and the Federal Energy Regulatory Commission's (Commission) regulations (18 CFR part 380), Commission staff have prepared an environmental assessment (EA) that analyzes the environmental impacts of allowing Duke Power Company, licensee for the Catawba-Wateree Hydroelectric Project, to grant an easement to the Town of Mooresville, North Carolina, for project property within the Cowans Ford Development, also known as Lake Norman. The new easement will allow the Town of Mooresville to install a new raw water pump station, intake screens, and intake pipes and to have a maximum allowable water withdrawal of 12.0 million gallons per day. The EA contains staff's analysis of the potential environmental impacts of the proposal and concludes that approval of the Proposed Action would not constitute a major Federal action significantly affecting the quality of the human environment.

A copy of the EA is attached to a Commission order titled "Order Approving Non-Project Use of Project Lands and Waters," which was issued August 23, 2005, and is available for review and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426. The EA may also be viewed on the Commission(s Web site at *http://www.ferc.gov* using the "elibrary" link. Enter the docket number (prefaced by P–) and excluding the last three digits, in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4740 Filed 8–30–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2984–042]

S.D. Warren Company; Notice Extending Time To File Comments on Environmental Assessment

August 25, 2005.

On July 11, 2005, Commission staff issued a draft environmental assessment (EA) for the Eel Weir Project. On August 18, 2005, Commission staff held a public meeting on the draft EA in Portland, Maine. During that meeting, a number of participants indicated that they had not previously received their service copy of the draft EA and requested additional time to file comments. Additionally, on August 24, 2005, S.D. Warren filed a request to extend the deadline for filing comments on the draft EA by 30 days from the date of the public meeting.

In order to ensure that the record in the relicensing proceeding is complete and that all participants have an adequate opportunity to comment on the draft EA, an extension of time to file comments on the draft EA is hereby granted until September 9, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4757 Filed 8–30–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

August 23, 2005.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of License.

b. *Project No.:* 9282–028.

c. *Date Filed:* April 4, 2005.

d. *Applicants:* Pine Valley Hydro.

e. *Name of Project:* Pine Valley Dam Project.

f. *Location:* The project is located on the Souhegan River, Hillsborough County, New Hampshire.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Milford Elm Street Trust, Pine Valley Hydro, c/o Heidi Heller-Blackmer, P.O. Box 517, Wilton, NH 03086, (603) 654–2433.

i. *FERC Contact:* Any questions on this notice should be addressed to Mrs. Anumzziatta Purchiaroni at (202) 502–6191, or e-mail address: *anumzziatta.purchiaroni@ferc.gov.*

j. *Deadline for filing comments and or motions:* September 23, 2005.

k. *Description of Request:* The licensee filed an amendment application to revise the existing 585-kW installed capacity of its project. The licensee proposes to remove from its license the 60-kW minimum flow turbine unit located at the dam. The unit has been idle for several years, and the costs associated with bringing it back on-line are not economically feasible. The licensee proposes to release the required minimum flow through a silt gate, spillage, and through an existing downstream fish passage facility. The minimum flow turbine has been already removed from the project.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. Information about this filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*, for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions To Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4733 Filed 8–30–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Applications Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

August 23, 2005.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

a. *Type of Applications:* Preliminary Permit (Competing).

b. *Applicants, Project Numbers, and Dates Filed:* Western Hydro, LLC, filed the application for Project No. 12592–000 on May 19, 2005, at 8:32 a.m. and an amended application on July 18, 2005, at 3:21 p.m.

Bear Creek Hydro Associates, LLC, filed the application for Project No. 12593–000 on May 24, 2005, at 11:34 a.m.

c. *Name of Project:* Cascade Hydroelectric Project—P–12592; Bear Creek Hydroelectric Project—P–12593. The project will be located on Bear Creek, near the town of Concrete, in Skagit County, Washington. The existing dam is owned by Glacier Northwest, Inc.

d. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

e. *Applicant Contacts:* For Western Hydro, LLC: Mr. Edward F. Donohoe, Western Hydro, LLC, 212 Reed Circle, Mill Valley, CA 94941, (415) 380–0625. For Bear Creek Hydro Associates, LLC: Mr. Jace B. McMaster, Bear Creek Associates, LLC, 19536 Wallingford Avenue, N., Shoreline, WA 98133, (206) 769–7289.

f. *FERC Contact:* Etta Foster, (202) 502–8769.

g. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

h. *Description of Projects:* The project proposed by Western Hydro, LLC would consist of: (1) The existing 24-foot-high, 235-foot-long, concrete Bear Creek Dam; (2) a 1.7 acre reservoir with negligible storage; (3) a 48-inch, 2,800-foot-long, steel penstock; (4) an existing powerhouse containing two generating units with a capacity of 3.5 megawatts; (5) a 2-mile-long, 34.5 kV transmission line; and (6) appurtenant facilities. The proposed project would operate in a run-of-river mode and have an average annual generation of 16 million kWh. Generated power would be sold to regional investor owned utilities.

The project proposed by Bear Creek Associates, LLC would consist of reconstructing the abandoned Upper and Lower Bear Creek hydro facilities. The Upper Bear Creek Project site will be evaluated, however, the Lower Bear Creek Project site will be the main focus of the studies during the permit period. The Lower Bear Creek would consist of: (1) The existing 24-foot-high, 235-foot-long, concrete Bear Creek Dam; (2) a 1.7 acre reservoir with negligible storage; (3) a new 36-inch, 2,800-foot-long, steel penstock; (4) a renovated concrete powerhouse containing generating units with an installed capacity of 1800 kW;

(5) a new 3.5-mile-long, 12.5 kV transmission line to be interconnected with the Puget Sound Energy's transmission lines at Lake Tyee; and (6) appurtenant facilities. The proposed project would operate in a run-of-river mode. The estimated annual generation is 11.7 million kWh. Generated power would be sold to Puget Sound Energy.

i. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

j. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

k. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

l. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

m. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

n. Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

o. Comments, Protests, or Motions To Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; See 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site under "e-filing" link. The Commission strongly encourages electronic filing.

p. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

q. Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4734 Filed 8–30–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepting for Filing and Soliciting Motions To Intervene, Protests and Comments

August 23, 2005.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12596–000.

c. *Date filed:* June 8, 2005.

d. *Applicant:* Ophir Valley Land Company, LLC.

e. *Name of Project:* Carbonero Hydroelectric Project.

f. *Location:* On Carbonero Mine Adit, near Ophir, San Miguel County, Colorado, within the Uncompagre National Forest. The mine is owned by Glenn Pauls, Placerville, CO.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Vincent A. Lamarra, Ph.D., Ecosystems Research Institute, 975 S. Highway 89/91, Logan, UT 84321, (435) 752–2580, or Glenn Pauls, Ophir Valley Land Company, LLC, P.O. Box 426, Placerville, CO 81430, (970) 728–3540.

i. *FERC Contact:* Etta Foster, (202) 502–8769.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–12596–000) on any comments, protests, or motions filed.

k. *Description of Project:* The proposed project would consist of: (1)

An existing mine adit spillway; (2) a 24-inch, 4,100-foot-long steel penstock; (3) a powerhouse containing two units having a total installed capacity of 500 kW; (4) a 200-foot-long tailrace; (5) a new 15 kV transmission line; and (6) appurtenant facilities. There are neither dams nor reservoirs associated with this proposed project.

The project would have an annual generation of 1.34 GWh. The applicant anticipates generated power will feed into the nearby existing electrical grid system and interconnect with an existing distribution system in the town of Ophir.

l. *Location of Application:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

p. Notice of Intent—a notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under "e-filing" link. The Commission strongly encourages electronic filing.

s. Filing and Service of Responsive Documents—Any filings must bear in all capital letter the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4735 Filed 8–30–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12608–000]

Alternatives Unlimited, Inc.; Notice of Application Tendered for Filing With the Commission, Soliciting Additional Study Requests, and Establishing Procedural Schedule for Licensing and Deadline for Submission of Final Amendments

August 23, 2005.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Exemption From Licensing.

b. *Project No.:* P–12608–000.

c. *Date Filed:* August 15, 2005.

d. *Applicant:* Alternatives Unlimited, Inc.

e. *Name of Project:* Alternatives Hydro Power Project

f. *Location:* On the Mumford River in the Town of Northbridge, Worcester County, Massachusetts. The project does not utilize lands of the United States.

g. *Filed Pursuant to:* Public Utilities Regulatory Policies Act of 1978. 16 U.S.C. 2705, 2708.

h. *Applicant Contact:* Kathleen D. Hervol, Beals and Thomas, Inc., Reservoir Corporate Center, 144 Turnpike Road (Road 9), Southborough, MA 01772–6232, (508) 366–0560.

i. *FERC Contact:* Stefanie Harris, (202) 502–6653 or *stefanie.harris@ferc.gov*.

j. *Cooperating Agencies:* We are asking Federal, State, and local agencies and Indian tribes with jurisdiction and/or special expertise with respect to

environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item l below.

k. Pursuant to Section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* October 14, 2005.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Additional study requests and requests for cooperating agency status may be filed electronically via the internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at (*http://www.ferc.gov*) under the "eFiling" link.

m. This application is not ready for environmental analysis at this time.

n. *Description of Project:* The Alternatives Hydro Power Project consists of: (1) The existing 127-foot-long by 15.5-foot-high Ring Shop Dam consisting of a concrete 9.5-foot-high spillway topped with 2.5-foot-high flashboards, a waste gate, and two inlet structures located at the north and south ends of the spillway; (2) a 2-acre reservoir with a normal full pond elevation of 285.1 feet above mean sea level; (3) a restored 8-foot-wide head gated intake structure; (4) a new 23-foot by 6-foot metal service platform (to be enclosed for a future powerhouse) located at the south side of the dam containing three generating units with a total installed capacity of 45 kilowatts; and (5) appurtenant facilities. The restored project would have an average annual generation of 340 megawatt-hours.

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. With this notice, we are initiating consultation with the Massachusetts State Historic Preservation Officer (SHPO), as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

q. *Procedural schedule and final amendments:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate. The Commission staff proposes to issue one environmental assessment rather than issue a draft and final EA. Comments, terms and conditions, recommendations, prescriptions, and reply comments, if any, will be addressed in an EA. Staff intents to give at least 30 days for entities to comment on the EA, and will take into consideration all comments received on the EA before final action is taken on the license application.

Issue Acceptance Letter or Deficiency Letter—October 2005
Issue Scoping Document—February 2006
Notice of application is ready for environmental analysis—April 2006
Notice of the availability of the EA—October 2006
Ready for Commission's decision on the application—December 2006

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Magalie R. Salas,
Secretary.
[FR Doc. E5–4736 Filed 8–30–05; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Non-Project Use of Project Lands and Waters

August 23, 2005.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No:* 2413–070.

c. *Date Filed:* July 27, 2005.

d. *Applicant:* Georgia Power Company.

e. *Name of Project:* Wallace Dam Project.

f. *Location:* The proposed development is located on Lake Oconee in Putnam County, Georgia. This project does not occupy any Federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a), 825(r) and 799 and 801.

h. *Applicant Contact:* Mr. Lee Glenn, Georgia Power Company, 125 Wallace Dam Road, NE., Eatonton, GA 31024, (706) 485–8704.

i. *FERC Contact:* Any questions on this notice should be addressed to Shana High at (202) 502–8764, or e-mail address: *shana.high@ferc.gov.*

j. *Deadline for filing comments and/or motions:* September 12, 2005.

All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–2413–070) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages e-filings.

k. *Description of Request:* Georgia Power Company is seeking Commission approval to permit the construction of two, ten slip docks on approximately 1.1 acres within the project boundary. The proposed docks are adjacent to a condominium development that is

located on private property and does not utilize any project lands.

l. *Location of the Application:* This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions To Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described applications. A copy of the applications may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4737 Filed 8–30–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Transfer of License and Application for Surrender of License With Dam Removal and Soliciting Comments, Motions To Intervene, and Protests

August 25, 2005.

a. *Type of Application:* Application for Transfer of License and Application for Surrender of License with Dam Removal.

b. *Project Number:* P–3155–027 and –028.

c. Date Filed: August 24, 2005.

d. *Applicant:* Cox Lake—Carbonton Associates, LLC and Michael R. Allen.

e. *Name of Project:* Carbonton Dam Project (FERC No. 3155).

f. *Location:* The project is located on the Deep River, in Lee County, North Carolina. The project affects no Federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a) 825(r) and 799 and 801.

h. *Applicant Contact:* Michael Allen, P.O. Box 1401, Burlington, NC 27612–1401, phone (336) 269–2829 or Mark K. Seifert, Attorney at Law, P.O. Box 548, Cary, NC 27512, phone (919) 362–4452.

i. *FERC Contact:* Any questions on this notice should be addressed to Robert Fletcher at (202) 502–8901, or e-mail address: *robert.fletcher@ferc.gov*.

j. *Deadline for filing comments and or motions:* September 23, 2005.

k. *Description of Request:* Cox Lake Carbonton Associates, LLC and Michael R. Allen request approval of the Joint Application for Transfer of License from Cox Lake Carbonton Associates, LLC, a North Carolina limited liability company to Michael R. Allen. Cox Lake Carbonton Associates, LLC and Michael R. Allen also request approval of its application for surrender of license and complete removal dam removal and powerhouse closure/removal. The licensee has consulted with the U.S. Army Corps of Engineers, Department of Interiors, Fish and Wildlife Service, North Carolina Departments of Environment and Natural Resources Division of Water Quality, North Carolina Wildlife Resources Commission, and the North Carolina State Historic Preservation Officer as part of the large Deep River stream restoration project.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field (P–3155) to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*, for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions To Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers (P–3155–027 and –028). All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an

agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4758 Filed 8–30–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of FERC Staff Attendance at Midwest ISO Inaugural Annual Stakeholder Meeting, Midwest ISO Monthly Board Meeting and Midwest ISO Market Subcommittee Meetings

August 25, 2005.

The Federal Energy Regulatory Commission hereby gives notice that members of its staff may attend the following meetings regarding the Midwest Independent Transmission System Operator, Inc. (Midwest ISO):

• Inaugural Annual Stakeholder Meeting, September 14, 2005, 10 a.m.–4 p.m. (e.s.t.)

Sheraton Indianapolis Hotel & Suites, 8787 Keystone Crossing, Indianapolis, IN 46240.

• Midwest ISO Monthly Board Meeting, September 15, 2005, 8:30 a.m.–10:30 a.m. (e.s.t.)

Lakeside Conference Center, 630 West Carmel Drive, Carmel, IN 46032.

• Midwest ISO Market Subcommittee Meetings, August 30, 2005, 9 a.m.–5 p.m., and August 31, 2005, 8 a.m.–12 p.m. (e.s.t.); October 4, 2005, at a time to be determined; November 1, 2005, at a time to be determined; November 30, 2005, at a time to be determined.

Lakeside Conference Center, 630 West Carmel Drive, Carmel, IN 46032.

For further information regarding the times and agendas of the Market Subcommittee meetings, please see *http://www.midwestiso.org/calendar/index.php*.

The discussions at each of the meetings described above may address matters at issue in the following proceedings:

Docket No. ER02–2595, *et al.*, Midwest Independent Transmission System Operator, Inc.

Docket No. ER04–375, Midwest Independent Transmission System Operator, Inc., *et al.*

Docket No. ER04–458, *et al.*, Midwest Independent Transmission System Operator, Inc.

Docket Nos. ER04–691, EL04–104 and ER04–106, *et al.*, Midwest Independent Transmission System Operator, Inc., *et al.*

Docket No. ER05–6, *et al.*, Midwest Independent Transmission System Operator, Inc., *et al.*

Docket No. ER05–752, Midwest Independent Transmission System Operator, Inc. and PJM Interconnection, L.L.C.

Docket No. ER05–1083, *et al.*, Midwest Independent Transmission System Operator, Inc., *et al.*

Docket No. ER05–1085, *et al.*, Midwest Independent Transmission System Operator, Inc.

Docket No. ER05–1138, Midwest Independent Transmission System Operator, Inc.

Docket No. ER05–1201, Midwest Independent Transmission System Operator, Inc.

Docket No. ER05–1230, Midwest Independent Transmission System Operator, Inc.

Docket No. EL05–103, Northern Indiana Power Service Co. v. Midwest Independent Transmission System Operator, Inc. and PJM Interconnection, L.L.C.

Docket No. EL05–128, Quest Energy, L.L.C. v. Midwest Independent Transmission System Operator, Inc.

These meetings are open to the public.

For more information, contact Patrick Clarey, Office of Markets, Tariffs and Rates, Federal Energy Regulatory Commission at (317) 249–5937 or *patrick.clarey@ferc.gov*, or Christopher Miller, Office of Markets, Tariffs and Rates, Federal Energy Regulatory Commission at (317) 249–5936 or *christopher.miller@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4756 Filed 8–30–05; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2005–0003; FRL–7963–9]

Agency Information Collection Activities; Submission for OMB Review and Approval; Comment Request; NESHAP for Miscellaneous Metal Parts and Products (Renewal), ICR Number 2056.02, OMB Number 2060–0486

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act, this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on August 31, 2005. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before September 30, 2005.

ADDRESSES: Submit your comments, referencing docket ID number OECA–2005–0003, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *docket.oeca@epa.gov*, or by mail to: Environmental Protection Agency, EPA Docket Center (EPA/DC), Enforcement and Compliance Docket and Information Center (EPA/DC) EPA West, Mail Code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Leonard Lazarus, Compliance Assessment and Media Programs Division (CAMPD), Office of Compliance, Mail code: 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–6369; fax number: (202) 564–0050; E-mail address: *lazarus.leonard@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On March 8, 2005 (70 FR 11239), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received a request that burden and cost estimates be revised to include the higher burden and cost incurred by the magnet wire facilities, and the estimates have been revised accordingly.

EPA has established a public docket for this ICR under Docket ID Number OECA–2005–0003, which is available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Avenue, NW., Washington,

DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center Docket is: (202) 566–1752. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or to view public comments, to access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. When in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

Title: NESHAP for Miscellaneous Metal Parts and Products (Renewal).

Abstract: This National Emission Standards for Hazardous Air Pollutants (NESHAP) requires initial notification, performance tests, and periodic reports. Owners or operators also are required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance and are required, in general, of all sources subject to NESHAP.

Any owner or operator subject to the provisions of this part shall maintain a file of these documents, and retain the file for at least five years following the date of such notifications, reports, and records. All reports are sent to the delegated state or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA regional office. This information is being collected to assure compliance with 40 CFR part 63, Subpart MMMM as authorized in Sections 112 and 114(a) of the Clean Air Act. The required information consists of emissions data and other information that have been determined not to be private.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB Control Numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 198 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to adjust the existing ways to comply with any previously applicable instructions and requirements; to train personnel to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information.

Respondents/Affected Entities: Miscellaneous metal parts and products surface coating facilities.

Estimated Number of Respondents: 1,680.

Frequency of Response: Initial, Semiannually, On Occasion.

Estimated Total Annual Hour Burden: 675,050 hours.

Estimated Total Annual Costs: $56,642,905, which includes $1,667,000 annualized capital/startup costs, $500,000 annual O&M costs, and $54,475,905 annual labor costs.

Changes in the Estimates: There is an increase of 535,670 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase is due to the recalculation of burden reflecting activities undertaken by facilities to comply with 40 CFR part 63, subpart MMMM over the three year period covered by this ICR.

Dated: August 23, 2005.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 05–17354 Filed 8–30–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OAR–2005–0121; FRL–7963–8]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Exclusion Determinations for New Non-Road Spark-Ignited Engines at or Below 19 Kilowatts, New Non-Road Compression-Ignited Engines, New Marine Engines, and New On-Road Heavy Duty Engines (Renewal); EPA ICR Number 1852.03; OMB Control Number 2060–0395

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This ICR is scheduled to expire on August 31, 2005. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. The ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before September 30, 2005.

ADDRESSES: Submit your comments, referencing docket ID number OAR–2005–0121, to (1) EPA online using EDOCKET (our preferred method), by email to *a-and-r-docket@epa.gov*, or by mail to: Environmental Protection Agency, EPA Docket Center (EPA/DC), Air and Radiation Docket and Information Center, Mail Code 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Nydia Y. Reyes-Morales, Mail Code

6403J, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 343–9264; fax number: (202) 343–2804; email address: *reyes-morales.nydia@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 31, 2005, (70 FR 30943), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID Number OAR–2005–0121, which is available for public viewing at the Air and Radiation Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket and Information Center is (202) 566–1742. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number as identified below.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *www.epa.gov/edocket*.

Title: Exclusion Determinations for New Non-road Spark-ignited Engines at or Below 19 Kilowatts, New Non-road Compression-ignited Engines, New Marine Engines, and New On-road Heavy Duty Engines (Renewal)

Abstract: Under the provisions of the Clean Air Act (Act), the Administrator is required to promulgate regulations to control air pollutant emissions from "motor vehicles" and "non-road engines", as defined in the Act. Motor vehicles and non-road engines not meeting the applicable definitions are excluded from compliance with current regulations.

A manufacturer may make an exclusion determination by itself; however, manufacturers and importers may routinely request EPA to make such determination to ensure that their determination does not differ from the Agency's. To request an exclusion determination, manufacturers submit a letter with a description of the engine and/or vehicle (engine type, horsepower rating, intended usage, etc.) and a sales brochures to the Engine Programs Group (EPG), Certification and Compliance Division, Office of Transportation and Air Quality. EPG uses this information to determine whether the engine or vehicle is excluded from compliance with one or more emission regulations. EPG then stores the data in its internal files, and makes it available to environmental groups and the public upon request under the Freedom of Information Act.

Responses to this collection are voluntary. Confidentiality to proprietary information is granted in accordance with the Freedom of Information Act, EPA regulations at 40 CFR part 2, and class determinations issued by EPA's Office of General Counsel.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 7 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Light Truck and Utility Vehicle Manufacturers; Heavy Duty Truck Manufacturers; Gasoline Engine and Engine Parts Manufacturers; Construction Machinery Manufacturers; Industrial Truck, Tractor, Trailer, and Stacker Machinery Manufacturers; Marine Engine Manufacturers; Other Engine Equipment Manufacturers

Estimated Number of Respondents: 12

Frequency of Response: One time voluntary

Estimated Total Annual Hour Burden: 69

Estimated Total Annual Cost: $5,654, which includes $0 annualized capital/startup costs, $116 annual O&M costs, and $5,538 annual labor costs.

Changes in the Estimates: There is no change in the total estimated burden hours currently identified in the OMB Inventory of Approved ICR Burdens.

Dated: August 23, 2005.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 05–17355 Filed 8–30–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2005–0014; FRL–7963–2]

Agency Information Collection Activities: Submission to OMB for Review and Approval; Comment Request; State Review Framework; EPA ICR Number 2185.01

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request for a new collection. Under

OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Comments must be submitted on or before September 30, 2005.

ADDRESSES: Submit your comments, referencing docket ID number OECA–2005–0014 to (1) EPA online using EDOCKET (our preferred method), by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, OECA Docket, mail code 2201T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Arthur Horowitz, Office of Planning Policy Analysis and Communication, mail code 2201A, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–2612; fax number: (202) 564–0027; email address: *horowitz.arthur@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On April 26, 2005 70 FR 21408, EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received one comment and has addressed the comment received.

EPA has established a public docket for this ICR under Docket ID number OECA–2005–0014, which is available for public viewing at the OECA Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the OECA Docket is (202) 566–1514. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 *FR* 38102 (May 31, 2002), or go to *www.epa.gov./edocket.*

Affected entities: State and local governments.

Title: State Review Framework.

Abstract: The State Review Framework ("Framework") is an oversight tool designed to assess state performance in enforcement and compliance assurance. The Framework's goal is to evaluate state performance by examining existing data to provide a consistent level of oversight and develop a uniform mechanism by which EPA Regions, working collaboratively with their states, can ensure that state environmental agencies are consistently implementing the national compliance and enforcement program in order to meet agreed-upon goals. Furthermore, the Framework is designed to foster dialogue on enforcement and compliance performance between the states that will enhance relationships and increase feedback, which will in turn lead to consistent program management and improved environmental results.

Specifically, the Framework is a structured process that provides critical information on a state's (or Region's, for states with EPA-implemented programs) core enforcement and compliance assurance performance by employing existing data available in EPA's national databases and presented in management reports for each state. By the end of calendar year 2005 EPA expects to automate the management reports and make them available for the Regions and states to directly view and pull their own data. No new data collection is required for the national databases. Additional data will be obtained from the review of a state environmental agency's compliance and enforcement files. While no new data is required to be created in these files; they will be required to be provided and reviewed to ensure consistency with national standards in terms of documentation and performance. The states' participation in this process is mandatory.

The Framework process asks regions, states and local governments to examine existing data in three core programs: Clean Air Act ("CAA"), Stationary Sources; Clean Water Act ("CWA"), National Pollutant Discharge Elimination System ("NPDES"); and Resource Conservation and Recovery Act ("RCRA"), Subtitle C. The Framework evaluates twelve (12) primary elements, and a thirteenth optional element, using data and file review metrics. The utility of the Framework's metrics and the Implementation Guide are a direct result of the collaboration between states, Regions, Headquarters, and environmental leaders over the previous two years. These stakeholders provided extensive input and comments prior to both a pilot phase of the project, and in an evaluation of the pilots. The results of the evaluation of the Framework's pilot program was 14 main recommendations, which OECA and ECOS reviewed and used to establish work groups that were tasked with addressing those recommendations. The results of the evaluation of the Framework's pilot program have been used to improve the Framework and further ensure that it is narrowly crafted and will only collect information that satisfies the Agency's needs.

The thirteen (13) elements mentioned above are: (1) The degree to which a state program has completed the universe of planned inspections (addressing core requirements and Federal, state, and regional priorities); (2) The degree to which inspection reports and compliance reviews document inspection findings, including accurate descriptions of what was observed to sufficiently identify violation(s); (3) The degree to which inspection reports are completed in a timely manner, including timely identification of violations; (4) The degree to which significant violations (*e.g.*, significant noncompliance and high-priority violations) and supporting information are accurately identified and reported to EPA's national databases in a timely manner; (5) The degree to which state enforcement

actions include required corrective or complying actions (*i.e.*, injunctive relief) that will return facilities to compliance in a specific time frame; (6) The degree to which a state takes timely and appropriate enforcement actions, in accordance with policy relating to specific media; (7) The degree to which a state includes both gravity and economic benefit calculations for all penalties, appropriately using the BEN model or similar state model (where in use and consistent with national policy); (8) The degree to which penalties in final enforcement actions collect appropriate economic benefit and gravity in accordance with applicable penalty procedures; (9) The degree to which enforcement commitments in the PPA/PPG/ categorical grants (*i.e.*, written agreements to deliver a product/project at a specified time), if they exist, are met and any products or projects are completed; (10) The degree to which the minimum data requirements are timely; (11) The degree to which the minimum data requirements are accurate; (12) The degree to which the minimum data requirements are complete, unless otherwise negotiated by the region and state or prescribed by a national initiative; and (13) (Optional) Other program activities (*e.g.*, using outcome data, compliance assistance, self-disclosure programs, innovative approaches, etc.). In the interest of accuracy and efficiency, the Framework also includes a four-step protocol for managing the process: (1) Pre-review and offsite review; (2) onsite review; (3) drafting of the report; and (4) composing the final report and follow-up. After reviewing the level of performance based on metrics developed to support the 12 required performance elements, EPA will determine if a state or Region meets adequate performance levels.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 384 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: 50 states.

Estimated Number of Respondents: 40.

Frequency of Response: one time over a three year period.

Estimated Total Annual Hour Burden: 5,122.

Estimated Total Annual Cost: $169,035 including $0 annualized capital or O&M costs.

Changes in the Estimates: N/A.

Dated: August 24, 2005.

Oscar Morales.

Director, Collection Strategies Division.

[FR Doc. 05–17361 Filed 8–30–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OAR–2002–0073; FRL–7963–3]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Recordkeeping and Periodic Reporting of the Production, Import, Export, Recycling, Destruction, Transhipment, and Feedstock Use of Ozone-Depleting Substances (Renewal), EPA ICR Number 1432.25, OMB Control Number 2060–0170

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on August 31, 2005. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before September 30, 2005.

ADDRESSES: Submit your comments, referencing docket ID number OAR–2002–0073, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *a-and-r-Docket@epa.gov*, or by mail to: Environmental Protection Agency, EPA Docket Center (EPA/DC), Air and Radiation Docket and Information Center, Mail Code 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kirsten M. Cappel, Office of Atmospheric Programs, Stratospheric Protection Division, Mail Code 6205J, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 343–9556; fax number: (202) 343–2338; e-mail address: *cappel.kirsten@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On June 14th, 2005 (70 FR 34470) EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OAR–2002–0073 which is available for public viewing at the Air and Radiation Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket and Information Center is (202) 566–1742. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material,

confidential business information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

Title: Recordkeeping and Periodic Reporting of the Production, Import, Export, Recycling, Destruction, Transhipment, and Feedstock Use of Ozone-Depleting Substances (Renewal)

Abstract: The international treaty The Montreal Protocol on Substances that Deplete the Ozone and Title VI of the Clean Air Act (CAA) established limits on total United States (U.S.) production, import, and export of class I and class II controlled ozone depleting substances (ODS). Under its Protocol commitments, the United States is obliged to cease production and import of class I controlled substances with exemptions for essential uses, critical uses, previously used material, and material that will be transformed, destroyed, or exported to developing countries. The Protocol also establishes limits and reduction schedules leading to the eventual phaseout of class II controlled substances with similar exemptions beyond the phaseout. Additionally, the CAA has its own limits on production and consumption of controlled substances that EPA must adhere to and enforce.

To ensure the United States compliance with the limits and restrictions established by the Protocol and the CAA, the ODS phaseout regulations establish control measures for individual companies. The limits and restrictions for individual United States companies are monitored by EPA through the recordkeeping and reporting requirements established in the regulations stated in 40 CFR part 82, subpart A. To submit required information, regulated entities can download reporting forms from EPA's stratospheric ozone Web site (*http://www.epa.gov/ozone/record.index.html*), complete them, and then send them to EPA via U.S. Mail or fax. Upon receipt of the reports, the data is entered and subsequently stored in the Stratospheric Protection Tracking System (Tracking System). The Tracking System is a secure database that maintains all of the data that is submitted to EPA and allows the Agency to: (1) Maintain control over total production and consumption of controlled substances to satisfy conditions of the CAA and fulfill the United States obligations under the Protocol; (2) monitor compliance with limits and restrictions on production, imports, exports, and specific exemptions to the phaseout for individual U.S. companies; and (3) enforce against illegal imports and violations related to the control of class I and class II substances. Additionally, reporting on the exemptions permits an entity to retain the benefit of being able to produce or import a controlled class I ODS beyond the date of complete phaseout.

EPA is developing an electronic reporting system through the Agency's Central Data Exchange (CDX) that will allow regulated entities to download, complete, and submit reports electronically. Electronic reporting is expected to make the reporting process more effective and efficient for reporting companies and EPA. When electronic reporting becomes available, EPA will change its guidance document and its ICR to indicate a reduction in burden hours.

Pursuant to regulations 40 CFR part 2, subpart B, reporting businesses are entitled to assert a business confidentiality claim covering any part of the submitted business information as defined in 40 CFR 2.201(c).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average about seven hours per response per respondent. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Persons that produce, import, export, destroy, transform as a feedstock, distribute, or apply controlled ODS.

Estimated Number of Respondents: 1,138.

Frequency of Response: On occasion, quarterly, and annually (as applicable).

Estimated Total Annual Hour Burden: 8,370.

Estimated Total Annual Cost: $714,160, which includes $0 annualized capital/startup costs, $5,580 annual O&M costs, and $708,520 annual labor costs.

Changes in the Estimates: There is a decrease of 1,567 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is largely attributed to the reduction of the number of responses and respondents. The decrease in Agency hours is due to the longevity of the regulatory program and its implementation. Estimates have also been refined based on historical information.

Dated: August 25, 2005.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 05–17362 Filed 8–30–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2004–0037; FRL–7963–4]

Agency Information Collection Activities; Submission for OMB Review and Approval; Comment Request; NESHAP for Natural Gas Transmission and Storage (Renewal), ICR Number 1789.05, OMB Number 2060–0418

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act, this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on September 30, 2005. Under OMB regulations, the Agency may

continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before September 30, 2005.

ADDRESSES: Submit your comments, referencing docket ID number OECA–2004–0037, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *docket.oeca@epa.gov*, or by mail to: Environmental Protection Agency, EPA Docket Center (EPA/DC), Enforcement and Compliance Docket and Information Center, Mail Code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Dan Chadwick, Compliance Assessment and Media Programs Division, Office of Compliance, 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–7054; fax number: (202) 564–0050; e-mail address: *chadwick.dan@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On December 1, 2004 (69 FR 69909), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OECA–2004–0037, which is available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center Docket is: (202) 566–1752. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. When in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 *FR* 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket*.

Title: NESHAP for Natural Gas Transmission and Storage (Renewal)

Abstract: This information collection request addresses Clean Air Act information collection requirements in standards published at 40 CFR part 63, subpart HHH, which have mandatory recordkeeping and reporting requirements. These regulations were proposed on February 6, 1998, promulgated on June 17, 1999, and apply to major sources of hazardous air pollutants (HAP) that transport or store natural gas prior to entering the pipeline to a local distribution company or to a final end user (if there is no local distribution company). In general, all NESHAP standards require initial notifications, performance tests, and periodic reports. Owners or operators are also required to maintain records of the occurrence and duration of any start-up, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance, and are required of all sources subject to NESHAP.

Any owner or operator subject to the provisions of this part shall maintain a file of these records, and retain the file for at least 5 years following the date of such occurrences, maintenance reports, and records. All reports are sent to the delegated State or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA Regional Office.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB Control Numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 15 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Entities potentially affected by this action are those that transport or store natural gas prior to entering the pipeline to a local distribution company or to a final end user (if there is no local distribution company).

Estimated Number of Respondents: 830.

Frequency of Response: On occasion, Semi-annually.

Estimated Total Annual Hour Burden: 757 hours.

Estimated Total Annual Costs: $61,087, which includes $0 annualized capital/startup costs, $0 annual O&M costs, and $61,087 annual labor costs.

Changes in the Estimates: There is an increase of 176 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase is due to the calculation of the industry technical labor hours at a higher level relative to total labor hours than in the active ICR.

Dated: August 25, 2005.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 05–17363 Filed 8–30–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2005–0052; FRL–7963–5]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Enforcement Policy Regarding the Sale and Use of Aftermarket Catalytic Converters (Renewal), EPA ICR Number 1292.07, OMB Control Number 2060–0135

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on August 31, 2005. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before September 30, 2005.

ADDRESSES: Submit your comments, referencing docket ID number OECA–2005–0052, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *docket.oeca@epa.gov*, or by mail to: Environmental Protection Agency, EPA Docket Center (EPA/DC), Enforcement and Compliance Docket and Information Center, Mail Code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jack McLaughlin, Office of Mobile Sources, Office of Enforcement and Compliance, U.S. EPA Western Field Office, 12345 West Alamdea Parkway, Suite #214, Lakewood, CO 80228; Telephone number: (303) 236–9513, Fax number: (303) 236–9514, E-Mail: *mclaughlin.jackj@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 31, 2005 (70 FR 30941–30943), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments on this notice.

EPA has established a public docket for this ICR under Docket ID No. OECA–2005–0052, which is available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center is (202) 566–1752. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

Title: Enforcement Policy Regarding the Sale and Use of Aftermarket Catalytic Converters (Renewal)

Abstract: Section (a)(3) of the Clean Air Act (Act) prohibits removing or rendering inoperative automobile emission control devices or elements of design. But for the adoption of the aftermarket catalytic converter enforcement policy (51 FR 28814–28819, 28133 (August 5, 1986); 52 FR 42114 (November 3, 1987)), 67 FR 319 (January 3, 2002) the manufacture, sale or installation of aftermarket catalytic converters (catalysts) not equivalent to new original equipment (OE) catalysts would constitute a violation of the Act. However, because replacement OE catalysts are expensive, many consumers had elected to not replace catalysts that malfunctioned subsequent to the expiration of the emissions warranty on their vehicles. The Agency believes that allowing the installation of aftermarket catalysts on older vehicles can be environmentally beneficial if the Agency can be assured that the aftermarket catalysts meet certain standards and if installers are accountable to select the proper aftermarket catalyst for each vehicle application. Manufacturers of new aftermarket catalysts are required on a one time basis, for each catalyst line manufactured, to identify the catalyst physical specifications and summarize pre-production testing of the prototype. Previously, manufacturers were required to submit semi-annual reports to EPA of the number of each type of catalytic converter manufactured and a summary (or copies at manufacturer's option) of warranty card information. These requirements are both discontinued. The information would still have to be retained for 5 years, and would be subject to EPA inspection. A technical change is being made to clarify the existing requirement that converters be labeled, specifically that information affixed to the converters appears on the underside so that it can be seen after the converter is installed.

Reconditioners of used catalysts must, on a one-time basis, identify themselves and provide information regarding their converter testing equipment and procedures followed when testing used catalysts. All used catalytic converters must be individually bench-tested. The requirement to submit semi-annual reports to EPA disclosing the identity of persons who distribute the reconditioned catalysts and the number of reconditioned catalysts of each type that are sold to each distributor is discontinued.

Companies that install aftermarket catalysts have no reporting requirements

but must keep copies of installation invoices and records for 6 months that show the reason an aftermarket catalyst installation was permissible. A technical change is made to note that the warranty period for the Original Equipment Manufacturer (OEM) converter originally installed on the vehicle is 8 years/80,000 miles starting with the 1995 model year. Therefore, aftermarket or reconditioned converters generally cannot be installed on such vehicles until the vehicles are at least 8 (eight) years old, or have accumulated 80,000 miles of service life. Removed catalysts must be tagged with identifying information and be retained for 15 days. EPA allows the use of pre-printed documents or computer generated documents. All the record keeping under the policy is authorized by section 114 of the Act, 42 U.S.C. 7414 and section 208 of the Act, 42 U.S.C. 7542 and is a mandatory condition for participation in this voluntary alternative program to manufacturing catalytic converters equivalent to OE. Not complying with the record keeping and remaining reporting requirements would violate section 203(a)(3) of the Act, 42 U.S.C. 7522(a)(3). Parties who comply with these policies are allowed to install aftermarket catalysts instead of OE catalytic converters. Confidentiality provisions are found at 40 CFR part 2. These requirements have been in effect for over 19 years. Startup costs have been completed.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 7 hours per response for the three categories of respondent. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Manufacturers, reconditioners, and installers of aftermarket and/or reconditioned automotive catalytic converters.

Estimated Number of Respondents: 30,014.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 212,101 hours.

Estimated Total Annual Cost: $8,725,189, which includes $285,824 annualized capital/startup costs, $390,064 annual O&M costs, and $8,049,201 annual labor costs.

Changes in the Estimates: There is an increase of 100,793 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. The increase is due to an error in calculations in the previous ICR, and not an actual increase in respondent burden hours. A combination of errors in calculations in the previous ICR (67 FR 319–320, Jan. 3, 2002) led to the annual burden hours for installers being represented as 3.5 hours/year, rather than 7 hours/year. Spread over 30,000 installer respondents this led to a shortfall of 104,000 burden hours. This figure has been correctly calculated in this ICR renewal. There is, therefore, no increase in burden hours to the industry, rather the correction of a previous error which accounts for the higher burden hour numbers.

Dated: August 25, 2005.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 05–17366 Filed 8–30–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2004–0043; FRL–7955–5]

Agency Information Collection Activities; Submission for OMB Review and Approval; Comment Request; NSPS for Metallic Mineral Processing Plants (Renewal), ICR Number 0982.08, OMB Number 2060–0016

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act, this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on September 30, 2005. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before September 30, 2005.

ADDRESSES: Submit your comments, referencing docket ID number OECA–2004–0043, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *docket.oeca@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, Mail Code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Gregory Fried, Compliance Assessment and Media Programs Division, Office of Compliance, 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–7016; fax number: (202) 564–0050; e-mail address: *fried.gregory@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On December 1, 2004, (69 *FR* 69909) EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID Number OECA–2004–0043, which is available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center Docket is: (202) 566–1752. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public

comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. When in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *www.epa.gov/edocket*.

Title: NSPS for Metallic Mineral Processing Plants (Renewal).

Abstract: The New Source Performance Standards (NSPS) for Metallic Mineral Processing Plants were proposed on August 24, 1982, and promulgated on February 21, 1984. These standards apply to the following facilities in Metallic Mineral Processing Plants: Each crusher and screen in open-pit mines; each crusher, screen, bucket elevator, conveyor belt transfer point, thermal dryer, product packaging station, storage bin, enclosed storage area, truck loading and unloading station at the mill or concentrator, commencing construction, modification or reconstruction after the date of proposal. The NSPS does not apply to facilities located in underground mines, or to facilities performing the beneficiation of uranium ore at uranium ore processing plants.

Particulate matter (PM) is the pollutant regulated under this subpart. The standards limit the particulate matter emissions from the stack to 0.05 grams per dry standard cubic meter and to 7 percent opacity. Those sources that are using a wet scrubbing control device are exempted from the 7 percent opacity requirement. No affected facility may discharge any process fugitive emissions that exhibit greater than 10 percent opacity.

Response to the collection of information is mandatory under 40 CFR part 60, subpart LL. Owners or operators of the affected facilities described must make initial notifications, including notification of any physical or operational change to an existing facility that may increase the regulated pollutant emission rate; notification of the demonstration of the continuous monitoring system (CMS), and notification of the initial performance test. Performance test reports are needed as these are the Agency's records of a source's initial capability to comply with emission standards, and note the operating conditions, flow rate and pressure drop, under which compliance was achieved. Owners of affected facilities are required to install, calibrate, maintain, and operate a continuous monitoring system to measure the change in the pressure of the gas stream through the scrubber and the scrubbing liquid flow rate. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative.

Semiannual excess emissions reports and monitoring systems performance reports will include the exceeded findings of any control device operating parameters, (specified in CFR 40 60.735, Recordkeeping and Reporting), the date and time of the deviance, the nature and cause of the malfunction (if known) and the corrective measures taken, and identification of the time period during which the CMS was inoperative (this does not include zero and span checks nor typical repairs/adjustments). These notifications, reports and records are required, in general, of all sources subject to NSPS.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB Control Numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 52 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Metallic Mineral Processing Plants.

Estimated Number of Respondents: 20.

Frequency of Response: On occasion, initially and semiannually.

Estimated Total Annual Hour Burden: 2,306 hours.

Estimated Total Annual Costs: $199,140 which includes $0 annualized capital/startup costs, $13,000 annual O&M costs, and $186,140 Respondent Labor costs.

Changes in the Estimates: There is an increase of 546 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase is due to an increase in the estimated number of sources that will be reconstructed or make or physical/operational changes. In addition, the increase in burden is due to the inclusion of burden hour estimates for management and clerical personnel at the plant.

Dated: August 22, 2005.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 05–17368 Filed 8–30–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OW–2003–0030; FRL–7964–1]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; National Pollutant Discharge Elimination System Great Lakes Water Quality Guidance, EPA ICR Number 1639.05, OMB Control Number 2040–0180

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces

that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on August 31, 2005. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before September 30, 2005.

ADDRESSES: Submit your comments, referencing docket ID number OW–2003–0030, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *ow-docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Water Docket, Mail Code 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Lynn Stabenfeldt, Office of Wastewater Management. 4201M, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–0602; fax number: (202) 501–2399; e-mail address: *stabenfeldt.lynn@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 31, 2005 (70 FR 30944–30955), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OW–2003–0030, which is available for public viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket*.

Title: National Pollutant Discharge Elimination System Great Lakes Water Quality Guidance.

Abstract: The primary objective of the Clean Water Act (CWA) is "to restore and maintain the chemical, physical and biological integrity of the nation's waters" (Section 101(a)). CWA Section 402 establishes the National Pollutant Discharge Elimination System (NPDES) permit program to regulate the discharge of any pollutant or combination of pollutants from point sources into the waters of the United States. CWA Section 402(a), as amended, authorizes the EPA Administrator to issue permits for the discharge of pollutants if those discharges meet the following requirements:

- All applicable requirements of CWA Sections 301, 302, 306, 307, 308, and 403; and
- Any conditions the Administrator determines are necessary to carry out the provisions and objectives of the CWA.

Section 101 of the Great Lakes Critical Programs Act (CPA) amends section 118 of the CWA and directs EPA to publish water quality guidance for the Great Lakes System. Provisions of the Guidance are codified in 40 CFR part 132. The Guidance establishes minimum water quality criteria, implementation procedures, and antidegradation provisions for the Great Lakes System.

Permitting authorities currently require dischargers to provide information such as the name, location, and description of facilities to identify the facilities that require permits. EPA and authorized NPDES States store much of this basic information in the Permit Compliance System (PCS) database. PCS provides EPA with a nationwide inventory of NPDES permit holders. EPA Headquarters uses the information contained in the PCS to develop reports on permit issuance, backlogs, and compliance rates. The Agency also uses the information to respond to public and Congressional inquiries, develop and guide its policies, formulate its budgets, assist States in acquiring authority for permitting programs, and manage its programs to ensure national consistency in permitting.

NPDES permit applications and requests for supplemental information currently require information about wastewater treatment systems, pollutants, discharge rates and volumes, whole effluent toxicity testing and other data. Additional information collection requirements that may be necessary to implement State, Tribal, or EPA promulgated provisions consistent with the final Guidance include: (1) Monitoring (pollutant-specific and whole effluent toxicity or WET); (2) pollutant minimization programs; (3) antidegradation policy/demonstrations; and, (4) regulatory relief options (*e.g.*, variances from water quality criteria).

This information may be used to ensure compliance with provisions consistent with the Guidance and re-evaluate existing permit conditions and monitoring requirements. Data on discharges is entered into STORET and PCS, EPA's databases for ambient water quality data and NPDES permits, respectively. Results of water quality criteria testing will be entered into an EPA Information Clearinghouse database.

Permit applications may contain confidential business information. If this is the case, the respondent may request that such information be treated as confidential. All confidential data will be handled in accordance with 40 CFR 122.7, 40 CFR part 2, and EPA's Security Manual part III, chapter 9, dated August 9, 1976. However, CWA Section 308(b) specifically states that effluent data may not be treated as confidential. No questions of a sensitive nature are associated with this information collection.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 26,781 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: (1) Industries discharging toxic pollutants to waters in the Great Lakes System as defined in 40 CFR 132.2 and (2) publicly-owned treatment works discharging toxic pollutants to waters of the Great Lakes System as defined in 40 CFR 132.2.

Estimated Number of Respondents: 2,710

Frequency of Response: Varies depending on discharger's effluent characteristics.

Estimated Total Annual Hour Burden: 28,797

Estimated Total Annual Cost: $3,070,186, includes $0 annualized capital or O&M costs.

Changes in the Estimates: There is a decrease of 94,066 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is due to a transfer of burden hours to the Water Quality Standards ICR (OMB Control Number 2040–0049) and a decrease in the number of potentially affected entities.

Dated: August 23, 2005.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 05–17369 Filed 8–30–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2003–0004; FRL–7733–7]

Access to Confidential Business Information by Systems Research and Applications Corporation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor Systems Research and Applications Corporation (SRA), of Arlington and Fairfax, Virginia, access to information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be Confidential Business Information (CBI).

DATES: Access to the confidential data will occur no sooner than September 8, 2005.

FOR FURTHER INFORMATION CONTACT: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: *TSCA–Hotline@.epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Notice Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those persons who are or may be required to conduct testing of chemical substances under TSCA. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Documents?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2003–0004. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include CBI or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. What Action is the Agency Taking?

Under Contract Number EP–W–05–024, SRA of 2000 15th Street, North Arlington, VA 22201, and 4300 Fair Lakes Court, Fairfax, VA 22033, will assist EPA in preparing OPPT's Target Information Architecture, involving enterprise architecture documentation, development, requirements analysis, design, testing and change management.

In accordance with 40 CFR 2.306(j), EPA has determined that under Contract Number EP–W–05–024, SRA will require access to CBI submitted to EPA under all sections of TSCA, to perform successfully the duties specified under the contract.

SRA personnel will be given information submitted to EPA under all sections of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA, that the Agency may provide SRA access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters.

Clearance for access to TSCA CBI under Contract Number EP–W–05–024 may continue until April 14, 2010.

Access will commence no sooner than September 8, 2005.

SRA personnel have signed non-disclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental protection, Confidential business information.

Dated: August 23, 2005.

Vicki A. Simons,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 05–17199 Filed 8–30–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2003–0004; FRL–7733–8]

Access to Confidential Business Information by BeakerTree Corporation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized Syracuse Research Corporation's (SRC) subcontractor BeakerTree Corporation, of Fairfax, Virginia, access to information which has been submitted to EPA under sections 4, 5, 6, and 8 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be Confidential Business Information (CBI).

DATES: Access to the confidential data will occur no sooner than September 8, 2005.

FOR FURTHER INFORMATION CONTACT: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: *TSCA–Hotline@.epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Notice Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those persons who are or may be required to conduct testing of chemical substances under TSCA. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Documents?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2003–0004. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include CBI or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. What Action is the Agency Taking?

Under Contract Number 68–W–01–061, BeakerTree Corporation of 13402 Birch Bark Court, Fairfax, VA will assist EPA in reviewing Premanufacture Notices (PMNs) which are TSCA CBI.

In accordance with 40 CFR 2.306(j), EPA has determined that under Contract Number 68–W–01–061, BeakerTree Corporation, will require access to CBI submitted to EPA under sections 4, 5, 6, and 8 of TSCA, to perform successfully the duties specified under the contract.

BeakerTree personnel will be given information submitted to EPA under sections 4, 5, 6, and 8 of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under sections 4, 5, 6, and 8 of TSCA, that the Agency may provide BeakerTree Corporation. access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at the BeakerTree Corporation site located at 13402 Birch Bark Court, Fairfax, VA and SRC's site located at 1215 Jefferson Davis Highway, Suite 405, Arlington, VA site. No access will occur at BeakerTree's facility until after it has been approved for the storage of TSCA CBI.

Clearance for access to TSCA CBI under Contract Number 68–W–01–061, may continue until September 30, 2006. Access will commence no sooner than September 8, 2005.

BeakerTree Corporation personnel will be required to sign non-disclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental protection, Confidential business information.

Dated: August 23, 2005.

Vicke A. Simons,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 05–17200 Filed 8–30–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7963–7]

National Advisory Council for Environmental Policy and Technology Environmental Technology Subcommittee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Committee Act, Public Law 92463, EPA gives notice of a meeting of the Environmental Technology Subcommittee of the National Advisory Council for Environmental Policy and Technology (NACEPT). NACEPT provides advice and recommendations to the Administrator of EPA on a broad range of environmental policy,

technology, and management issues. The Environmental Technology Subcommittee was formed to assist EPA in evaluating its current and potential role in the development and commercialization of environmental technologies by suggesting how to optimize existing EPA programs to facilitate the development of sustainable private sector technologies, and by suggesting alternative approaches to achieving these goals. The purpose of the meeting is to continue the Subcommittee's consideration of these issues. A copy of the agenda for the meeting will be posted at *http://www.epa.gov/ocem/nacept/calnacept.htm.*

DATES: The NACEPT Environmental Technology Subcommittee will hold a two day open meeting on Thursday, September 22, from 9 a.m. to 5:30 p.m. and Friday, September 23, from 8:30 a.m. to 1:30 p.m.

ADDRESSES: The meeting will be held at the Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Alexandria, Virginia 22202. The meeting is open to the public, with limited seating on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Mark Joyce, Designated Federal Officer, *joyce.mark@epa.gov,* 202–233–0068, U.S. EPA, Office of Cooperative Environmental Management (1601E), 1200 Pennsylvania Avenue NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: Requests to make oral comments or provide written comments to the Subcommittee should be sent to Mark Joyce, Designated Federal Officer, at the contact information below. The public is welcome to attend all portions of the meeting.

Meeting Access: For information on access or services for individuals with disabilities, please contact Mark Joyce at 202–233–0068 or joyce.mark@epa.gov. To request accommodation of a disability, please contact Mark Joyce, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: August 22, 2005.

Mark Joyce,

Designated Federal Officer.

[FR Doc. 05–17353 Filed 8–30–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0233; FRL–7731–9]

Full Tribal Pesticide Program Council (TPPC); Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Tribal Pesticide Program Council (TPPC) will hold a 2½–day meeting, beginning on September 13 and ending on September 15, 2005. This notice announces the location and times for the meeting, and sets forth the tentative agenda topics. One Tribal Caucus is scheduled each day.

DATES: The meeting will be held on September 13 and 14, 2005, from 8 a.m. to 5 p.m. and half day on September 15, 2005.

ADDRESSES: The meeting will be held at Ute Mountain Casino Hotel and Resort, 3 Weeminuche Drive at Yellow Hat, Towaoc, CO 81334. Telephone: (800) 258–8007.

FOR FURTHER INFORMATION CONTACT: Georgia McDuffie, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 605–0195; fax number: (703) 308–1850; e-mail address: *duffie.georgia@epa.gov* or Lillian Wilmore, TPPC Facilitator, P.O. Box 470829, Brookline Village, MA 02447–0829; telephone number: (617) 232–5742; fax (617) 277–1656; e-mail address:*naecology@aol.com.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are interested in TPPC's information exchange relationship with EPA regarding important issues related to human health, environmental exposure to pesticides, and insight into EPA's decision-making process. All parties are invited and encouraged to attend the meetings and participate as appropriate. Potentially affected entities may include, but are not limited to those persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult either 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–2005–0233. 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 view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Tentative Agenda

1. TPPC State of the Council Report.
2. Presentation and questions and answers with EPA Office of Pesticide Programs, Deputy Office Director.
3. Reports from working groups and TPPC participation in other meetings.
4. Tribal Caucus (2).
5. Reports from other organizations.
6. Invasive species/endangered species.
7. NAGPRA and Lifeline discussion.
8. Lindane (issue paper on lindane).

9. Report on Salt River Pima Maricopa Indian Community Pesticide Program.
10. OPP Tribal Strategy - final review.
11. TPPC outreach power point.
12. Federal Credential (questions and answers).
13. Presentation and questions and answers by EPA Office of Enforcement and Compliance Assurance.
14. Section 18 and 24c pilot project - soybean rust.
15. Instructions on preparing forms to include the Form 5700.
16. Region 8 and 9 reports.
17. Performance Measures - panel/ reports from working groups and discussion of performance for Tribes.
18. Strategic planning for the TPPC Environmental Protection.

List of Subjects

Environmental protection, Pesticide and pests.

Dated: August 10, 2005.

Jay S. Ellenberger,

Associate Division Director, Field and External Affairs Division. Office of Pesticide Programs.

[FR Doc. 05–17127 Filed 8–30–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0385 FRL–7734–4]

Permethrin; Notice of Availability of Risk Assessments and Opening of Docket

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's preliminary human health and ecological risk assessments and related documents for permethrin, a synthetic pyrethroid insecticide, and opens a public comment period on these documents. The public is encouraged to provide information to refine assessed risks, and suggest risk management ideas or proposals to address the risks identified. At this time, EPA is intending to develop a Reregistration Eligibility Decision (RED) for permethrin through a modified 4–phase public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance assessment decisions. For permethrin, a modified 4–Phase process with one public comment period and ample opportunity for public consultation seems appropriate in view of the number and level of risk concerns identified in the preliminary risk assessment. However, if as a result of comments received during this comment period EPA finds that additional issues warranting further discussion are raised, the Agency may consider an additional comment period, as needed. Through this program, EPA is ensuring that all pesticides meet current health and safety standards. This notice is phase–3 of the 4–phase process.

DATES: Comments, identified by docket identification (ID) number OPP–2004–0385 must be received on or before October 31, 2005.

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: Jacqueline Guerry, Chemical Review Manager, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–0024; e-mail address: *guerry.jacqueline@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–2004–0385. 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–2004–0385. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2004–0385. 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–2004–0385.

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–2004–0385. 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 tho 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?

We invite you to provide your views on the various options we propose, new approaches we have not considered, the potential impacts of the various options (including possible unintended consequences), and any data or information that you would like the Agency to consider during the development of the final action. You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the rule or collection activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

A. What Action is the Agency Taking?

EPA is releasing for public comment its preliminary human health and environmental fate and effects risk assessments and related documents for the synthetic pyrethroid insecticide,

permethrin, and is encouraging the public to provide information to refine identified risks, and suggest risk management ideas or proposals. EPA is ensuring that pesticides meet current standards under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). Permethrin is registered for use on sites in agricultural, commercial, and residential settings. In addition to its pesticidal uses, permethrin also has non-FIFRA pharmaceutical use as a pediculicide for the treatment of head lice and scabies. The Food and Drug Administration (FDA) approves use of the pesticidal-containing pharmaceutical products under FFDCA.

The preliminary risk assessments have identified potential residential postapplication noncancer chronic risks of concerns for toddlers; residential handlers and postapplication cancer risks; occupational handler and postapplication noncancer chronic and cancer risks; and potential acute and chronic ecological risks of concern. EPA is providing an opportunity, through this notice, for interested parties to provide comments and input on the Agency's risk assessments for permethrin. Such comments and input could address the potential risks of concern.

All elements of the Agency's risk assessments for permethrin are open for public comment; however, we are particularly seeking public comment and input on data that could help refine those scenarios where uncertainties exists and risk estimates exceed the level of concern, which are identified in the Agency's risk assessments available in the docket. Specifically, there is uncertainly regarding the residential handler and postapplication cancer risks. In order to identify the residential exposure scenarios that may pose risks of concern, the Agency is seeking public comment on the typical number of applications associated with those homeowner scenarios assessed. Additionally, the Agency is looking for consumer information on the market segments that utilize impregnated clothing and the use pattern of these products (i.e. types of impregnated clothing purchased and worn, number of times the article of clothing is worn and washed, etc.). Refer to the Permethrin Overview document available in the docket for further discussion of uncertainties and data needs regarding residential uses. Further, the only occupational risks of concern identified resulted from use of permethrin in mushroom houses. The Agency is seeking typical use information on permethrin applied in mushroom houses (i.e. current level of personal protective equipment worn, application rate, and percent crop treated, etc.), as well as benefits of this use, and potential risk mitigation ideas. Additionally, the Agency is interested in obtaining data or information that would assist in refining the risks identified in the ecological assessment, such as the typical use of buffer zones in areas where permethrin is applied close to bodies of water. Finally, additional data are being requested regarding the potential ecological risk resulting from permethrin formulations that contain the synergist piperponyl butoxide (PBO). Few toxicity studies are available on formulations of permethrin/PBO. In order to assess any increased toxicity of permethrin active ingredient when formulated with a synergist, the Agency is requesting the submission of existing permethrin/PBO toxicity studies, and public comment on additional studies that may need to be generated to address this issue. Refer to the Overview document for more discussion of this matter.

EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical, unusually high exposure to permethrin, compared to the general population.

EPA is releasing for public comment its risk assessments for permethrin, to provide an opportunity for interested parties to also provide risk management proposals or otherwise comment on risk management. Such comments and proposals should further discuss ways to manage permethrin's occupational, residential, and/or ecological risks resulting from its many uses, as discussed in the Agency's risk assessments.

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 the issues, and degree of public concern associated with each pesticide. At this time for permethrin, a modified 4–Phase process with one public comment period and ample opportunity for public consultation seems appropriate in due to the number and level of risk concerns. However, if as a result of comments received during this comment period EPA finds that additional issues warranting further discussion are raised, the Agency may consider an additional comment period, as needed.

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. Comments will become part of the Agency Docket for permethrin. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

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

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, "the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration," before calling in product specific data on individual end-use products and either reregistering products or taking other "appropriate regulatory 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: August 25, 2005.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs

[FR Doc. 05–17365 Filed 8–30–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0219; FRL–7731–7]

Chlorsulfuron Reregistration Eligibility Decision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's Reregistration Eligibility Decision (RED) for the pesticide chlorsulfuron. The Agency's risk assessments and other related documents also are available in the chlorsulfuron Docket. Chlorsulfuron is used as a pre-and post-emergent herbicide to control a variety of weeds on cereal grains, pasture and rangeland, industrial sites, and turf grass. EPA has reviewed chlorsulfuron through the public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

FOR FURTHER INFORMATION CONTACT: Susan Jennings, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (706) 355–8574; fax number: (706) 355–8744; e-mail address:*jennings.susan@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, 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 identification (ID) number OPP–2004–0219. 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 view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Background

A. What Action is the Agency Taking?

Under section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is reevaluating existing pesticides to ensure that they meet current scientific and regulatory standards. EPA has completed a Reregistration Eligibility Decision (RED) for the pesticide, chlorsulfuron under section 4(g)(2)(A) of FIFRA. Chlorsulfuron is used as a pre- and post-emergent herbicide to control a variety of weeds on cereal grains, pasture and rangeland, industrial sites, and turf grass. EPA has determined that the data base to support reregistration is substantially complete and that products containing chlorsulfuron are eligible for reregistration, provided the risks are mitigated either in the manner described in the RED or by another means that achieves equivalent risk reduction. Upon submission of any required product-specific data under section 4(g)(2)(B) and any necessary changes to the registration and labeling (either to address concerns identified in the RED or as a result of product-specific data), EPA will make a final reregistration decision under section 4(g)(2)(C) for products containing chlorsulfuron.

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 (69 FR 26819) (FRL–7357–9), explains that in conducting these programs, EPA 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. Due to its uses, risks, and other factors, chlorsulfuron was reviewed through the modified 4–Phase public participation process. Through this process, EPA worked extensively with stakeholders and the public to reach the regulatory decisions for chlorsulfuron.

The reregistration program is being conducted under Congressionally-mandated time frames, and EPA recognizes the need both to make timely decisions and to involve the public. Because few substantive comments were received during the earlier comment period for this pesticide and all issues related to this pesticide were resolved through consultations with stakeholders, the Agency is issuing the chlorsulfuron RED without a comment period.

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

Section 4(g)(2) of FIFRA as amended, directs that, after submission of all data concerning a pesticide active ingredient,"the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration," before calling in product-specific data on individual end-use products and either reregistering products or taking other "appropriate regulatory action."

List of Subjects

Environmental protection, Pesticides and pests.

Dated: August 10, 2005.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 05–16384 Filed 8–30–05 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0220; FRL–7729–1]

Dicofol; Addendum and Closure of Reregistration Eligibility Decision; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's intention to resolve certain issues not addressed in the 1998 Reregistration Eligibility Decision (RED) for the miticide dicofol, and opens a public comment period on this addendum. At the time the RED was completed, the Agency was concerned with risks posed to occupational workers. In order to adequately determine re-entry intervals (REIs), the registrant submitted a dermal toxicity study and a chemical specific dislodgeable foliar residue study. The Agency has reviewed these studies and continues to be concerned with occupational exposure from most crops. To protect workers, the Agency has determined that longer REIs are required. The addendum to the dicofol RED establishes REIs that were not finalized in the RED and provides rationale and potential impact analysis for establishing longer REIs. The Agency is seeking public comment on the practicality of the new REIs. If the new REIs are not practical, commenters should provide an explanation why, and explain why alternatives cannot be used to replace dicofol. EPA believes that increasing REIs for these crops will not likely result in negative economic or biological impacts.

DATES: Comments must be received on or before September 30, 2005.

ADDRESSES: Comments, identified by docket identification (ID) number OPP–2005–0220, 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: Mika J. Hunter, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–0041; fax number: (703) 308–8041; e-mail address: *hunter.mika@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–2005–0220. 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–2005–0220. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2005–0220. 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–2005–0220.

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–2005–0220. 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?

In 1998, EPA issued a RED for dicofol under section 4(g)(2)(A) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Subsequent to publication of this RED, the technical registrant submitted additional data to further refine dicofol use and exposure scenarios. At the time the RED was completed, the Agency had not established REIs, pending the submission of new data. The Agency has received and evaluated a dermal toxicity study and a chemical specific dislodgeable foliar residue study. To protect workers, the Agency is establishing longer REIs for beans, cane berries, citrus, cucurbits, grapes, hops, mint, non-residential turf and ornamentals, pecans, peppers, pomefruit, stone fruit, strawberries, tomatoes, and walnuts. Included in the addendum are rationale for increasing REIs and discussion of potential economic and biological impacts. After consulting with the U.S. Department of Agriculture and other contacts, the Agency believes that increasing REIs for these crops will not likely result in negative economic or biological impacts. The Agency is seeking public comment on the practicality of the new REIs. If the REIs are not practical, the Agency is asking for specific information regarding why alternatives cannot be used and why dicofol is a an important part of mite management.

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. Comments and proposals will become part of the Agency docket for dicofol. 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 RED in the **Federal Register**. In the absence of substantive comments requiring changes, the dicofol RED will be implemented as it is now presented.

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

Section 4(g)(2) of FIFRA, as amended, directs that, after submission of all data concerning a pesticide active ingredient, "the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration," before calling in product specific data on individual end-use products and either reregistering products or taking other "appropriate regulatory action."

Section 408(q) of the Federal Food, Drug, and Cosmetic Act (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: August 18, 2005.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 05–17205 Filed 8–30–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0183; FRL–7731–8]

Thiram; Amendment to Terminate Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's order for the amendment to terminate uses, voluntarily requested by the registrant and accepted by the Agency, of products containing the pesticide thiram, pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. This cancellation order follows an April 27, 2005 **Federal Register** Notice of Receipt of Request from the thiram registrant to voluntarily amend to terminate uses of thiram in or on apples. These are not the last thiram products registered for use in the United States. In the April 27, 2005 Notice, EPA indicated that it would issue an order implementing the amendment to terminate uses, unless the Agency received substantive comments within the 30–day comment period that would merit its further review of this request, or unless the registrant withdrew their request within this period. The Agency did not receive any comments on the Notice. Further, the registrant did not withdraw their request. Accordingly, EPA hereby issues in this notice a cancellation order granting the requested amendment to terminate uses. Any distribution, sale, or use of the thiram products subject to this cancellation order is permitted only in accordance with the terms of this order, including any existing stocks provisions.

DATES: The cancellations are effective August 31, 2005.

FOR FURTHER INFORMATION CONTACT: Craig Doty, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–0122; fax number: (703) 308–8041; e-mail address: *doty.craig@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 identification (ID) number OPP–2004–0183. 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 view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. What Action is the Agency Taking?

This notice announces the amendment to terminate use, as requested by registrants, of certain end-use and/or manufacturing-use thiram products registered under section 3 of FIFRA. These registrations are listed in sequence by registration number in Table 1 of this unit.

TABLE 1— THIRAM PRODUCT REGISTRATION AMENDMENTS TO TERMINATE USES

EPA Registration No.	Product Name
45728–1	Thiram Technical
45728–21	Thiram 75 WP Fruit, Vegetable and Turf Fungicide
45728–24	Thiram 65

Table 2 of this unit includes the name and address of record for the registrant of the products in Table 1 of this unit.

TABLE 2— AMENDED THIRAM PRODUCTS

EPA Company No.	Company Name and Address
45728	Taminco, Inc. 1950 Lake Park Drive Smyrna, GA 30080

III. Summary of Public Comments Received and Agency Response to Comments

During the public comment period provided, EPA received no comments in response to the April 27, 2005 **Federal Register** notice announcing the Agency's receipt of the request for voluntary amendment to terminate uses of thiram.

IV. Cancellation Order

Pursuant to FIFRA section 6(f), EPA hereby approves the requested amendment to terminate uses of thiram registrations identified in Table 1 of Unit II. Accordingly, the Agency orders that the thiram product registrations identified in Table 1 are hereby amended to terminate the affected uses. Any distribution, sale, or use of existing stocks of the products identified in Table 1 of Unit II. in a manner inconsistent with any of the Provisions for Disposition of Existing Stocks set forth below in Unit VI. will be considered a violation of FIFRA.

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

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the Administrator may approve such a request.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. The cancellation order issued in this Notice includes the following existing stocks provisions.

Persons other than the registrant may continue to sell and/or use existing stocks of amended products until such stocks are exhausted, provided that such use is consistent with the terms of the previously approved labeling on, or that accompanied, the amended product. This order specifically prohibits any use of existing stocks that is not consistent with such previously approved labeling.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: August 18, 2005.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 05–17126 Filed 8–30–05; 8:45 am]

BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0195; FRL–7730–4]

Ethalfluralin; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket identification (ID) number OPP–2005–0195, must be received on or before September 30, 2005.

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

FOR FURTHER INFORMATION CONTACT: Sidney Jackson, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7610; e-mail address:*jackson.sidney@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

- Crop production (NAICS code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS 32532)

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

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

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP–2005–0195. 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. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets.

Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

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–2005–0195. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID number OPP–2005–0195. 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–2005–0195.

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–2005–0195. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

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

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 19, 2005.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner's summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by Interregional Research Project Number 4 (IR-4), and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Interregional Research Project Number 4 (IR-4)

PP 1E6326, PP 2E6360 and PP 2E6466

EPA has received pesticide petitions 1E6326, 2E6360 and from the Interregional Research Project Number 4 (IR-4), P.O. Box 231, Rutgers University, New Brunswick, NJ 08903 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180, by establishing tolerances for residues of ethalfluralin in or on the raw agricultural commodities rapeseed, canola, crambe, and mustard seed at 0.05 parts per million (ppm), potato at 0.05 ppm, and dill, at 0.05 ppm. IR-4 submitted the petitions on behalf of the registrant, Dow AgroSciences LLC, who prepared this notice of filing. EPA has determined that the petitions contain data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* Nature of residue studies with 14C-ethalfluralin have demonstrated very low terminal residues and that ethalfluralin per se is the residue of concern in plants grown in soil treated with this compound and that there are no significant metabolic products. These studies indicate that it is appropriate to base a tolerance on residues of the parent compound, ethalfluralin.

2. *Analytical method*—i. *Rapeseed.* A residue method has been developed and validated at a limit of quantitation (LOQ) of 0.02 µg/g for the determination of ethalfluralin in rapeseed seed which utilizes capillary gas chromatography with mass selective detection (GC/MSD). Validation data were generated using this method during the analysis of the canola seed field samples from the magnitude of residue studies.

ii. *Potato.* The residue method used for determination of ethalfluralin in potato was based upon Analytical Method No. AM-AA-CA-R025-AB-755, "Determination of Ethalfluralin in Agricultural Crops and Soil; Determination of Ethalfluralin in Potato and Potato Processed Products." Analysis was by gas chromatography using an electron capture detector. The analytical method was determined to have an LOQ of 0.05 ppm and a limit of detection (LOD) of 0.016 ppm.

iii. *Canola.* A residue method has been developed and validated at an LOQ of 0.02 µg/g for the determination of ethalfluralin in canola seed which utilizes capillary gas chromatography with mass selective detection (GC/MSD). Validation data were generated using this method during the analysis of the canola seed field samples from the magnitude of residue studies.

iv. *Safflower.* Adequate residue analytical methods are available for purposes of registration based upon the analytical method for sunflower. A GC method, Method I, with electron capture detection is listed in the Pesticide Analytical Manual (PAM, Vol. II, Section 180.416) for tolerance enforcement. Method I is applicable for analysis of ethalfluralin residues in or on sunflower seed. The LOD is 0.01 ppm.

v. *Dill.* Dill was analyzed by the method "Determination of Ethalfluralin in Agricultural Crops and Soil," Residue Method Number AM-AA-CA-R025-AB-755, Lilly Research Laboratories, Greenfield, IN (currently Dow AgroSciences). The LOQ was 0.050 ppm by a gas chromatograph with a Ni63 electron capture detector(ECD). Method validation was performed both prior to and concurrently with sample analysis.

3. *Magnitude of residues*—i. *Canola.* In the magnitude of residue field studies, herbicides containing the active ingredient ethalfluralin N-ethyl-N-(2-methyl-2-propenyl)-2,6-dinitro-4-(trifluoromethyl) benzenamine were applied in 1996 at eight sites as a preplant incorporated application. Sonalan* 10G herbicide was applied directly to the soil surface and Sonalan* HFP herbicide was diluted in water and applied in a spray volume of 16–23 gallon/Acre (gal/A). The applications were made to field plots of canola at the rate of 1.25 lb active ingredient/Acre (a.i./A) at all sites except GA and WA, and at the rate of 0.75 lb a.i./A (GA and WA). Three to five days after application, a second incorporation was done and canola seeds were planted. Samples of canola seeds were collected at normal harvest, 87–216 days after the last application. Residues in canola seed collected at normal harvest were non-detectable based on a method lower limit of detection of 0.004 ppm.

ii. *Potato.* In the magnitude of residue field studies, ethalfluralin N-ethyl-N-(2-methyl-2-propenyl)-2,6-dinitro-4-(trifluoromethyl) benzenamine was applied as a preemergence broadcast treatment at a nominal rate of 1.0 lb a.i./acre and was incorporated into the soil

with the use of sprinkler irrigation or a drag harrow. Samples of marketable potatoes were collected at normal harvest, 65–143 days after treatment application. No residues of ethalfluralin above the limit of detection were observed in the potato raw agricultural commodity (RAC) or processed fractions (chips, flakes, and wet peel).

iii. *Safflower.* The magnitude of residue data from sunflower are surrogate data for safflower. The registered uses of ethalfluralin on sunflowers along with the established tolerances on these commodities are supported by acceptable field residue data from trials reflecting the maximum registered use patterns. In all cases, the residues were <0.01 ppm. The reregistration requirements for processing studies were fulfilled. Adequate processing studies have been conducted on sunflower seed. Field residue data resulting from up to 5X label rates showed non-detectable (<0.01 ppm) residues of ethalfluralin in sunflower seed.

iv. *Dill.* In the magnitude of residue field studies, herbicides containing the active ingredient ethalfluralin N-ethyl-N-(2-methyl-2-propenyl)-2,6-dinitro-4-(trifluoromethyl) benzenamine were applied in 1997 at three sites. Ethalfluralin formulated as Curbit EC was applied directly to the soil surface, diluted in water and applied in a spray volume of 36 gal/A. The applications were made to field plots of canola at the rate of 1.5 lb a.i./A and incorporated by sprinkler irrigation. Samples of dill were collected at normal harvest, 91–100 days after the last application. Residues in fresh and dried dill collected at normal harvest were non-detectable based on a method lower limit of detection of 0.05 ppm.

B. Toxicological Profile

1. *Acute toxicity.* Ethalfluralin is of relatively low toxicity. The rat oral lethal dose, LD_{50} is >10,000 mg/kg. The acute dermal LD_{50} in rabbits is >2,000 milligram/kilogram (mg/kg) and the acute rat inhalation lethal concentration LC_{50} is >0.94 mg/liter (L) air. Ethalfluralin produced slight eye irritation and slight dermal irritation in rabbits. A guinea pig dermal sensitization study conducted by the modified Buehler method found no sensitization, whereas a study conducted by the Magnusson and Kligman maximization method showed a positive sensitization reaction. The signal word for the technical grade active ingredient is "Caution."

2. *Genotoxicty.* Ethalfluralin was weakly mutagenic in activated strains TA1535 and TA100 of *salmonella typhimurium*, but not in strains TA1537, TA1538, and TA98 in an Ames assay. In a modified Ames assay with *salmonella typhimurium* and *e- coli*, ethalfluralin was weakly mutagenic in strains TA1535 and TA100, with and without activation, and in strain TA98 without activation, at the highest dose. No mutagenicity was found in the mouse lymphoma assay for forward mutation. Ethalfluralin did not induce unscheduled DNA synthesis in rat hepatocytes. In Chinese hamster ovary cells, ethalfluralin was negative without S9 activation, but it was clastogenic with activation.

3. *Reproductive and developmental toxicity.* The maternal no-observed adverse effect level (NOAEL) of ethalfluralin in rats was 50 mg/kg/day. The maternal lowest observed adverse effect level (LOAEL) was 250 mg/kg/day, based on decreased body weight gain and dark urine. In this rat study there was no observable developmental toxicity. The developmental NOAEL in rats was 1,000 mg/kg/day, the highest dose. In rabbits the NOAELs for maternal and developmental toxicity were 75 mg/kg/day. The maternal LOAEL at 150 mg/kg/day was based on abortions and decreased food consumption. These effects as well as decreased weight gain, enlarged liver, and orange urine were found at 300 mg/kg/day. In this study developmental toxicity was observed. The developmental LOAEL in rabbits was 150 mg/kg/day, based on slightly increased resorptions, abnormal cranial development, and increased sternal variants. In a three-generation rat reproduction study, the parental NOAEL was 12.5 mg/kg/day. The parental LOAEL was 37.5 mg/kg/day, based on depressed mean body weight gains in males in all generations. No treatment-related effects were noted on reproductive parameters and the NOAEL was 37.5 mg/kg/day or greater. A 7–month multigeneration bridging study was conducted with doses equivalent to 0, 8, 20, or 61 mg/kg/day in the diet of Fischer 344 rats. The parental NOAEL was 20 mg/kg/day. The parental LOAEL was 61 mg/kg/day based on increased liver weights. No treatment-related effects were noted on reproductive parameters and the reproductive NOAEL was equal to or greater than 61 mg/kg/day.

4. *Subchronic toxicity.* Ethalfluralin was evaluated in five subchronic dietary studies which showed NOAELs of 560 ppm in a 3-month mouse study, 12 mg/kg/day in a 1–year mouse study, 29 mg/kg/day in a 3-month rat study, 3.9 mg/kg/day in male rats and 4.9 mg/kg/day in female rats in a 1–year study, and 27.5 mg/kg/day in a 3–month dog study. A 21–day dermal study in rabbits showed no systemic toxicity, while slight to severe dermal irritation was observed.

5. *Chronic toxicity.* Ethalfluralin was administered to Fisher 344 rats in the diet for 2 years in combined chronic toxicity and carcinogenicity replicate studies. The doses were equivalent to 0, 4.2, 10.7, or 32.3 mg/kg/day. The NOAEL for systemic effects was 32.3 mg/kg/day. Mammary gland fibroadenomas were found in dosed female rats at statistically significant incidences in the mid and high doses. Ethalfluralin was administered to B6C3F1 mice in the diet for 2 years in combined chronic toxicity and carcinogenicity replicate studies. The doses were equivalent to 0, 10.3, 41.9, or 163.3 mg/kg/day. No increased incidence of neoplasms was attributed to the treatment. The NOAEL was 10.3 mg/kg/day. The mid-dose (LOAEL) and high–dose showed focal hepatocellular hyperplasia in both sexes. There were increased relative liver, kidney, and heart weights in females. Some blood changes were found also, including decreased hematocrit, hemoglobin, and erythrocyte count accompanied by increased mean corpuscular hemoglobin concentration in high dose females. Alkaline phosphatase values were increased at the high dose in both sexes. Body weight gain decreased at the high dose.

Beagle dogs were given 0, 4, 20, or 80 mg/kg/day orally, by capsule, for 1 year. The NOAEL was 4 mg/kg/day. The LOAEL was 20 mg/kg/day, based on increased urinary bilirubin, variations in erythrocyte morphology, increased thrombocyte count, and increased erythroid series of the bone marrow. Elevated alkaline phosphatase levels were found at the two higher doses and siderosis of the liver at the high dose.

EPA's Office of Pesticide Program's Carcinogenicity Peer Review Committee concluded that, ethalfluralin should be classified as Group C, a possible human carcinogen, based on increased mammary gland fibroadenomas and adenomas/fibroadenomas combined in female rats. The tumor incidences were statistically significant at both the mid and high dose, and exceeded the upper range of historical controls. Based on a low dose extrapolation, the $Q1^*$ of 8.9×10^{-2} $(mg/kg/day)^{-1}$ has been calculated.

6. *Animal metabolism.* Fischer 344 rats were treated orally with a single low dose, a single high dose, or repeated low doses of radiolabeled ethalfluralin. Absorption of ethalfluralin was estimated at 79% - 87% of the dose for all dose levels. Ethalfluralin was rapidly

and extensively metabolized, and 95% of the chemical was excreted in urine and feces by 7 days. The major route of elimination for the radiolabel was in the feces, 50.9% - 63.2%, and the levels remaining in the tissues after 72 hours were negligible. The major metabolites in urine and feces were identified.

7. *Metabolite toxicology.* The residue of concern is ethalfluralin per se, as specified in 40 CFR 180.416. Thus, there is no need to address metabolite toxicity.

8. *Endocrine disruption.* There is no evidence to suggest that ethalfluralin has an effect on any endocrine system.

C. Aggregate Exposure

1. *Dietary exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an acute effect of concern occurring as a result of a 1–day or single exposure. EPA has previously used a NOAEL of 75 mg/kg/day from a rabbit developmental toxicity study as the toxicity endpoint for assessing acute dietary risk in females 13–50 years of age. An acute reference dose (aRfD) of 0.75 mg/kg/day was calculated, based on a NOAEL of 75 mg/kg/day and an uncertainty factor of 100 (10 for interspecies extrapolation and 10 for intraspecies variation). EPA has previously added a 3X FQPA safety factor, resulting in an acute poputiou adjusted dose (aPAD) of 0.25 mg/kg/day. Likewise, in this assessment acute dietary risk to females 13–50 years old was based on an aPAD of 0.25 mg/kg/day.

Chronic dietary exposure to ethalfluralin is possible due to the potential presence of ethalfluralin residue in certain foods. Chronic dietary risk was evaluated using a chronic RfD of 0.04 mg/kg/day, which is based on a NOAEL of 4 mg/kg/day from a chronic dog study along with an uncertainty factor of 100. EPA previously concluded that an FQPA Safety Factor of 1X is appropriate for assessing chronic dietary risk.

EPA has concluded, that ethalfluralin should be classified as group C, a possible human carcinogen, based on increased mammary gland fibroadenomas and adenomas/fibroadenomas combined in female rats. Therefore, a cancer risk assessment was included. Based on a low dose extrapolation, the Q1* of 8.9×10^{-2} (mg/kg/day)$^{-1}$ has been calculated and was used in this cancer risk assessment.

i. *Food.* The dietary exposure assessment was based on all commodities with tolerances for ethalfluralin established at 40 CFR 180.416 together with the proposed tolerances of 0.05 ppm for rapeseed, 0.05 ppm for potatoes, and 0.05 ppm for dill, canola and safflower. The Dietary Exposure Evaluation Model (DEEM™), which is produced by Novigen Sciences, Inc. and licensed to Dow AgroSciences, was used to estimate dietary exposure. This software used the food consumption data for the 1989–1991 USDA Continuing Surveys of Food Intake by Individuals (CSFII 1989–1991).

a. *Acute.* An acute dietary risk assessment was conducted with the conservative assumptions of 100% crop treated and tolerance level residues for all crops. These assumptions result in a very conservative estimate of human exposure and risk. Acute dietary risk for females 13+ years old was assessed using an acute population adjusted dose (aPAD) of 0.25 mg/kg/day. Even with conservative assumptions used in this analysis acute dietary exposure was estimated to occupy only 0.05% of the aPAD for females 13+ years old. Adverse effects are not expected for exposures occupying 100% or less of the aPAD. Therefore, acute exposure and risk from food is well within acceptable levels.

b. *Chronic.* Chronic dietary exposure and risk was estimated with the conservative assumptions of 100% crop treated and tolerance level residues for all crops. The estimate of potential chronic exposure and risk is very conservative and estimated risk would be substantially reduced with further refinement to the exposure estimate. Even with the conservative assumptions used in this analysis, chronic exposure is estimated to occupy only 0.2% of the RfD for the general U.S. population. Chronic dietary exposure is estimated to occupy 0.4% of the RfD for non-nursing infants, the population subgroup estimated to have highest potential exposure. Therefore, chronic exposure and risk from food is well within acceptable levels.

c. *Cancer.* Cancer risk was estimated based on percent crop treated and anticipated residues (AR) as provided in EPA's Reregistration Eligibility Decision (RED) for ethalfluralin and EPA's final rule concerning tolerances for residue of ethalfluralin in or on canola seed and safflower seed (67 FR 2333, January 17, 2002). Since ethalfluralin residue in potatoes was below the LOD, a residue of ½ the LOD or 0.008 ppm was assigned to potatoes for use in cancer risk assessment. Additionally, this dietary risk assessment was based on 40% of the U.S. potato crop being treated with ethalfluralin. Based on both registered and proposed product uses, exposure to ethalfluralin from food is estimated to not exceed a lifetime cancer risk of 8.47×10^{-7}. Cancer risks of less than 1×10^{-6} are generally considered to be negligible.

ii. *Drinking water.* There are no established maximum contaminant levels (MCLs) for residues of ethalfluralin in drinking water and health advisory levels (HALs) for ethalfluralin have not been established. EPA has previously used modeling for a screening level assessment of potential ethalfluralin exposure through drinking water. The Agency has used EPA's pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) and screening concentration in ground water (SCI-GRO) to provide a screening level assessment for surface water and ground water, respectively. Based on these models EPA has indicated the estimated environmental concentrations (EECs) for acute exposures are 2.3 parts per billion (ppb) for surface water and 0.02 ppb for ground water. The EECs for chronic exposures are estimated to be 0.052 ppb for surface water and 0.02 ppb for ground water. Estimated concentrations of a pesticide are compared to a Drinking Water level of Comparison (DWLOC) as a surrogate estimate of exposure and risk. The DWLOC is the concentration of a pesticide in drinking water that would be acceptable as an upper limit in light of total aggregate exposure to that pesticide.

a. *Acute.* As indicated previously, EPA has used surface water and ground water EECs of 2.3 ppb and 0.02 ppb, respectively, for comparison with the DWLOC in an acute assessment. The DWLOC for acute exposure in females 13+ years old was based on an aPAD of 0.25 mg/kg/day and was calculated to be 7,500 ppb. Therefore, the acute DWLOC for ethalfluralin is over 3,000 fold greater than the EEC for surface water or ground water, indicating that potential acute exposure and risk from drinking water is well within acceptable levels.

b. *Chronic.* As indicated previously, EPA has used surface water and ground water EECs of 0.052 ppb and 0.02 ppb, respectively, for comparison with the DWLOC in a chronic assessment. The chronic DWLOC was calculated based on a chronic RfD of 0.04 mg/kg/day and accounted for potential chronic exposure to ethalfluralin through residues in food. The chronic DWLOC for the general U.S. population and non-nursing infants was calculated to be 1,400 ppb and 400 ppb, respectively. Therefore, chronic DWLOCs are substantially greater than estimated residue concentration in surface water or ground water over a chronic exposure period, indicating that chronic exposure

and risk from drinking water are well within acceptable levels.

c. *Cancer.* The DWLOC for the cancer risk assessment was calculated to be 0.12 ppb. Surface water and ground water EECs of 0.052 ppb and 0.02 ppb, respectively, were used for comparison with the DWLOC. The EECs are below the DWLOC, indicating that the cancer risk would generally be considered negligible.

2. *Non-dietary exposure.* Ethalfluralin is not currently registered for use on any residential non-food sites, and thus, it is not expected that non-occupational, non-dietary exposures will occur.

D. Cumulative Effects

EPA at this time has not established methodologies to resolve the complex issues concerning common mechanism of toxicity in a meaningful way. Although, ethalfluralin is a member of the dinitroaniline class of herbicides, there is no information available at this time to determine whether ethalfluralin has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Based on the metabolic profile, the registrant concludes that ethalfluralin does not appear to produce a toxic metabolite produced by other substances. Therefore, only aggregate exposure and risk were considered.

E. Safety Determination

1. *U.S. population.* Using conservative exposure assumptions previously described, chronic dietary exposure to residues of ethalfluralin from current and proposed uses was estimated to occupy only 0.2% of the RfD for the general U.S. population. EPA generally has no concern for exposures below 100% of the RfD since the RfD represents the level at or below which daily exposure over a lifetime will not pose appreciable risks to human health. Additionally, the chronic DWLOC was found to be substantially greater than EECs for ethalfluralin in surface water or ground water, indicating risk is well within acceptable levels. Cancer risk resulting from potential exposure to ethalfluralin through food and drinking water was estimated. Cancer risk from potential dietary and drinking water exposure for the general U.S. population was found to be within a range that EPA has generally considered negligible. Thus, based on the completeness and reliability of the toxicity data and the conservative exposure assessment, it is concluded that, there is a reasonable certainty that no harm will result to the general U.S. population from aggregate exposure to ethalfluralin residues from current and proposed uses.

2. *Infants and children.* Risk for developmental toxicity from acute exposure to ethalfluralin was evaluated for females 13+ years old. As indicated in the previous discussion, risk from aggregate acute exposure to ethalfluralin through food and drinking water is well within acceptable levels. It can be concluded that there is a reasonable certainty that no harm will result for both females 13+ years old and for the pre-natal development of infants from aggregate acute exposure to ethalfluralin.

Chronic aggregate exposure and risk was evaluated for non-nursing infants, the population subgroup predicted to be most highly exposed. As indicated previously, risk from aggregate chronic exposure through food and drinking water is well within acceptable levels. Thus, based on the completeness and reliability of the toxicity data and the conservative exposure assessment, it can be concluded with reasonable certainty that no harm will result to infants and children from chronic aggregate exposure to ethalfluralin based on current and proposed uses.

F. International Tolerances

There are no Codex, Canadian or Mexican maximum residue limits established for ethalfluralin.

[FR Doc. 05–17124 Filed 8–30–05; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0235; FRL–7733–1]

Fenarimol; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket identification (ID) number OPP–2005–0235, must be received on or before September 30, 2005.

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

FOR FURTHER INFORMATION CONTACT: Barbara Madden, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6463; e-mail address: *madden.barbara@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

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

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

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP–2005–0235. 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. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1 EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2005–0235. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2005–0235. 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–2005–0235.

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–2005–0235. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of

the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

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

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 19, 2005.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Interregional Research Project Number 4

PP 5E4573

EPA has received a pesticide petition (PP 5E4573) from Interregional Research Project Number 4 (IR-4), 681 U.S. Highway #1 South, North Brunswick, NJ 08902–3390 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of fenarimol [alpha-(2-chlorophenyl)-alpha-(4-chlorophenyl)-5-pyrimidinemethanol] in or on the raw agricultural commodity filbert at 0.02 parts per million (ppm). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The nature of the residue in fenarimol-treated filbert has not been directly determined. Radioactive metabolism studies with apples and cherries indicate that fenarimol is the only significant component of the residue in apples and cherries. The residue of concern in filbert is fenarimol.

2. *Analytical method.* Analytical methodology used for filbert is a slight modification of the basic Pesticide analytical manual (PAM II) method for fenarimol (Method R039). Residues are extracted with methanol. Aqueous sodium chloride (5%) is added and the extract is partitioned with dichloromethane. Residues are cleaned up on a Florisil column and detected by Gas chromatography/electron capture detector (GC/ECD). Recoveries ranged from 84% to 97% in samples fortified with fenarimol at 0.02 ppm to 0.2 ppm. The limit of detection via this method is <0.02 ppm.

3. *Magnitude of residues.* IR-4 data from 4 residue trials show residues of fenarimol were <0.02 ppm in composite samples of filbert treated at 0.09 pound of active ingredient per acre (lb ai/A) and composite samples treated at 0.18 lb ai/A or two times the proposed maximum application rate. The data indicates that fenarimol residues would not be expected to accumulate to significant levels in filbert. Based on these results and for purposes of this petition, it is appropriate to base the magnitude of total terminal residues and proposed tolerance only on residues of the parent compound, fenarimol.

B. Toxicological Profile

1. *Acute toxicity.* The acute oral lethal dose (LD_{50}) in the rat is 2,500 milligrams per kilogram (mg/kg) and the acute dermal LD_{50} in the rabbit is >2,000 mg/kg. The inhalation lethal concentration (LC_{50}) in the rat is >2.04 mg/liter of air, which is the highest obtainable respirable aerosol concentration. Fenarimol produced no indications of dermal irritation in rabbits or sensitization in the guinea pig. End use formulations of fenarimol have similar low acute toxicity profiles.

2. *Genotoxicity.* Fenarimol tested negative in several assay systems for gene mutation, structural chromosome aberration, and other genotoxic effects. In a micronucleus test in the mouse, fenarimol did produce a significant increase in the percent of polychromatic erythrocytes with micronucleus at 24 hours but not at 48 or 72 hours. Moreover, a second test run at a higher dosage, which produced significant toxicity including death, was unequivocally negative.

3. *Reproductive and developmental toxicity.* A developmental toxicity study in rabbits was negative for teratogenic effects at all doses tested (0, 5, 10, and 35 mg/kg). A developmental toxicity study in rats demonstrated hydronephrosis at 35 mg/kg (doses tested were 0, 5, 10, and 35 mg/kg). A second developmental toxicity study in rats, with a postpartum evaluation, again demonstrated hydronephrosis at 35 mg/kg. Maternal toxicity (decreased body weight) was also observed at the 35 milligrams/kilogram/day (mg/kg/day) dose level. The no observed effect level (NOEL) for hydronephrosis and maternal toxicity is 13 mg/kg.

4. *Chronic toxicity.* A 2–year chronic toxicity and carcinogenicity study in rats fed diets containing 0, 50, 130, or 350 ppm (equivalent to 2.5, 6.5, or 17.5

mg/kg/day) resulted in a systemic NOEL of 130 ppm, equivalent to 6.5 mg/kg/day. An increase in fatty liver changes was observed in rats fed diets containing 350 ppm. There were no carcinogenic effects observed under the conditions of the study.

A second 2–year carcinogenicity study was conducted in rats fed diets containing 0, 12.5, 25, or 50 ppm, equivalent to 0, 0.63, 1.25, or 2.5 mg/kg/day. There was no apparent effect on survival, which was reduced in all treatment groups due to chronic respiratory disease. An increased incidence of fatty changes in the liver was observed at the top dose level of 50 ppm, and the NOEL was established as 25 ppm (1.2 mg/kg/day) in this study. A third 2–year carcinogenicity study was conducted at the same dose levels as above. The incidence of liver lesions was similar in the treated and control groups; thus the NOEL for liver effects in this study was greater than 50 ppm (2.5 mg/kg/day).

A 2–year feeding study was conducted in mice fed diets containing concentrations of 0, 50, 170, or 600 ppm, equivalent to 0, 7, 24.3, or 85.7 mg/kg/day. The 600 ppm dose level was shown to increase liver weight. There was no increase in cancer, and no toxicologically significant treatment related effects were observed at any dose level. The NOEL was determined to be 600 ppm (85.7 mg/kg/day).

In a 1–year chronic toxicity study, dogs were fed diets containing 0, 1.25, 12.5, or 125 mg/kg/day. The NOEL was 12.5 mg/kg/day based upon an increase in serum alkaline phosphatase, increased liver weights, an increase in p-nitroanisole o-demethylase activity, and mild hepatic bile stasis at the high dose level (125 mg/kg/day).

Based on the chronic toxicity data, the chronic Reference Dose (RfD) for fenarimol is established at 0.0006 mg/kg/day. The RfD for fenarimol is based on a 2–year chronic feeding study in rats with a NOEL of 6.5 mg/kg/day and an uncertainty factor of 1,000. For short-term <35 day risk assessments to females 13-50 years old, the Agency selected a LOAEL of 35 mg/kg/day based upon decreased fertility and dystocia in rats and an uncertainty factor of 3,000.

5. *Animal metabolism.* Metabolism studies conducted in rats show fenarimol is rapidly metabolized and excreted. Major metabolic pathways were oxidation of the carbinol-carbon atom, the phenyl rings and the pyrimidine ring.

6. *Endocrine disruption.* In a 3–generation reproduction study with rats and in subsequent special studies, fenarimol was determined to be a weak inhibitor of aromatase. Rats dosed at 0, 12.5, 25, or 50 ppm (equivalent to 0, 0.625, 1.25, or 2.5 mg/kg/day) demonstrated decreased fertility in males at 25 ppm and delayed parturition and dystocia in females at 25 and 50 ppm. The NOEL for reproductive effects was 12.5 ppm (0.625 mg/kg/day). The infertility effect in males is considered to be a species-specific effect mediated by the inhibition of aromatase, an enzyme which catalyzes the conversion of testosterone to estradiol. Estradiol plays an essential role in the developmental and maintenance of sexual behavior in rats.

Multi-generation reproduction studies in guinea pigs and mice were negative for reproductive effects at the highest dose levels tested, 35 mg/kg/day and 20 mg/kg/day, respectively. A NOEL of 35 mg/kg/day for reproductive effects relevant to humans was established based on the NOEL from the multi-generation reproduction study in guinea pigs.

C. Aggregate Exposure

1. *Dietary exposure*—i. *Food.* For the purposes of assessing the potential dietary exposure from use on filbert, an estimate of aggregate exposure is determined by basing the TMRC from previously established tolerances and the proposed tolerance on filbert for fenarimol at 0.02 parts per million (ppm) and assuming the 100% of the filbert crop has a residue of fenarimol at the tolerance level.

Exposure of humans to residues could also result if such residues are transferred to meat, milk, poultry, or eggs. Since there is no livestock feed commodity associated with filbert, there is no reasonable expectation that measurable secondary residues of fenarimol will occur in meat, milk, poultry, or eggs under the terms of the proposed use. Other established tolerances for fenarimol on food or feed crops in the United States are established under 40 CFR 180.421. The use of a tolerance level and 100% of crop treated clearly results in an overestimate of human exposure and a safety determination for use on filbert that is based on conservative exposure assessment.

ii. *Drinking water.* Based upon the available environmental studies conducted with fenarimol wherein its properties show little potential for mobility in soil and extremely rapid photolysis in water, there is no anticipated exposure to residues of fenarimol in drinking water.

2. *Non-dietary exposure.* The proposed use on filbert involves application of fenarimol to a crop grown in an agricultural environment. Thus, the potential for non-occupational, non-dietary exposure to the general population is not expected to be significant. There are no residential uses of fenarimol.

D. Cumulative Effects

There is no evidence that there is a common mechanism of toxicity with any other chemical compound or that potential toxic effects of fenarimol would be cumulative with those of any other pesticide chemical. Thus it is believed that it is appropriate to consider only the potential risks of fenarimol in its exposure assessment.

E. Safety Determination

1. *U.S. population.* It is concluded that aggregate exposure to fenarimol will utilize less than 2% of the chronic RfD for the U.S. general population and less than 14% of the acute RfD for females 13-50 at the 99.9 percentile level. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. It is concluded that there is a reasonable certainty that no harm will result from aggregate exposure to fenarimol residues in or on filbert.

2. *Infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of fenarimol, data from developmental toxicity studies in rats and rabbits and a multigeneration reproduction study in the rat are considered. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development to one or both parents. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability and potential systemic toxicity of mating animals and on various parameters associated with the well-being of offspring.

FFDCA section 408 provides that EPA may apply an additional safety factor for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the data base. Based on the current toxicological data requirements, the data base for fenarimol relative to pre- and post-natal effects for children is complete. Further, for fenarimol, the NOEL in the chronic feeding study which was used to calculate the RfD (6.5 mg/kg/day used by EPA or 1.2 mg/kg/day used by The World Health

Organization) is already lower than the NOELs from the developmental studies in rats and rabbits.

Concerning the multi-generation reproduction study, the effects on reproduction are considered to be specific effect caused by aromatase inhibition. The aromatase enzyme promotes normal sexual behavior in rats and mice, but not in guinea pigs or primates, including humans. A NOEL of 35 mg/kg/day for reproductive effects relevant to humans was established based on the NOEL from the multi-generation reproduction study in guinea pigs. In addition, a NOEL of 13 mg/kg/day for developmental effects was established based upon the NOEL from the teratology study in rats. Therefore, it is concluded that an additional uncertainty factor is not needed and that the RfD at 0.065 mg/kg/day is appropriate for assessing risk to infants and children.

F. International Tolerances

There is no Codex or national maximum residue level established for fenarimol on filbert.

[FR Doc. 05–17195 Filed 8–30–05; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0223; FRL–7730–2]

Pesticide Emergency Exemptions; Agency Decisions and State and Federal Agency Crisis Declarations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted or denied emergency exemptions under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for use of pesticides as listed in this notice. The exemptions or denials were granted during the period April 1, 2005 to June 30, 2005 to control unforseen pest outbreaks.

FOR FURTHER INFORMATION CONTACT: See each emergency exemption or denial for the name of a contact person. The following information applies to all contact persons: Team Leader, Emergency Response Team, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9366.

SUPPLEMENTARY INFORMATION: EPA has granted or denied emergency exemptions to the following State and Federal agencies. The emergency exemptions may take the following form: Crisis, public health, quarantine, or specific. EPA has also listed denied emergency exemption requests in this notice.

I. General Information

A. Does this Action Apply to Me?

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

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

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

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

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2005–0223. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 South Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Background

Under FIFRA section 18, EPA can authorize the use of a pesticide when emergency conditions exist. Authorizations (commonly called emergency exemptions) are granted to State and Federal agencies and are of four types:

1. A "specific exemption" authorizes use of a pesticide against specific pests on a limited acreage in a particular State. Most emergency exemptions are specific exemptions.

2. "Quarantine" and "public health" exemptions are a particular form of specific exemption issued for quarantine or public health purposes. These are rarely requested.

3. A "crisis exemption" is initiated by a State or Federal agency (and is confirmed by EPA) when there is insufficient time to request and obtain EPA permission for use of a pesticide in an emergency.

EPA may deny an emergency exemption: If the State or Federal agency cannot demonstrate that an emergency exists, if the use poses unacceptable risks to the environment, or if EPA cannot reach a conclusion that the proposed pesticide use is likely to result in "a reasonable certainty of no harm" to human health, including exposure of residues of the pesticide to infants and children.

If the emergency use of the pesticide on a food or feed commodity would result in pesticide chemical residues, EPA establishes a time-limited tolerance meeting the "reasonable certainty of no harm standard" of the Federal Food, Drug, and Cosmetic Act (FFDCA).

In this document: EPA identifies the State or Federal agency granted the exemption or denial, the type of exemption, the pesticide authorized and the pests, the crop or use for which authorized, number of acres (if applicable), and the duration of the exemption. EPA also gives the **Federal Register** citation for the time-limited tolerance, if any.

III. Emergency Exemptions and Denials

U.S. States and Territories

Alabama

Department of Agriculture and Industries

Specific: EPA authorized the use of diuron on catfish ponds to control blue green algae; April 25, 2005 to November 30, 2005. Contact: (Carmen Rodia)

Arizona

Department of Agriculture
Crisis: On May 04, 2005, for the use of quinoxyfen on watermelons to control powdery mildew. This program is expected to end on September 30, 2005. Contact: (Stacey Groce)

Arkansas

State Plant Board
Specific: EPA authorized the use of fomesafen on snap beans to control various weed pests; April 15, 2005 to September 15, 2005. Contact: (Andrea Conrath)
EPA authorized the use of spinosad on pasture grass to control armyworms; May 27, 2005 to December 31, 2005. Contact: (Andrew Ertman)
EPA authorized the use of diuron on catfish ponds to control blue green algae; May 27, 2005 to November 30, 2005. Contact: (Carmen Rodia)

California

Environmental Protection Agency, Department of Pesticide Regulation
Specific: EPA authorized the use of imidacloprid on pomegranates to control whiteflies; June 10, 2005 to August 15, 2005. Contact: (Andrew Ertman)

Colorado

Department of Agriculture
Crisis: On May 16, 2005, for the use of fluroxypyr on onions to control volunteer potatoes. This program ended on July 15, 2005. Contact: (Stacey Groce)
Quarantine: EPA authorized the use of myclobutanil on soybeans to control soybean rust; April 7, 2005 to November 10, 2007. Contact: (Andrew Ertman)
EPA authorized the use of propiconazole on soybeans to control soybean rust; April 7, 2005 to November 10, 2007. Contact: (Andrew Ertman)
EPA authorized the use of trifloxystrobin on soybeans to control soybean rust; April 8, 2005 to November 10, 2007. Contact: (Andrew Ertman)
Specific: EPA authorized the use of acibenzolar on onion to control iris yellow spot virus; April 8, 2005 to September 1, 2005. Contact: (Libby Pemberton)
EPA authorized the use of fomesafen on dry beans to control various weed pests; April 15, 2005 to July 15, 2005. Contact: (Andrea Conrath)

Delaware

Department of Agriculture
Specific: EPA authorized the use of fomesafen on snap beans] to control various weed pests; April 15, 2005 to October 1, 2005. Contact: (Andrea Conrath)

Florida

Department of Agriculture and Consumer Services
Specific: EPA authorized the use of fenbuconazole on grapefruit to control greasy spot disease; April 1, 2005 to October 1, 2005. Contact: (Andrea Conrath)
EPA authorized the use of thiophanate methyl in fruiting vegetables to control white mold; April 8, 2005 to April 7, 2006. Contact: (Andrea Conrath)

Georgia

Department of Agriculture
Quarantine: EPA authorized the use of trifloxystrobin on soybeans to control soybean rust; April 8, 2005 to November 10, 2007. Contact: (Andrew Ertman)
EPA authorized the use of myclobutanil on soybeans to control soybean rust; April 7, 2005 to November 10, 2007. Contact: (Andrew Ertman)
EPA authorized the use of propiconazole on soybeans to control soybean rust; April 7, 2005 to November 10, 2007. Contact: (Andrew Ertman)

Hawaii

Department of Agriculture
Quarantine: EPA authorized the use of calcium hydroxide in outdoor nurseries, commercial plant nurseries, residential areas, resorts and hotels, parks, forest habitats, and natural areas to control *coqui* and greenhouse frogs; April 26, 2005 to April 26, 2008. Contact: (Stacey Groce)

Idaho

Department of Agriculture
Specific: EPA authorized the use of fenpyroximate on hops to control spider mites; May 26, 2005 to September 15, 2005. Contact: (Andrea Conrath)
EPA authorized the use of spinosad on bulb onions to control thrips; June 8, 2005 to August 31, 2005. Contact: (Andrew Ertman)

Illinois

Department of Agriculture
Specific: EPA authorized the use of fomesafen on snap beans to control various weed pests; April 15, 2005 to August 31, 2005. Contact: (Andrea Conrath)
EPA authorized the use of tebuconazole on wheat to control*Fusarium* head blight; April 29, 2005 to June 20, 2005. Contact: (Libby Pemberton)

Indiana

Office of Indiana State Chemist
Specific: EPA authorized the use of fomesafen on snap beans to control various weed pests; April 15, 2005 to September 15, 2005. Contact: (Andrea Conrath)
EPA authorized the use of thiophanate methyl in blueberry to control various fungal pathogens; April 29, 2005 to September 30, 2005. Contact: (Andrea Conrath)
EPA authorized the use of tebuconazole on wheat to control*Fusarium* head blight; May 27, 2005 to June 30, 2005. Contact: (Libby Pemberton)

Iowa

Department of Agriculture and Land Stewardship

Specific: EPA authorized the use of fomesafen on dry beans to control various weed pests; May 13, 2005 to August 31, 2005. Contact: (Andrea Conrath)
EPA authorized the use of fomesafen on snap beans to control various weed pests; May 13, 2005 to August 31, 2005. Contact: (Andrea Conrath)

Kansas

Department of Agriculture
Specific: EPA authorized the use of tebuconazole on sunflower to control rust; April 7, 2005 to September 15, 2005. Contact: (Libby Pemberton)
EPA authorized the use of propiconazole on sorghum to control sorghum ergot; June 29, 2005 to December 31, 2005. Contact: (Libby Pemberton)

Kentucky

Department of Agriculture
Crisis: On April 22, 2005, for the use of tebuconazole on wheat to control *Fusarium* head blight. This program ended on May 6, 2005. Contact: (Libby Pemberton)
Specific: EPA authorized the use of tebuconazole on wheat to control *Fusarium* head blight; April 29, 2005 to May 30, 2005. Contact: (Libby Pemberton)
EPA authorized the use of azoxystrobin on tobacco to control Frogeye (Cercospora nicotianae) and Target spot (Thanatephorus cucumeris/Rhizoctonia solani); June 24, 2005 to October 15, 2005. Contact: (Libby Pemberton)

Louisiana

Department of Agriculture and Forestry
Specific: EPA authorized the use of bifenthrin on sweet potato to control soil beetle complex; April 29, 2005 to

November 30, 2005. Contact: (Andrea Conrath)
EPA authorized the use of halosulfuron-methyl on sweet potatoes to control sedges; June 10, 2005 to August 1, 2005. Contact: (Andrew Ertman)
EPA authorized the use of methoxyfenozide on soybeans to control soybean loopers; June 30, 2005 to September 30, 2005. Contact: (Stacey Groce)

Maine

Department of Agriculture, Food, and Rural Resources
Specific: EPA authorized the use of propiconazole on blueberry to control mummyberry disease; April 6, 2005 to June 30, 2005. Contact: (Andrea Conrath)
EPA authorized the use of fomesafen on dry beans to control various weed pests; April 15, 2005 to July 15, 2005. Contact: (Andrea Conrath)

Maryland

Department of Agriculture
Specific: EPA authorized the use of fomesafen on snap beans to control various weed pests; May 13, 2005 to September 15, 2005. Contact: (Andrea Conrath)
EPA authorized the use of terbacil] on [watermelon] to control annual broadleaf weeds; June 06, 2005 to July 15, 2005. Contact: (Stacey Groce)

Massachusetts

Massachusetts Department of Food and Agriculture
Specific: EPA authorized the use of pronamide on cranberries to control dodder; April 1, 2005 to June 15, 2005. Contact: (Andrew Ertman)
EPA authorized the use of fenbuconazole on blueberry to control mummyberry disease; April 11, 2005 to June 30, 2005. Contact: (Andrea Conrath)
EPA authorized the use of indoxacarb on cranberry to control cranberry weevil; May 12, 2005 to June 30, 2005. Contact: (Stacey Groce)

Michigan

Michigan Department of Agriculture
Specific: EPA authorized the use of fomesafen on snap beans to control various weed pests; April 15, 2005 to August 30, 2005. Contact: (Andrea Conrath)
EPA authorized the use of fomesafen on dry beans to control various weed pests; April 15, 2005 to August 15, 2005. Contact: (Andrea Conrath)
EPA authorized the use of thiophanate methyl in blueberry to control various fungal pathogens; April 29, 2005 to September 30, 2005. Contact: (Andrea Conrath)
EPA authorized the use of zoxamide on ginseng to control phytophthora blight; May 6, 2005 to October 31, 2005. Contact: (Stacey Groce)
EPA authorized the use of mancozeb on ginseng to control alternaria blight; May 10, 2005 to October 31, 2005. Contact: (Stacey Groce)
EPA authorized the use of chlorothalonil on ginseng to control alternaria blight; May 10, 2005 to October 31, 2005. Contact: (Stacey Groce)
EPA authorized the use of tebuconazole on wheat to control *Fusarium* head blight; May 27, 2005 to June 25, 2005. Contact: (Libby Pemberton)
EPA authorized the use of sulfentrazone on strawberries to control broadleaf weeds; June 25, 2005 to December 15, 2005. Contact: (Andrew Ertman)

Minnesota

Department of Agriculture
Specific: EPA authorized the use of fomesafen on dry beans to control various weed pests; April 15, 2005 to August 15, 2005. Contact: (Andrea Conrath)
EPA authorized the use of tebuconazole on barley and wheat to control *Fusarium* head blight; May 27, 2005 to September 1, 2005. Contact: (Libby Pemberton)
EPA authorized the use of lambda-cyhalothrin on wild rice to control rice worms; June 30, 2005 to September 10, 2005. Contact: (Andrew Ertman)

Mississippi

Department of Agriculture and Commerce

Specific: EPA authorized the use of fenbuconazole on blueberry to control mummyberry disease; April 11, 2005 to August 31, 2005. Contact: (Andrea Conrath)
EPA authorized the use of diuron on catfish ponds to control blue green algae; April 25, 2005 to November 1, 2005. Contact: (Carmen Rodia)
EPA authorized the use of bifenthrin on sweet potato to control soil beetle complex; April 29, 2005 to September 30, 2005. Contact: (Andrea Conrath)
EPA authorized the use of methoxyfenozide on soybeans) to control saltmarsh catepillar and armyworms; June 30, 2005 to September 30, 2005. Contact: (Stacey Groce)

Missouri

Department of Agriculture
Specific: EPA authorized the use of fomesafen on snap beans to control various weed pests; April 15, 2005 to September 10, 2005. Contact: (Andrea Conrath)

Montana

Department of Agriculture
Specific: EPA authorized the use of tebuconazole on barley and wheat to control *Fusarium* head blight; April 29, 2005 to July 20, 2005. Contact: (Libby Pemberton)
EPA authorized the use of diflubenzuron on barley and wheat to control grasshoppers; June 22, 2005 to July 15, 2005. Contact: (Libby Pemberton)

Nebraska

Department of Agriculture
Specific: EPA authorized the use of fomesafen on dry beans to control various weed pests; May 13, 2005 to July 15, 2005. Contact: (Andrea Conrath)

Nevada

Department of Agriculture
Specific: EPA authorized the use of bifenazate on timothy grass to control Banks grass mite; May 1, 2005 to September 1, 2005. Contact: (Andrea Conrath)
EPA authorized the use of diflubenzuron on alfalfa to control Mormon cricket and grasshopper; June 3, 2005 to October 31, 2005. Contact: (Libby Pemberton)

New Jersey

Department of Environmental Protection
Quarantine: EPA authorized the use of trifloxystrobin on soybeans to control soybean rust; April 8, 2005 to November 10, 2007. Contact: (Andrew Ertman)
EPA authorized the use of propiconazole on soybeans to control soybean rust; April 7, 2005 to November 10, 2007. Contact: (Andrew Ertman)
EPA authorized the use of myclobutanil on soybeans to control soybean rust; April 7, 2005 to November 10, 2007. Contact: (Andrew Ertman)
EPA authorized the use of tetraconazole on soybeans to control soybean rust; April 25, 2005 to November 10, 2007. Contact: (Andrew Ertman)
Specific: EPA authorized the use of pronamide on cranberry to control dodder; April 30, 2005 to December 15, 2005. Contact: (Stacey Groce)

New Mexico

Department of Agriculture
Specific: EPA authorized the use of spinosad on onions to control thrips; May 6, 2005 to November 1, 2005. Contact: (Andrew Ertman)
EPA authorized the use of myclobutanil on chile peppers and bell peppers to control powdery mildew; July 01, 2005 to October 15, 2005. Contact: (Stacey Groce)

New York

Department of Environmental Conservation

Specific: EPA authorized the use of fomesafen on snap beans to control various weed pests; April 15, 2005 to August 30, 2005. Contact: (Andrea Conrath)
EPA authorized the use of fomesafen on dry beans to control various weed pests; April 15, 2005 to August 30, 2005. Contact: (Andrea Conrath)
EPA authorized the use of lambda-cyhalothrin on alfalfa/clover/grass mixed stands to control potato leafhopper; June 10, 2005 to August 31, 2005. Contact: (Andrew Ertman)
EPA authorized the use of quinoxyfen on melons, winter squash, gourds, and pumpkin (non-edible cucurbits) to control powdery mildew; June 30, 2005 to September 30, 2005. Contact: (Stacey Groce)

North Carolina

Department of Agriculture
Specific: EPA authorized the use of bifenthrin on sweet potato to control beetle complex; April 1, 2005 to September 30, 2005. Contact: (Libby Pemberton)
EPA authorized the use of halosulfuron-methyl on sweet potatoes to control sedges; June 1, 2005 to August 1, 2005. Contact: (Andrew Ertman)

North Dakota

Department of Agriculture
Specific: EPA authorized the use of fomesafen on dry beans to control various weed pests; April 15, 2005 to August 15, 2005. Contact: (Andrea Conrath)
EPA authorized the use of tebuconazole on barley and wheat to control *Fusarium* head blight; May 27, 2005 to September 1, 2005. Contact: (Libby Pemberton)
EPA authorized the use of zeta-cypermethrin on flax to control grasshoppers; June 10, 2005 to September 30, 2005. Contact: (Andrew Ertman)

Oklahoma

Department of Agriculture
Specific: EPA authorized the use of fomesafen on snap beans to control various weed pests; April 15, 2005 to September 10, 2005. Contact: (Andrea Conrath)

Oregon

Department of Agriculture
Specific: EPA authorized the use of mesotrione on cranberry to control various weeds; April 18, 2005 to October 31, 2005. Contact: (Libby Pemberton)
EPA authorized the use of mancozeb on ginseng to control alternaria and phytophthora leaf and stem blight; June 6, 2005 to August 10, 2005. Contact: (Stacey Groce)

Pennsylvania

Department of Agriculture
Specific: EPA authorized the use of fomesafen on snap beans to control various weed pests; April 15, 2005 to August 30, 2005. Contact: (Andrea Conrath)

Rhode Island

Department of Environmental Management

Specific: EPA authorized the use of pronamide on cranberries to control dodder; April 1, 2005 to June 15, 2005. Contact: (Andrew Ertman)

South Dakota

Department of Agriculture
Specific: EPA authorized the use of tebuconazole on barley and wheat to control *Fusarium* head blight; May 10, 2005 to August 31, 2005. Contact: (Libby Pemberton)

Tennessee

Department of Agriculture
Quarantine: EPA authorized the use of trifloxystrobin on soybeans to control soybean rust; April 8, 2005 to November 10, 2007. Contact: (Andrew Ertman)
EPA authorized the use of tetraconazole on soybeans to control soybean rust; April 25, 2005 to November 10, 2007. Contact: (Andrew Ertman)

Texas

Department of Agriculture
Specific: EPA authorized the use of hexythiazox on field corn to control mites; May 18, 2005 to August 31, 2005. Contact: (Andrew Ertman)
EPA authorized the use of diuron on catfish ponds to control blue green algae; June 22, 2005 to November 1, 2005. Contact: (Carmen Rodia)

Utah

Department of Agriculture
Specific: EPA authorized the use of diflubenzuron on alfalfa to control Mormon cricket and grasshopper; June 8, 2005 to October 31, 2005. Contact: (Libby Pemberton)

Vermont

Department of Agriculture
Quarantine: EPA authorized the use of trifloxystrobin on soybeans to control soybean rust; June 23, 2005 to November 10, 2007. Contact: (Andrew Ertman)
EPA authorized the use of propiconazole on soybeans to control soybean rust; June 23, 2005 to November 10, 2007. Contact: (Andrew Ertman)
EPA authorized the use of myclobutanil on soybeans to control soybean rust; June 23, 2005 to November 10, 2007. Contact: (Andrew Ertman)
EPA authorized the use of tetraconazole on soybeans to control soybean rust; June 23, 2005 to November 10, 2007. Contact: (Andrew Ertman)
EPA authorized the use of tebuconazole on soybeans to control soybean rust; June 23, 2005 to November 10, 2007. Contact: (Andrew Ertman)

Virginia

Department of Agriculture and Consumer Services
Specific: EPA authorized the use of thiophanate methyl in tomatoes to control white mold; April 8, 2005 to September 30, 2005. Contact: (Andrea Conrath)
EPA authorized the use of fomesafen on snap beans to control various weed pests; April 15, 2005 to September 30, 2005. Contact: (Andrea Conrath)
EPA authorized the use of azoxystrobin on tobacco to control Frogeye (Cercospora nicotianae) and Target spot (Thanatephorus cucumeris/Rhizoctonia solani); June 24, 2005 to October 15, 2005. Contact: (Libby Pemberton)

Washington

Department of Agriculture
Specific: EPA authorized the use of mesotrione on cranberry to control various weeds; April 18, 2005 to October 31, 2005. Contact: (Libby Pemberton)
EPA authorized the use of fenpropathrin on currants to control the currant cane borer and the stem girdler; May 6, 2005 to September 1, 2005. Contact: (Andrea Conrath)
EPA authorized the use of fenpyroximate on hops to control spider mites; May 26, 2005 to September 15, 2005. Contact: (Andrea Conrath)
EPA authorized the use of mancozeb on ginseng to control alternaria and phytophthora leaf and stem blight; June 6, 2005 to August 10, 2005. Contact: (Stacey Groce)

West Virginia

Department of Agriculture
Quarantine: EPA authorized the use of propiconazole on soybeans to control soybean rust; April 7, 2005 to November 10, 2007. Contact: (Andrew Ertman)
EPA authorized the use of myclobutanil on soybeans to control soybean rust; April 7, 2005 to November 10, 2007. Contact: (Andrew Ertman)
EPA authorized the use of trifloxystrobin on soybeans to control soybean rust; April 8, 2005 to November 10, 2007. Contact: (Andrew Ertman)

Wisconsin

Department of Agriculture, Trade, and Consumer Protection
Quarantine: EPA authorized the use of propiconazole on soybeans to control soybean rust; April 7, 2005 to November 10, 2007. Contact: (Andrew Ertman)
EPA authorized the use of myclobutanil on soybeans to control soybean rust; April 7, 2005 to November 10, 2007. Contact: (Andrew Ertman)
EPA authorized the use of trifloxystrobin on soybeans to control soybean rust; April 8, 2005 to November 10, 2007. Contact: (Andrew Ertman)
Specific: EPA authorized the use of propiconazole on cranberry to control cottonball disease; April 1, 2005 to December 15, 2005. Contact: (Libby Pemberton)
EPA authorized the use of zoxamide on ginseng to control phytophthora blight; May 6, 2005 to October 31, 2005. Contact: (Stacey Groce)
EPA authorized the use of mancozeb on ginseng to control alternaria blight; May 10, 2005 to October 31, 2005. Contact: (Stacey Groce)
EPA authorized the use of chlorothalonil on ginseng to control alternaria blight; May 10, 2005 to October 31, 2005. Contact: (Stacey Groce)

Wyoming

Department of Agriculture
Specific: EPA authorized the use of diflubenzuron on alfalfa to control Mormon cricket and grasshoppers; June 23, 2005 to October 31, 2005. Contact: (Libby Pemberton)

List of Subjects

Environmental protection, Pesticides and pest.

Dated: August 19, 2005.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 05–17201 Filed 8–30–05; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7963–6]

Draft Air Quality Criteria for Ozone and Related Photochemical Oxidants E–Docket No. ORD–2004–0015

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of second external review draft for public review and comment.

SUMMARY: The U.S. Environmental Protection Agency (EPA) Office of Research and Development's National Center for Environmental Assessment (NCEA) is reviewing and, as appropriate, revising the EPA document, Air Quality Criteria for Ozone and Related Photochemical Oxidants, EPA–600/AP–93/004aF–cF, published in 1996. Today's **Federal Register** notice announces the availability of a second external review draft of the revised ozone air quality criteria document (AQCD).

DATES: The period for submission of comments on the second external review draft of the revised ozone AQCD begins August 31, 2005, and ends November 30, 2005.

ADDRESSES: The second external review draft of the revised ozone AQCD will be available on or about August 31, 2005. Internet users will be able to download a copy of this document from the NCEA home page. The URL is *http://www.epa.gov/ncea/*. A limited number of CD–ROM or paper copies will be available. Contact Ms. Diane Ray by phone (919–541–3637), fax (919–541–1818), or email (*ray.diane@epa.gov*) to request either of these. Please provide the draft document's title, Air Quality Criteria for Ozone and Related Photochemical Oxidants (Second External Review Draft), Volumes I, II, and III, EPA 600/R–05/004aB, bB, and cB, as well as your name and address, to facilitate processing of your request. Public comments on the second external review draft of the revised ozone AQCD may be submitted electronically, by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions as provided in the section of this notice entitled **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: For details on the period for submission of comments from the public, contact the Office of Environmental Information Docket; telephone: 202–566–1752; facsimile: 202–566–1753; or e-mail: *ORD.Docket@epa.gov*.

For technical information, contact Lori White, Ph.D., NCEA, facsimile: 919–541–1818, or email: *white.lori@epa.gov*.

SUPPLEMENTARY INFORMATION: Section 108 (a) of the Clean Air Act directs the EPA Administrator to identify certain pollutants which "may reasonably be anticipated to endanger public health and welfare" and to issue air quality criteria for them. These air quality criteria are to "accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of [a] pollutant in the ambient air * * *." Under section 109 of the Act, EPA is then to establish National Ambient Air Quality Standards (NAAQS) for each pollutant for which EPA has issued criteria. Section 109 (d) of the Act subsequently requires periodic review and, if appropriate, revision of existing air quality criteria to reflect advances in scientific knowledge on the effects of the pollutant on public health and welfare. EPA is also to revise the NAAQS, if appropriate, based on the revised criteria.

Ozone is one of six "criteria" pollutants for which EPA has established air quality criteria and NAAQS. On September 26, 2000 (65 FR 57810), EPA formally initiated its current review of the criteria and NAAQS for ozone, requesting the submission of recent scientific information on specified topics. Preliminary outlines for the proposed chapters were presented in the draft Project Work Plan that was released for public comment (66 FR 67524, December 31, 2001) and for review by the Clean Air Scientific Advisory Committee (CASAC) of EPA's Science Advisory Board (68 FR 3527, January 24, 2003). Later in 2003, a series of workshops were convened to discuss draft sections and chapters for revising the existing Ozone AQCD (68 FR 17365, April 9, 2003, and 68 FR 60369, October 22, 2003).

In January 2005, EPA announced the availability of the first external review draft of the Air Quality Criteria for Ozone and Related Photochemical Oxidants for review and comment (70 FR 4850, January 31, 2005). Following the close of the public comment period, EPA presented the first external review draft of the ozone AQCD to the CASAC Ozone Review Panel on May 4–5, 2005. The public comments received were also made available to the CASAC. EPA has carefully considered the public comments and comments from the CASAC Review Panel in preparing the second external review draft announced in today's notice.

After the end of the comment period on the Air Quality Criteria for Ozone and Related Photochemical Oxidants (Second External Review Draft), EPA will present the draft at a public meeting for review by the Clean Air Scientific Advisory Committee (CASAC). Public comments received will be provided to the CASAC review panel. There will be a **Federal Register** notice to inform the public of the exact date and time of that CASAC meeting.

How To Submit Comments to EPA's E–Docket

EPA has established an official public docket for information pertaining to the revision of the Ozone AQCD, Docket ID No. ORD–2004–0015. The official public docket is the collection of materials, excluding Confidential Business Information (CBI) or other information whose disclosure is restricted by statute, that is available for public viewing at the Office of Environmental Information (OEI) Docket in the Headquarters EPA Docket Center, EPA West Building, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202–566–1744, and the telephone number for the OEI Docket is 202–566–1752; facsimile: 202–566–1753; or e-mail: *ORD.Docket@epa.gov.*

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

Certain types of information will not be placed in E–Docket. Information claimed as CBI and other information with disclosure restricted by statute, also not included in the official public docket, will not be available for public viewing in E–Docket. Copyrighted material also will not be placed in E–Docket but will be referenced there and available as printed material in the official public docket.

Persons submitting public comments should note that EPA's policy makes the information available as received and at no charge for public viewing at the EPA Docket Center or in E–Docket. This policy applies to information submitted electronically or in paper form, except where restricted by copyright, CBI, or statute.

Unless restricted as above, public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to E–Docket. Physical objects will be photographed, where practical, and the photograph will be placed in E–Docket along with a brief description written by the docket staff.

You may submit public comments electronically, by mail, by facsimile, or by hand delivery/courier. To ensure proper receipt by EPA, include the appropriate docket identification number with your submission. Please adhere to the specified submitting period. Public comments received or submitted past the closing date will be marked "late" and may only be considered if time permits.

If you submit public comments electronically, EPA recommends that you include your name, mailing address, and an e-mail address or other details for contacting you. Also include these contact details 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 person submitting the public comments and allows EPA to contact you in case the Agency cannot read what you submit due to technical difficulties or needs to clarify issues raised by what you submit. If EPA cannot read what you submit due to technical difficulties and cannot contact you for clarification, it may delay or prohibit the Agency's consideration of the public comments.

To access EPA's electronic public docket from the EPA Internet Home Page, select "Information Sources," "Dockets," and "EPA Dockets." Once in the system, select "search," and key in Docket ID No. ORD–2004–0015. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact details if you are merely viewing the information.

Public comments may be sent by electronic mail (e-mail) to *ORD.Docket@epa.gov,* Attention Docket ID No. ORD–2004–0015. In contrast to EPA's electronic public docket, EPA's e-mail system is *not* an "anonymous access" system. If you send an e-mail directly to the docket without going through EPA's E–Docket, EPA's e-mail system automatically captures your e-mail address, and it becomes part of the information in the official public docket and is made available in EPA's E–Docket.

You may submit public comments on a disk or CD ROM mailed to the OEI Docket mailing address. Files will be accepted in WordPerfect, Word, or PDF file format. Avoid the use of special characters and any form of encryption.

If you provide public comments in writing, please submit one unbound original, with pages numbered consecutively, and three copies. For attachments, provide an index, number pages consecutively with the main text, and submit an unbound original and three copies.

Dated: August 25, 2005.

George Alapas,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 05–17356 Filed 8–30–05; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

August 11, 2005.

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 September 30, 2005. If you anticipate that you will be submitting PRA 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., DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov.* If you would like to obtain or view a copy of this new or

revised information collection, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra.*

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.: 3060–0742.

Title: Telephone Number Portability (47 CFR Part 52, Subpart C, Sections 52.21–52.33) and CC Docket No. 95–116.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 1,960 respondents; 2,027 responses.

Estimated Time Per Response: 2–149 hours.

Frequency of Response: On occasion and one time reporting requirements, third party disclosure requirement and recordkeeping requirement.

Total Annual Burden: 14,333 hours.

Total Annual Cost: $84,000.

Privacy Act Impact Assessment: N/A.

Needs and Uses: The Commission is revising this information collection due to the addition of wireless carriers providing local number portability (LNP), the removal of the certification requirement and an increase in the number of carriers proving LNP. The Commission requires the following information to be collected from various entities: (1) Requests for long-term number portability must be provided by local exchange carriers (LECs) and Commercial Mobile Radio Service (CMRS) providers (which now includes wireless carriers) in switches for which another carrier has made a specific request for number portability, according to the Commission's deployment schedule; (2) carriers that are unable to meet the deadlines for implementing a long-term number portability solution are required to file with the Commission (at least 60 days in advance of the deadline) a petition to extend the time by which implementation in its network will be completed; (3) incumbent LECs may recover their carrier-specific costs directly related to providing long-term number portability by establishing in tariffs filed with the Commission certain number portability charges. Incumbent LECs are required to include many details in their cost support that are unique to the number portability proceeding pursuant to the Cost Classification Order. For instance, incumbent LECs must demonstrate that any incremental overhead costs claimed in their cost support are actually new costs incremental to and resulting from the provision of long-term number portability; and (4) Incumbent LECs are required to maintain records that detail both the nature and specific amount of these carrier-specific costs that are directly related to number portability, and those carrier-specific costs that are not directly related to number portability (recordkeeping requirement).

OMB Control No.: 3060–0139.

Title: Application for Antenna Structure Registration.

Form Nos.: FCC Forms 854 and 854R.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households, business or other for-profit, not-for-profit institutions, and State, local or tribal government.

Number of Respondents: 4,500 respondents; 9,000 responses.

Estimated Time Per Response: .5 hours—1 hour.

Frequency of Response: On occasion reporting requirement, third party disclosure requirement and recordkeeping requirement.

Total Annual Burden: 6,750 hours.

Total Annual Cost: $183,000.

Privacy Act Impact Assessment: Yes.

Needs and Uses: The Commission is revising FCC Forms 854 and 854R to correct an email address, Web site addresses, telephone numbers and instructions for obtaining FCC Registration Numbers (FRNs) in the General Instructions.

FCC Form 854 is used to register antenna structures used for wire or radio communication service in any area where radio services are regulated by the Commission; to make changes to existing registered structures or pending applications; or to notify the Commission of the completion of construction or dismantlement of structures, as required by Title 47 of the Code of Federal Regulations, Chapter 1, Part 17 (FCC Rules Part 17).

One of the Commission's primary responsibilities is to ensure that antenna structures do not pose a threat to air safety. The information will be used by the Commission to maintain a current registration database which increases air safety by allowing the Federal Aviation Administration (FAA) and the Commission to identify potential hazards.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–17042 Filed 8–30–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

August 17, 2005.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information, subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before October 31, 2005. 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: You may submit your Paperwork Reduction Act (PRA) comments by email or U.S. postal mail. To submit you comments by email send them to: *PRA@fcc.gov.* To submit your comments by U.S. mail, mark it to the attention of Leslie F. Smith, Federal Communications Commission, 445 12th Street, SW., Room 1–A804, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an e-mail to *PRA@fcc.gov* or contact Leslie F. Smith at 202–418–0217.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1015.

Title: Ultra Wideband Transmission Systems Operating under Part 15, ET Doc. No. 98–153.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for profit entities; not-for-profit institutions.

Number of Respondents: 500.

Estimated Time per Response: 1 hour.

Frequency of Response: Recordkeeping, on occasion reporting requirements, third party disclosure.

Total Annual Burden: 500 hours.

Total Annual Costs: $625.

Privacy Impact Assessment: No impact(s).

Needs and Uses: On February 13, 2003, the FCC adopted a *Memorandum Opinion and Order (MO&O) and Further Notice of Proposed Rule Making,* in the Revision of Part 15 of the Commission's Rules Regarding Ultra-Wideband Transmission System, ET Docket No. 98–153. Section 15.525—Coordination requirements—the Commission revised the rules to the effect that initial operation in a particular area does not require prior approval from the FCC to operate the equipment. The *First Report and Order* required operators of the Ultra Wideband (UWB) imaging systems to coordinate with other Federal agencies via the FCC and to obtain approval before the UWB equipment may be used. Under the rules adopted in the MO&O, initial operation in a particular area may not commence until the information has been sent to the Commission and no prior approval is required. The information will be used to coordinate the operation of the Ultra Wideband transmission systems in order to avoid interference with sensitive U.S. Government radio systems. The UWB operators will be required to provide the name, address and other pertinent contact information of the user, the desired geographical area of operation, and the FCC ID number, and other nomenclature of the UWB device. This information will be collected by the Commission and forwarded to the National Telecommunications and Information Administration (NTIA under the U.S. Department of Commerce. This information collection is essential to controlling potential interference to Federal radio communications. Since initial operation in a particular area does not require prior approval from the FCC to operate the equipment, we have reduced the amount of time per response to 1 hour.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–17043 Filed 8–30–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

August 15, 2005.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before September 30, 2005. 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: You may submit your Paperwork Reduction Act (PRA) comments by e-mail or U.S. postal mail. To submit your comments by e-mail send them to *PRA@fcc.gov.* To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554 and Kristy L. LaLonde, Office of Management and Budget (OMB), Room 10236 NEOB, Washington, DC 20503, (202) 395–3087 or via the Internet at *Kristy_L._LaLonde@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an email to *PRA@fcc.gov* or contact Cathy Williams at (202) 418–2918. If you would like to obtain a copy of the information collection, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0174.

Title: Section 73.1212, Sponsorship Identification; List Retention; Related Requirements.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or household; business or other for-profit entities.

Number of Respondents: 17,910.

Estimated Time per Response: 4 seconds–6 minutes.

Frequency of Response: Recordkeeping requirement; on occasion reporting requirement; third party disclosure requirement.

Total Annual Burden: 108,051 hours.

Total Annual Cost: None.

Privacy Impact Assessment: Not required at this time.

Needs and Uses: 47 CFR 73.1212 requires a broadcast station to identify the sponsor of programming for which consideration is provided. For programming advertising commercial products or services, generally mention of the product's name or service constitutes sponsorship identification. For television political advertisements for candidates seeking public office, the sponsor shall be identified with letters equal to or greater than four percent of the vertical height of the television screen. In addition, when an entity rather than an individual sponsors broadcast programming of a political or controversial nature, the licensee must retain a list of the executive officers, board of directors, or executive committee, etc., of the organization paying for the programming. Sponsorship announcements are waived when broadcasting "want ads" are sponsored by individuals, but licensees are required to maintain a list showing the name, address and telephone number of each such advertiser. These lists shall be made available for public inspection to allow the public to know by whom they are being persuaded.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–17044 Filed 8–30–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Network Reliability and Interoperability Council

AGENCY: Federal Communications Commission.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act (FACA), this notice advises interested persons of the fifth meeting of the Network Reliability and Interoperability Council (Council) under its charter renewed as of December 29, 2003. The meeting will be held at the Federal Communications Commission in Washington, DC.

DATES: Wednesday September 21, 2005 beginning at 10 a.m. and concluding at 1 p.m.

ADDRESSES: Federal Communications Commission, 445 12th St., SW., Room TW–305, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jeffery Goldthorp, the Designated Federal Officer (DFO) at (202) 418–1096 or *Jeffery.Goldthorp@fcc.gov*. The TTY number is: (202) 418–2989.

SUPPLEMENTARY INFORMATION: The purpose of the Council is to provide recommendations to the FCC and to the communications industry that, if implemented, shall under all reasonably foreseeable circumstances assure optimal reliability and interoperability of wireless, wireline, satellite, cable, and public data networks. At this fifth meeting under the Council's new charter, the Council will discuss potential recommendations in the areas of E911 implementation and evolution, network security, network reliability, and broadband. The Council will also review the status of various working groups.

Members of the general public may attend the meeting. The Federal Communications Commission will attempt to accommodate as many people as possible. Admittance, however, will be limited to the seating available. The public may submit written comments before the meeting to Jeffery Goldthorp, the Commission's Designated Federal Officer for the Network Reliability and Interoperability Council, by email (*Jeffery.Goldthorp@fcc.gov*) or U.S. Postal Service mail (7–A325, 445 12th St., SW., Washington, DC 20554). Real Audio and streaming video access to the meeting will be available at *http://www.fcc.gov/realaudio/*.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 05–17041 Filed 8–30–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237; DA 05–2276]

Next Meeting of the North American Numbering Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On August 22, 2005, the Commission released a public notice announcing the September 20, 2005 meeting and agenda of the North American Numbering Council (NANC). The intended effect of this action is to make the public aware of the NANC's next meeting and agenda.

DATES: Tuesday, September 20, 2005, 9:30 a.m.

ADDRESSES: Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, Portals II, 445 Twelfth Street, SW., Suite 5–A420, Washington, DC 20554. Requests to make an oral statement or provide written comments to the NANC should be sent to Deborah Blue.

FOR FURTHER INFORMATION CONTACT: Deborah Blue, Special Assistant to the Designated Federal Officer (DFO) at (202) 418–1466 or *Deborah.Blue@fcc.gov*. The fax number is: (202) 418–2345. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION: Released: August 22, 2005. The North American Numbering Council (NANC) has scheduled a meeting to be held Tuesday, September 20, 2005, from 9:30 a.m. until 5 p.m. The meeting will be held at the Federal Communications Commission, Portals II, 445 Twelfth Street, SW., Room TW–C305, Washington, DC. This meeting is open to members of the general public. The FCC will attempt to accommodate as many participants as possible. The public may submit written statements to the NANC, which must be received two business days before the meeting. In addition, oral statements at the meeting by parties or entities not represented on the NANC will be permitted to the extent time permits. Such statements will be limited to five minutes in length by any one party or entity, and requests to make an oral statement must be received two business days before the meeting.

Proposed Agenda—Tuesday, September 20, 2005, 9:30 a.m.: *

1. Announcements and Recent News
2. Approval of Minutes

—Meeting of July 19, 2005

3. Report of the North American Numbering Plan Administrator (NANPA)
4. Report of the National Thousands Block Pooling Administrator (PA)
5. Report of the North American Portability Management (NAPM) LLC
6. Status of the Industry Numbering Committee (INC) activities
7. Report of the North American Numbering Plan Billing and Collection (NANP B&C) Agent
8. Report of the Billing & Collection Working Group (B&C WG)
9. Reports from the Issues Management Groups (IMGs)

—See Agenda Item 12 for pseudo Automatic Numbering Identification (pANI) IMG

—See Agenda Item 13 for NANC Training IMG

10. Report of the Local Number Portability Administration (LNPA) Working Group
11. Report of the Numbering Oversight Working Group (NOWG)
12. Report of the Future of Numbering Working Group (FoN WG)
    - Including report of pANI IMG
13. NANC Training IMG Review
14. Special Presentations
15. Update List of the NANC Accomplishments
16. Summary of Action Items
17. Public Comments and Participation (5 minutes per speaker)
18. Other Business

Adjourn no later than 5 p.m.

Next Meeting: Wednesday, November 30, 2005

* The Agenda may be modified at the discretion of the NANC Chairman with the approval of the DFO.

Federal Communications Commission.

Regina M. Brown,

Attorney, Telecommunications Access Policy Division, Wireline Competition Bureau.

[FR Doc. 05–17115 Filed 8–30–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[WC Docket Nos. 04–36 and 05–196; DA 05–2277]

E911 Requirements for IP-Enabled Services; Petitions for Reconsideration and/or Clarification and/or Waiver Filed

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document seeks comment on petitions for reconsideration and/or clarification and/or waiver filed by CompTel, T-Mobile USA, Inc., and the National Emergency Number Association & Voice on the Net (VON) Coalition, seeking reconsideration and/or clarification and/or waiver of the Commission's E911 requirements for IP-enabled service providers adopted in the First Report and Order in WC Docket No. 04–36.

DATES: Oppositions to these petitions must be filed by September 15, 2005. Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

ADDRESSES: You may submit oppositions or replies, identified by WC Docket Nos. 04–36 and 05–196, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Federal Communications Commission's Web Site: *http://www.fcc.gov/cgb/ecfs/*. Follow the instructions for submitting comments.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432. For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Christi Shewman, Senior Attorney, Competition Policy Division, Wireline Competition Bureau, at (202) 418–1686.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice, DA 05–2277, released August 12, 2005. The full text of the petitions and copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554, (202) 418–0270. This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact BCPI, Inc. at their Web site: *http://www.bcpiweb.com* or by calling 1–800–378–3160.

Background

On July 29, 2005, petitions for reconsideration and/or clarification and/or waiver were filed by CompTel, T-Mobile USA, Inc., and the National Emergency Number Association & Voice on the Net (VON) Coalition, seeking reconsideration and/or clarification and/or waiver of the Commission's E911 requirements for IP-enabled service providers adopted in the First Report and Order in WC Docket No. 04–36. *See* CompTel, Petition for Reconsideration/Clarification and/or Waiver, WC Docket Nos. 04–36 and 05–196, filed July 29, 2005; T-Mobile USA, Inc., Petition for Clarification, WC Docket Nos. 04–36 and 05–196, filed July 29, 2005; National Emergency Number Association & Voice on the Net (VON) Coalition, Joint Petition for Clarification, WC Docket Nos. 04–36 and 05–196, filed July 29, 2005.

Electronic Access and Filing

Pursuant to § 1.429 of the Commission's rules, 47 CFR 1.429, interested parties may file Oppositions to these petitions on or before September 15, 2005. Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired. When filing, please reference WC Docket Nos. 04–36 and 05–196. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121, May 1, 1998. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

Parties who choose to file by paper must send an original and eleven (11) copies of each filing. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–B204, Washington, DC 20554.

Filings can be sent by hand or messenger delivery, by electronic media, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings or electronic media for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial and electronic media sent by overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

This proceeding shall be treated as a "permit but disclose" proceeding in accordance with the Commission's *ex parte* rules, 47 CFR 1.1200. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. See 47 CFR 1.1206(b). Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in § 1.1206(b) of the Commission's rules, 47 CFR 1.1206(b).

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format) send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice) or (202) 418–0432 (TTY).

Federal Communications Commission.

Donald K. Stockdale, Jr.,

Acting Deputy Chief, Wireline Competition Bureau.

[FR Doc. 05–17227 Filed 8–30–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement Filed

The Commission hereby gives notice of the filing of the following agreement 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.: 011847–002.

Title: Pacific Gulf Express Agreement.

Parties: CMA CGM, S.A.; P&O Nedlloyd Limited; and P&O Nedlloyd B.V.

Filing Party: Neal M. Mayer, Esq.; Hoppel, Mayer & Coleman; 1000 Connecticut Avenue, NW.; Washington, DC 20036.

Synopsis: The amendment increases the size of the vessels deployed under the agreement and makes corresponding adjustments in the space allocation.

By Order of the Federal Maritime Commission.

Dated: August 26, 2005.

Karen V. Gregory,

Assistant Secretary.

[FR Doc. 05–17338 Filed 8–30–05; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY:

Background

Notice is hereby given of the final approval of proposed information collection by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83-Is and supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Michelle Long—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202–452–3829). OMB Desk Officer—Mark Menchik—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503, or e-mail to *mmenchik@omb.eop.gov*.

Final approval under OMB delegated authority of the extension for three years, without revision, of the following report:

Report title: Consumer Satisfaction Questionnaire.

Agency form number: FR 1379.

OMB Control number: 7100–0135.

Frequency: Event-generated.

Reporters: Consumers.

Annual reporting hours: 170.

Estimated average hours per response: 20 minutes.

Number of respondents: 512.

General description of report: This information collection is voluntary (15 U.S.C. 57(a)(f)(1)) and is not usually given confidential treatment under the Freedom of Information Act (FOIA). However, if a respondent provides information not specifically solicited on the form, that information may be exempt from disclosure under FOIA (5 U.S.C. 552(b)(4), (b)(6), or (b)(7)) upon specific request from the respondent.

Abstract: The questionnaire is sent to consumers who have filed complaints against state member banks. It is used to determine whether complainants are satisfied with the way the Federal Reserve System handled their complaints and to solicit suggestions for improving the complaint investigation process.

Board of Governors of the Federal Reserve System, August 25, 2005.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 05–17263 Filed 8–30–05; 8:45 am]

BILLING CODE 6210–01–P

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/*.

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 September 15, 2005.

A. Federal Reserve Bank of Chicago (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Marshall and Ilsley Corporation, Milwaukee, Wisconsin; to acquire through Metavante Corporation, Brasfield Holdings, LLC, Birmingham, Alabama, and thereby engage in data processing and management consulting activities, pursuant to section 225.28(b)(9)(i)(A), and 225.28(b)(14)(i and ii) of Regulation Y.

Board of Governors of the Federal Reserve System, August 25, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–17264 Filed 8–30–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of theFederal Reserve System.

TIME AND DATE: 11:30 a.m., Tuesday, September 6,2005.

PLACE: Marriner S. Eccles Federal Reserve BoardBuilding, 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 ReserveSystem 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 call202–452–3206 beginning at approximately 5 p.m. two businessdays before the meeting for a recorded announcement of bank and bankholding company applications scheduled for the meeting; or you may contactthe Board's Web site at *http://www.federalreserve.gov* for anelectronic announcement that not only lists applications, but alsoindicates procedural and other information about the meeting.

Board of Governors of the Federal Reserve System, August 26, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–17396 Filed 8–29–05; 8:51 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

AGENCY: Federal Trade Commission ("Commission" or "FTC").

ACTION: Notice.

SUMMARY: The information collection requirements described below will be submitted to the Office of Management and Budget ("OMB") for review, as required by the Paperwork Reduction Act ("PRA") (44 U.S.C. 3501–3520). The FTC is seeking public comments on its proposal to extend through August 31, 2008, the current Paperwork Reduction Act clearances for information collection requirements contained in four Commission rules and one clearance covering the Commission's administrative activities. Those clearances expire on August 31, 2005.

DATES: Comments must be received on or before September 30, 2005.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to "Paperwork Comment: FTC File No. P822108" to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope and should be mailed or delivered, with two complete copies, to the following address: Federal Trade Commission/Office of the Secretary, Room H–135 (Annex J), 600 Pennsylvania Avenue, NW., Washington, DC 20580. Because paper mail in the Washington area and at the Commission is subject to delay, please consider submitting your comments in electronic form, (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to e-mail messages directed to the following e-mail box: *PaperworkComment@ftc.gov*. However, if the comment contains any material for which confidential treatment is requested, it must be filed in paper form, and the first page of the document must be clearly labeled "Confidential." [1]

All comments should additionally be submitted to: Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission. Comments should be submitted via facsimile to (202) 395–6974 because U.S. Postal Mail is subject to lengthy delays due to heightened security precautions.

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 will be considered by the Commission and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov*. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy at *http://www.ftc.gov/ftc/privacy.htm*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information requirements should be addressed as follows:

For the Negative Option Rule, contact Edwin Rodriguez, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Ave., NW., Washington, DC 20580, (202) 326–3147.

For the Amplifier Rule, contact Neil Blickman, Attorney, Division of Enforcement, Federal Trade Commission, Bureau of Consumer Protection, 600 Pennsylvania Ave., NW., Washington, DC 20580, (202) 326–3038.

For the Franchise Rule, contact Steven Toporoff, Attorney, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Ave., NW., Washington, DC 20580, (202) 326–3135.

For the R-Value Rule, contact Hampton Newsome, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Ave., NW., Washington, DC 20580, (202) 326–2889.

For the Administrative Activities clearance, contact J. Ronald Brooke Jr., Attorney, Division of Planning and Information, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Ave., NW., Washington, DC 20580, (202) 326–3484.

SUPPLEMENTARY INFORMATION: On May 19, 2005, the FTC sought comment on the information collection requirements associated with the Negative Option Rule, 16 CFR part 425 (OMB Control Number 3084–0104); the Amplifier Rule, 16 CFR part 432 (OMB Control Number 3084–0105); the Franchise Rule, 16 CFR part 436 (OMB Control Number 3084–0107); the R-Value Rule, 16 CFR part 460 (OMB Control Number 3084–0109); and the clearance covering the FTC's administrative activities (OMB Control Number 3084–0047). 70 FR 28937. As discussed below, one comment relating to the clearance for administrative activities was received. Pursuant to the OMB regulations that implement the PRA (5 CFR part 1320), the FTC is providing this second opportunity for public comment while seeking OMB approval to extend the existing paperwork clearance for the rule. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before September 30, 2005.

1. The Negative Option Rule, 16 CFR Part 425 (OMB Control Number: 3084–0104)

The Negative Option Rule governs the operation of prenotification subscription plans. Under these plans, sellers ship merchandise, such as books, compact discs, or tapes, automatically to their subscribers and bill them for the merchandise if consumers do not expressly reject the merchandise within a prescribed time. The Rule protects consumers by: (a) requiring that promotional materials disclose the terms of membership clearly and conspicuously; and (b) establishing procedures for the administration of such "negative option" plans.

Estimated annual hours burden: 15,000 hours.

[1] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

Staff estimates that approximately 190 existing clubs require annually about 75 hours each to comply with the Rule's disclosure requirements, for a total of 14,250 hours (190 clubs × 75 hours). These clubs should be familiar with the Rule, which has been in effect since 1974, with the result that the burden of compliance has declined over time. Moreover, a substantial portion of the existing clubs likely would make these disclosures absent the Rule because they have helped foster long-term relationships with consumers.

Approximately 5 new clubs come into being each year. These clubs require approximately 120 hours to comply with the Rule, including start- up time. Thus, cumulative PRA burden for new clubs is about 600 hours. Combined with the estimated burden for established clubs, total burden is 14,850 hours or 15,000, rounded to the nearest thousand.

Estimated annual cost burden: $490,000, rounded to the nearest thousand (solely related to labor costs).

Based on recent data from the Bureau of Labor Statistics, the average compensation for advertising managers is approximately $36 per hour. Compensation for clerical personnel is approximately $13 per hour. Assuming that managers perform the bulk of the work, while clerical personnel perform associated tasks (*e.g.*, placing advertisements and responding to inquiries about offerings or prices), the total cost to the industry for the Rule's paperwork requirements would be approximately $489,750 [(65 hours managerial time × 190 existing negative option plans × $36 per hour) + (10 hours clerical time × 190 existing negative option plans × $13 per hour) + (110 hours managerial time × 5 new negative option plans × $36 per hour) + (10 hours clerical time × 5 new negative option plans × $13)].

Because the Rule has been in effect since 1974, the vast majority of the negative option clubs have no current start-up costs. For the few new clubs that enter the market each year, the costs associated with the Rule's disclosure requirements, beyond the additional labor costs discussed above, are *de minimis*. Negative option clubs already have access to the ordinary office equipment necessary to achieve compliance with the Rule. Similarly, the Rule imposes few, if any, printing and distribution costs. The required disclosures generally constitute only a small addition to the materials that a prospective subscriber sends to the seller to solicit enrollment in a negative option plan. Because printing and distribution expenditures are incurred regardless of the Rule to market the product, adding the required disclosures to them would result in marginal incremental expense.

2. The Amplifier Rule, 16 CFR Part 432 (OMB Control Number: 3084–0105)

The Amplifier Rule assists consumers by standardizing the measurement and disclosure of power output and other performance characteristics of amplifiers in stereos and other home entertainment equipment. The Rule also specifies the test conditions necessary to make the disclosures that the Rule requires.

Estimated annual hours burden: 450 hours (300 testing-related hours; 150 disclosure-related hours).

The Rule's provisions require affected entities to test the power output of amplifiers in accordance with a specified FTC protocol. The staff estimates that approximately 300 new amplifiers and receivers come on the market each year. High fidelity manufacturers routinely conduct performance tests as part of any new product development. As a result, the Rule imposes incremental costs only to the extent that the FTC protocol is more time-consuming than alternative testing procedures. Specifically, a warm up ("precondition") period that the Rule requires before measurements are taken may add approximately one hour to the time testing entails. Thus, staff estimates that the Rule imposes approximately 300 hours (1 hour × 300 new products) of added testing burden annually.

The Rule requires disclosures if a media advertisement makes a power output claim or if a manufacturer specification sheet and product brochure for a covered product make a power output claim. This requirement does not impose any additional costs on manufacturers because, absent the Rule, media advertisements, as well as manufacturer specification sheets and product brochures, simply would contain a power specification obtained using an alternative to the Rule-required testing protocol. The Rule, though, also requires disclosure of harmonic distortion, power bandwidth, and impedance ratings in manufacturer specification sheets and product brochures. The staff's research suggests that approximately 300 new amplifiers and receivers are introduced each year. The cost of disclosing the ancillary distortion, bandwidth, and impedance information in the potentially 600 new specification sheets and brochures produced each year for those products (300 × 2) is limited to the time needed to draft and review the language pertaining to the aforementioned specifications. Because this Rule became effective in 1974 and because members of the industry are familiar with its requirements, compliance is less burdensome today. Accordingly, staff continues to estimate the time involved for this task to be a maximum of ¼ hour for each new specification sheet and brochure (600 × .25 hours), for a total annual burden of 150 hours. The total annual burden imposed by the Rule, therefore, is approximately 450 burden hours for testing and disclosures.

Estimated annual cost burden: $16,000, rounded to the nearest thousand (solely relating to labor costs).

Based on recent data from the Bureau of Labor Statistics, the average hourly compensation for electronics engineers is about $36, and the average hourly compensation for advertising and promotions managers is about $36. Generally, electronics engineers perform the testing of amplifiers and receivers (300 hours × $36 = $10,800), and advertising or promotions managers prepare product brochures and manufacturer specification sheets (including required disclosures) (150 hours × $36 = $5,400). Based on this information, staff estimates industry labor costs associated with the Rule of approximately $16,000 per year, rounded to the nearest thousand.

The Rule imposes no capital or other non-labor costs because its requirements are incidental to testing and advertising done in the ordinary course of business.

3. The Franchise Rule, 16 CFR Part 436 (OMB Control Number: 3084–0107)

The Franchise Rule requires franchisors and franchise brokers to furnish to prospective investors a disclosure document that provides information relating to the franchisor, the franchisor's business, the nature of the proposed franchise relationship, as well as additional information about any claims concerning actual or potential sales, income, or profits for a prospective franchisee ("financial performance claims"). The franchisor must also preserve the information that forms a reasonable basis for such claims. The FTC is seeking to extend the PRA clearance for the existing Rule. In addition, the FTC is seeking PRA clearance for the rule changes that have been proposed in the ongoing rulemaking proceeding.

Estimated annual hours burden for existing Franchise Rule: 33,500 hours.

The Rule's required disclosure document provides franchisees with information on broad-ranging subjects that affect franchisors and the nature of the proposed franchise relationship.

This includes not only generally available information, such as the official name and address and principal place of business of the franchisor, but also less commonly available information, such as, among other things, the previous five years business experience of a franchisor's current directors and executive officers and whether any of these individuals have been convicted of a felony or fraud or have filed for bankruptcy or been adjudged bankrupt during the previous seven years. All information in the disclosure statement must be updated and revised according to the express time requirements set forth in the Rule.

Based on a review of the trade publications and information from state regulatory authorities, staff believes that, on average, from year to year, there are approximately 5,000 American franchise systems, consisting of 2,500 business format franchises and 2,500 business opportunity sellers, with approximately 500 (or 10%) of the total reflecting new entrants who have replaced departing businesses. Staff has calculated burden based on the above estimates. Some franchisors, however, for various reasons, are not covered by the Rule in certain situations (*e.g.*, when a franchisee buys bona fide inventory but pays no franchisor fees). Moreover, fifteen states have franchise disclosure laws similar to the Rule. These states use a disclosure document format known as the Uniform Franchise Offering Circular ("UFOC"). In order to ease compliance burdens on the franchisor, the Commission has authorized use of the UFOC in lieu of its own disclosure format to satisfy the Rule's disclosure requirements. Staff estimates that about 95 percent of all franchisors use the UFOC format. When that format is used, the franchisor is not required to prepare an additional federal disclosure document. The burden hours stated below reflect staff's estimate of the incremental burden that the Franchise Rule may impose beyond information requirements imposed by states and/or followed by franchisors who use the UFOC.

Staff estimates that the 500 or so new franchisors (including business opportunity ventures) require approximately 30 hours each to develop a Rule-compliant disclosure document. Staff additionally estimates that the remaining 4,500 established franchisors require no more than approximately 3 hours each to update the disclosure document. The combined cumulative burden is 28,500 hours.

The franchisor may need to maintain additional documentation for the sale of franchises in non-registration states, which could take up to an additional hour of recordkeeping per year. This yields a cumulative total of 5,000 hours per year for affected entities.

Estimated annual cost burden for existing rule: $7,190,000.

Labor costs are determined by applying applicable wage rates to associated burden hours. Staff assumes that an attorney likely would prepare or update the disclosure document. Accordingly, staff's estimate of the labor costs attributed to those tasks are as follows: (500 new franchisors × $250 per hour × 30 hours per franchisor) + (4,500 established franchisors × $250 per hour × 3 hours per franchisor) = $7,125,000.

Staff anticipates that recordkeeping would be performed by clerical staff at approximately $13 per hour. At 5,000 hours per year for all affected entities, this would amount to a total cost of $65,000. Thus, combined labor costs for recordkeeping and disclosure is approximately $7,190,000.

Estimated increase in annual hours burden for proposed rule amendments: 2750 hours.

The Commission is conducting a rulemaking proceeding to amend the Franchise Rule. 64 FR 57294 (1999) (Notice of Proposed Rulemaking). The Staff Report on the Proposed Revised Franchise Rule (Aug. 25, 2004) ("Staff Report"), which is available online at *http://www.ftc.gov*, sets forth the staff's recommendations to the Commission on various proposed amendments to the Franchise Rule. The Commission did not review or approve the staff report prior to its issuance. See 69 FR 53661 (2004) (Notice Announcing Publication of Staff Report). Among other things, the Rule amendments discussed in the Staff Report would accomplish five goals. First, the staff has recommended that the amended Rule address the sale of business format and product franchises exclusively. The existing requirements for business opportunity ventures would be renumbered as a separate rule limited to business opportunities only. See Staff Report at 13 and n.42. Accordingly, the burden for business opportunity ventures will remain the same.

Second, the amended Rule would reduce inconsistencies between federal and state disclosure requirements. Fifteen states have franchise disclosure laws similar to the Rule. These states use a disclosure document format known as the Uniform Franchise Offering Circular ("UFOC"). Staff estimates that about 95 percent of all franchisors use the UFOC format. The amended Rule would incorporate nearly all of the UFOC disclosures, thereby harmonizing federal and state disclosure laws.

Third, the amended Rule would require the disclosure of more information on the quality of the franchise relationship. Among other things, franchisors would disclose litigation initiated against franchisees involving the franchise relationship and franchisee-specific trademark associations.

Fourth, the amended Rule would update the rule to address new technologies. Specifically, it would permit franchisors to furnish disclosures electronically. This includes transmission via CD ROM, e-mail, and access to a Web site.

Finally, the amended Rule would reduce compliance costs by expanding exemptions from disclosure. Specifically, the amended Rule would create new exemptions for sophisticated investors and for sales to managers and others within the franchise system who are already familiar with the franchise system's operations.

At the same time, the amended Rule would increase franchisors' recordkeeping obligations. Specifically, a franchisor would be required to retain copies of receipts for disclosure documents, as well as materially different versions of its disclosure documents. Such recordkeeping requirements are consistent with, or less burdensome, than those imposed by the states.

Staff estimates the increase in burden attributable to the proposed Rule amendments as follows: Each year, approximately 250 new franchisors will require 32 hours each (2 hours more than under the existing Rule) to develop a Rule-compliant disclosure document (increase of 500 hours). Staff also estimates that during the first year that the amended Rule is effective, the remaining 2250 established franchisors will require approximately 6 hours each (3 hours more than under the existing Rule) to update their existing disclosure document to comply with the amended Rule (increase of 6750 hours for the first year). After the first year, however, the time required should be the same as under the existing Rule, as the new disclosure format becomes familiar. Accordingly, the increase in the annual disclosure burden, averaged over the three-year clearance period, will be 2750 hours (500 hours per year for new franchisors + 2250 hours per year for established franchisors).

Estimated increase in annual cost burden for proposed rule amendments: $688,000, rounded to the nearest thousand.

Labor costs are determined by applying applicable wage rates to associated burden hours. Staff assumes that an attorney likely would prepare the disclosure document. Accordingly, staff's estimate of the increase in labor costs that would be attributable to the proposed Rule amendments, averaged over the three-year clearance period, is as follows: (500 hours per year for new franchisors × $250 per hour) + (2250 hours per year for established franchisors × $250) = $687,500.

4. R-Value Rule, 16 CFR Part 460 (OMB Control Number: 3084–0109)

The R-value Rule establishes uniform standards for the substantiation and disclosure of accurate, material product information about the thermal performance characteristics of home insulation products. The R-value of an insulation signifies the insulation's degree of resistance to the flow of heat. This information tells consumers how well a product is likely to perform as an insulator and allows consumers to determine whether the cost of the insulation is justified.

Estimated annual hours burden: 121,000 hours.

The Rule's requirements include product testing, recordkeeping, and third-party disclosures on labels, fact sheets, advertisements, and other promotional materials. Based on information provided by members of the insulation industry, staff estimates that the Rule affects: (1) 150 insulation manufacturers and their testing laboratories; (2) 1,615 installers who sell home insulation; (3) 125,000 new home builders/sellers of site-built homes and approximately 5,500 dealers who sell manufactured housing; and (4) 25,000 retail sellers who sell home insulation for installation by consumers.

Under the Rule's testing requirements, manufacturers must test each insulation product for its R-value. The test takes approximately 2 hours. Approximately 15 of the 150 insulation manufacturers in existence introduce one new product each year. The total annual testing burden is therefore approximately 30 hours (15 manufacturers × 2 hours per test).

Staff further estimates that most manufacturers require an average of approximately 20 hours per year with regard to third-party disclosure requirements in advertising and other promotional materials. Only the five or six largest manufacturers require additional time, approximately 80 hours each. Thus, the annual third-party disclosure burden for manufacturers is approximately 3,360 hours [(144 manufacturers × 20 hours) + (6 manufacturers × 80 hours)].

While the Rule imposes recordkeeping requirements, most manufacturers and their testing laboratories keep their testing-related records in the ordinary course of business. Staff estimates that no more than one additional hour per year per manufacturer is necessary to comply with this requirement, for an annual recordkeeping burden of approximately 150 hours (150 manufacturers × 1 hour).

Installers are required to show the manufacturers' insulation fact sheet to retail consumers before purchase. They must also disclose information in contracts or receipts concerning the R-value and the amount of insulation to install. Staff estimates that two minutes per sales transaction is sufficient to comply with these requirements. Approximately 1,520,000 retrofit insulations are installed by approximately 1,615 installers per year, and, thus, the related annual burden total is approximately 50,667 hours (1,520,000 sales transactions × 2 minutes). Staff anticipates that one hour per year per installer is sufficient to cover required disclosures in advertisements and other promotional materials. Thus, the burden for this requirement is approximately 1,615 hours per year (1,615 installers × 1 hour). In addition, installers must keep records that indicate the substantiation relied upon for savings claims. The additional time to comply with this requirement is minimal—approximately 5 minutes per year per installer—for a total of approximately 135 hours (1,615 installers × 5 minutes).

New home sellers must make contract disclosures concerning the type, thickness, and R-value of the insulation they install in each part of a new home. Staff estimates that no more than 30 seconds per sales transaction is required to comply with this requirement, for a total annual burden of approximately 14,167 hours (1.7 million new home sales × 30 seconds). New home sellers who make energy savings claims must also keep records regarding the substantiation relied upon for those claims. Because few new home sellers make these claims, and the ones that do would likely keep these records regardless of the R-value Rule, staff believes that the 30 seconds covering disclosures would also encompass this recordkeeping element.[2]

The Rule requires that the approximately 25,000 retailers who sell home insulation make fact sheets available to consumers before purchase. This can be accomplished by, for example, placing copies in a display rack or keeping copies in a binder on a service desk with an appropriate notice. Replenishing or replacing fact sheets should require no more than approximately one hour per year per retailer, for a total of 25,000 annual hours, industry-wide.

The Rule also requires specific disclosures in advertisements or other promotional materials to ensure that the claims are fair and not deceptive. This burden is very minimal because retailers typically use advertising copy provided by the insulation manufacturer, and even when retailers prepare their own advertising copy, the Rule provides some of the language to be used. Accordingly, approximately one hour per year per retailer should suffice to meet this requirement, for a total annual burden of approximately 25,000 hours.

Retailers who make energy savings claims in advertisements or other promotional materials must keep records that indicate the substantiation they are relying upon. Because few retailers make these types of promotional claims and because the Rule permits retailers to rely on the insulation manufacturer's substantiation data for any claims that are made, the additional recordkeeping burden is *de minimis*. The time calculated for disclosures, above, would be more than adequate to cover any burden imposed by this recordkeeping requirement.

To summarize, staff estimates that the Rule imposes a total of 120,624 burden hours, as follows: 150 recordkeeping and 3,390 testing and disclosure hours for manufacturers; 135 recordkeeping and 52,282 disclosure hours for installers; 14,667 disclosure hours for new home sellers; and 50,000 disclosure hours for retailers. Rounded to the nearest thousand, the total burden is 121,000 burden hours.

Estimated annual cost burden: $2,738,000, rounded to the nearest thousand (solely related to labor costs).

The total annual labor costs for the Rule's information collection requirements is $2,737,902, derived as follows: $690 for testing, based on 30 hours for manufacturers (30 hours × $23 per hour for skilled technical

[2] In previous requests for clearance under the PRA, the FTC staff assumed that the requirements related to new home sales contracts require one minute per sales transaction. See, *e.g.*, 67 FR 21243, 21246 (April 30, 2002). The FTC staff now estimates that the inclusion of such information should take no more than 30 seconds per sales transaction because of increased automation, the wide-spread use of standard contracts, and the prevalence of large firms in the housing market. In addition, there was a calculation error in the previous requests that significantly overestimated the total burden imposed by new home sale contract disclosures.

personnel); $3,705 for complying with the recordkeeping requirements of the Rule, based on 285 hours (285 hours × $13 per hour for clerical personnel); $43,680 for manufacturers' compliance with third-party disclosure requirements, based on 3,360 hours (3,360 hours × $13 per hour for clerical personnel); and $2,689,827 for compliance by installers, new home sellers, and retailers (116,949 hours × $23 per hour for sales persons).

There are no significant current capital or other non-labor costs associated with this Rule. Because the Rule has been in effect since 1980, members of the industry are familiar with its requirements and already have in place the equipment for conducting tests and storing records. New products are introduced infrequently. Because the required disclosures are placed on packaging or on the product itself, the Rule's additional disclosure requirements do not cause industry members to incur any significant additional non-labor associated costs.

5. FTC Administrative Activities (OMB Control Number: 3084–0047)

This category consists of: (a) applications to the Commission, including Applications and notices contained in the Commission's Rules of Practice (primarily Parts I, II, and IV); (b) the FTC's consumer complaint systems; (c) FTC program evaluation activities and (d) Applicant Background Form.

Estimated annual hours burden: 139,000 hours, rounded to the nearest thousand.

(a) Applications to the Commission, including applications and notices contained in the Commission's Rules of Practice: 125 hours.

Most applications to the Commission generally fall within the "law enforcement" exception to the Paperwork Reduction Act.[3] Over the last decade, the Commission has received only one application for an exemption under the Fair Debt Collection Practices Act provisions. Staff has estimated that such a submission can be completed well within 50 hours. Applications and notices to the Commission contained in other rules (generally in Parts I, II, and IV of the Commission's Rule of Practice) are also infrequent and difficult to quantify. Nonetheless, in order to cover any potential "collections of information" for which separate clearance has not been sought, staff is projecting 125 hours as its estimate of the time needed to submit any applicable responses.[4]

(b) Complaint Systems: 138,415 hours.

Consumer Response Center

Consumers can submit complaints about fraud and other practices to the FTC's Consumer Response Center by telephone or through the FTC's website. Telephone complaints and inquiries to the FTC are answered both by FTC staff and contractors. These telephone counselors ask for the same information that consumers would enter on the applicable forms available on the FTC's Web site. For telephone inquiries and complaints, the FTC staff estimates that it takes 4.5 minutes per call to gather information, somewhat less time than the 5 minutes estimated for consumers to enter a complaint online.[5] The burden estimate conservatively assumes that all of the phone call is devoted to collecting information from consumers, although frequently telephone counselors devote a small portion of the call to providing requested information to consumers.

Complaints Concerning National Do Not Call Registry

To receive complaints from consumers of possible violations of the rules governing the National Do Not Call Registry, 16 CFR 310.4(b), the FTC maintains both an online form and a toll free hotline with automated voice response system. Consumer complainants must provide either the name or telephone number of the company about which they are complaining, the phone number that was called and the date of the call; they may also provide their name and address so they can be contacted for additional information. The FTC staff estimates that the time required of consumer complainants is 2.5 minutes for phone complaints and 2 minutes for online complaints.

The FTC received a comment from T-Mobile USA, Inc. ("T-Mobile") contending that the FTC should require more information from consumer complainants in order to reduce the burden on companies such as T-Mobile investigating complaints against them of possible violations of the Registry. T-Mobile, which describes itself as a nationwide commercial mobile radio service carrier that currently serves more than 18 million customers as well as the largest carrier-owned Wi-Fi network in the world, proposes increasing the burden on each consumer submitting a complaint of an unwanted telemarketing call in two ways.

First, T-Mobile proposes that the FTC require consumers to include an "express description of the goods or services that were offered" or other similar information about what the call was about. T-Mobile asserts it is the subject of some consumer complaints for exempt calls such as debt collection, customer service inquiries, and other calls that do not constitute telemarketing. Indeed, T-Mobile emphasizes that it "does not conduct any outbound telemarketing to anyone other than its existing subscribers," which suggests it may also receive complaints about calls exempt from the Registry due to an established business relationship.

The FTC declines to require this proposed field of additional information from all consumer complainants in order to eliminate a limited set of complaints about exempt calls against companies like T-Mobile. Preliminarily, if it is true that T-Mobile is not engaged in telemarketing covered by the Registry, T-Mobile's investigation would appear to be a relatively simple matter. In addition, the proposed solution is not a good fit for the problem asserted. For example, if a company such as T-Mobile calls for debt collection or a customer service inquiry, the consumer complainant may describe the call as an offer about the company's goods or services. Moreover, it is not at all clear that this indirect method of reminding consumers that the call must be a telemarketing call in order to be covered by the Registry would be more effective than the FTC announcements on the online complaint form and the toll-free hotline that already inform consumers that certain types of calls are permitted by the Registry rules.

Second, T-Mobile suggests that the FTC require consumers to collect, record and provide both the name and telephone number of the company about which they are complaining. Because

[3] The "law enforcement" exception to the PRA excludes most items in this subcategory because they involve collecting information during the conduct of a Federal investigation, civil action, administrative action, investigation, or audit with respect to a specific party, or subsequent adjudicative or judicial proceedings designed to determine fines or other penalties. See 44 U.S.C. 3518(c)(1); 5 CFR 1320.4(a)(1)–(3).

[4] This includes Commission Rule of Practice 4.11(e), 16 CFR § 4.11(e), which establishes procedures for agency review of outside requests for Commission employee testimony, through compulsory process or otherwise, in cases or matters to which the agency is not a party. The rule requires that a person who seeks such testimony submit a statement in support of the request. Staff estimates that agency personnel receive roughly 2 such requests per month or 24 per year, and conservatively estimates that it would require up to 2 hours to prepare the statement, for a cumulative total of 24 hours.

[5] Because the fraud-related form is closely patterned after the general complaint form, burden estimates per respondent for each are the same.

consumer complainants may provide both pieces of information, and many already do so, T-Mobile's proposal to require both imposes an extra requirement on precisely those consumers who are already indicating that providing such additional information is burdensome, if not impossible. As T-Mobile recognizes in its comment, not all consumers have Caller ID and they may not have *69 service. Furthermore, *69 service may not always identify the phone number from which the call originated. Consumers may not record the number from which the call originated, particularly if the call is received during dinner or another inopportune time, which is precisely when they should be protected from unwanted telemarketing. In addition, calls left upon a consumer's telephone answering machine or through call waiting service may not be the last call received and thus would not be identifiable using *69 service. Finally, consumer unfamiliarity with *69 and concerns about whether it would result in a charge to the consumer would discourage consumers from making complaints at all.

The FTC, as a law enforcement agency that enforces compliance with the Registry, is well aware of the investigatory burden of investigating Do Not Call complaints by beginning with the limited information that consumers provide. The FTC, as a consumer protection agency, is also well aware of the importance of providing consumers with a convenient means of submitting complaints. The FTC must not so burden consumers so as to discourage the submission of complaints. While more information may be helpful in some circumstances, that benefit must be balanced against the burden of requiring all consumers to submit the additional information in all complaints. The FTC, based on its agency experience and familiarity with the financial and technical constraints of operating the complaint system, has concluded that the current complaint system collects the appropriate amount and type of information from consumers. Accordingly, the FTC declines to adopt T-Mobile's suggestions at this time. The FTC staff periodically considers whether its complaint system can be improved as a part of ongoing system upgrades and may make changes at a future date.

Identity theft

To handle complaints about identity theft, the FTC must obtain more detailed information than is required of other complainants. Identity theft complaints generally require more information (such as a description of actions complainants have taken with credit bureaus, companies, and law enforcement, and the identification of multiple suspects) than general consumer complaints and fraud complaints. In addition, the FTC is considering expanding the information required on its online complaint form (such as collecting additional information about the fraudulent activity at affected companies and creating an attachment summarizing all of the fraudulent account activity as well as all fraudulent information on the consumer's credit report). Consumers would be able to print out a copy of the revised form and use it to assist them in completing a police report, if appropriate, and, as also may be necessary, an ID Theft report. See 16 CFR 603.3 (defining the term "identity theft report"). The FTC estimates that the revised form would take consumers up to 13 minutes to complete (instead of the 7.5 minutes estimated for the current online form).

The FTC is also planning to make some revisions in the information it collects from consumers who call the Consumer Response Center (CRC) with identity theft complaints. Staff estimates that it will take 9 minutes per call to obtain identity-theft related information (instead of the 8 minutes estimated for the current call procedure). A substantial portion of identity theft-related calls typically consists of counseling consumers on other steps they should consider taking to obtain relief (which may include directing consumers to a revised online complaint form). The time needed for counseling is excluded from the estimate.

Surveys

Consumer customer satisfaction surveys give the agency information about the overall effectiveness and timeliness of the Consumer Response Center (CRC). The CRC surveys roughly 1 percent of complainants who file IDT or general consumer complaints. Subsets of consumers contacted throughout the year are questioned about specific aspects of CRC customer service. Each consumer surveyed is asked several questions chosen from a list prepared by staff. The questions are designed to elicit information from consumers about the overall effectiveness of the call center. Half of the questions ask consumers to rate CRC performance on a scale or require a yes or no response. The second half of the survey asks more open-ended questions seeking a short written or verbal answer. Staff estimates that each respondent will require 4 minutes to answer the questions (approximately 20–30 seconds per question).

Finally, Consumer Sentinel user surveys give the agency information about the overall effectiveness of its Consumer Sentinel Network. Consumer Sentinel allows federal, state and local law enforcement organizations common access to a secure database containing over two million complaints from victims of consumer fraud and identity theft. To date, Consumer Sentinel has over 1200 members, including law enforcement agencies from Canada and Australia. FTC staff plan to survey roughly 50% (approximately 2,500 respondents) of Consumer Sentinel users each year about such things as overall satisfaction, performance, and possible improvements. Generally, the surveys should take approximately 10 minutes per respondent (417 hours total).

What follows are staff's estimates of burden for these various collections of information, including the surveys. The figures for the online forms and consumer hotlines are an average of annualized volume for the respective programs including both current and projected volumes over the 3-year clearance period sought and are rounded to the nearest thousand.

Activity	Number of respondents	Number of minutes/ activity	Total hours
Miscellaneous and fraud-related consumer complaints (phone)*	315,000	4.5	23,625
Miscellaneous and fraud-related consumer complaints (online)**	135,000	5	11,250
IDT complaints (phone)*	380,000	9	57,000
IDT complaints (online)**	128,000	13	27,733
Do-Not-Call related consumer complaints (phone)	82,000	2.5	3,417
Do-Not-Call related consumer complaints (online)	430,000	2	14,333
Customer Satisfaction Questionnaire	9,600	4	640

Activity	Number of respondents	Number of minutes/ activity	Total hours
Consumer Sentinel User Surveys	2,500	10	417
Totals	1,482,100		138,415

* Number of consumer calls calculated by projecting over the 3-year clearance period sought 5% annual growth and a telephone contractor response rate of 95% (contracted level of service) with regard to consumers who call the toll free lines and opt to talk to a counselor.

** Number of online collections projected from number of consumers who use the FTC's online complaint forms noted in the text above. These figures also assume 5% annual growth for miscellaneous and fraud-related complaints, and 8% annual growth for ID Theft online complaints, over the 3-year clearance period requested.

Annual cost burden:

The cost per respondent should be negligible. Participation is voluntary and will not require any labor expenditures by respondents. There are no capital, start-up, operation, maintenance, or other similar costs to the respondents.

(c) Program Evaluations: 355 hours.

Review of Divestiture Orders

The Commission issues, on average, approximately 10–15 orders in merger cases per year that require divestitures. As a result of a 1999 study authorized by the OMB and conducted by the staffs of the Bureau of Competition and the Bureau of Economics,[6] the Bureau of Competition ("BC") intends to enhance its monitoring of these required divestitures by interviewing representatives of the Commission-approved buyers of the divested assets within the first year after the divestiture is completed. For the first several years of this new evaluation process, however, BC staff will be focusing on older orders and thus anticipates reviewing up to 40 divestitures per year.

BC staff will interview representatives of the buyers to ask whether all assets required to be divested were, in fact, divested;[7] whether the buyer has used the divested assets to enter the market of concern to the Commission and, if so, the extent to which the buyer is participating in the market; whether the divestiture met the buyer's expectations; and whether the buyer believes the divestiture has been successful. BC staff may also interview other participants, including customers or trustee monitors, as appropriate. In all these interviews, staff will seek to learn about pricing and other basic facts regarding competition in the markets of concern to the agency.

Participation by the buyers will be voluntary. Each responding company will designate the company representative most likely to have the necessary information; in all likelihood, it will be a company executive and a lawyer for the company may also be present. BC staff estimates that each interview will take approximately one hour to complete, with no more than an hour's preparation required by each of the participants. In some instances, staff may do additional interviews with customers of the responding company or the monitor. Staff conservatively estimates that for each interview, two individuals (a company executive and a lawyer) will devote two hours each to responding to our questions for a total of four hours. In addition, for approximately half of the divestitures, staff will seek to question two additional respondents, adding four participants (a company executive and a lawyer for each of the two additional respondents) devoting two hours each, for a total of eight additional hours. Assuming that staff evaluates up to 40 divestitures per year during the three-year clearance period, the total hours burden for the responding companies will be approximately 320 hours per year ((40 × 4 hours) + (20 × 8 hours)).

Using the burden hours estimated above, staff estimates that the total annual labor cost, based on a conservative estimated average of $425/hour for executives' and attorneys' wages, would be approximately $136,000 (320 hours × $425).

Review of Competition Advocacy Program

The FTC's competition advocacy program draws on the Commission's expertise in competition and consumer protection matters to encourage federal and state legislators, courts and other state and federal agencies to consider the competitive effects of their proposed actions. Since June of 2001, the FTC Office of Policy Planning ("OPP") has sent out 51 letters or written comments to different government officials, which have advocated the passage or repeal of various laws or regulations based on their likely competitive effects. OPP intends to evaluate the effectiveness of these advocacy comments.

The evaluation will target the recipients of each of the 51 written comments, as well as 18 sponsors of the relevant legislation, by means of a written questionnaire. Most of the questions ask the respondent to agree or disagree with a statement concerning the advocacy comment that they received. Specifically, these questions inquire as to the applicability, value, persuasive influence, public effect, and informative value of the FTC's comments. The questionnaire also provides respondents with an opportunity to provide additional remarks related either to the written comments received or the FTC's advocacy program in general. Participation is voluntary.

OPP staff estimates that on average, respondents will take 30 minutes or less to complete the questionnaire. OPP staff does not intend to conduct any follow-up activities that would involve the respondents' participation. If all respondents complete the questionnaire, the total hours burden for the evaluation will be approximately 35 hours (69 respondents × .5 hours). OPP staff estimates a conservative hourly labor cost of $250 for the time of the survey participants (primarily state representatives and senators). Thus, the total annual labor cost would be approximately $8750 (35 hours × $250).

(d) Applicant Tracking Form: 400 hours.

The FTC's Human Resources Management Office intends to survey job applicants on their ethnicity, race, and disability status in order to determine if recruitment is effectively reaching all aspects of the relevant labor pool, in compliance with management directives from the Equal Opportunity Employment Commission. Response by applicants is optional. The information obtained will be used for evaluating recruitment only and plays no part in the selection of who is hired. The information is not provided to selecting officials. Instead, the information is used in summary form to determine

[6] The Staff of the Bureau of Competition of the Federal Trade Commission compiled its findings from the study in its report: A Study of the Commission's Divestiture Process, 1999, available at *http://www.ftc.gov/os/1999/08/divestiture.pdf*.

[7] To the extent that the staff interviews focus on a law enforcement activity (whether the party to the order complied with all its obligations), the interviews are not subject to the requirements of the Paperwork Reduction Act. See supra note 3.

trends over many selections within a given occupational or organizational area. The information is treated in a confidential manner. No information from the form is entered into the official personnel file of the individual selected and all forms are destroyed after the conclusion of the selection process. The format of the questions on ethnicity and race are compliant with OMB requirements and comparable to those used by other agencies.

The FTC staff estimates that up to 5,000 applicants will submit the form as part of the new online application process and that the form will require 5 minutes to complete, for an annual burden total of approximately 400 hours.

Annual cost burden:

The cost per respondent should be negligible. Participation is voluntary and will not require any labor expenditures by respondents. There are no capital, start-up, operation, maintenance, or other similar costs to the respondents.

Christian S. White,

Acting General Counsel.

[FR Doc. 05–17326 Filed 8–30–05; 8:45 am]

BILLING CODE 6750–01–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), Subcommittee on Standards and Security (SSS).

Time and Date: September 21, 2005: 9 a.m.–5 p.m.; September 22, 2005: 8:30 a.m.–12 p.m.

Place: Hubert H. Humphrey Building, 200 Independence Avenue SW., Room 705A, Washington, DC 20201.

Status: Open.

Purpose: On the first day the Subcommittee will focus on two topics: introductory discussions of the issues surrounding matching patients with their records, and then continued explorations into issues around HIPAA Return on Investment (ROI). The second day open with an overview of the e-prescribing pilots required under Medicare Modernization Act (MMA) and will move to continued discussions on the secondary use of clinical data.

Contact Person for More Information: Substantive program information as well as summaries of meetings and a roster of Committee members may be obtained from Maria Friedman, Health Insurance Specialist, Security and Standards Group, Centers for Medicare and Medicaid Services, MS: C5–24–04, 7500 Security Boulevard, Baltimore, MD 21244–1850, telephone: 410–786–6333 or Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, Room 1100, Presidential Building, 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.nevhs.hhs.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) 458–3EEO (4336) as soon as possible.

Dated: August 23, 2005.

James Scanlon,

Acting Deputy Assistant Secretary for Science and Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 05–17345 Filed 8–30–05; 8:45 am]

BILLING CODE 4151–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Meeting

National Center for Health Statistics (NCHS), Classifications and Public Health Data Standards announces the following meeting.

Name: ICD–9–CM Coordination and Maintenance Committee meeting.

Times and Dates: 9 a.m.–4 p.m., September 29, 2005. 9 a.m.–4 p.m., September 30, 2005.

Place: Centers for Medicare and Medicaid Services (CMS) Auditorium, 7500 Security Boulevard, Baltimore, Maryland.

Status: Open to the public.

Purpose: The ICD–9–CM Coordination and Maintenance (C&M) Committee will hold its final meeting of the 2005 calendar year cycle on Thursday and Friday, September 29–30, 2005. The C&M meeting is a public forum for the presentation of proposed modifications to the International Classification of Diseases, Ninth-Revision, and Clinical Modification.

Matters to be Discussed: Agenda items include: Complex and simple febrile seizures, family history of colonic polyps, mucositis, newborn post discharge check, benign prostatic hypertrophy with lower urinary tract symptoms, acute and chronic gingival disease, anal sphincter tear, addenda (diagnosis), cervical stump prolapse, growth-guidance device/8-plate, M-brace dynamic spinal stabilization system, implantable hemodynamic monitor, injection or infusion of Levosimendan, laparoscopic hysterectomy, Taylor spatial frame, bifurcated vessel procedure, EPS studies, addenda (procedures), ICD–10–Procedure Coding System (PCS) update.

For Further Information Contact: Amy Blum, Medical Systems Specialist, Classifications and Public Health Data Standards Staff, NCHS, 3311 Toledo Road, Room 2402, Hyattsville, Maryland 20782, e-mail *alb8@cdc.gov*, telephone 301–458–4106 (diagnosis), Mady Hue, Health Insurance Specialist, Division of Acute Care, CMS, 7500 Security Blvd., Baltimore, Maryland 21244, e-mail *Marilu.Hue@cms.hhs.gov*, telephone 410–786–4510 (procedures).

Notice: Because of increased security requirements, CMS has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show an official form of picture I.D., (such as a driver's license), and sign-in at the security desk upon entering the building. Those who wish to attend a specific ICD–9–CM C&M meeting in the CMS auditorium must submit their name and organization for addition to the meeting visitor list. Those wishing to attend the September 29–30, 2005 meeting must submit their name and organization by September 26, 2005 for inclusion on the visitor list. This visitor list will be maintained at the front desk of the CMS building and used by the guards to admit visitors to the meeting. Those who attended previous ICD–9–CM C&M meetings will no longer be automatically added to the visitor list. You must request inclusion of your name prior to each meeting you attend. Register to attend the meeting on-line at: *http://cms.hhs.gov/events.*

Notice: This is a public meeting. However, because of fire code requirements, should the number of attendants meet the capacity of the room, the meeting will be closed.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: August 24, 2005.

B. Kathy Skipper,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 05–17325 Filed 8–30–05; 8:45 am]

BILLING CODE 4163–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for Environmental Health/Agency for Toxic Substances and Disease Registry

The Community and Tribal Subcommittee of the Board of Scientific Counselors (BSC), Centers for Disease Control and Prevention (CDC), National Center for Environmental Health/Agency for Toxic Substances and Disease Registry (NCEH/ATSDR): Teleconference.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act

(Pub. L. 92–463), the Centers for Disease Control and Prevention, NCEH/ATSDR announces the following subcommittee meeting:

Name: Community and Tribal Subcommittee (CTS).

Time and Date: 3 p.m.–4:30 p.m., September 8, 2005.

Place: The teleconference will originate at the National Center for Environmental Health/Agency for Toxic Substances and Disease Registry in Atlanta, Georgia. Please see *Supplementary Information* for details on accessing the teleconference.

Status: Open to the public, teleconference access limited only by availability of telephone ports.

Purpose: Under the charge of the Board of Scientific Counselors, NCEH/ATSDR the Community and Tribal Subcommittee will provide the BSC, NCEH/ATSDR with a forum for community and tribal first-hand perspectives on the interactions and impacts of the NCEH/ATSDR's national and regional policies, practices and programs.

Matters To Be Discussed: The teleconference agenda will include an update on the Report on the Program Peer Review Subcommittee, a discussion on the NCEH/ATSDR portfolio of programs; and an open discussion for other important issues.

Items are subject to change as priorities dictate.

Supplementary Information: This conference call is scheduled to begin at 3 p.m. eastern standard time. To participate in the teleconference, please dial (877) 315–6535 and enter conference code 383520.

For Further Information Contact: Sandra Malcom, Committee Management Specialist, Office of Science, NCEH/ATSDR, M/S E–28, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone (404) 498–0003.

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 National Center for Environmental Health/Agency for Toxic Substances and Disease Registry.

Dated: August 25, 2005.

B. Kathy Skipper,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 05–17295 Filed 8–30–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Agency for Toxic Substances and Disease Registry (ATSDR) Public Meeting of the Citizens Advisory Committee on Public Health Service (PHS) Activities and Research at Department of Energy (DOE) Sites: Oak Ridge Reservation Health Effects Subcommittee

Name: Public meeting of the Citizens Advisory Committee on PHS Activities and Research at DOE Sites: Oak Ridge Reservation Health Effects Subcommittee (ORRHES).

Time and Date: 12 p.m.—8 p.m., September 22, 2005.

Place: Oak Ridge Mall, Alpine Room, 333 East Main Street, Oak Ridge, Tennessee, 37830.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Background: A Memorandum of Understanding (MOU) was signed in October 1990 and renewed in September 2000 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund"). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles. In addition, under an MOU signed in December 1990 with DOE and replaced by an MOU signed in 2000, the Department of Health and Human Services (DHHS) has been given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production and use. DHHS has delegated program responsibility to CDC. Community involvement is a critical part of ATSDR's and CDC's energy-related research and activities, and input from members of the ORRHES is part of these efforts.

Purpose: The purpose of this meeting is to address issues that are unique to community involvement with the ORRHES, and agency updates.

Matters To Be Discussed: Agenda items will include a brief discussion on the Beir VII report; a presentation on the draft public health assessment: Current and Future Chemical Exposure Evaluation (1990–2003); an update on ATSDR's project management plan and the schedule of public health assessments to be released in FY2005–2006; updates and recommendations from the Exposure Evaluation, Community Concerns and Communications, and the Health Outcome Data Workgroups; and agency updates.

Agenda items are subject to change as priorities dictate.

For Further Information Contact: Marilyn Horton, Designated Federal Official and Health Communication Specialist, Division of Health Assessment and Consultation, ATSDR, 1600 Clifton Road, NE., M/S E–32, Atlanta, Georgia 30333, telephone 1–888–42–ATSDR (28737), fax (404) 498–1744.

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 ATDSR.

Dated: August 25, 2005.

B. Kathy Skipper,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 05–17296 Filed 8–30–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Educational Workshops on Current Good Manufacturing Practices; Public Workshops

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshops.

SUMMARY: The Food and Drug Administration (FDA) is announcing a series of educational workshops on current good manufacturing practice (CGMP). The workshops, which will be held in collaboration with Peking University (Beijing, China) and the International Society for Pharmaceutical Engineering (ISPE), are intended to educate participants on current methods for compliance with good manufacturing practices (GMP). The workshops are being offered to help ensure effective CGMP programs and to further the common goals of FDA and providers of quality pharmaceutical products.

DATES: See table 1 in the **SUPPLEMENTARY INFORMATION** section of this document.

ADDRESSES: See table 1 in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Erik N. Henrikson, Center for Drug Evaluation and Research (HFD–320), Food and Drug Administration, 11919 Rockville Pike, Rockville, MD 20852,

301–827–9035, FAX: 301–827–8907, *henriksone@cder.fda.gov* or Qiang Zheng, Peking University, Beijing, China, 86–10–6275–6489, FAX: 86–10–6275–1207, *zhengqiang@pku.edu.cn.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Who Should Attend?

This announcement is directed towards professionals involved in the manufacture, control, and regulation of pharmaceutical products who will benefit from these workshops, including process/production engineers, manufacturing personnel, quality assurance/quality control and regulatory affairs professionals, consultants, regulatory investigators and CGMP compliance officials. Other entities or individuals may also be interested in attending.

B. Where and When Will These Workshops Be Held?

The location and times for the two workshops are listed in table 1 of this document.

TABLE 1.—WORKSHOP LOCATION AND SCHEDULES

Workshop Address	Dates and Local Times
Ying Jie Convention Center, Peking University, Beijing, China	December 5 through 7, 2005, from 9 a.m. to 5 p.m. each day.
Ying Jie Convention Center, Peking University, Beijing, China	April 24 through 26, 2006, from 9 a.m. to 5 p.m. each day.

C. How Can I Participate?

You can participate in person. Anyone interested in the GMP workshops can register through the contact person in the **FOR FURTHER INFORMATION CONTACT** section of this document.

D. Is There a Registration Fee for These Workshops?

Yes, a registration fee of $440 is required for this workshop. This registration fee includes workshop reference materials and meals. Government employees qualify for a discounted rate of $120.

E. How Can I Get Additional Information?

The notice of participation form, information about the workshops, and other related documents are available from the contact person in the **FOR FURTHER INFORMATION CONTACT** section of this document or from the Internet at *http://www.fda.gov/cder/meeting/CTP2005.htm.*

II. Background Information

A. Why Is FDA Cosponsoring These Workshops?

FDA is cosponsoring these 3-day workshops to provide information and training opportunities for industry as well as CGMP compliance officials.

B. What Will Be Covered?

The workshops will provide information on specific topics designed to educate and guide participants on methodologies and implementation of CGMP as applied to quality drug manufacturing. Presentations by both FDA and industry will provide a regulatory and practical perspective on the current relevant critical topics.

Dated: August 24, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–17248 Filed 8–30–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Request for Public Comment: 60-Day Proposed Information Collection: Indian Health Service (IHS) Background Investigations of Individuals in Position Involving Regular Contact With or Control Over Indian Children OPM–306.

AGENCY: Indian Health Service, HHS.

SUMMARY: The Department of Health and Human Services, as part of its continuing efforts 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. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the IHS is providing a 60-day advance opportunity for public comment on a proposed extension of current information collection activity to be submitted to the office of Management and Budget for review.

Proposed Collection

Title: 0917–0028, "IHS Background Investigations of Individuals in Positions Involving Regular Contact With or Control Over Indian Children" OPM–306.

Type of Information Collection Request: Extension, without revision, of currently approved information collection, 0917–0028. "IHS Background Investigations of Individuals in Position Involving Regular Contact With or Control Over Indian Children" OPM–306.

Form Number: OF–306.

Forms: Declaration for Federal Employment.

Need and Use of Information Collection: This is a request for approval of collection information required by section 408 of the Indian Child Protection and Family Violence Prevention Act, Public Law 101–630, 104 Stat. 4544, 25 U.S.C. 3201–3211. The IHS is required to compile a list of all authorized positions within the IHS where the duties and responsibilities involve regular contact with, or control over, Indian children; and to conduct an investigation of the character of each individual who is employed, or is being considered for employment in a position having regular contact with, or control over, Indian children. Section 3207(b) of the Indian Child Protection and Family Violence Prevention Act was amended by section 814 of S. 3031, the Native American Laws Technical Corrections Act of 2000, which requires that the regulations prescribing the minimum standards of character ensure that none of the individuals appointed to positions involving regular contact with, or control over Indian children have been found guilty of, or entered a plea of nolo contendere or guilty to any felonious offense, or any of two or more misdemeanor offenses under Federal, State, or tribal law involving crimes of violence; sexual assault, molestation, exploitation, contact or prostitution; crimes against persons; or offenses committed against children. In addition, 42 U.S.C. 13041 requires each agency of the Federal Government, and every facility operated by the Federal Government (or operated under contract with the Federal Government), that hires (or contracts for hire) individuals involved with children under the age of 18 or child care services to assure that all existing and newly-hired employees undergo a criminal history background check. The background is to be initiated through the personnel program of the applicable Federal agency. This section requires employment applications for individuals who are seeking work for an

agency of the Federal Government, or for a facility or program operated by (or through contract with) the Federal Government, in positions involved with the provision to children under the age of 18 or child care services, to contain a question asking whether the individual has ever been arrested for or charged with a crime involving a child.

Affected Public: Individuals and households.

Type of Respondents: Individuals.

The table below provides the estimated burden hours for this information collection:

ESTIMATED BURDEN HOURS

42 CFR Part 36	Estimated number of respondents	Responses per respondent	Average burden hour per response *	Total annual burden hours
Addendum to OF 306 Declaration for Federal Employment	2,000	1	0.25 (15 mins)	500

* For ease of understanding, burden hours are also provided in actual minutes.

There are no Capital Costs, Operating Costs and/or Maintenance Costs to report.

Request For Comments: Your written comments and/or suggestions are invited on one or more of the following points: (a) Whether the information collection activity is necessary to carry out an agency function; (b) whether the agency processes the information collected in a useful and timely fashion; (c) the accuracy of public burden estimate (the estimated amount of time needed for individual respondents to provide the requested information); (d) whether the methodology and assumptions used to determine the estimate are logical; (e) ways to enhance the quality, utility, and clarity of the information being collected; and (f) ways to minimize the public burden through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Send Comments and Requests For Further Information: Send your written comments and requests for more information on the proposed collection or requests to obtain a copy of the data collection instrument(s) and instructions to: Mrs. Chris Rouleau, IHS Reports Clearance Officer, 801 Thompson Avenue, Rockville, MD 20852, call non-toll free (301) 443–5938, send via facsimile to (301) 443–2316, or send your E-mail requests, comments, and return address to: *crouleau@hqe.ihs.gov.*

Comment Due Date: Your comments regarding this information collection are best assured of having their full effect if received within 60-days of the date of this publication.

Dated: August 24, 2005.

Robert G. McSwain,

Deputy Director, Indian Health Service.

[FR Doc. 05–17320 Filed 8–30–05; 8:45 am]

BILLING CODE 4165–16–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Survey of NIGMS Minority Opportunities in Research (MORE) Division Institutional Program Directors

Summary: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institute of General Medical Sciences (NIGMS), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on February 22, 2005, pages 8594–8595 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection: Title: Survey of NIGMS Minority Opportunities in Research (MORE) Division Institutional Program Directors. *Type of Information Collection Request:* NEW. *Need and Use of Information Collection:* NIGMS provides research and research training support in the basic biomedical sciences through a variety of programs and grant mechanisms. Several of these programs are targeted toward support of underrepresented minority students at various educational levels and research faculty at minority-serving institutions. Although significant resources are dedicated to funding these programs, there is a lack of quantitative information on program outcomes. This proposed one-time survey is part of a larger study that will provide NIGMS with the high-quality data needed to evaluate the educational outcomes and research activity of students and faculty who are supported by NIGMS training and research support programs. Data on student enrollment and highest degree received will be collected from institutional program directors in the following programs: Minority Access to Research Careers Undergraduate Student Training in Academic Research (U*STAR), Minority Biomedical Research Support Initiative for Minority Student Development (IMSD), and Minority Biomedical Research Support Research Initiative for Scientific Enhancement (RISE). Other data will be collected from existing sources, including grant records and Medline databases. Taken together, the data will be used as a baseline for future assessments, as well to further develop current programs and in the creation of proposals for new initiatives in minority recruitment and training. These results will be reported to the National Advisory General Medical Sciences Council (NAGMSC) and shared with the community of NIGMS grantees. *Frequency of Response:* Once. *Affected Public:* Individuals or households; Not-for-profits. *Type of Respondents:* Training grant program directors.

The annual reporting burden is as follows:

Type and number of respondents	Estimated number of responses per respondent	Estimated total responses	Average burden hours per response	Estimated total annual burden hours requested
Training Grant Program Directors—150	1	150	20 minutes	50

Total Number of Respondents: 150.

Total Number of Responses: 150.

Total Hours: 50.

The Annualized Cost to Respondents is Estimated at: $1,650.

There are no capital costs, operating costs, and/or maintenance costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function 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.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. James Onken, NIGMS, NIH, Natcher Building, Room 2AN–32F, 45 Center Drive, MSC 6200, Bethesda, MD 20892–6200, or call non-toll-free number 301–594–2762 or e-mail your request, including your address to: *OnkenJ@nigms.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: August 18, 2005.

Martha Pine,

Associate Director for Administration and Operations, National Institute of General Medical Sciences, National Institutes of Health.

[FR Doc. 05–17253 Filed 8–30–05; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Establishment

Pursuant to the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), the Director, National Institutes of Health (NIH), announces the establishment of the Board of Scientific Counselors, National Center for Complementary and Alternative Medicine (Committee).

This Committee shall advise the Director, NIH; the Deputy director for Intramural Research, NIH; the Director, National Center for Complementary and Alternative Medicine (NCCAM); and the Scientific Director, NCCAM, on the intramural research programs through periodic visits to the laboratories for assessment of the research in progress, the proposed research, and evaluation of the productivity and performance of tenured, tenure track and staff scientists and physicians.

The Committee will consist of eight members, including the Chair, appointed by the Director, NIH, from authorities knowledgeable about conventional and complementary and alternative medicine research in the fields of interest to NCCAM.

Duration of this committee is continuing unless formally determined by the Director, NIH, that termination would be in the best public interest.

Dated: August 17, 2005.

Elias A. Zerhouni,

Director, National Institutes of Health.

[FR Doc. 05–17252 Filed 8–30–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel Review of K05's, K12's, K24's, and Two Types of R25 Grant Applications

Date: October 11–12, 2005

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814

Contact Person: Sonya Roberson, PhD., Scientific Review Administrator, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Blvd., Room 8045, Bethesda, MD 20892, 301–594–1182, *robersos@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: August 22, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–17255 Filed 8–30–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the President's Cancer Panel.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(9)(B), Title 5 U.S.C., as amended, because the premature disclosure of information and the discussions would be likely to significantly frustrate implementation of recommendations.

Name of Committee: President's Cancer Panel

Date: September 2, 2005

Time: 1 p.m. to 4 p.m.

Agenda: The Panel will discuss and plan the next series of meetings in 2005–2006.

Place: National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Suite 212, Bethesda, MD 20892 (Teleconference)

Contact Person: Abby Sandler, Ph.D., Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Suite 212, Bethesda, MD, 20892, 301/451–9399.

This meeting is being published less than 15 days prior to the meeting due to scheduling conflicts.

Any interested person may file written comments with the committee by forwarding the comments to the Contact Person listed on this Notice. The comments should include the name, address, telephone number and, when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *deainfo.nci.nih.gov/advisory/pcp/pcp.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: August 22, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–17256 Filed 8–30–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel Atherosclerosis Risk in Communities (ARIC) Study Morbidity/Mortality Follow-up Coordinating Center

Date: September 1, 2005

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate contract proposals

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call)

Contact Person: Valerie L. Prenger, PhD., Chief, Review Branch, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, MSC 7924, Room 7214, Bethesda, MD 20892–7924, (301) 435–0270, *prengerv@nhlbi.nih.gov*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research, 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: August 22, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–17254 Filed 8–30–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory General Medical Sciences Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory General Medical Sciences Council

Date: September 22–23, 2005

Closed: September 22, 8:30 a.m. to 10:30 a.m.

Agenda: To review and evaluate grant applications

Place: National Institutes of Health, Natcher Building, Conference Rooms E1 & E2, 9000 Rockville Pike, Bethesda, MD 20892

Open: September 22, 10:30 a.m. to 3 p.m.

Agenda: For the discussion of program policies and issues, opening remarks, report of the Director, NIGMS, new potential opportunities and other business of the Council.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1 & E2, 9000 Rockville Pike, Bethesda, MD 20892

Closed: September 22, 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications

Place: National Institutes of Health, Natcher Building, Conference Rooms E1 & E2, 9000 Rockville Pike, Bethesda, MD 20892

Closed: September 23, 8:30 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications

Place: National Institutes of Health, Natcher Building, Conference Rooms E1 & E2, 9000 Rockville Pike, Bethesda, MD 20892

Contact Person: Ann A. Hagan, PhD., Associate Director for Extramural Activities, NIGMS, NIH, DHHS, 45 Center Drive, Room 2AN24H, MSC6200, Bethesda, MD 20892–6200, (301) 594–4499 *hagana@nigms.nih.gov*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: *http://www.nigms.nih.gov/about/advisory_council.html*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: August 23, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–17250 Filed 8–30–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Lithium in Suicide Prevention.

Date: September 22, 2005.

Time: 1:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: David I. Sommers, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6144, MSC 9606, Bethesda, MD 20892–9606, 301–443–7861, *dsommers@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health, National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: August 23, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–17251 Filed 8–30–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The portions of the meeting devoted to the review and evaluation of journals for potential indexing by the National Library of Medicine will be closed to the public in accordance with the provisions set forth in section 552b(c)(9)(B), Title 5 U.S.C., as amended. Premature disclosure of the titles of the journals as potential titles to be indexed by the National Library of Medicine, the discussions. and the presence of individuals associated with these publications could significantly frustrate the review and evaluation of individual journals.

Name of Committee: Literature Selection Technical Review Committee.

Date: October 26–27, 2005.

Open: October 26, 2005, 9 a.m. to 11 a.m.

Agenda: Administrative reports and program discussions.

Place: National Library of Medicine, Building 38, Board Room, 2nd Floor, 8600 Rockville Pike, Bethesda, MD 20894.

Closed: October 26, 2005, 11 a.m. to 5 p.m.

Agenda: To review and evaluate journals as potential titles to be indexed by the National Library of Medicine.

Place: National Library of Medicine, Building 38, Board Room, 2nd Floor, 8600 Rockville Pike, Bethesda, MD 20894.

Closed: October 27, 2005, 8:30 a.m. to 2 p.m.

Agenda: To review and evaluate journals as potential titles to be indexed by the National Library of Medicine.

Place: National Library of Medicine, Building 38, Board Room, 2nd Floor, 8600 Rockville Pike, Bethesda, MD 20894.

Contact Person: Sheldon Kotzin, MLS, Chief, Bibliographic Services Division, Division of Library Operations, National Library of Medicine, 8600 Rockville Pike, Bldg 38A/Room 4N419, Bethesda, MD 20894, 301–496–6217, *Sheldon_Kotzin@nlm.nih.gov*.

Any interested person may file written comments with the Committee by forwarding the statement to the Contact Person listed in this Notice. The statement should include the name, address, telephone number and, when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign in at the security desk upon entering the building.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: August 22, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 05–17257 Filed 8–30–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, PAR–04–023; Bioengineering Research Partnership.

Date: September 15, 2005.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Syed M. Quadri, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6210, MSC 7804, Bethesda, MD 20892, (301) 435–1211, *quadris@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Genes, Genomics, Genetics.

Date: September 16, 2005.

Time: 10 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mary P. McCormick, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2208, MSC 7890, Bethesda, MD 20892, (301) 435–1047, *mccormim@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, PAR–04–023 Bioengineering Research Partnership.

Date: September 22, 2005.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Syed M. Quadri, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6210, MSC 7804, Bethesda, MD 20892, (301) 435–1211, *quadris@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Software Development and Maintenance.

Date: September 23, 2005.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Zhenya Li, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3022B, MSC 7849, Bethesda, MD 20892, (301) 435–2417, *lizhenya@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 24, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–17249 Filed 8–30–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2004–19842]

Ballast Water Management for Vessels Entering the Great Lakes That Declare No Ballast Onboard

AGENCY: Coast Guard, DHS.

ACTION: Notice of policy; availability of draft environmental assessment.

SUMMARY: To prevent the introductions of aquatic nonindigenous species from vessels entering the Great Lakes declaring no ballast onboard (NOBOB), the Coast Guard establishes best management practices for residual ballast water and sediment management to be followed by NOBOB vessels. Coast Guard also requests comments on the draft environmental assessment prepared for the policy.

DATES: This policy is effective on the date of publication in the **Federal Register**. Comments and related material regarding the draft Environmental Assessment must reach the Docket Management System on or before September 30, 2005.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2004–19842 to the Docket management facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods: (1) By mail to the Docket Management Facility (USCG–2004–19842), U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20593–0001. (2) By delivery to Room PL–401 on the Plaza Level of the Nassif Building, 400 Seventh Street, SW., Washington DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329. (3) By fax to the Docket Management Facility at (202) 493–2251. (4) Electronically through the Web site for the Docket Management System at *http://dms.dot.gov.* The Docket Management Facility maintains the public docket for this notice. Comments will become part of this docket and will be available for inspection or copying in Room PL–401, located on the Plaza Level of the Nassif Building at the above address between 9 a.m. and 5 p.m., Monday through Friday, except for Federal holidays. You may also view this docket, including this notice and comments, on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: For information concerning this policy, call Mr. Bivan Patnaik, Project Manager, Environmental Standards Division, U.S. Coast Guard, telephone 202–267–1744 or via e-mail *bpatnaik@comdt.uscg.mil.* If you have any questions on viewing or submitting material to the docket, call Ms. Andrea M. Jenkins, Program Manager, Docket Operations, Department of Transportation, telephone 202–366–0271.

SUPPLEMENTARY INFORMATION:

Regulatory History

The Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990, as reauthorized and amended by the National Invasive Species Act of 1996, authorizes the Coast Guard to develop guidelines and regulations to prevent the introduction of nonindigenous species (NIS) via ballast water discharges. The Coast Guard promulgated regulations in the **Federal Register** on June 14, 2004, entitled, "Penalties for Non-submission of Ballast Water Management Reports" (68 FR 32864) and on July 28, 2004, entitled "Mandatory Ballast Water Management for U.S. Waters" (69 FR 44952). In doing so, the Great Lakes Ballast Water Management Program that became effective on May 10, 1993 (58 FR 18330), has remained unchanged, with the exception that all vessels equipped with ballast water tanks that enter and operate between ports in the Great Lakes must now submit their ballast water reporting forms to the National Ballast Information Clearinghouse as of August 13, 2004 (69 FR 32864).

On July 14, 2004, the Coast Guard received a petition for rulemaking requesting that we take specific regulatory action to prevent NIS introductions via NOBOB vessels. In response, on January 7, 2005, the Coast Guard published a notice of public meeting; request for comments, entitled, "Ballast Water Management for Vessels Entering the Great Lakes that Declare No Ballast Onboard" (70 FR 1448) asking the public to assist us in developing ballast water management practices for NOBOBs that are effective and practicable. Additionally on May 9, 2005, we held a public meeting where we further engaged the public on this issue. There were 35 people in attendance including representatives from: Congressional staff, federal

agencies, state agencies, international organizations, the shipping industry, maritime equipment manufacturers, non-governmental organizations, and concerned citizens. From the notice and the public meeting, we received 25 letters on the issue.

Background and Purpose

Vessels carrying ballast water that enter the Great Lakes after operating outside the U.S. Exclusive Economic Zone (EEZ) are required to comply with the Great Lakes ballast water management requirements found in 33 CFR Part 151, Subpart C. Ballast water means any water and suspended matter taken on board a vessel to control or maintain, trim, draught, stability, or stresses of the vessel, regardless of how it is carried. NOBOB vessels are those vessels that have discharged ballast water in order to carry cargo, and as a result, have only unpumpable residual water and sediment remaining in tanks. A large number of vessels that call on the Great Lakes are NOBOBs fully loaded with cargo that consequently cannot conduct a full mid-ocean exchange enroute to the Great Lakes. However, NOBOBs have the potential to carry NIS in their empty tanks via residual ballast water and/or accumulated sediment. Once NOBOBs enter the Great Lakes, discharge some or all of their cargo and take on ballast water, this water mixes with the residual water and sediment, and if this mixed ballast water is subsequently discharged into the Great Lakes, may provide a mechanism for NIS to enter the Great Lakes. Therefore, the Coast Guard is issuing best management practices for vessels with ballast tanks with residual ballast water and sediment. While this policy targets vessels declaring NOBOB entering the Great Lakes, the recommended management practices are applicable to all vessels that enter the Great Lakes with empty ballast tanks that may be filled with ballast water and discharged within the Great Lakes.

Discussion of Comments

From the notice and the public meeting, we received 25 letters on the issue. Most letters contained more than one comment. These included general comments as well as specific comments. We address the general comments first and then the specific comments.

General Comments

We received 3 comments that support the Coast Guard as the lead agency to regulate ballast water discharge. One commenter further stated that the Coast Guard should develop a regulatory regime based on the long-term goal of eliminating NIS from NOBOBs.

The Coast Guard agrees with these comments and preventing NIS introductions via NOBOBs for the interim is the intent of this notice. Once we establish the ballast water discharge (BWD) standard and use it to approve ballast water treatment methods, we will greatly reduce the number of NIS introductions via vessels in general, including NOBOBs.

Five commenters stated that a federal approach to preventing invasions in the Great Lakes is needed whereas a State-by-State piece-meal approach is not.

The Coast Guard agrees that a federal approach is more amenable than a patch-work of state NOBOB management programs, where each state may have different ballast water management requirements that could confuse the shipping industry and not necessarily prevent NIS introductions. However, NISA does allow for states to develop their own NIS prevention measures.

One commenter stated their opinion that misinformation is being sent to the public by "one or two individuals or organizations" regarding NIS invasions and NOBOBs.

The Coast Guard notes this comment without endorsing its validity. We reviewed and analyzed the National Oceanic and Atmospheric Administration's Great Lakes Environmental Research Laboratory (NOAA/GLERL) Report and Coast Guard monitoring data (Coast Guard unpublished data) and these analyses show that NOBOB vessels are carrying hundreds of tons of ballast water. Of the 103 foreign flag ships NOAA/GLERL boarded from December 2000 to December 2002, residual water surveyed ranged from negligible to 200 tons, and sediment accumulation ranged from negligible to 100 tons, with sixty percent of vessels estimated to have less than 10 tons. The Coast Guard inspected 36 vessels from May 2005 to July 2005 and the average amount of residual water and sediment per vessel was estimated at only 41.4 cubic meters. Also, of the 36 NOBOB vessels we sampled, approximately 45% of ballast water tanks were dry. Meaning these tanks were so dry that we could not get even a few drops of water needed to measure salinity.

The NOAA/GLERL NOBOB Project Report noted the majority of the NIS introduction risk is associated with fresh and brackish residual waters due to compatibility of the organisms native to these environments and the Great Lakes. Of the 36 vessels we inspected, approximately 30% of the tanks contained residual ballast water with a salinity of 30 ppt or greater, and only 16% of the tanks with residual ballast water contained fresh or brackish residual water.

The Coast Guard received 10 comments stating that we should require saltwater flushing for vessels carrying residual ballast water that enter the Great Lakes.

The Coast Guard agrees with this comment and through this notice we strongly recommend that vessels carrying residual ballast water conduct saltwater flushing prior to entering the Great Lakes. A more detailed discussion of this practice takes place further in this notice in the *Best Management Practices Section.*

Three commenters stated that the Coast Guard should set BWD standards for NOBOBs that are developed through regional collaboration and are based on federally defined ballast water management standards and consistent among all the Great Lakes states and provinces. Additionally, five commenters stated that the Coast Guard should implement the BWD standard for all vessels.

As stated previously, the Coast Guard is already developing a BWD standard for all vessels, which includes NOBOB vessels. We expect the standard to be environmentally protective, scientifically sound, and enforceable so that when vessels use Coast Guard approved ballast water treatment systems, NIS introductions will be greatly reduced from all vessels generally, including NOBOBs. The standard will be used to approve ballast water treatment systems. However, NISA allows for ballast water treatment as an option along with ballast water exchange, and therefore, those vessels able to conduct an exchange prior to entering the Great Lakes will be able to do so even after the ballast water discharge standard is issued.

Five commenters asked the Coast Guard to close the NOBOB loophole; that is, to change the applicability of the Great Lakes Ballast Water Management Program from vessels carrying ballast water to vessels equipped with ballast water tanks. One commenter stated that this change should occur for the interim, until a ballast water discharge standard is set.

The Coast Guard disagrees with this comment. The Coast Guard believes that developing effective and practicable ballast water management strategies for NOBOBs is the best way to address the risk of NIS introductions by these vessels. Requiring NOBOB vessels to comply with current ballast water management regulations for vessels

entering the Great Lakes will not adequately prevent NIS introductions from NOBOBs since they cannot complete a mid-ocean ballast water exchange enroute to the Great Lakes. The Coast Guard believes that the separate, interim, management approach described in this notice is the best way to address the risk of NIS introductions from NOBOBs until the BWD standard is in place.

Eight commenters said that the Coast Guard should implement ballast water management requirements for NOBOBs that provide them with the following options:

- Conduct open ocean ballast water exchange, if such practices are found to be safe, or can be made safe, for NOBOB vessels;
- Retain their residual ballast water; or
- Employ an alternative treatment.

The Coast Guard finds implementing the suggested comments difficult at this time. NOBOBs cannot conduct mid-ocean exchange because they are carrying cargo and do not have sufficient freeboard to safely add sea water to their ballast tanks sufficient to complete an exchange. Adding ballast water to a vessel when it is fully loaded with cargo can be unsafe to the crew and to the vessel due to loss of stability and freeboard. The risk of NIS introduction from NOBOB vessels occurs when these vessels, while discharging cargo in a Great Lakes port, take on Great Lakes water as ballast water, and this ballast water mixes with residual ballast water and sediment and is subsequently discharged into the Great Lakes when the vessel loads cargo destined for ports outside the Great Lakes. Requiring the vessel to retain their ballast water or residual would impair the vessel's ability to carry cargo out of the Great Lakes. NOBOB vessels cannot employ an alternative treatment without approval by the Coast Guard. To date, there are no vessels that have requested approval of alternative treatment methods.

Two commenters stated that residual ballast water should be exchanged whenever possible. One commenter further elaborated by saying residual water should be exchanged in a saline environment of low turbidity at every opportunity.

The Coast Guard agrees with the commenters and through this notice of policy, we will be requesting vessels with residual ballast water to conduct a saltwater flush whenever possible, prior to entering the U.S. EEZ.

One commenter stated that future ballast water management regulations from international or national efforts should equally apply to NOBOBs and to vessels carrying ballast water.

The Coast Guard believes that once the ballast water discharge standard is in place, vessel owners will be able to treat ballast water prior to discharging it regardless of whether or not they carry ballast water or declare NOBOB.

Seven commenters stated that for the remainder of the 2005 shipping season and/or beyond, NOBOB vessels should be required to retain their untreated ballast onboard or barred from entering the Great Lakes. Further two commenters stated that retention should take place when these NOBOB vessels take on Great Lakes water as ballast water.

The Coast Guard disagrees with these comments. It is unreasonable to require all NOBOBs to retain untreated residual ballast water or residual ballast water that has been mixed with Great Lakes water or prevent vessels carrying cargo and no ballast from entering the Great Lakes. The suggested requirements would severely restrict the movement of cargo into and out of the Great Lakes. The Coast Guard believes a risk-based approach focused on NOBOB vessels with fresh and/or brackish residual waters is the best way forward.

Three commenters said that the Coast Guard should require NOBOB vessels to have BWM plans.

The Coast Guard agrees and since September 27, 2004, all vessels entering and operating in U.S. waters have been required to have a BWM plan onboard, including NOBOBs. This plan must show the specific vessel's ballast water management strategy as well as document those responsible for the plan's implementation have been trained and understand the plan.

One commenter suggested that we should also look at other vectors for NIS introductions such as hull fouling, heat exchangers, and bilge water.

The Coast Guard appreciates this comment and recognizes that there are other mechanisms for introductions of NIS via the vector of commercial shipping. The Coast Guard is currently focusing its regulatory efforts on preventing NIS introductions via ballast water and specifically from NOBOBs. Therefore, this comment is beyond the scope of the original request for comments.

One commenter suggested that arrangements be made to involve and encourage Canadian participation in a Great Lakes NOBOB rulemaking.

The Coast Guard notes this comment. Canada has recently announced their first proposed regulations for vessels entering the Great Lakes. Also, the U.S. and Canada are discussing cooperative approaches to ballast water management on the Great Lakes, within current regulatory authority and under the International Maritime Organization's (IMO) Ballast Water Management Convention of 2004.

Three commenters said that the Coast Guard should require all oceangoing ships to clean and remove sediment.

The Coast Guard already requires vessels equipped with ballast water tanks that operate in U.S. waters to regularly clean their ballast water tanks to remove sediment (33 CFR 151.2035(a)(3)).

One commenter suggested that the Coast Guard should forward the NOAA/GLERL NOBOB Report to IMO.

The Coast Guard notes this comment and is one of several co-sponsors of the NOAA/GLERL report. We will present a summary of this report at a future IMO Marine Environmental Protection Committee meeting if we have the opportunity.

One commenter said that the Coast Guard should use a risk-based approach for NOBOBs.

The Coast Guard agrees with this comment. The Best Management Practices discussed below do use a risk-based approach and are targeted at eliminating the residual water with the highest risk of introducing NIS from fresh and brackish water ecosystems into the Great Lakes.

One commenter asked the Coast Guard to develop a system to track and identify ships that pose the greatest risk.

The Coast Guard disagrees with this comment. We know from the work performed by NOAA/GLERL, the highest risk NOBOB tanks carry fresh or brackish residual water. Because of the ways cargo and ballast water are managed on ships, the risk of NIS introduction can vary significantly across individual tanks in a single ship. In addition, the risk can be dramatically reduced through the regular use of the Best Management Practices described further in this notice. This will result in a reduction of high-risk NIS introductions through the elimination of fresh and brackish residual ballast water.

Two commenters stated that the Coast Guard should require cargo be transferred at the entrance of the Great Lakes. Further, one commenter said we should review the option of shutting down the Saint Lawrence Seaway until NOBOB management strategies are in place.

The Coast Guard disagrees with this comment. We do not have the authority under NISA to require vessels to lighten their load, to transfer their cargo to other modes at the entrance of the Great

Lakes, or shutdown the St. Lawrence Seaway. Also, the suggested requirements would severely restrict the movement of cargo into and out of the Great Lakes.

One commenter suggested that the Coast Guard require ships to have tamper-proof meters that document volumes, salinity, time and Global Positioning System (GPS) locations of ballast water taken on and discharged all over the world and submit this data to the Coast Guard prior to entry into U.S. waters and monthly while in U.S. waters.

The Coast Guard disagrees with this comment. The Coast Guard already requires ships that enter and/or operate in U.S. waters to submit their ballast water reporting forms. These reports already provide us with the locations (latitude and longitude) of where ballast water was taken on and discharged as well as the dates that these activities took place. Coast Guard compliance evaluation activities involve validating the information provided on these forms with information in vessel logs without the need for additional specialized equipment to be installed on the vessel.

Two commenters asked the Coast Guard to develop education and outreach initiatives for the shipping industry to assist the industry with complying with BWM regulations.

The Coast Guard agrees and will provide additional guidance and training to the shipping industry so they can be better equipped to comply with our BWM regulations and policies.

Comments Regarding Research and Treatment

Five commenters stated that the Coast Guard should work with vessel owners, operators and other maritime industry stakeholders and provide incentives to continue research and development on ballast water management technologies, notably NOBOB vessels. Furthermore, one commenter stated we should review and analyze technologies.

The Coast Guard already provides incentives to ship owners to further the development of ballast water treatment technologies through the Shipboard Technology Evaluation Program (STEP). This program was established in January 2004, through a Navigation and Inspection Circular (NVIC 01–04), and announced in a Notice of Availability published in the **Federal Register** on January 7, 2004 (69 FR 1082). Information on STEP can be found at: *http://www.uscg.mil/hq/g-m/mso/step.htm.* The Coast Guard also has ongoing efforts to review the development of technologies.

One commenter recommended the use of a "closed-loop" ballast water treatment process of ultraviolet radiation and filtration to address NIS introductions via NOBOBs.

The Coast Guard appreciates this comment and suggests the commenter work with a ship owner to submit an application to STEP so that we may further determine the efficacy and operational capability of this treatment system.

Two commenters stated that the Coast Guard should analyze the use of the following options to manage NOBOBs: ferrate, filtration, UV, ozonation, washdown-pumpout with scavenger pumps w/caustic soda, and/or chemical biocides.

The Coast Guard appreciates this comment and is tracking the development of these options; however, the Coast Guard will not require specific treatment options at this time. Vessels fitted with these treatment methods must apply to the Coast Guard for their approval for use in meeting the ballast water management regulations. Until a BWD standard is promulgated, ballast water management systems on vessels would be approved on a vessel-by-vessel basis. In addition, vessels using treatment systems must comply with all state water quality discharge limits for chemicals.

Seven commenters said that the Coast Guard's long-term goal should be zero discharge of living organisms from vessels entering the Great Lakes. One commenter further stated this could be achieved by such management options as filtration, ultraviolet radiation, and/or chemical biocides.

The Coast Guard disagrees that the long-term goal should be zero discharge of living organisms in the Great Lakes. According to our current authority under NISA, the long term goal is to prevent NIS introductions into the waters of the U.S. from ballast water, and this goal may be achieved without a zero discharge requirement. Once the BWD standard is developed, we will approve those technologies that meet the standard in an effort to prevent the introduction of NIS into the Great Lakes.

Two commenters suggested that the Coast Guard consider shore-side treatment options especially for a centralized facility in the Saint Lawrence Seaway, which seem reasonable and are cost effective.

Although the Coast Guard appreciates this comment, the Coast Guard is not involved in the regulatory or approval process for land-based ballast water treatment facilities. Anyone wishing to establish a ballast water reception facility that would discharge to waters of the United States would need to obtain a National Pollutant Discharge Elimination System (NPDES) permit under the Clean Water Act. In addition, all appropriate Federal, State, and local permits would need to be obtained.

One commenter stated that techniques to enhance flow-through or empty-refill exchange of NOBOBs should be the outcome of the Coast Guard technical workshop that was held immediately after the NOBOB public meeting.

The Coast Guard agrees that techniques to enhance flow-through and empty-refill exchange for NOBOBs should be evaluated. Ballast water exchange and other management options for NOBOBs were discussed during the technical workshop.

One commenter said that in cases where ballast water must be discharged into the Great Lakes, ships should use best available treatment technologies to be installed by 2006 in combination with mandatory ballast water management practices.

The Coast Guard notes this comment. Prior to Coast Guard approval, alternative treatment technologies must be reviewed to determine the efficacy and operational capabilities of the treatment systems, as well as the need to address the operational requirements of placing systems onboard ships. Alternative ballast water management practices for vessels must be approved by the Coast Guard, which is also time-intensive.

Comments Regarding Enforcement and Compliance

One commenter stated that the Coast Guard should conduct random inspections with fines of $5 million and seizure of each vessel that was not in compliance.

The Coast Guard disagrees with this comment. Every vessel entering the Great Lakes is subject to an inspection upon entering the Saint Lawrence Seaway. We conduct ballast water examinations for vessels carrying ballast water, and examinations for vessels that are NOBOBs. The Coast Guard verifies that the information reported is accurate, and sampling is carried out to determine compliance. If vessels are not in compliance with the ballast water exchange requirements, vessels are required to retain their ballast onboard for their entire voyage in the Great Lakes or they must go out 200 nautical miles from land and to water 2000 meters in depth to conduct ballast water exchange. Dollar value limits on civil penalties are provided by NISA and adjusted for inflation.

Three commenters recommended that the Coast Guard require strict

compliance with the current Great Lakes Ballast Water Management regulations for NOBOBs, and require retention or the use of an effective treatment system prior to discharging ballast water.

Once the Coast Guard establishes a BWD standard, we will be able to approve effective ballast water treatment systems to be used prior to discharge for those vessels unable to conduct ballast water exchange, including NOBOB vessels. Until then, the Coast Guard believes implementation of the best management practices is the better option for NOBOB vessels.

Eight commenters stated that the Coast Guard should have an enforcement and compliance program in place for NOBOBs. One commenter further stated that this program should be as stringent as those for ballasted vessels, including restriction from entering the Great Lakes.

The Coast Guard disagrees with this comment. As the NOBOB policy will ask vessels to conduct saltwater flushing and other practices to maintain high salinity residual waters in ballast tanks, we cannot enforce vessel compliance with a voluntary program. However, we will be conducting a monitoring program to determine the efficacy of this practice in reducing fresh and brackish residual water carried by NOBOB vessels into the Great Lakes.

Best Management Practices for Vessels Declaring No Ballast Onboard That Enter the Great Lakes

The masters, owners, operators, or persons-in-charge of vessels equipped with ballast water tanks and voyage plans including transits to ports or places in the Great Lakes (including the Hudson River, North of the George. Washington Bridge), should do the following:

- Conduct mid-ocean ballast water exchange during ballast-laden voyages in an area 200 nautical miles from any shore and in water 2000 meters deep whenever possible, prior to entering the U.S. EEZ.
- For vessels unable to conduct mid-ocean ballast water exchange, conduct saltwater flushing of their empty ballast water tanks in an area 200 nautical miles from any shore, whenever possible. For the purposes of this policy, saltwater flushing is defined as the addition of mid-ocean water to empty ballast water tanks; the mixing of the flush water with residual water and sediment through the motion of the vessel; and the discharge of the mixed water, such that the resultant residual water remaining in the tank has as high a salinity as possible, and preferably is greater than 30 parts per thousand (ppt). The vessel should take on as much mid-ocean water into each tank as is safe (for the vessel and crew) in order to conduct saltwater flushing. The master of the vessel is responsible for ensuring the safety of the vessel, crew, and passengers.

The masters, owners, operators, or persons-in-charge of vessels equipped with ballast water tanks, declaring NOBOB and bound for ports or places in the Great Lakes (including the Hudson River, North of the George Washington Bridge) should take particular care to conduct saltwater flushing on the transit to the Great Lakes so as to eliminate fresh and or brackish water residuals in ballast tanks.

NOBOB vessels that conduct these best management practices should incorporate them into their required ballast water management plan onboard their vessels. The requirements for ballast water management plans are found in 33 CFR 151.2035(a)(7). Also, NOBOB vessels are reminded that there are required ballast water management practices for vessels equipped with ballast water tanks that operate in U.S. waters, regarding avoiding ballasting operations in certain situations, sediment removal, and the cleaning of ballast tanks. These requirements are found in 33 CFR 151.2035(a).

Monitoring Program

The Coast Guard will monitor NOBOB vessels engaging in the best management practices during normal pre-arrival processing (or when updated ballast water reporting forms are obtained) and note the results in the U.S. Coast Guard's Marine Safety Detachment Massena's Vessel Matrix. NOBOB vessels that conducted mid-ocean exchange the last time the tanks contained ballast water should indicate that they have done so when submitting their Ballast Water Reporting Form (OMB Control No. 1625–0069) by filling out the appropriate information in *Section 4. Ballast Water Management* and in *Section 5. Ballast Water History.*

NOBOB vessels that conduct saltwater flushing should indicate that they have done so in the Ballast Water Reporting Form in *Section 4. Ballast Water Management*, by checking off the "Underwent Alternative Management" box and indicating that the vessel underwent saltwater flushing in the "specify alternative method" line. NOBOB vessels that conducted saltwater flushing should also fill out *Section 5. Ballast Water History.*

NOBOB vessels that use a U.S. Coast Guard approved alternative method (treatment) to ballast water exchange, should indicate they have done so in the Ballast Water Reporting Form in *Section 4. Ballast Water Management*, by checking off the "Underwent Alternative Management" box and indicating that the vessel underwent the specific alternative method in the "specify alternative method" line. NOBOB vessels that use a U.S. Coast Guard approved alternative method should also fill out *Section 5. Ballast Water History.*

For more information and examples on how to correctly fill out a ballast water reporting form, please visit the following Web site at: *http://invasions.si.edu/nbic/instructions.html.*

The Coast Guard will take samples of residual water from the ballast tanks of NOBOB vessels in order to determine the efficacy of this program. If we determine that this program is not effective in preventing the introduction of NIS into the Great Lakes, the Coast Guard may consider other alternatives.

Environment

In accordance with the National Environmental Policy Act of 1969 (Section 102(2)(c)), as implemented by the Council of Environment Quality regulations (40 CFR parts 1500–1508) and Coast Guard Policy for Considering Environmental Impacts (COMDTINST M16475.1D), the Coast Guard has prepared a draft Environmental Assessment (EA) to consider the environmental impacts of implementing the best management practices for NOBOB vessels. The draft EA identifies and examines those reasonable alternatives needed to effectively reduce NIS introductions into the Great Lakes via NOBOB vessels. The draft EA analyzed the no action alternative and one action alternative that could fulfill the purpose and need of establishing best management practices for NOBOB vessels to reduce NIS introductions into the Great Lakes. Specifically, the draft EA considered potential effects to the natural and human environments by incorporating environmental analyses previously conducted for establishing ballast water management regulations for U.S. waters. These analyses are available in the docket. Therefore, we are requesting your comments on environmental concerns you may have related to the draft EA. This includes methodologies for use in the draft EA or possible sources of data or information not included in the draft EA. Your comments will be considered in preparing a Finding of No Significant Impact (FONSI) and final PEA.

Dated: August 19, 2005.

T.H. Gilmour,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety, Security and Environmental Protection.

[FR Doc. 05–17426 Filed 8–29–05; 12:21 pm]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Customs and Border Protection

Quarterly IRS Interest Rates Used In Calculating Interest on Overdue Accounts and Refunds on Customs Duties

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: This notice advises the public of the quarterly Internal Revenue Service interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of customs duties. For the calendar quarter beginning July 1, 2005, the interest rates for overpayments will be 5 percent for corporations and 6 percent for non-corporations, and the interest rate for underpayments will be 6 percent. This notice is published for the convenience of the importing public and Customs and Border Protection personnel.

EFFECTIVE DATE: July 1, 2005.

FOR FURTHER INFORMATION CONTACT: Trong Quan, National Finance Center, Collections Section, 6026 Lakeside Boulevard, Indianapolis, Indiana 46278; telephone (317) 614–4516.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 U.S.C. 1505 and Treasury Decision 85–93, published in the **Federal Register** on May 29, 1985 (50 FR 21832), the interest rate paid on applicable overpayments or underpayments of customs duties must be in accordance with the Internal Revenue Code rate established under 26 U.S.C. 6621 and 6622. Section 6621 was amended (at paragraph (a)(1)(B) by the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105–206, 112 Stat. 685) to provide different interest rates applicable to overpayments: one for corporations and one for non-corporations.

The interest rates are based on the Federal short-term rate and determined by the Internal Revenue Service (IRS) on behalf of the Secretary of the Treasury on a quarterly basis. The rates effective for a quarter are determined during the first-month period of the previous quarter.

In Revenue Ruling 2005–35, the IRS determined the rates of interest for the calendar quarter beginning July 1, 2005, and ending September 30, 2005. The interest rate paid to the Treasury for underpayments will be the Federal short-term rate (3%) plus three percentage points (3%) for a total of six percent (6%). For corporate overpayments, the rate is the Federal short-term rate (3%) plus two percentage points (2%) for a total of five percent (5%). For overpayments made by non-corporations, the rate is the Federal short-term rate (3%) plus three percentage points (3%) for a total of six percent (6%). These interest rates are subject to change for the calendar quarter beginning October 1, 2005, and ending December 31, 2005.

For the convenience of the importing public and Customs and Border Protection personnel the following list of IRS interest rates used, covering the period from before July of 1974 to date, to calculate interest on overdue accounts and refunds of customs duties, is published in summary format.

Beginning date	Ending date	Under payments (percent)	Over payments (percent)	Corporate overpayments (Eff. 1–1–99) (percent)
070174	063075	6	6	
070175	013176	9	9	
020176	013178	7	7	
020178	013180	6	6	
020180	013182	12	12	
020182	123182	20	20	
010183	063083	16	16	
070183	123184	11	11	
010185	063085	13	13	
070185	123185	11	11	
010186	063086	10	10	
070186	123186	9	9	
010187	093087	9	8	
100187	123187	10	9	
010188	033188	11	10	
040188	093088	10	9	
100188	033189	11	10	
040189	093089	12	11	
100189	033191	11	10	
040191	123191	10	9	
010192	033192	9	8	
040192	093092	8	7	
100192	063094	7	6	
070194	093094	8	7	
100194	033195	9	8	
040195	063095	10	9	
070195	033196	9	8	
040196	063096	8	7	
070196	033198	9	8	
040198	123198	8	7	
010199	033199	7	7	6
040199	033100	8	8	7
040100	033101	9	9	8
040101	063001	8	8	7

Beginning date	Ending date	Under payments (percent)	Over payments (percent)	Corporate overpayments (Eff. 1–1–99) (percent)
070101	123101	7	7	6
010102	123102	6	6	5
010103	093003	5	5	4
100103	033104	4	4	3
040104	063004	5	5	4
070104	093004	4	4	3
100104	033105	5	5	4
040105	093005	6	6	5

Dated: August 25, 2005.

Robert C. Bonner,

Commissioner, Customs and Border Protection.

[FR Doc. 05–17247 Filed 8–30–05; 8:45 am]

BILLING CODE 9110–06–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, U.S. Department of Homeland Security.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed continuing information collections. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning the renewal of FEMA's National Flood Insurance Program's (NFIP) Biennial Report forms (FEMA Form 81–28, FEMA Form 81–29, FEMA Form 81–29A). Under 44 CFR 59.22(b)(2), the Federal Emergency Management Agency (FEMA) requires that communities participating in the National Flood Insurance Program (NFIP) submit an annual or biennial report describing the progress made during the year in the implementation and enforcement of floodplain management regulations. Currently, FEMA has determined that this data will be collected on a biennial reporting cycle and the data collection is now referred to as the Biennial Report.

SUPPLEMENTARY INFORMATION: Under 44 CFR 59.22(b)(2), the Federal Emergency Management Agency (FEMA) requires that communities participating in the National Flood Insurance Program (NFIP) submit an annual or biennial report describing the progress made during the year in the implementation and enforcement of floodplain management regulations. Currently, FEMA has determined that this data will be collected on a biennial reporting cycle and the data collection is now referred to as the Biennial Report. As a supplement to the Biennial Report, FEMA has been mandated under Section 575 of the National Flood Insurance Reform Act of 1994 (NFIRA) to assess the need to revise and update all floodplain areas and flood risk zones identified, delineated, or established under section 1360 of the National Flood Insurance Act of 1968.

The NFIP Biennial Report enables FEMA to meet its regulatory requirement under 59.22(b)(2). It also enables FEMA to be more responsive to the on-going changes that occur in each participating community's flood hazard area. These changes include, but are not limited to, new corporate boundaries, changes in flood hazard areas, new floodplain management measures, and changes in rate of floodplain development. It is also used to evaluate the effectiveness of the community's floodplain management activities. The evaluation is accomplished by analyzing information provided by the community, such as the number of variances and floodplain permits granted by each community in relationship to other information contained in the Biennial Report, as well as other data available in FEMA's Community Information System (CIS). The Biennial Report also provides an opportunity for NFIP participating communities to request technical assistance in implementing a floodplain management program. FEMA regional offices use this information as a means to know which communities need support and guidance. In addition, the NFIP Biennial Report is one of the tools used to assist FEMA in meeting its regulatory requirement under Section 575 of the NFIRA. A "yes" answer to Items A–D in Section I of the report will provide the basis for FEMA to follow-up by contacting the community for clarification and/or elaboration regarding changes and activities occurring in a community's flood hazard area. This information will be used in ranking and prioritizing one community's mapping needs against all other communities in the NFIP and for determining how the limited flood hazard mapping funds are allocated for map updates.

Collection of Information

Title: The National Flood Insurance Program-Biennial Report.

Type of Information Collection: Extension of a currently approved collection.

OMB Number: 1660–0003.

Form Numbers: FEMA Form 81–28, FEMA Form 81–29, FEMA Form 81–29A.

Abstract: The NFIP Biennial Report enables FEMA to meet its regulatory requirement under 59.22(b)(2). It also enables FEMA to be more responsive to the on-going changes that occur in each participating community's flood hazard area. These changes include, but are not limited to, new corporate boundaries, changes in flood hazard areas, new floodplain management measures, and changes in rate of floodplain development. It is also used to evaluate the effectiveness of the community's floodplain management activities. The evaluation is accomplished by analyzing information provided by the community, such as the number of variances and floodplain permits granted by each community in relationship to other information contained in the Biennial Report, as well as other data available in FEMA's Community Information System (CIS). The Biennial Report also provides an opportunity for NFIP participating communities to request technical assistance in implementing a floodplain

management program. FEMA regional offices use this information as a means to know which communities need support and guidance. In addition, the NFIP Biennial Report is one of the tools used to assist FEMA in meeting its regulatory requirement under Section 575 of the NFIRA. A "yes" answer to Items A–D in Section I of the report will provide the basis for FEMA to follow-up by contacting the community for clarification and/or elaboration regarding changes and activities occurring in a community's flood hazard area. This information will be used in ranking and prioritizing one community's mapping needs against all other communities in the NFIP and for determining how the limited flood hazard mapping funds are allocated for map updates.

Affected Public: The respondents are the estimated 20,500 United States and United States territorial communities that are participating members of the National Flood Insurance Program (NFIP). The NFIP requires that communities participating in the NFIP submit an annual or biennial report describing the progress made during the year in the implementation and enforcement of floodplain management regulations.

Estimated Total Annual Burden Hours: 11,375 burden hours.

ANNUAL BURDEN HOURS

Project/activity (survey, form(s), focus group, worksheet, etc.)	Number of respondents (A)	Frequency of responses (B)	Burden hours per respondent (C)	Annual responses (A × B)	Total annual burden hours (A × B × C)
FF 81–28	5,930	0.5	0.75	2,965	2,223
FF 81–29	12,224	0.5	1.44	6,112	8,801
FF 81–29A	2,346	0.5	0.3	1,173	351
Total	20,500	0.5		10,250	11,375

Estimated Cost: The estimated annual cost of the collection of the Biennial Report forms is estimated to be $180,520.

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Chief, Records Management Section, Information Resources Management Branch, Information Technology Services Division, Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security, 500 C Street, SW., Room 316, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Contact William Lesser, Lead Program Specialist at (202) 646–2807 for additional information. You may contact the Records Management Section for copies of the proposed collection of information at facsimile number (202) 646–3347 or e-mail address: *FEMA-Information-Collections@dhs.gov*.

Dated: August 25, 2005.

George S. Trotter,

Acting Branch Chief, Information Resources Management Branch, Information Technology Services Division.

[FR Doc. 05–17339 Filed 8–30–05; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and marine mammals.

DATES: Written data, comments or requests must be received by September 30, 2005.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: High Delta, Delhi, LA, PRT–107782.

The applicant requests a permit to authorize interstate and foreign commerce, export and cull of excess male barasingha (*Cervus duvauceli*) from the captive herd maintained at their facility for the purpose of enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a five year period.

Applicant: Don J. Hohensee, Mathews, LA, PRT–106686.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Albert A. Wolfe, Pilot Point, TX, PRT–106636.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Brett A. Nelson, Fairbanks, AK, PRT–106635.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Joseph S. Brannen, Inverness, FL, PRT–106850.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Marine Mammals

The public is invited to comment on the following applications for a permit to conduct certain activities with marine mammals. The applications were submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing marine mammals (50 CFR Part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: Randall W. Davis, Texas A & M University, Galveston, TX, PRT–078744.

The applicant requests an amendment to this permit which currently authorizes take by harassment of up to 200 wild northern sea otters (*Enhydra lutris kenyoni*) for the purpose of scientific research. The permittee is currently authorized to measure otter foraging depth and to opportunistically recover and necropsy sea otter carcasses. The applicant requests authorization to photo-identify these 200 otters and subsequently monitor their movement patterns using photo-identification. This notification covers activities to be conducted by the applicant over a five-year period.

Applicant: Alaska Science Center, USGS, Anchorage, AK, PRT–067925.

The applicant requests an amendment to this permit which currently authorizes the capture, handling, sample collection, and tagging of up to 27 wild southern sea otters (*Enhydra lutris nereis*) and up to 150 wild northern sea otters (*Enhydra lutris kenyoni*), as well as the importation of biological samples of *Enhydra lutris nereis, Enhydra lutris kenyoni,* and *Enhydra lutris lutris* for purposes of scientific research. The applicant requests authorization to continue permitted research activities on these subspecies of sea otters, as identified above, inclusive of northern sea otters (*Enhydra lutris kenyoni*) from within the Southwest Alaska distinct population segment, recently listed as "threatened" under the U.S. Endangered Species Act. This notification covers activities to be conducted by the applicant over a five-year period.

Concurrent with the publication of this notice in the **Federal Register**, the Division of Management Authority is forwarding copies of the above applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Applicant: Larry D. Atkinson, Stuttgart, AR, PRT–102916.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal, noncommercial use.

Applicant: Raymond L. Howell, La Crescent, MN, PRT–106529.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal, noncommercial use.

Applicant: Jerri Frehner, Las Vegas, NV, PRT–106486.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal, noncommercial use.

Applicant: Garth E. Frehner, Las Vegas, NV, PRT–106532.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal, noncommercial use.

Dated: August 12, 2005.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 05–17329 Filed 8–30–05; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and marine mammals.

DATES: Written data, comments or requests must be received by September 30, 2005.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

PRT–108887

Applicant: Darlene Ketten, Ph.D., Woods Hole, MA.

The applicant requests a permit to import biological samples and/or whole carcasses from wild, captive-held and/or captive-hatched Kemp's ridley sea turtle (*Lepidochelys kempii*), olive ridley sea turtle (*Lepidochelys olivacea*), green sea turtle (*Chelonia mydas*), and leatherback sea turtle (*Dermochelys coriacea*) for the purpose of scientific research. Samples and/or whole carcasses will be collected opportunistically from salvaged specimens and will be used for analyses of the impacts of sound on anatomical structures. This notification covers

activities to be conducted by the applicant over a five-year period.

PRT–101628

Applicant: Miami Metrozoo (Miami-Dade County Parks/Zoo), Miami, Florida.

The applicant requests a permit for interstate commerce to purchase a female Asian elephant (*Elephas maximus*), "Nellie," born approximately 1969 from R.W. Commerford & Sons, Goshen, Connecticut. The animal has been on long-term loan to the Miami Metrozoo since December 2000. The purpose of the requested activity is for breeding, conservation education, and enhancement of the survival of the species.

Endangered Marine Mammals

The public is invited to comment on the following application for a permit to conduct certain activities with endangered marine mammals. The application was submitted to satisfy requirements of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) and the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing endangered species (50 CFR part 17) and marine mammals (50 CFR part 18). Written data, comments, or requests for copies of the complete application or requests for a public hearing on this application should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

PRT–100361

Applicant: Mote Marine Laboratory, Sarasota, FL.

The applicant requests a permit to take West Indian manatees (*Trichechus manatus*) throughout Florida and import specimens from the Caribbean region and import specimens of South American manatee (*Trichechus inunguis*), West African manatee (*Trichechus senegalensis*), and dugong (*Dugong dugong*) for the purpose of scientific research including collection and importation of biological samples, physiological analyses, aerial surveys and close approach for photo identification and behavioral surveys. This notification covers activities to be conducted by the applicant over a five-year period.

Concurrent with the publication of this notice in the **Federal Register**, the Division of Management Authority is forwarding copies of the above applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Dated: August 19, 2005.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 05–17331 Filed 8–30–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; Initiation of a 5-Year Review of Aleutian Shield Fern (*Polystichum aleuticum*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of review.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 5-year review of Aleutian shield fern (*Polystichum aleuticum*) under section 4(c)(2)(A) of the Endangered Species Act of 1973 (Act) (16 U.S.C. 1531 *et seq.*). A 5-year review is a periodic process conducted to ensure that the listing classification of a species is accurate. A 5-year review is based on the best scientific and commercial data available at the time of the review; therefore, we are requesting submission of any such information on Aleutian shield fern that has become available since its original listing as an endangered species in 1988 (53 FR 4626). Based on the results of this 5-year review, we will make the requisite finding under section 4(c)(2)(B) of the ESA.

DATES: To allow us adequate time to conduct this review, we must receive your information no later than September 15, 2005. However, we will continue to accept new information about any listed species at any time.

ADDRESSES: Submit information to the U.S. Fish and Wildlife Service, Alaska Regional Office, Endangered Species Division Chief, Attention: 5-Year Review, 1011 East Tudor Road, Anchorage, Alaska 99503–6199. Comments may also be faxed to 907–271–2786, or e-mailed to *charla_sterne@fws.gov*. See **SUPPLEMENTARY INFORMATION** for file formats and other information about electronic filing. Information received in response to this notice and review will be available for public inspection, by appointment, during normal business hours, at the above address.

FOR FURTHER INFORMATION CONTACT: Michael Roy at the above address, or at (907) 786–3925.

SUPPLEMENTARY INFORMATION: Under the Act, the Service maintains a list of endangered and threatened wildlife and plant species at 50 CFR 17.11 (for animals) and 17.12 (for plants). Section 4(c)(2)(A) of the Act requires that we conduct a review of listed species at least once every 5 years. Then, on the basis of such reviews under section 4(c)(2)(B), we determine whether or not any species should be removed from the List (delisted), or reclassified from endangered to threatened or from threatened to endangered. Delisting a species must be supported by the best scientific and commercial data available and only considered if such data substantiates that the species is neither endangered nor threatened for one or more of the following reasons: (1) The species is considered extinct; (2) the species is considered to be recovered; and/or (3) the original data available when the species was listed, or the interpretation of such data, were in error. Any change in Federal classification would require a separate rulemaking process. The regulations in 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those species currently under active review. This notice announces our active review of the Aleutian shield fern currently listed as endangered.

The 5-year review considers the best scientific and commercial data and all new information that has become available since the listing determination or most recent status review. Categories of requested information include: (A) Species biology, including, but not limited to, population trends, distribution, abundance, demographics, and genetics; (B) habitat conditions, including but not limited to, amount, distribution, and suitability; (C) conservation measures that have been implemented that benefit the species; (D) threat status and trends; and (E) other new information, data, or corrections, including but not limited to, taxonomic or nomenclatural changes, identification of erroneous information contained in the List, and improved analytical methods.

Public Solicitation of New Information

To ensure that the 5-year review is complete and based on the best available scientific and commercial information, we are soliciting new information from the public, concerned governmental agencies, tribes, the scientific community, industry, environmental entities, and any other interested parties concerning the status of Aleutian shield fern.

Electronic Access and Filing Addresses

You may submit comments by sending electronic mail to: *charla-sterne@fws.gov.*

Please submit electronic comments in an ASCII file format, and avoid the use of special characters and encryption. Identify all comments in electronic form by including "Aleutian shield fern 5-Year Review Comments" in the title line.

If you wish to provide information for this 5-year review, you may submit your comments and materials to the U.S. Fish and Wildlife Service's Alaska Regional Office (see **ADDRESSES** section). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Respondents may request that we withhold a respondent's identity, as allowable by law. If you wish us to withhold your name or address, you must state this request prominently at the beginning of your comment. We will not, however, consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours (see **ADDRESSES** section).

Authority: This document is published under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: July 26, 2005.

Gary Edwards,

Acting Regional Director, Region 7, Fish and Wildlife Service.

[FR Doc. 05–17317 Filed 8–30–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Marine Mammal Annual Report Availability, Combined Calendar Years 1999 and 2000

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: We, the U.S. Fish and Wildlife Service and the Biological Resources Discipline of the U.S. Geological Survey, have issued our combined Calendar Years 1999 and 2000 annual report on marine mammals under the jurisdiction of the U.S. Department of the Interior, as required by section 103(f) of the Marine Mammal Protection Act of 1972. Our report covers the periods of January 1 to December 31, 1999, and January 1 to December 31, 2000. We submitted the report to Congress on September 7, 2004. By this notice, we are informing you, the public, that the report is available and that copies may be obtained on request to the U.S. Fish and Wildlife Service.

ADDRESSES: You should submit written requests for copies to: Publications Unit, U.S. Fish and Wildlife Service, National Conservation Training Center, Route 1, Box 166, Shepherd Grade Road, Shepherdstown, WV 25443. You may also contact that office by telephone at 1–800–344–WILD (9453).

FOR FURTHER INFORMATION CONTACT: Diane Bowen, Division of Habitat and Resource Conservation, U.S. Fish and Wildlife Service in Arlington, Virginia, at telephone 703–358–2161.

SUPPLEMENTARY INFORMATION: The U.S. Department of the Interior is responsible for eight species of marine mammals, as assigned by the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*). These species are polar bear, sea and marine otters, walrus, three species of manatee, and dugong. Administrative actions discussed in our report include appropriations, status reports, research activities, scientific research and public display permits, international activities, law enforcement actions, and outer continental shelf operations and environmental studies.

Dated: July 25, 2005.

Mamie Parker,

Assistant Director, Fisheries and Habitat Conservation.

[FR Doc. 05–17330 Filed 8–30–05; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Aquatic Nuisance Species Task Force—Meeting of the Mid-Atlantic Regional Panel

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Aquatic Nuisance Species (ANS) Task Force Mid-Atlantic Regional Panel. The meeting is open to the public. The meeting topics are identified in the **SUPPLEMENTARY INFORMATION** section.

DATES: The Mid-Atlantic Regional Panel will meet from 9 a.m. to 5 p.m. on Wednesday, September 7, 2005, and 9 a.m. to 12:45 p.m. on Thursday, September 8, 2005.

ADDRESSES: The Mid-Atlantic Regional Panel meeting will be held at Cacapon State Park, 818 Cacapon Lodge Drive, Berkeley Springs, WV 25411; (304) 258–1022. Minutes of the meeting will be maintained in the office of Division of Environmental Quality, Chief, Branch of Invasive Species, U.S. Fish and Wildlife Service, Suite 322, 4401 North Fairfax Drive, Arlington, Virginia 22203–1622, and will be made available for public inspection during regular business hours, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Julie Thompson, Mid-Atlantic Regional Panel Coordinator, 410–573–4517, *Julie_Thompson@fws.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.), this notice announces a meeting of the ANS Task Force Mid-Atlantic Regional Panel. The ANS Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990. The Mid-Atlantic Regional Panel was established by the ANS Task Force in 2003 and includes eight Mid-Atlantic States (Delaware, Maryland, North Carolina, New Jersey, New York, Pennsylvania, Virginia, and West Virginia) and the District of Columbia. The Regional Panel is comprised of representatives from Federal, State, and local agencies, as well as from private environmental and commercial interests, and performs the following activities:

a. Identifies priorities for activities in the Mid-Atlantic region,

b. Develops and submits recommendations to the national Aquatic Nuisance Species Task Force,

c. Coordinates aquatic nuisance species program activities in the Mid-Atlantic region,

d. Advises public and private interests on control efforts, and

e. Submits an annual report to the Aquatic Nuisance Species Task Force.

Topics to be addressed at this meeting include: Regional Panel business (standard operating procedures and membership), international ballast water standards, a spotlight on the northern snakehead (*Channa argus*), development and implementation of an ANSTF management plan, status of ANS management plans in the Mid-Atlantic Region, updates on ANS Task Force activities and the National Aquatic Invasive Species Act, and

concurrent workgroup sessions to discuss potential projects.

Dated: August 17, 2005.

Frank DeLuise,

Acting Co-Chair, Aquatic Nuisance Species Task Force, Acting Assistant Director—Fisheries & Habitat Conservation.

[FR Doc. 05–17328 Filed 8–30–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Burns Paiute Tribe Liquor Ordinance; Amendment

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes an Amendment to the Burns Paiute Tribe's Liquor Control Ordinance. The Ordinance regulates and controls the possession, sale and consumption of liquor within the Burns Paiute Tribe's Indian Country. The land is located on trust land and this Ordinance allows for the possession and sale of alcoholic beverages within the Burns Paiute Tribe's Indian Country and will increase the ability of the tribal government to control the tribe's liquor distribution and possession, and at the same time will provide an important source of revenue for the continued operation and strengthening of the tribal government and the delivery of tribal services.

EFFECTIVE DATE: This Amendment is effective on August 31, 2005.

FOR FURTHER INFORMATION CONTACT: Betty Scissons, Division of Tribal Government Services, Bureau of Indian Affairs, Northwest Regional Office, 911 NE. 11th Avenue, Portland, OR 97232–4169, Telephone 503–231–6723, Fax 503–231–2189; or Ralph Gonzales, Office of Tribal Services, 1951 Constitution Avenue, NW., Mail Stop 320–SIB, Washington, DC 20240, Telephone (202) 513–7629.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner*, 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country. The Burns Paiute Tribal Council adopted this Amendment by Resolution No. 2005–05 on April 12, 2005. The purpose of this Amendment to their Ordinance is to permit the sale and service of alcohol anywhere in the Old Camp Casino instead of restricting liquor sales to the lounge, restaurant, and bingo hall.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Principal Deputy Assistant Secretary—Indian Affairs. I certify that this Amendment to the Liquor Ordinance of the Burns Paiute Tribe was duly adopted by the Tribal Council on April 12, 2005.

Dated: August 19, 2005.

Michael D. Olsen,

Acting Principal Deputy Assistant Secretary—Indian Affairs.

The Amendment to Burns Paiute Tribe's Liquor Ordinance reads as follows:

1. Remove the second sentence in section 5 which reads: "The sales and service of liquor in the Old Camp Casino may only be permitted in the following areas: liquor lounge, restaurant, and bingo hall when used for entertainment, food service, or convention/meeting purposes."

2. Remove the following phrase from the first sentence of section 6.C: "the lounge or restaurant area within."

The re-statement of the Burns-Paiute Tribal Liquor Ordinance incorporating the Amendment will now read as follows:

Burns-Paiute Tribal Liquor Ordinance

Section 1—Title

This Ordinance shall be the Liquor Ordinance of the Burns-Paiute Indian Tribe and shall be referenced as the Tribal Liquor Ordinance.

Section 2—Findings and Purpose

1. The introduction, possession, and sale of liquor on Indian Reservations has historically been recognized as a matter of special concern to Indian tribes and to the United States. The control of liquor on Reservations remains exclusively subject to their legislative enactments.

2. Federal law currently prohibits the introduction of liquor into Indian Country (18 U.S.C. 1154), leaving tribes the decision regarding when and to what extent liquor transactions, sales, possession and service shall be permitted on their Reservation (18 U.S.C. 1161).

3. The Burns-Paiute General Council discussed and approved a Resolution to permit the sale and service of liquor at the Old Camp Casino, but at no other location, at the General Council meeting held in June, 1999.

4. The enactment of this Tribal Ordinance to govern liquor sales and service on the Burns-Paiute Reservation, and the limitation of such liquor sales and service at the Old Camp Casino, will increase the ability of the tribal government to control Reservation liquor distribution and possession, and at the same time will provide an important source of revenue for the continued operation of tribal government and the delivery of governmental services, as well as provide an amenity to customers at the Old Camp Casino.

5. In order to authorize limited liquor sales and service at the Old Camp Casino, to facilitate increased tribal control over liquor distribution on the Burns-Paiute Reservation, and to provide for urgently needed additional revenues for the Burns-Paiute tribal government, the Burns-Paiute Tribal Council adopts this Liquor Ordinance.

6. The Burns-Paiute Tribe has entered a Memorandum of Understanding (MOU) with the Oregon Liquor Control Commission to deal with governmental issues associated with the licensing and regulation of liquor sales on the Burns-Paiute Indian Reservation.

Section 3—Definitions

Unless otherwise required by the context, the following words and phrases shall have the designated meanings:

1. Alcohol: Is that substance known as ethyl alcohol, hydrated oxide or ethyl, or spirit of wine, which is commonly produced by the fermentation or distillation of grain, starch, molasses, or sugar, or other substances including all dilutions and mixtures of those substances.

2. Casino Manager: That person appointed by the Tribal Council to manage the Old Camp Casino.

3. Liquor or Liquor Products: Includes the four varieties of liquor herein defined (alcohol, spirits, wine, and beer) and all fermented, spirituous, vinous, or malt liquor, or a combination thereof, and mixed liquor, a part of which is fermented, spirituous, vinous, or malt liquor or otherwise intoxicating in every liquid or solid or semi-solid or other substance patented or not containing alcohol, spirits, wine, or beer, and all drinks of potable liquids and all preparations or mixtures capable of human consumption, and any liquid, semi-solid, solid, or other substance, which contains more than one percent (1%) of alcohol by weight shall be conclusively deemed to be intoxicating.

4. Old Camp Casino: Shall be the gaming facility located on the 10-acre Old Camp site located on the Burns-Paiute Indian Reservation which is more specifically described in Exhibit 1 to the Tribal-State Compact between the

Burns-Paiute Tribe and the State of Oregon.

5. Sale and Sell: Includes exchange, barter, and traffic; and also the supplying or distribution by any means whatsoever, of liquor or any liquid known or described as beer or by any name whatever commonly used to describe malt or brewed liquor or wine, by any person to any other person; and also includes the supply and distribution to any other person.

6. Spirits: Any beverage which contains alcohol obtained by distillation, including wines exceeding seventeen percent (17%) of alcohol by weight.

7. Wine: Any alcoholic beverage obtained by fermentation of fruits, grapes, berries, or any other agricultural product containing sugar, to which any saccharin substances may have been added before, during, or after fermentation, and containing not more than seventeen percent (17%) of alcohol by weight, including sweet wines fortified with wine spirits, such as port, sherry, muscatel, and anglican, not exceeding seventeen percent (17%) of alcohol by weight.

Section 4—Relation to Other Tribal Laws

All prior Ordinances and Resolutions of the Burns-Paiute Indian Tribe regulating, authorizing, prohibiting, or in any way dealing with the sale or service of liquor are hereby repealed and are of no further force or effect to the extent they are inconsistent or conflict with the provisions of this Ordinance. No tribal business licensing law or other tribal law shall be applied in a manner inconsistent with the provisions of this Ordinance.

Section 5—Authorized Sale and Service of Liquor

Liquor may be offered for sale and may be served on the Burns-Paiute Indian Reservation only in the Old Camp Casino. All such sales and service of liquor in the Old Camp Casino shall be consistent with the Tribal-State Compact and applicable Federal and State law.

The Burns-Paiute Tribal Council hereby authorizes the Manager of the Old Camp Casino to apply for a Dispenser Class A License from the Oregon Liquor Control Commission (OLCC) for the sales and service of liquor at the Old Camp Casino as provided in this Ordinance. The casino Manager is further authorized to treat as a casino expense any license fees associated with the OLCC Liquor License.

Section 6—Prohibitions

A. General Prohibitions

The introduction of liquor, other than by the Burns-Paiute Tribe through its Old Camp Casino is prohibited within the Burns-Paiute Indian Reservation, and is hereby declared an offense under tribal law. Possession, sales, and service of liquor by any person prohibited by federal law at 18 U.S.C. 1154 shall be lawful so long as the possession is in conformity with this Ordinance.

Federal Indian liquor laws shall remain applicable to any person, act, or transaction which is not authorized by this Ordinance and violators of this Ordinance shall be subject to federal prosecution as well as to legal action in accordance with tribal law.

B. Age Restrictions

No person shall be authorized to serve liquor to casino patrons unless they are at least 21 years of age. No person may be served liquor unless they are 21 years of age.

C. No Consumption of Liquor Outside of Casino Premises

All liquor sales and service permitted by this Ordinance shall be fully consumed within the Old Camp Casino. No open containers of liquor, or unopened containers of liquor in bottles, cans, or otherwise may be permitted outside of the casino premises.

D. No Credit Liquor Sales

The sales and service of liquor authorized by this Ordinance shall be upon a cash basis only. Payment for liquor shall be by cash, credit card, or check.

Section 7—Conformity with State Law

Authorized liquor sales and service on the Burns-Paiute Indian Reservation shall comply with Oregon State liquor law standards to the extent required by 18 U.S.C. 1161. The casino Manager shall be responsible for insuring that all OLCC license requirements are satisfied, that the license is renewed on an annual basis, and that all reasonable and necessary actions are taken to sell and serve liquor to casino patrons in a manner consistent with this Ordinance, applicable state law, and the Tribal-State Compact. The casino Manager shall also be authorized to purchase liquor from the State or other source for sale and service within the Old Camp Casino.

Section 8—Penalty

Any person or entity possessing, selling, serving, bartering, or manufacturing liquor products in violation of any part of this Ordinance shall be subject to a civil fine of not more than $500 for each violation involving possession, but up to $5,000 for each violation involving selling, bartering, or manufacturing liquor products in violation of this Ordinance, and violators may be subject to exclusion from the Burns-Paiute Indian Reservation. In addition, persons or entities subject to the criminal jurisdiction of the Burns-Paiute Tribe who violate this Ordinance shall be subject to criminal punishment as provided in the Burns-Paiute Law and Order Code. All contraband liquor shall be confiscated by the Burns-Paiute Police Department.

Section 9—Sovereign Immunity Preserved

Nothing in this Ordinance is intended or shall be construed as a waiver of the sovereign immunity of the Burns-Paiute Indian Tribe. No Manager or employee of the Old Camp Casino shall be authorized, nor shall they attempt, to waive the sovereign immunity of the Tribe.

Section 10—Effective Date

This Ordinance shall be effective following approval by the Burns-Paiute Tribal Council and approval by the Secretary of Interior or his designee as provided by federal law.

[FR Doc. 05–17281 Filed 8–30–05; 8:45 am]
BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

National Park Service

60-day Notice of Intention To Request Clearance of Collection of Information: Opportunity for Public Comment

AGENCY: National Park Service, The Department of the Interior.

ACTION: Notice and request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C., Chapter 3507) and 5 CFR part 1320, Reporting and Record Keeping Requirements, the National Park Service invites public comments on an extension of a currently approved collection (OMB#1024–0018).

DATES: Public comments will be accepted on or before sixty days from the date of publication in the **Federal Register.**

ADDRESSES: Send comments to Beth L. Savage, Publications Managing Editor, National Register of Historic Places, National Park Service, 1849 "C" Street

NW., (2280), Washington, DC 20240. E-mail: *beth_savage@nps.gov.* Phone: 202–354–2211, Fax 202–371–2229.

To Request Copies of the Documents Contact: Beth L. Savage, Publications Managing Editor, National Register of Historic Places, National Park Service, 1849 "C" Street NW., (2280), Washington, DC 20240. E-mail: *beth_savage@nps.gov.* For further information, contact Beth Savage, (202) 354–1122.

SUPPLEMENTARY INFORMATION: *Title:* National Register of Historic Places Registration Form, National Register of Historic Places Continuation Sheet, and National Register of Historic Places Multiple Property Documentation Form.

Form: NPS 10–900 (registration form), 10–900–a (continuation sheet), 10–900–b (multiple property form).

OMB Number: NPS 1024–0018.

Expiration Date: 12/31/05.

Type of Request: Extension of a currently approved collection.

Description of Need: The primary purpose of the ICR is to nominate properties for listing in the National Register of Historic Places, the official list of the Nation's cultural resources worthy of preservation, which the National Historic Preservation Act requires the Secretary of the Interior to maintain and expand. Properties are listed upon nomination by State, Federal and Tribal Historic Preservation Officers. The National Register of Historic Places Registration Form documents properties nominated for listing in the National Register and demonstrates that they meet the criteria established for inclusion. The documentation is used to assist in preserving and protecting the properties and for heritage education and interpretation. National Register properties and those eligible for listing must be considered in the planning for Federal or federally assisted projects, and National Register listing is required for eligibility for the Federal rehabilitation tax incentives. NPS specifically requests comments on: (1) The need for information including whether the information has practical utility; (2) the accuracy of the reporting burden estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of information collection on respondents, including the use of automated collection techniques or other forms of information technology.

Description of Respondents: The affected public are State, tribal, and local governments, businesses, non-profit organizations, and individuals. Nominations to the National Register of Historic Places are voluntary.

Estimated Annual Reporting Burden: 52,824 hours, broken down as follows, 196 nominations submitted under existing MPS @ 18 hrs. each = 3,528. 1,186 newly proposed individual nominations @ 36 hrs. each = 42,696.55 newly proposed MPS @ 120 hrs. each = 6,600.

Estimated Average Burden Hours per Response: Depending on which form is used, the average burden hours per response may vary considerably because of many complex factors. In general, to fulfill minimum program requirements describing the nominated property and demonstrating its eligibility under the criteria, the average burden hours range from 18 hours for a nomination proposed under an existing Multiple Property submission, to 36 hours for a newly proposed individual nomination, to 120 hours for a newly proposed Multiple Property Submission. Continuation sheets (10–900–a) are used as space for additional information for both the individual nomination form and the multiple property form, as needed. As such, the calculation of average burden hours per response for the continuation sheets has been included in the above average calculations for the nomination form (10–900–) and the multiple property form (10–900–b).

Estimated Average Number of Respondents: 1,513.

Estimated Frequency of Response: 1,513 annually.

Dated: July 19, 2005.

Leonard E. Stowe,

National Park Service Information and Collection Clearance Officer.

[FR Doc. 05–17261 Filed 8–30–05; 8:45 am]

BILLING CODE 4312–57–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before August 8, 2005. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by September 15, 2005.

John W. Roberts,

Acting Chief, National Register/National Historic Landmarks Program.

FLORIDA

Hillsborough County

Meacham Elementary School, 1225 India St., Tampa, 05001041

INDIANA

Decatur County

Jerman School, (Indiana's Public Common and High Schools MPS) 316 W. Walnut St., Greensburg, 05001017

Delaware County

Maring, Grace Keiser, Library, 1808 S. Madison St., Muncie, 05001011

Elkhart County

Fort Wayne Street Bridge, Indiana Ave. over Elkhard R. Goshen, 05001018

Hamilton County

Boxley, George, Cabin, Pioneer Hill at First and Main Sts., Sheridan, 05001010

Lake County

Indiana Harbor Public Library, 3605 Grand Ave., East Chicago, 05001014

Kingsbury—Doak Farmhouse, 4411 E 153rd Ave., Hebron, 05001013

Marion County

Speedway Historic District, Roughly bounded by 16th St., Main St. 10th St. and Winton Ave., Speedway, 05001015

Montgomery County

O'Neall, Abijah II, House, 4040 West 300 South, Crawfordsville, 05001016

Morgan County

Blankenship—Hodges—Brown House, 7455 Old IN 67 W, Paragon, 05001012

IOWA

Lee County

Faeth Farmstead and Orchard District, 2469 IA 2, Fort Madison, 05001020

Pottawattamie County

Willow—Bluff—3rd Street Historic District, Roughly bounded by Worth, High School Ave., Clark Ave. and W side Bluff St., Council Bluffs, 05001019

LOUISIANA

St. Mary Parish

Franklin Historic District (Boundary Increase), 600–608 Palfrey St., Franklin, 05001042

MARYLAND

Somerset County

University of Maryland Eastern Shore, 1 Backbone Rd., Princess Anne, 05001021

MINNESOTA

Hennepin County

Phi Gamma Delta Fraternity House, 1129 University Ave. SE, Minneapolis, 05001040

MISSOURI

Buchanan County

Everett School, (St. Joseph, Buchanan County, Missouri MPS AD), 826 S 14th St., Saint Joseph, 05001023

Cape Girardeau County

Esquire Theater, (Cape Girardeau, Missouri MPS) 824 Broadway, Cape Girardeau, 05001025

St. Louis County

Rott School, 9455 Rott Rd., Sunset Hills, 05001022

St. Louis Independent City

Halsey—Packard Building, 2201–11 Locust, St. Louis (Independent City), 05001036
Locust Street Automotive District, (Auto-Related Resources of St. Louis, Missouri MPS) 2914–3124 Locust and 3043 Olive, St. Louis (Independent City), 05001024
Shaughnessy, Martin, Building, 2201–15 Washington, St. Louis (Independent City), 05001035
Tower, George F., Jr. and Carrie, House, 1520 S. Grand Ave., St. Louis (Independent City), 05001034

NEW YORK

Nassau County

Stepping Stones Light Station, (Light Stations of the United States MPS), Long Island Sound, 0.9 mi. NW of Elm Point at town of Kings Point, Kings Point, 05001026

NORTH CAROLINA

Northampton County

Seabord Historic District, Bounded by Main, Church and Washington Sts, and NC 186, Seaboard, 05001032

Person County

Merritt—Winstead House, 7891 Boston Rd., Roxboro, 05001031

Polk County

Ryder Hall, 305 Seminary St., Saluda, 05001033

Robeson County

McKinnon, Kenneth, House, South Side of NC 20, SE corner of NC 20 and NC 1907, St. Pauls, 05001029

Wake County

Johnson, Kemp B., House, 7116 Johnson Pond Rd., Fuquay—Varina, 05001028
Thompson House, 2528 Old NC 98, Wake Forest, 05001030

TENNESSEE

Davidson County

Airdrie, 3210 Avenal Ave., Nashville, 05001027

Knox County

Chilhowee Park Historic District, (Knoxville and Knox County MPS), N. Beaman St., N. Castle St., Jefferson Ave., Mary St., Manor Dr., and Woodbine Ave., Knoxville, 05001039

UTAH

Cache County

Sigma Chi Fraternity House, 705 North 800 East, Logan, 05001038

Salt Lake County

Fuller, W.P., Paint Company Office and Warehouse, 404 West 400 South, Salt Lake City, 05001037

A request for REMOVAL has been made for the following resources:

ARKANSAS

Mississippi County

First Baptist Church 513 S. Pecan St., Osceola, 95001083

Pulaski County

Mosaic Templars of America Headquarters Building, 900 Broadway, Little Rock, 90000634

White County

Searcy City Hall, (White County MPS), Jct. Of Gum and Race Sts., Searcy, 91001227

[FR Doc. 05–17259 Filed 8–30–05; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before August 13, 2005. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by September 15, 2005.

John W. Roberts,

Acting Chief, National Register/National Historic Landmarks Program.

CONNECTICUT

Fairfield County

New Haven Railroad Danbury Turntable, 120 White St., Danbury, 05001048

Hartford County

Glastonbury—Rock Hill Ferry Historic District, Roughly along Tryon St., Ferry Ln. and Glastonbury Ave., Meadow and Riverview Rds., Glastonbury, 05001046
Robbins, Unni II, House, 1692 Main St., Newington, 05001049

New London County

Greeneville, Roughly along Boswell and Central Aves., Prospect and N. Main Sts., bet. Hickory and 14th Sts., Norwich, 05001047
Oswegatchie Historic District, East St., Riverside, Plant, Park Drs., and Sharwandassee and Oswegatchie Rds, Waterford, 05001043
Walnut Grove, 305 Great Neck Rd., Waterford, 05001044

Windham County

Willimantic Elks Club, 198 Pleasant St., Windham, 05001045

KANSAS

Brown County

Hiawatha Courthouse Square Historic District, 520–819 Oregon, 101–123 S6, 108–124 S7, 601–613 Utah, Hiawatha, 05001052

McPherson County

Schroeder, Heinrich H., Barn, 632 29th Ave., Canton, 05001051

MISSOURI

Jackson County

Cherry Street Colonnades Historic District, (Colonnade Apartment Buildings of Kansas City, MO MPS) 2523,2537,2531,2535,2543,2542, and 2544 Cherry St., Kansas City, 05001050

NEW JERSEY

Essex County

New Jersey Bell Headquarters Building, 540 Broad St., Newark City, 05001054

Gloucester County

Tinicum Island Range Rear Light Station, (Light Stations of the United States MPS) 250 ft. S o jct. of Beacon Ave. and Second St., Billingsport, 05001053

OREGON

Clackamas County

Davis, John and Magdalena, Farm, 13678 S. Spanglar Rd., Oregon City, 05001056

Columbia County

Caples, Dr. Charles G. and Lucinda McBride, Farmstead, 1925 First St., Columbia City, 05001060

Lane County

McCracken Brothers Moto Freight Building, 375 W. 4th St., Eugene, 05001055

Multnomah County

Cardwell-Homan House, 827 NW 25th Ave., Portland, 05001057
Elliott House, 2022 N. Williamette Blvd., Portland, 05001058
Jeffrey, Oliver and Margaret, House, 3033 NE Bryce St., Portland, 05001059

RHODE ISLAND

Washington County

Dunmere, 560 Ocean Rd., Narragansett, 05001061

WASHINGTON

Klickitat County

Trout Lake Tourist Club, 15 Guler Rd., Trout Lake, 05001063

Yakima County

Gendron, Olj., Ranch, 6702 Bell Rd., Moxee City, 05001062

[FR Doc. 05–17260 Filed 8–30–05; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Mental Health and Community Safety Initiative Equipment and Training Progress Report.

The Department of Justice (DOJ) Office of Community Oriented Policing Services (COPS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until October 31, 2005. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Rebekah Dorr, Department of Justice Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW., Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection:

(1) *Type of Information Collection:* Extension of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Mental Health and Community Safety Initiative Equipment and Training Progress Report.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form Number: None. U.S. Department of Justice Office of Community Oriented Policing Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, Local or Tribal Government. Other: None: Law enforcement agencies that are recipients of COPS Tribal Mental Health and Community Safety Initiative grants must submit progress reports.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 10 respondents annually will complete the form within 3.5 hours, including 1 hour required for maintaining records.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated total of 35 hours annually associated with this collection.

If additional information is required contact: Brenda E. Dyer, Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: August 25, 2005.

Brenda E. Dyer,

Department Clearance Officer, PRA, Department of Justice.

[FR Doc. 05–17274 Filed 8–30–05; 8:45 am]

BILLING CODE 4410–AT–P

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: Annual Report to Congress—Expired COPS Awards Exceeding $5 Million.

The Department of Justice (DOJ), Office of Community Oriented Policing Services (COPS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 70, Number 114, page 34795 on June 15, 2005, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until September 30, 2005. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic,

mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this Information Collection:

(1) Type of Information Collection: New Collection.

(2) Title of the Form/Collection: Annual Report to Congress—Expired COPS Awards Exceeding $5 Million.

(3) Agency form number, if any, and the applicable component of the Department sponsoring the collection: Form Number: None. Office of Community Oriented Policing Services.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: State, local, or tribal government. Law enforcement agencies that are recipients of COPS grants over $5,000,000 that are programmatically and financially closed out or that otherwise ended in the immediately preceding fiscal year.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply: It is estimated that approximately 10 respondents annually will complete the form within one hour.

(6) An estimate of the total public burden (in hours) associated with the collection: There are approximately 10 total annual burden hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: August 25, 2005.

Brenda E. Dyer,

Department Clearance Officer, Department of Justice.

[FR Doc. 05–17275 Filed 8–30–05; 8:45 am]

BILLING CODE 4410–AT–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Records of Acquisition and Disposition, Registered Importers of Arms, Ammunition And Implements of War on the U.S. Munitions Imports List.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 70, Number 125, page 37869 on June 30, 2005, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until September 30, 2005. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this Information Collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Records of Acquisition and Disposition, Registered Importers of Arms, Ammunition and Implements of War on the U.S. Munitions Imports List.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form Number: ATF REC 7570/1. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None. The records are of imported items that are on the United States Munitions Import List. The importers must register with ATF and must file an intent to import specific items as well as certify to the Bureau that the items were in fact received. The records are maintained at the registrant's business premises where they are available for inspection by ATF officers during compliance inspections or criminal investigations.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 50 respondents will take 5 hours to maintain the records.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 250 annual total burden hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: August 25, 2005.

Brenda E. Dyer,

Department Clearance Officer, Department of Justice.

[FR Doc. 05–17273 Filed 8–30–05; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Advisory Council on Employee Welfare and Pension Benefit Plans Working Group on Retirement Plan Distributions and Options; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the Working Group assigned by the Advisory Council on Employee Welfare and Pension Benefit Plans to study the issue of retirement

plan distributions and options will hold an open public meeting on September 22, 2005.

The session will take place in Room S4215B–C, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. The purpose of the open meeting, which will run from 9 a.m. to approximately 5 p.m., with a one hour break for lunch, is for Working Group members to hear testimony from invited witnesses. The Working Group will inquire about distribution options available to participants of qualified retirement plans and the sufficiency of the communication of the options to retiring or terminating participants.

Organizations or members of the public wishing to submit a written statement pertaining to the topic may do so by submitting 25 copies on or before September 14, 2005 to Larry Good, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5623, 200 Constitution Avenue, NW., Washington, DC 20210. Statements also may be submitted electronically to *good.larry@dol.gov*. Statements received on or before September 14, 2005 will be included in the record of the meeting. Individuals or representatives of organizations wishing to address the Working Group should forward their requests to the Executive Secretary or telephone (202) 693–8668. Oral presentations will be limited to 20 minutes, time permitting, but an extended statement may be submitted for the record. Individuals with disabilities who need special accommodations should contact Larry Good by September 14, at the address indicated.

Signed at Washington, DC, this 25th day of August, 2005.

Ann L. Combs,

Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. 05–17308 Filed 8–30–05; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Advisory Council on Employee Welfare and Pension Benefit Plans 131st Plenary Meeting; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the 131st open meeting of the full Advisory Council on Employee Welfare and Pension Benefit Plans will be held on September 21, 2005.

The session will take place in Room S 4215 B–C, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. The purpose of the open meeting, which will run from 4 p.m. to approximately 5 p.m., is for members to be updated on activities of the Employee Benefits Security Administration and for the chairs of this year's Working Groups to provide progress reports on their individual study topics.

Organizations or members of the public wishing to submit a written statement may do so by submitting 25 copies on or before September 14, 2005 to Larry Good, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5623, 200 Constitution Avenue, NW., Washington, DC 20210. Statements also may be submitted electronically to *good.larry@dol.gov*. Statements received on or before September 14, 2005 will be included in the record of the meeting. Individuals or representatives of organizations wishing to address the Advisory Council should forward their requests to the Executive Secretary or telephone (202) 693–8668. Oral presentations will be limited to 10 minutes, time permitting, but an extended statement may be submitted for the record. Individuals with disabilities who need special accommodations should contact Larry Good by September 14 at the address indicated.

Signed at Washington, DC, this 25th day of August, 2005.

Ann L. Combs,

Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. 05–17309 Filed 8–30–05; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Advisory Council on Employee Welfare and Pension Benefit Plans Working Group on Communications to Retirement Plane Participants; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the Working Group assigned by the Advisory Council on Employee Welfare and Pension Benefit Plans to study the issue of communications to retirement plan participants will hold an open public meeting on September 23, 2005.

The session will take place in Room S 4215 B–C, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. The purpose of the open meeting, which will run from 8:30 a.m. to approximately 4 p.m., with a one hour break for lunch, is for Working Group members to hear testimony from invited witnesses. The Working Group will inquire whether plan participants understand their rights and benefits under retirement plans and if existing required communication tools are accomplishing the original goal of full disclosure.

Organizations or members of the public wishing to submit a written statement pertaining to the topic may do so by submitting 25 copies on or before September 14, 2055 to Larry Good, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5623, 200 Constitution Avenue, NW., Washington, DC 20210. Statements also may be submitted electronically to *good.larry@dol.gov*. Statements received on or before September 14, 2005 will be included in the record of the meeting. Individuals or representatives of organizations wishing to address the Working Group should forward their requests to the Executive Secretary or telephone (202) 693–8668. Oral presentations will be limited to 20 minutes, time permitting, but an extended statement may be submitted for the record. Individuals with disabilities who need special accommodations should contact Larry Good by September 14 at the address indicated.

Signed at Washington, DC, this 25th day of August, 2005.

Ann L. Combs,

Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. 05–17311 Filed 8–30–05; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Advisory Council on Employee Welfare and Pension Benefit Plans Working Group on Improving Plan Communications for Health and Welfare Plan Participants; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the Working Group assigned by the Advisory Council on Employee Welfare and Pension Benefit Plans to study the issue of improving

plan communications for health and welfare plan participants will hold an open public meeting on September 21, 2005.

The session will take place in room S 4215 B–C, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. The purpose of the open meeting, which will run from 9 a.m. to approximately 4 p.m., with a one hour break for lunch, is for Working Group members to hear testimony from invited witnesses. The Working Group will inquire whether plan participants understand benefits under health and welfare plans and whether the existing required communication tools (e.g., SPD, SAR, claims procedure rules) are accomplishing the original goal of full disclosure.

Organizations or members of the public wishing to submit a written statement pertaining to the topic may do so by submitting 25 copies on or before September 14, 2005 to Larry Good, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N-5623, 200 Constitution Avenue, NW., Washington, DC 20210. Statements also may be submitted electronically to *good.larry@dol.gov*. Statements received on or before September 14, 2005 will be included in the record of the meeting. Individuals or representatives of organizations wishing to address the Working Group should forward their requests to the Executive Secretary or telephone (202) 693–8668. Oral presentations will be limited to 20 minutes, time permitting, but an extended statement may be submitted for the record. Individuals with disabilities who need special accommodations should contact Larry Good by September 14 at the address indicated.

Signed at Washington, DC this 25th day of August, 2005.

Ann L. Combs,

Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. 05–17312 Filed 8–30–05; 8:45 am]

BILLING CODE 4510–24–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR 1218–0203 (2005)]

Permit-Required Confined Spaces; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comment.

SUMMARY: OSHA solicits public comment concerning its request for an extension of the information collection requirement contained in its Standard on Permit-Required Confined Spaces (29 CFR 1910.146).

DATES: Comments must be submitted by the following dates:

Hard copy: Your comments must be submitted (postmarked or received) by October 31, 2005.

Facsimile and electronic transmission: Your comments must be received by October 31, 2005.

ADDRESSES: You may submit comments, identified by OSHA Docket No. ICR–1218–0203(2005), by any of the following methods:

Regular mail, express delivery, hand delivery, and messenger service: Submit your comments and attachments to the OSHA Docket Office, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350 (OSHA's TTY number is (877) 889–5627). OSHA Docket Office and Department of Labor hours are 8:15 a.m. to 4:45 p.m., e.t.

Facsimile: If your comments are 10 pages or fewer in length, including attachments, you may fax them to the OSHADocket Office at (202) 693–1648.

Electronic: You may submit comments through the Internet at *http://ecomments.osha.gov*. Follow instructions on the OSHA Web page for submitting comments.

Docket: For access to the docket to read or download comments or background materials, such as the complete Information Collection Request (ICR) (containing the Supporting Statement, OMB–83–I Form, and attachments), go to OSHA's Web page at *http://www.OSHA.gov*. In addition, the ICR, comments, and submissions are available for inspection and copying at the OSHA Docket Office at the address above. You also may contact Theda Kenney at the address below to obtain a copy of the ICR. For additional information on submitting comments, please see the "Public Participation" heading in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210, telephone: (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing efforts to reduce paperwork and respondent (*i.e.*, employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)).

This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657).

The Standard specifies a number of collection of information requirements. The collections of information are used by employers and employees whenever entry is made into permit-required confined spaces. The following sections describe who uses the information collected under each requirement, as well as how they use it. The purpose of the information is to ensure that employers systematically evaluate the dangers in permit spaces before entry is attempted and to ensure that adequate measures are taken to make the spaces safe for entry. In addition, the information is needed to determine, during an OSHA inspection by a compliance safety and health officer, if employers are in compliance with the Standard.

Section 1910.146(c)(2) requires the employer to post danger signs to inform exposed employees of the existence and location of, and the danger posed by, permit spaces.

Section 1910.146(c)(4) requires the employer to develop and implement a written a "permit space program" if the employer decides that its employees will enter permit spaces. The written program is to be made available for inspection by employees and their authorized representatives. Section 1910.146(d) provides the employer with the requirements of a permit-required confined space program ("permit space program") required under this paragraph.

Section 1910.146(c)(5)(i)(E) requires that the determinations and supporting data specified by paragraphs (c)(5)(i)(A), (c)(5)(i)(B), and (c)(5)(i)(C) of this

section are documented by the employer and are made available to each employee who enters a permit space or to that employee's authorized representative.

Under paragraph (c)(5)(ii)(H) of § 1910.146, the employer is required to verify that the space is safe for entry and that the pre-entry measures required by paragraph (c)(5)(ii) of this section have been taken, using a written certification that contains the date, the location of the space, and the signature of the person providing the certification. The certification is to be made before entry and is required to be made available to each employee entering the space or to that employee's authorized representative.

Section 1910.146(c)(7)(iii) requires the employer to document the basis for determining that all hazards in a permit space have been eliminated using a certification that contains the date, the location of the space, and the signature of the person making the determination. The certification is to be made available to each employee entering the space or to that employee's authorized representative.

Section 1910.146(c)(8)(i) requires that the employer inform the contractor that the workplace contains permit spaces and that permit space entry is allowed only through compliance with a permit space program meeting the requirements of this section. Section 1910.146(c)(i)(ii) requires that the employer apprise the contractor of the elements, including the hazards identified and the host employer's experience with the space, that make the space in question a permit space. Section 1910.146(c)(8)(iii) requires that the employer apprise the contractor of any precautions or procedures that the host employer has implemented for the protection of employees in or near permit spaces where contractor personnel will be working. Section 1910.146(c)(8)(v) requires the employer to debrief the contractor at the conclusion of the entry operations regarding the permit space program followed and regarding any hazards confronted or created in permit spaces during entry operations.[1]

Section 1910.146(c)(9)(iii) requires that the contractor inform the host employer of the permit space program that the contractor will follow and of any hazards confronted or created in permit spaces, either through a debriefing or during the entry operation.[1]

Section 1910.146(d)(5)(vi) requires the employer to immediately provide each authorized entrant or that employee's authorized representative with the results of any testing conducted in accordance with paragraph (d) of this section.[1]

Section 1910.146(e)(1) requires the employer to document the completion of measures required by paragraph (d)(3) by preparing an entry permit before employee entry is authorized. Paragraph (f) of § 1910.146 specifies the information to be included on the entry permit. Paragraph (e)(3) requires that the employer make the completed permit available at the time of entry to all authorized entrants by posting the permit at the entry portal or by any other equally effective means, so that the entrants can confirm that pre-entry preparations have been completed. Paragraph (e)(6) requires the employer to retain each canceled entry permit for at least one year.

Section 1910.146(g)(4) requires that the employer certify that the training required by paragraphs (g)(1) through (g)(3)[2] has been accomplished by preparing a written certification record.

Section 1910.146(k)(1)(iv) requires that the employer inform each rescue team or service of the hazards they may confront when called on to perform rescue at the site.

Section 1910.146(k)(2)(ii) requires that the employer train affected employees to perform assigned rescue duties. The employer must ensure that such employees successfully complete the training required to establish proficiency as an authorized entrant, as provided by paragraphs (g) and (h) of this section. Section 1910.146(k)(2)(iii) requires that the employer train affected employees in basic first-aid and cardiopulmonary resuscitation (CPR). The employer shall ensure that at least one member of the rescue team or service holding a current certification in first aid and CPR is available.

Section 1910.146(k)(4) requires that if an injured entrant is exposed to a substance for which a Material Safety Data Sheet (MSDS) or other similar written information is required to be kept at the worksite, that the employer make the MSDS or written information available to the medical facility treating the exposed entrant.[3]

Section § 1910.146(1)(2) requires that employers make all information required to be developed by this section available to affected employees and their authorized representatives.

[1] These sections identify usual and customary communications between employers, contractors, and employees; therefore, they do not impose burden hours or costs on the employer. For example, as a matter of business practice, information about hazards and permit-required confined spaces, etc., would be conveyed to contractors during initial discussions of work to be performed.

[2] The Agency concludes that the training required under § 1910.146(g)(1) through (g)(3) and (k)(2)(i) and (k)(2)(ii) § 1910.146(k)(iii) is written in performance-oriented language and, thus, not considered a collection of information under the implementing rules and guidelines of PRA–95.

[3] The burden hours and cost for MSDS accessibility is taken under OMB Control Number 1218–0072 (the Hazard Communication Standard (HCS) ICR).

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply, for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA proposes to extend the Office of Management and Budget's (OMB) approval of the collection of information (paperwork) requirements contained in the Standard on Permit-Required Confined Spaces (29 CFR 1910.146). The Agency will summarize the comments submitted in response to this notice, and will include this summary in its request to OMB to extend the approval of the collection of information requirements contained in the Standard.

Type of Review: Extension of currently approved information collection requirements.

Title: Permit-Required Confined Spaces (29 CFR 1910.146).

OMB Number: 1218–0203.

Affected Public: Business or other for-profits; not-for-profit organizations; Federal government; State, local, or tribal government.

Number of Respondents: 238,853.

Frequency of Response: On occasion.

Total Responses: 9,163,736.

Average Time Per Response: Varies from one minute (.02 hour) to maintain a certificate to 16 hours to develop a written permit space entry program.

Estimated Total Burden Hours: 1,523,810.

Estimated Cost (Operation and Maintenance): 50.

IV. Public Participation-Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments and supporting materials in response to this notice by (1) hard copy, (2) fax transmission (facsimile), or (3) electronically through the OSHA Web page. Because of security-related problems, a significant delay may occur in the receipt of comments by regular mail. Please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for information about security procedures concerning the delivery of submissions by express delivery, hand delivery, and courier service.

All comments, submissions and background documents are available for inspection and copying a the OSHA Docket Office at the above address. Comments and submissions posted on OSHA's Web page are available at *http://www.OSHA.gov*. Contact the OSHA Docket Office for information about materials not available through the OSHA Web page and for assistance using the Web page to locate docket submissions.

Electronic copies of this **Federal Register** notice, as well as other relevant documents, are available on OSHA's Web page. Since all submissions become public, private information such as social security numbers should not be submitted.

V. Authority and Signature

Jonathan L. Snare, Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*), and Secretary of Labor's Order No. 5–2002 (67 FR 65008).

Signed at Washington, DC, on August 25, 2005.

Jonathan L. Snare,

Deputy Assistant Secretary of Labor.

[FR Doc. 05–17346 Filed 8–30–05; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency has submitted to OMB for approval the information collection described in this notice. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted to OMB at the address below on or before September 30, 2005 to be assured of consideration.

ADDRESSES: Send comments to Desk Officer for NARA, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5167.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–837–1694 or fax number 301–837–3213.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. NARA published a notice of proposed collection for this information collection on June 21, 2005 (70 FR 35733 and 35734). No comments were received. NARA has submitted the described information collection to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology; and (e) whether small businesses are affected by this collection. In this notice, NARA is soliciting comments concerning the following information collection:

Title: Order Forms for U.S. Court Records in the National Archives.

OMB Number: 3095–NEW.

Agency Form Number: NATF Forms 90, 91, 92, and 93.

Type of Review: Regular.

Affected Public: Individuals or households.

Estimated Number of Respondents: 76,222.

Estimated Time per Response: 10 minutes.

Frequency of Response: On occasion.

Estimated Total Annual Burden Hours: 12,704 hours.

Abstract: Submission of requests on a form is necessary to handle in a timely fashion the volume of requests received for these records (approximately 73,334 per year for the NATF 90, approximately 1,426 per year for the NATF 91, approximately 1,312 per year for the NATF 92, approximately 150 per year for the NATF 93) and the need to obtain specific information from the researcher to search for the records sought. As a convenience, the form will allow researchers to provide credit card information to authorize billing and expedited mailing of the copies. NARA is exploring the option of allowing researchers to use Order Online! (*http://www.archives.gov/research_room/obtain_copies/military_and_genealogy_order_forms.html*) to complete the forms and order the copies.

Dated: August 25, 2005.

Shelly L. Myers,

Deputy Chief Information Officer.

[FR Doc. 05–17304 Filed 8–30–05; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Committee Management Renewal

The NSF management officials having responsibility for NSB Public Service Award Committee (#5195) have determined that renewing this group for another two years is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation by 42 U.S.C. 1861 *et seq.* This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Authority for this Committee will expire on September 4, 2005, unless renewed. For more information contact Susanne Bolton at (703) 292–7488.

Dated: August 26, 2005.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 05–17313 Filed 8–30–05; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–269, 50–270, and 50–287]

Duke Energy Corporation; Notice of Consideration of Issuance of Amendment to Renewed 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 Renewed Facility Operating License No. DPR–38, DPR–47, and DPR–55, issued to Duke Energy Corporation (the licensee) for operation of Oconee Nuclear Station, Units 1, 2, and 3, located in Seneca, South Carolina.

The proposed amendment would revise the Technical Specifications to accommodate replacement of the Reactor Building Emergency Sump (RBES) suction inlet trash racks and screens with strainers in response to NRC Generic Letter 2004–02.

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) Involve a significant increase in the probability or consequences of an accident previously evaluated:

Duke is replacing the RBES [Reactor Building Emergency Sump] trash racks and screens with strainers in support of the response to Generic Letter 2004–02 on all three Oconee Units in the next refueling outage for each Unit. A change to Technical Specification (TS) Surveillance Requirements (SRs) 3.5.2.6 and 3.5.3.6 is needed to reflect this change. Although the configurations of the existing sump screen and the replacement strainer assemblies are different, they serve the same fundamental purpose of passively removing debris from the sump's suction supply of the supported system pumps. Removal of trash racks does not impact the adequacy of the pump NPSH [net positive suction head] assumed in the safety analyses. Likewise, the change does not reduce the reliability of any supported systems or introduce any new system interactions. A missile evaluation of the new strainer design concluded that there is no credible missile that could damage the strainer when needed during a LOCA [loss-of-coolant accident]. A jet impingement evaluation of the new strainer design concluded that there are no credible HELB [high energy line break] jets that could damage the strainer when needed during a LOCA. The greatly increased surface area of the new strainer will reduce the approach velocity of the strainer face significantly, further decreasing the risk of impact from large debris entrained in the sump flow stream. The proposed rewording of the SRs will continue to ensure that the reactor building sump suction inlet is not restricted by the debris and suction inlet strainers show no evidence of structural distress or abnormal corrosion for Unit(s) with or without the strainer modification complete. As such, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any kind of accident previously evaluated:

Duke is replacing the RBES trash racks and screens with strainers in support of the response to Generic Letter 2004–02 on all three Oconee Units in the next refueling outage for each Unit. The RBES strainers are passive components in standby safety systems used for accident mitigation. As such, they cannot be accident initiators. Therefore, there is no possibility that this change could create any accident of any kind. A change to TS SRs 3.5.2.6 and 3.5.3.6 is needed to reflect this change. These changes do not alter the nature of events postulated in the Safety Analysis Report nor do they introduce any unique precursor mechanisms. Therefore, the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Involve a significant reduction in a margin of safety:

The proposed changes do not adversely affect any plant safety limits, set points, or design parameters. The changes also do not adversely affect the fuel, fuel cladding, Reactor Coolant System (RCS), or containment integrity. Therefore, the proposed TS change, which revises the terminology associated with TS SRs, does not involve a significant reduction in the 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 (PDR), 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 O1F21, 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(c)(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*; 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*. A copy of the request for hearing and petition for leave to intervene should also be sent to Ms. Lisa F. Vaughn, Duke Energy Corporation, 422 S. Church Street, Mail Code—PB05E, Charlotte, NC 28201–1006, attorney for the licensee.

For further details with respect to this action, see the application for amendment dated [date], 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*.

Dated at Rockville, Maryland, this 23rd day of August, 2005.

For the Nuclear Regulatory Commission.

Leonard N. Olshan,

Project Manager, Section 1, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. E5–4749 Filed 8–30–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–317 and 50–318]

Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from Subsection (b)(1) of Section 50.68, "Criticality accident requirements," of part 50 of Title 10 of the Code of Federal Regulations (10 CFR) for Renewed Facility Operating License Nos. DPR–53 and DPR–69, issued to Calvert Cliffs Nuclear Power Plant, Inc. (the licensee),

for operation of the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2 (CCNPP), located in Calvert County, Maryland. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would exempt the licensee from the requirements of 10 CFR 50.68(b)(1) during the handling and storage of spent nuclear fuel in a 10 CFR part 72 licensed spent fuel storage container that is in a CCNPP spent fuel pool. The proposed action is in accordance with the licensee's application dated December 21, 2004, as supplemented on May 31, 2005. The supplemental letter provided clarifying information that did not expand the scope of the original request.

The Need for the Proposed Action

Under 10 CFR 50.68(b)(1), the Commission sets forth the following requirement that must be met, in lieu of a monitoring system capable of detecting criticality events. Plant procedures shall prohibit the handling and storage at any one time of more fuel assemblies than have been determined to be safely subcritical under the most adverse moderation conditions feasible by unborated water. Section 50.12(a) allows licensees to apply for an exemption from the requirements of 10 CFR part 50 if the regulation is not necessary to achieve the underlying purpose of the rule and other conditions are met. The licensee has stated that the NRC has previously established five criteria that, if met, would satisfy the intent of 10 CFR 50.68(b)(1).

Environmental Impacts of the Proposed Action

The NRC has completed its safety evaluation of the proposed action and concludes that the exemption described above would continue to satisfy the underlying purpose of 10 CFR 50.68(b)(1). The details of the staff's safety evaluation will be provided in the exemption that will be issued as part of the letter to the licensee approving the exemption to the regulation. The proposed action will not significantly increase the probability or consequences of accidents. No changes are being made in the types of effluents that may be released off site. There is no significant increase in the amount of any effluent released off site. There is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the Final Environmental Statement for the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, dated April 1984, and the Supplemental Environmental Impact Statement for License Renewal of Nuclear Plants, Calvert Cliffs Nuclear Power Plant (NUREG–1437, Supplement 1), dated October 1999.

Agencies and Persons Consulted

In accordance with its stated policy, on August 24, 2005, the staff consulted with the Maryland State official, R. McLean of the Maryland Department of Natural Resources, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated December 31, 2004, as supplemented by letter dated May 31, 2005. Documents may be viewed, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or (301) 415–4737, or send an e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 25th day of August, 2005.

For the Nuclear Regulatory Commission.

Patrick D. Milano,

Senior Project Manager, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. E5–4750 Filed 8–30–05; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52327; File No. SR–ISE–2004–33]

Self-Regulatory Organizations; International Securities Exchange, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Relating to the Entry of Complex Orders Into the Facilitation Mechanism

August 24, 2005.

I. Introduction

On November 16, 2004, the International Securities Exchange, Inc. ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend ISE Rule 716(d), "Facilitation Mechanism," to allow Electronic Access Members ("EAMs") to enter complex orders into the ISE's facilitation mechanism. On December 14, 2004, the ISE submitted Amendment No. 1 to the proposal.[3] The proposed rule change, as amended, was published for comment in the **Federal Register** on July 12, 2005.[4] The Commission received no comments regarding the proposal. This

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 made a technical revision to the text of the proposed rule change.

[4] *See* Securities Exchange Act Release No. 51968 (July 1, 2005), 70 FR 40089.

order approves the proposed rule change, as amended.

II. Description of the Proposal

Currently, an EAM may not use the ISE's facilitation mechanism to facilitate a complex order. The ISE proposes to amend ISE Rule 716(d) to allow EAMs to use the facilitation mechanism to facilitate complex orders. Under the proposal, each leg of the complex order must be for at least 50 contracts. After an EAM enters a complex order into the facilitation mechanism, ISE members will be able to enter at net prices indications at which they would be willing to participate in the facilitation of the order. Complex orders entered into the facilitation mechanism will be executed pursuant to ISE Rule 716(d)(4), and the priority rules for complex orders in ISE Rule 722(b)(2) will apply.[5] If a complex order entered into the facilitation mechanism could receive an improved net price from bids and offers for the individual legs of the order in the ISE's auction market, then the complex order will be executed at the better net price.

III. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[6] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[7] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the proposal could facilitate the execution of complex orders. The Commission notes that the priority rules in ISE Rule 722(b)(2) will apply to complex orders entered into the facilitation mechanism. In addition, if bids and offers in the ISE's auction market for the individual legs of the complex order being facilitated could produce a better net price for the order, then the complex order will receive an execution at the better net price.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–ISE–2004–33), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–4730 Filed 8–30–05; 8:45 am]

BILLING CODE 8010–01–P

[5] ISE Rule 722(b)(2) provides, in part, that a complex order may be executed at a total credit or debit price with another ISE member without giving priority to established bids or offers in the market that are not better than the bids or offers comprising such net debit or credit, provided that if any of the established bids or offers consists of a public customer limit order, the price of at least one leg of the complex order must trade at a price that is better than the corresponding bid or offer in the marketplace.

[6] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52330; File No. SR–ISE–2005–38]

Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to Fee Changes

August 24, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 1, 2005, the International Securities Exchange, Inc. ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the ISE. On August 22, 2005, ISE filed Amendment No. 1 to the proposed rule change.[3] The ISE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the ISE under Section 19(b)(3)(A)(ii) of the Act,[4] and Rule 19b–4(f)(2) thereunder,[5] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to amend its Schedule of Fees to establish fees for transactions in options on five products: The iShares Russell 2000(r) Index Fund, the Semiconductor HOLDRs Trust, the Oil Service HOLDRs Trust, the Energy Select Sector SPDR® Fund, and the iShares Lehman Brothers 20+ year Treasury Bond Index ETF. The text of the proposed rule change, as amended, is available on the ISE's Web site (*http://www.iseoptions.com/legal/proposed_rule_changes.asp*), at the principal office of the ISE, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the ISE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The ISE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend its Schedule of Fees to establish fees for transactions in options on five products: the iShares Russell 2000 Index Fund ("IWM"), the Semiconductor HOLDRs Trust ("SMH"), the Oil Service HOLDRs Trust ("OIH"), the Energy Select Sector SPDR Fund ("XLE"), and the iShares Lehman Brothers 20+ year Treasury Bond Index ETF ("TLT").[6] Specifically, the Exchange is proposing to adopt an execution fee and a comparison fee for transactions by Public Customers[7] in options on IWM, SMH, OIH, XLE, and TLT.[8] The Exchange currently charges an execution fee and a comparison fee

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 made changes to the filing, including Exhibit 5 (ISE's Schedule of Fees), to correct the names of the indexes: iShares Russell 2000(r) Index is the iShares Russell 2000(r) Index Fund and the full and proper name of the Lehman Brothers 20+ year Treasury Bond Index is the iShares Lehman Brothers 20+ year Treasury Bond Index ETF, and to remove references to the ISE Integrated Gas and Services Index (PMP).

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).

[6] The ISE represents that all five products are "Fund Shares," as defined by ISE Rule 502(h).

[7] ISE Rule 100(32) defines "Public Customer" as a person that is not a broker or dealer in securities.

[8] The ISE represents that these fees will be charged only to Exchange members.

only for transactions by Non-Customers [9] in options on IWM, SMH, OIH, XLE, and TLT. The amount of the execution fee and comparison fee for the products covered by this filing shall be the same for all order types on the Exchange—that is, orders for Public Customers and Non-Customers (which include Market Makers and Firm Proprietary)—and shall be equal to the execution fee and comparison fee, respectively, that are currently charged by the Exchange for transactions by Non-Customers in equity options.[10]

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b)(4) of the Act,[11] which requires that an exchange have an equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change, as amended, does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change, as amended, establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and Rule 19b–4(f)(2) [13] thereunder. At any time within 60 days of the filing of such amended proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[14]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–ISE–2005–38 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–ISE–2005–38. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. 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–ISE–2005–38 and should be submitted on or before September 21, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–4731 Filed 8–30–05; 8:45 am]

BILLING CODE 8010–01–P

[9] ISE Rule 100(22) defines "Non-Customer" as a person or entity that is broker or dealer in securities.

[10] The execution fee is currently between $.21 and $.12 per contract side, depending on the Exchange Average Daily Volume, and the comparison fee is currently $.03 per contract per side.

[11] 15 U.S.C. 78f(b)(4).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 19b–4(f)(2).

[14] The effective date of the original proposed rule is August 1, 2005. The effective date of Amendment No. 1 is August 22, 2005. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on August 22, 2005, the date on which the ISE submitted Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52331; File No. SR–ISE–2004–16]

Self-Regulatory Organizations; International Securities Exchange, Inc.; Order Granting Approval of Proposed Rule Change and Amendment No. 1 Thereto Establishing a Directed Order Process

August 24, 2005.

On May 20, 2004, the International Securities Exchange, Inc. ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt new ISE Rule 811 to allow Exchange market makers to receive Public Customer Orders directed to them from Electronic Access Members ("EAMs") through the Exchange's system ("Directed Orders"). On April 26, 2005, the ISE filed Amendment No. 1 to the proposed rule change.[3] The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on June 20, 2005.[4] The Commission received no comments on the proposed rule change.

Under ISE's proposal, a market maker that wishes to accept Directed Orders must systemically indicate that it wishes to receive Directed Orders each day, must be willing to accept Directed Orders from all EAMs, may receive Directed Orders only through the Exchange's system, and may not reject Directed Orders. A market maker receiving a Directed Order ("Directed Market Maker") would have to, within three seconds of receipt of the order, either submit the Directed Order to the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaced and superseded the original filing in its entirety.

[4] Securities Exchange Act Release No. 51835 (June 13, 2005), 70 FR 35479.

Price Improvement Mechanism ("PIM"), or send the order to the Exchange's limit order book. If the market maker submits the order to the PIM and is quoting at the national best bid or offer ("NBBO") on the opposite side of the Directed Order, it would be prohibited from changing its quotation to a price less favorable than the price available at the NBBO or reducing the size of its quotation prior to submitting the Directed Order to the PIM, unless such quotation change is the result of an automated quotation system that operates independently from the existence or nonexistence of a pending Directed Order. If the market maker sends the order to the Exchange's limit order book (or the Exchange system releases the order to the limit order book after three seconds) certain restrictions would apply to a market maker's ability to trade with the order depending on whether the Directed Order is marketable or not marketable, and whether the Directed Market Maker is quoting at the NBBO or not quoting at the NBBO. In any case, the Directed Market Maker would be last in priority when the Directed Order is matched against contra interest.

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange.[5] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[6] which requires among other things, that an exchange have rules that are designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission notes that the proposal is similar to the Directed Order program currently in place on the Boston Options Exchange facility ("BOX") of the Boston Stock Exchange, Inc. ("BSE").[7] Similar to the program currently in place on BOX, market makers receiving Directed Orders must accept all orders directed to them and must send such orders only to the PIM or to the Exchange's limit order book. In addition, a market maker that receives a Directed Order when not quoting at the NBBO as well as when quoting at the NBBO, would have to wait three seconds before trading with the Directed Order. The Directed Order would be exposed to other market participants to give them the first opportunity to trade with the Directed Order. Accordingly, the Commission believes that the proposal would not provide any disincentive for market makers that receive Directed Orders to quote competitively.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–ISE–2004–16) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–4732 Filed 8–30–05; 8:45 am]

BILLING CODE 8010–01–P

[5] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(5).

[7] *See* BSE Rules Chapter VI, Section 5(b) and (c), and Section 10.

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52333, File No. SR–MSRB–2005–13]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Approving Proposed Rule Change Relating to Official Statement Delivery Requirements Under Rule G–32, Rule G–36, and Rule G–11

August 25, 2005.

On June 23, 2005, the Municipal Securities Rulemaking Board ("MSRB" or "Board"), filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] a proposed rule change consisting of amendments to Rule G–32 (on delivery of official statements to new issue customers), Rule G–36 (on delivery of official statements and advance refunding documents to the Board) and Rule G–11 (on new issue municipal securities during the underwriting period). The proposed rule change is intended to improve the efficiency of official statement dissemination in the municipal securities marketplace and the timeliness of official statement deliveries to customers. The proposed rule change was published for comment in the **Federal Register** on July 25, 2005.[3] The Commission received no comment letters regarding the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB[4] and, in particular, the requirements of Section 15B(b)(2)(C) of the Act[5] and the rules and regulations thereunder. Section 15B(b)(2)(C) of the Act requires, among other things, that the MSRB's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.[6] In particular, the Commission finds that the proposed rule change will increase the efficiency of official statement dissemination in the marketplace and the timeliness of official statement deliveries to customers.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–MSRB–2005–13) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–4751 Filed 8–30–05; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 52058 (July 19, 2005), 70 FR 42604 (July 25, 2005).

[4] In approving this rule the Commission notes that it has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78o–4(b)(2)(C).

[6] *Id.*

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2005–22056]

Public Meeting To Discuss the Implementation of the North American Standard for Cargo Securement

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

ACTION: Notice of public meeting.

SUMMARY: FMCSA announces the second in a series of public meetings concerning the implementation of the North American Standard for Protection Against Shifting or Falling Cargo. On September 27, 2002, FMCSA published a final rule revising its regulations concerning protection against shifting and falling cargo for commercial motor vehicles (CMVs) engaged in interstate commerce. Motor carriers operating in the United States were given until January 1, 2004, to comply with the new regulations. On September 23, 2004, Canada's Council of Ministers Responsible for Transportation and Highway Safety approved a new National Safety Code Standard for cargo securement. Full implementation of the new cargo securement requirements in Canada began in the summer of 2005. The purpose of this meeting is second in a series of meetings to discuss the process for ensuring the consistent interpretation of the harmonized cargo securement standards by FMCSA and the Canadian Provinces, and of the issues raised by enforcement agencies and motor carriers in the U.S., and to address potential implementation issues for the Canadian Provinces, and motor carriers operating in Canada.

DATES: The meeting will be held on September 29–30, 2005. The meeting will begin at 1 p.m. and end at 5 p.m on September 29, and continue from 9 a.m. until 5 p.m. on September 30.

ADDRESSES: The meeting will be held at the Beau Rivage Resort, 875 Beach Boulevard, Biloxi, Mississippi.

FOR FURTHER INFORMATION CONTACT: Mr. Larry W. Minor, Director of the Office of Bus and Truck Standards and Operations (MC–PS), 202–366–4009, Federal Motor Carrier Safety Administration, 400 Seventh Street SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Background

On September 27, 2002 (67 FR 61212), FMCSA published a final rule revising its regulations concerning protection against shifting and falling cargo for CMVs operated in interstate commerce (49 CFR part 393). The new cargo securement standards are based on the North American Cargo Securement Standard Model Regulations, reflecting the results of a multi-year comprehensive research program to evaluate the then-current U.S. and Canadian cargo securement regulations; the motor carrier industry's best practices; and recommendations presented during a series of public meetings involving U.S. and Canadian industry experts, Federal, State and Provincial enforcement officials, and other interested parties. The Agency indicated that the intent of the rulemaking is to reduce the number of crashes caused by cargo shifting on or within, or falling from, CMVs operating in interstate commerce, and to harmonize to the greatest extent practicable U.S., Canadian and Mexican cargo securement regulations. Motor carriers were given until January 1, 2004, to comply with the new regulations.

Maintaining Uniformity Between U.S. and Canadian Cargo Securement Standards

FMCSA believes it is necessary to continue working with U.S. and Canadian industry experts, Federal, State and Provincial enforcement officials, and other interested parties to maintain to the greatest extent practicable, harmonization of U.S. and Canadian cargo securement standards. A major part of this effort includes uniformity in interpreting the meaning of the requirements adopted by the U.S. and Canada. While there are some differences between certain provisions of the regulations adopted by FMCSA and Canada's National Safety Code Standard 10, most of the contents of the model regulations have been adopted, or will soon be adopted, by almost all jurisdictions in the U.S. and Canada. To ensure consistency in the interpretation and enforcement of the requirements, FMCSA is working with its partners in Canada to develop a process for sharing information about requests for interpretation, and exchanging technical information that would be helpful to the regulatory agencies in developing responses to such requests. FMCSA would also work with its partners in Canada to ensure that interpretations are made available to all interested parties in an efficient and timely manner.

As part of the process for ensuring consistent interpretations of the harmonized cargo securement regulations, FMCSA is holding this public meeting to provide all interested parties the opportunity to participate in the discussions between the Agency and its Canadian counterparts about interpretations and other implementation issues. This is the second in a series of public meetings on this subject. The first meeting was held April 21–22 in Albuquerque, New Mexico (70 FR 16884, April 1, 2005). Minutes from the Albuquerque meeting, and the presentations made by participants have been placed in the docket listed at the beginning of this notice. The minutes and presentations from the Biloxi meeting and any future cargo securement implementation issues meetings will be placed in this docket. Future public meetings will be announced in the **Federal Register**.

Meeting Information

The meeting will be held on September 29–30, 2005, at the Beau Rivage Resort, 875 Beach Boulevard, Biloxi, Mississippi. The meeting is scheduled from 1 p.m. to 5 p.m. on September 29, and from 9 a.m. to 5 p.m. on September 30. The meeting is being held in connection with the Commercial Vehicle Safety Alliance's (CVSA) 2005 Fall Workshop. Attendance for the cargo securement meeting is free of charge and open to all interested parties. However, anyone interested in attending the sessions and committee meetings of the CVSA's 2005 Fall Workshop must register with the CVSA and pay the appropriate registration fee. For further information about registration for other sessions or meetings of the CVSA's 2005 Fall Workshop please contact the CVSA at (202) 775–1623.

Issued on: August 24, 2005.

Warren E. Hoemann,

Deputy Administrator.

[FR Doc. 05–17276 Filed 8–30–05; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Indiana Northeastern Railroad Company (Docket Number FRA–2005–21963)

The Indiana Northeastern Railroad Company (IN) seeks a waiver of compliance from the provisions of the *Track Safety Standards*, 49 CFR 213.233(c), that requires a twice-weekly track inspection when operating passenger trains.

The IN, a shortline railroad operating in the states of Indiana, Ohio, and Michigan, has commenced weekend excursion passenger train operation

necessitating a twice weekly track inspection required under Section 213.233(c). In its petition, the IN states that train activity increases towards the end of the week and track maintenance is generally scheduled at the beginning of the week when maximum staffing is available.

With the weekend excursions operating, the track supervisor traverses the line on each Monday to inspect the track that the passenger train will be operating over the upcoming weekend. Midweek the supervisor resumes the regular inspection of the entire line. The petitioner believes that the second inspection of the excursion trackage is redundant and adds another day to the inspection activity without any benefit.

Interested parties are invited to participate in these proceedings by submitting their written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communication concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number 2005–21963), and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW.. Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov*.

Issued in Washington, DC on August 25, 2005.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 05–17277 Filed 8–30–05; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–682X]

The Los Angeles Junction Railway—Abandonment Exemption—in Los Angeles County, CA

The Los Angeles Junction Railway (LAJ) [1] has filed a notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments* to abandon a 0.46-mile line of railroad between LAJ milepost 2.21 and LAJ milepost 2.67, in Maywood, Los Angeles County, CA. The line traverses United States Postal Service Zip Code 90270.

LAJ has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements of 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(l) (notice to governmental agencies) have been met.

As a condition to this exemption, any employees adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on September 30, 2005, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by September 12, 2005. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by September 20, 2005, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to LAJ's representative: Michael Smith, 311 S. Wacker Dr., Suite 3000, Chicago, IL 60606.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

LAJ has filed environmental and historic reports which address the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by September 2, 2005. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), LAJ shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by LAJ's filing of a notice of consummation by August 31, 2006, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: August 22, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–17140 Filed 8–30–05; 8:45 am]

BILLING CODE 4915–01–P

[1] LAJ is a wholly owned subsidiary of BNSF Railway Company.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each OFA must be accompanied by the filing fee, which currently is set at $1,200. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

August 24, 2005.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW. Washington, DC 20220.

DATES: Written comments should be received on or before September 30, 2005 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0091.
Form Number: IRS Form 1040X.
Type of Review: Extension.
Title: Amended U.S. Individual Income Tax Return.
Description: Form 1040X is used by individuals to amend an original tax return to claim a refund of income taxes, pay additional income taxes, or designate $3.00 to the Presidential Election Campaign Fund. The information is needed to help verify that the individual has correctly figured his or her income tax.
Respondents: Business and other for-profit, Individuals or households and Farms.
Estimated Total Burden Hours: 10,340,468 hours.

OMB Number: 1545–0714.
Form Number: IRS Form 8027 and 8027T.
Type of Review: Extension.
Title: Employers Annual Information Return of Tip Income and Allocated Tips (Form 8027); Transmittal of Employer's Annual Information Return to Tip Income and Allocated Tips (Form 8027–T).
Description: To help IRS in its examinations of returns filed by tipped employees, large food or beverage establishments are required to report annually information concerning food or beverage operations receipts, tips, reported by employees, and in certain cases, the employer must allocate tips to certain employees.
Respondents: Individuals or Households, Business or other-for-profit, Not-for-profit institutions and State, Local or Tribal.
Estimated Total Burden Hours: 488,161 hours.

OMB Number: 1545–0939.
Form Number: IRS Form 8404.
Type of Review: Extension.
Title: Interest Charge on DISC-Related Deferred Tax Liability.
Description: Shareholders of Interest Charge Domestic International Sales Corporations (IC–DISCs) use Form 8404 to figure and report an interest charge on their DISC-related deferred tax liability. The interest charge is required by Internal Revenue Code Section 995(f). IRS uses Form 8404 to determine whether the shareholder has correctly figured and paid the interest charge on a timely basis.
Respondents: Business or other for profit and Individuals or households.
Estimated Total Burden Hours: 17,600 hours.

OMB Number: 1545–1073.
Form Number: IRS Form 8801.
Type of Review: Extension.
Title: Credit for Prior Year Minimum Tax-Individuals, Estates and Trusts.
Description: Form 8801 is used by individuals, estates, and trusts to compute the minimum tax credit, if any, available from a tax year beginning after 1986 to be used in the current year or to be carried forward for use in a future year.
Respondents: Individuals or households.
Estimated Total Burden Hours: 258,036 hours.

OMB Number: 1545–1632.
Type of Review: Extension.
Title: Reg–118662–98 (Final) New Technologies in Retirement Plans.
Description: These regulations provide that certain notices and consents required in connection with distributions from retirement plans may be transmitted through electronic media. The regulations also modify the timing requirements for provision of certain distribution related notices.
Respondents: Individuals or households, Business or other for-profit, Not-for-profit institutions and State, Local or Tribal Government.
Estimated Total Burden Hours: 477,563 hours.

OMB Number: 1545–1675.
Type of Review: Extension.
Title: REG–122450–98(Final) Real Estate Mortgage Investment Conduits; REG–100276–97; REG–122450–98 (NPRM) Financial Asset Securitization Investment Trusts; Real Estate Mortgage Investment Conduits.
Description: REG–122450–98 Sections 1.860E–1(C)(4)–(10) of the Treasury Regulations provide circumstances under which a transferor of a noneconomic residual interest in a Real Estate Mortgage Investment Conduit (REMIC) meeting the investigation and two representation requirements may avail itself of the safe harbor by satisfying either the formula test or asset test. REG–100276–97; REG–122450–98. This regulation provides start-up and transitional rules applicable to financial asset securitization investment trust.
Respondents: Business or other-for-profit.
Estimated Total Burden Hours: 1,220 hours.

OMB Number: 1545–1796.
Type of Review: Extension.
Title: REG–106879–00 (Final) Consolidated Loss Recapture Events.
Description: This document contains final regulations under section 1503(d) regarding the events that require the recapture of dual consolidated losses. These regulations are issued to facilitate compliance by taxpayers with the dual consolidated loss provisions. The regulations generally provide that certain events will not trigger recapture of a dual consolidated loss or payment of the associated interest charge. The regulations provide for the filing of certain agreements in such cases. This document also makes clarifying and conforming changes to the current regulations.
Respondents: Business or other-for-profit.
Estimated Total Burden Hours: 60 hours.

Clearance Officer: Glenn P. Kirkland, (202) 622–3428. Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7316. Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Michael A. Robinson,
Treasury PRA Clearance Officer.

[FR Doc. 05–17258 Filed 8–30–05; 8:45 am]
BILLING CODE 4830–01–P

Federal Register

Wednesday,
August 31, 2005

Part II

Office of Management and Budget

2 CFR Part 1, et al.
Grants Policy Streamlining Overview and Guidance on Nonprocurement Debarment and Suspension and Cost Principles Guidance; Cost Principles for Educational Institutions (OMB Circular A–21), State, Local, and Indian Tribal Governments (OMB Circular A–87) and Non-Profit Organizations (OMB Circular A–122); Final Rules

OFFICE OF MANAGEMENT AND BUDGET

2 CFR Part 1

Grants Policy Streamlining Overview on Nonprocurement Debarment and Suspension and Cost Principles Guidance

AGENCY: Office of Management and Budget.

ACTION: Publication of policy guidance in 2 CFR subtitle A.

SUMMARY: This document and the four **Federal Register** documents following it in this issue of the **Federal Register** are related to a broad initiative that established Title 2 of the Code of Federal Regulations (CFR) as the single location where the public can find both OMB guidance for grants and agreements and the associated Federal agency implementing regulations. The **Federal Register** document that established Title 2 CFR (see the **SUPPLEMENTARY INFORMATION** section) describes this broad initiative. The initiative provides a good foundation for streamlining and simplifying the policy framework for grants and agreements, which is one objective of OMB and the Federal agencies in implementing the Federal Financial Assistance Management Improvement Act of 1999 (Pub. L. 106–107).

The **Federal Register** documents following this one publish four additional parts in subtitle A, 2 CFR. These four parts contain guidance to Federal agencies that presently is in three separate OMB circulars and one other OMB policy document. The four documents following this one are discussed further in the **SUPPLEMENTARY INFORMATION** section of this document.

This first document provides an overview for the sequence of the five **Federal Register** documents published by OMB in this issue of the **Federal Register**. It also makes changes to 2 CFR part 1, the part in 2 CFR that provides general information about the title. The changes conform part 1 with the four parts of OMB guidance added by the documents following this one.

DATES: The amendments this document makes to 2 CFR part 1 are effective on August 31, 2005.

FOR FURTHER INFORMATION CONTACT: Elizabeth Phillips, Office of Federal Financial Management, Office of Management and Budget, telephone (202) 395–3053 (direct) or (202) 395–3993 (main office) and e-mail: *ephillip@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: On May 11, 2004, OMB established title 2 CFR with two subtitles [69 FR 26276]. Subtitle A, "Government-wide Grants and Agreements," contains OMB policy guidance to Federal agencies on grants and agreements. Subtitle B, "Federal Agency Regulations for Grants and Agreements," will contain Federal agencies' regulatory implementation of the OMB guidance, as it applies to grants and other financial assistance agreements and nonprocurement transactions (for portions of the guidance applicable to procurement contracts, implementation for procurement will continue to be in the Federal Acquisition Regulation in title 48 CFR).

As stated in the **Federal Register** notice establishing title 2 CFR, OMB plans to publish its guidance in subtitle A of that title in two phases. In the first phase, OMB is relocating the circulars in their current form into chapter II of subtitle A. In the second phase, OMB will publish guidance in chapter I of subtitle A after: (1) Proposing for public comment any changes to streamline and simplify the guidance based on recommendations from the interagency working groups implementing Public Law 106–107; and (2) resolving the comments and finalizing the guidance with the help of the working groups.

The four **Federal Register** documents following this one publish four OMB guidance documents in subtitle A. The first, which is the document immediately following this one, publishes the OMB guidance on nonprocurement debarment and suspension in subtitle A, chapter I, part 180. OMB is publishing this guidance in chapter I because the substance is up to date, and we therefore do not expect the interagency working groups implementing Public Law 106–107 to propose any changes to it in the near future. The guidance is up to date because it is substantively the same as the common rule that 33 Federal agencies recently updated [68 FR 66534, November 26, 2003] after resolving public comments.

The other three **Federal Register** documents published today relocate OMB Circulars A–21, A–87, and A–122, the OMB circulars with cost principles, in their current form, into chapter II of subtitle A. An interagency working group under Public Law 106–107 is still considering proposals for streamlining these circulars. We will move the circulars to chapter I after any streamlining is completed (any proposals for substantive change will be published first, with an opportunity for public comment).

Conforming changes to 2 CFR part 1. The publication of the OMB guidance on nonprocurement debarment and suspension and OMB Circulars A–21, A–87 and A–122 as parts 180, 220, 225, and 230 in 2 CFR warrants conforming changes in §§ 1.205 and 1.215 of 2 CFR part 1. The amendment to § 1.215 adds references to the four new parts to the table in that section, to explain the relationship of the parts to their previous issuances as OMB circulars.

The amendments to § 1.205 clarify the statement in that section that the types of instruments subject to the guidance in subtitle A of 2 CFR vary from one part of the guidance to another. With the relocation of the cost principles in subtitle A, we are adding a statement to clarify that all portions of the guidance in subtitle A of 2 CFR apply to grants and cooperative agreements, some portions apply to other types of financial assistance or nonprocurement instruments, and some portions indirectly apply to procurement contracts. We are adding new paragraphs § 1.205(b) and (c) that give:

- The guidelines on debarment and suspension as an example of guidance that applies to nonprocurement instruments in general, and not just financial assistance; and
- The cost principles in 2 CFR parts 220, 225, and 230 as specific examples of guidance that applies to procurement, as well as financial assistance. Circulars A–21, A–87, and A–122 always have provided guidance to Federal agencies on costs that are allowable for reimbursement under procurement contracts to educational, governmental, and other nonprofit organizations, respectively. It should be noted, however, that the regulation formally imposing that requirement on Federal agencies' contracts is not in 2 CFR but in subparts 31.3, 31.6, and 31.7 of 48 CFR part 31 in the Federal Acquisition Regulation (FAR).

List of Subjects

2 CFR Part 1

Cooperative agreements, Grant programs, Grants administration.

Dated: August 8, 2005.

Joshua B. Bolten,

Director.

Authority and Issuance

■ For the reasons set forth above, the Office of Management and Budget amends 2 CFR, subtitle A, as follows:

PART 1—[AMENDED]

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

Authority: 31 U.S.C. 503; 31 U.S.C. 1111; 41 U.S.C. 405; Reorganization Plan No. 2 of

1970; E.O. 11541, 35 FR 10737, 3 CFR, 1966—1970, p. 939.

■ 2. Section 1.205 is revised to read as follows:

§ 1.205 Applicability to grants and other funding instruments.

The types of instruments that are subject to the guidance in this subtitle vary from one portion of the guidance to another (note that each part identifies the types of instruments to which it applies). All portions of the guidance apply to grants and cooperative agreements, some portions also apply to other types of financial assistance or nonprocurement instruments, and some portions also apply to procurement contracts. For example, the:

(a) Guidance on debarment and suspension in part 180 of this subtitle applies broadly to all financial assistance and other nonprocurement transactions, and not just to grants and cooperative agreements.

(b) Cost principles in parts 220, 225 and 230 of this subtitle apply to procurement contracts, as well as to financial assistance, although those principles are implemented for procurement contracts through the Federal Acquisition Regulation in Title 48 of the CFR, rather than through Federal agency regulations on grants and agreements in this title.

■ 3. Section 1.215 is revised to read as follows:

§ 1.215 Relationship to previous issuances.

Although some of the guidance was organized differently within OMB circulars or other documents, much of the guidance in this subtitle existed prior to the establishment of title 2 of the CFR. Specifically:

Guidance in . . .	On . . .	Previously was in . . .
(a) Chapter I, part 180	Nonprocurement debarment and suspension	OMB guidance that conforms with the government-wide common rule (see 60 FR 33036, June 26, 1995).
(b) Chapter II, part 215	Administrative requirements for grants and agreements.	OMB Circular A–110.
(c) Chapter II, part 220	Cost principles for educational institutions	OMB Circular A–21.
(d) Chapter II, part 225	Cost principles for State, local, and Indian tribal governments.	OMB Circular A–87.
(e) Chapter II, part 230	Cost principles for non-profit organizations	OMB Circular A–122.
(f) [Reserved].		

[FR Doc. 05–16646 Filed 8–30–05; 8:45 am]
BILLING CODE 3110–01–P

OFFICE OF MANAGEMENT AND BUDGET

2 CFR Parts 180 and 215

Guidance for Governmentwide Debarment and Suspension (Nonprocurement)

AGENCY: Office of Management and Budget.

ACTION: Interim final guidance.

SUMMARY: The Office of Management and Budget (OMB) is updating its guidance on nonprocurement debarment and suspension to conform to the common rule that 33 Federal agencies published on November 26, 2003. The agencies issued that common rule after resolving public comments received in response to a Notice of Proposed Rulemaking. In updating the guidance, the OMB is making two improvements to streamline the policy framework in this area.

First, we are issuing the guidance in a format that is suitable for Federal agency adoption. Agency adoption of the guidance will reduce the volume of Federal regulations on nonprocurement debarment and suspension, making it easier for the affected public to use, and easier and less expensive for the Federal Government to maintain.

Second, we are publishing the guidance in the recently established Title 2 of the Code of Federal Regulations (2 CFR). Locating it in 2 CFR will make it easier to find. Also, the OMB guidance will be co-located in the same title of the CFR as Federal agencies' implementing regulations that adopt the guidance. That is, consistent with the framework put in place when OMB established Title 2, each Federal agency will issue its implementing regulation in its chapter in Subtitle B of 2 CFR. This notice also makes minor changes to the previously issued 2 CFR part 215, to conform that part with the guidance published today.

DATES: The effective date for this interim final guidance is September 30, 2005. To be considered in preparation of the final guidance, comments on the interim final guidance must be received by October 31, 2005.

ADDRESSES: Due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, we encourage respondents to submit comments electronically to ensure timely receipt. We cannot guarantee that comments mailed will be received before the comment closing date.

Electronic mail comments may be submitted to: *ephillip@omb.eop.gov*. Please include "OMB suspension and debarment guidance" in the subject line of your e-mail message. Also, please include the full body of your comments in the text of the electronic message, as well as in an attachment. Please include your name, title, organization, postal address, telephone number, and e-mail address in the text of the message. Comments may also be submitted via facsimile to (202) 395–3952.

Comments may be mailed to Elizabeth Phillips, Office of Federal Financial Management, Office of Management and Budget, Room 6025, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Elizabeth Phillips, Office of Federal Financial Management, Office of Management and Budget, telephone (202) 395–3053 (direct) or (202) 395–3993 (main office) and e-mail: *ephillip@omb.eop.gov*.

SUPPLEMENTARY INFORMATION:

Background. The guidance updated by this notice originated with Executive Order (E.O.) 12549, "Debarment and Suspension." That Executive order, issued in 1986, gave government-wide effect to each agency's nonprocurement debarment and suspension actions. Section 6 of the Executive order authorized OMB to issue guidance on nonprocurement debarment and suspension. Section 3 directed agencies to issue implementing regulations consistent with the guidance.

The guidance has been revised twice since OMB first issued it in 1987 [52 FR 20360]. In 1988, when the agencies finalized a common rule to implement OMB's 1987 guidance, OMB revised its

guidance [53 FR 19160] to conform with the agencies' rule. The second revision of the OMB guidance occurred in 1995 [60 FR 33036]. That revision conformed the guidance with the Federal agencies' update of the common rule to give reciprocal government-wide effect to both procurement and nonprocurement debarment and suspension actions, an update which implemented E.O. 12689 and section 2455 of the Federal Acquisition Streamlining Act.

Today's notice conforms the guidance with the Federal agencies' November 26, 2003, update to the common rule [68 FR 66534], but does so in a way that will greatly improve the relationship between OMB's guidance and Federal agencies' implementing regulations. In the recent update, the Federal agencies recast the common rule in plain language and made other needed improvements. OMB did not issue a notice at that time to amend the guidance because we were considering two improvements to the approach we had used in the past.

Adoptable guidance. The first improvement to our past approach is to publish the full text of the OMB guidance in a form suitable for agency adoption. The 1988 and 1995 notices amended the guidance to conform with updates to the common rule but the guidance was not published anywhere in full text as an OMB issuance. Thus, the full text of policies and procedures on nonprocurement debarment and suspension had to appear in each of 33 Federal agencies' separate codifications of the common rule. Today's notice, by publishing the OMB guidance in a form that Federal agencies can adopt, eliminates the need for each agency to repeat the full text in its own implementing regulation.

This fundamentally different approach of adoptable guidance has three major advantages over the previous approach of having each agency codify the full-text of a common rule. Specifically, the new approach will:

- Make it easier for recipients of covered transactions or respondents in suspension or debarment actions to discern agency-to-agency variations from the common rule language. When agencies published the common rule on nonprocurement debarment and suspension, each agency was allowed to have some agency-specific additions or exceptions to the government-wide language. Because each agency's variations are embedded in and integrated with the agency's publication of the full-text of the rule, it is difficult for a recipient or respondent that does business with multiple Federal agencies to identify the agency-to-agency variations in the language. To do so, it either must locate the original **Federal Register** notice in which the agencies published the common rule or carefully read and compare the agencies' separate codifications of the rule. With the new approach, however, each agency's implementation of the guidelines will be a brief rule that: (1) Adopts the guidance, giving it regulatory effect for that agency's activities; and (2) states any agency-specific additions, clarifications, and exceptions to the government-wide policies and procedures contained in the guidance.
- Reduce the volume of Federal regulations in the CFR. The 33 individual agencies' separate codifications of the full text of the common rule currently require about 750 pages in each paper copy of each edition of the Code of Federal Regulations (*i.e.*, about 750,000 pages for every 1,000 paper copies of the CFR that are produced). We estimate that the new approach will reduce this by about six-fold, which reduces both burdens on the public and costs of maintaining the regulations.
- Streamline the process for updating the government-wide requirements on nonprocurement debarment and suspension. The process for updating a common rule is exceedingly complex and time consuming. The 33 Federal agencies must process the same rulemaking document before it can be sent to the OMB and published in the **Federal Register**, which can create long delays in updating the rule. With the new approach, OMB will publish proposed changes to the guidance in the **Federal Register**, with an opportunity for the public to comment. Once agencies have issued their regulations adopting the guidance, the process for future updates will be complete when OMB issues the final guidance. Agencies will not need to amend their regulations adopting the guidance.

Publication of the guidance in 2 CFR. The second improvement to our past approach is to locate the OMB guidance in Subtitle A of the new Title 2 of the CFR, "Grants and Agreements," that OMB established on May 11, 2004 [69 FR 26276]. Publishing the guidance in the CFR makes it very accessible to the affected public and, when agencies issue their new regulations adopting the guidance, will co-locate the OMB guidance in the same CFR title with the agency rules. We also will maintain a copy of the current guidance at the OMB Web site (*http://www.whitehouse.gov/omb/circulars*), for the benefit of individuals who would prefer to access it there.

Structure and content of the guidance. Our intent is to issue OMB guidance that is substantively unchanged from the common rule issued by the Federal agencies in November 2003. We modified some of the structure and language of the common rule, however, to create a part that reads properly as OMB guidance to agencies rather than an agency regulation.

The most significant structural change is in Sections 180.05 to 180.45 of the document, which precede subpart A. The primary purpose of these sections is to provide OMB guidance to Federal agencies on how to use the guidance in the remainder of the part. Sections 180.20 through 180.35, for example, tell Federal agencies that they must issue regulations to implement the guidance, identify some required and some optional content for those regulations, and specify where and when the agencies must issue the regulations. Most of these early sections have no counterparts in the November 2003 common rule, since it was designed to be an agency rule rather than OMB guidance.

Following section 180.45, in subparts A through I of the part, is the guidance that an agency would adopt to specify its policies and procedures for nonprocurement debarment and suspension. Several sections in subpart A of the guidance have different section numbers than their counterpart sections in the common rule. The changed section numbers are due to the inclusion of the OMB guidance in sections 180.05 through 180.45, which displaced and forced renumbering of sections __.25 to __.75 that preceded subpart A in the November 2003 common rule.

The only other portion of the guidance where section numbers vary from the November 2003 common rule is subpart I, which contains definitions of terms. We replaced the defined term "agency" in the common rule with the term "Federal agency" in the OMB guidelines, which forced a reorganization of the definition sections in subpart I to keep the defined terms in alphabetical order.

In one section of subpart A, we made a wording change to clarify the substance. Section __.135 of the November 2003 common rule stated that an agency, given an appropriate cause for debarment, could take an action to exclude "any person who has been involved, is currently involved, or may reasonably be expected to be involved in a covered transaction." The corresponding language in the OMB guidelines, which is in section 180.150,

is "any person who has been, is, or may reasonably be expected to be a participant or principal in a covered transaction." The revised language is intended to be more precise than the somewhat vague wording of the common rule.

One language change throughout the guidelines is use of the term "Federal agency" where agency responsibilities, authorities, and procedures are described. The common rule used the personal pronoun "we," which was appropriate in an agency rule but not in OMB guidance.

We also dropped the references in sections 180.530 and 180.945 of the guidance (which had the same section numbers in the common rule) to the paper version of the list of excluded parties maintained by the General Services Administration (GSA). Section __.530 of the November 2003 common rule stated that Federal agencies anticipated that the paper version of the list would be discontinued. The paper version no longer is available, so we deleted the references to it.

Other minor wording changes throughout subparts A through I are to make the document read properly as OMB guidance. We have posted a source and destination table at the OMB Web site that shows which section in the OMB guidance corresponds to each section in the common rule and summarizes the more significant changes, none of which we believe to be substantive change.

Invitation to comment. Our intent is to preserve in the OMB guidance the substantive content of the November 2003 common rule. Given that the agencies published the final common rule after an opportunity for public comment, we are publishing these guidelines as interim final guidelines, rather than proposing the substance for comment again. For future updates to this guidance, we will propose substantive changes with an opportunity for public comment, in accordance with § 180.40 of the guidance. In soliciting comments on the interim final guidance, we are not seeking to revisit substantive issues raised by those earlier comments and resolved by the agencies during preparation of their final rule. However, we invite comments on any unintended changes we have made in the guidance relative to the November 2003 common rule.

Next steps. We will finalize the guidance after resolving any comments received on the interim final version published in this notice. Each Federal agency that is a signatory to the common rule on nonprocurement debarment and suspension will: (1) Establish its chapter in Subtitle B of 2 CFR, consistent with the structure established for that title; (2) issue in that chapter of 2 CFR its brief rule adopting the OMB guidance and stating any additions, clarifications, or exceptions to the policies and procedures contained in the guidance; and (3) remove the November 2003 common rule from its own CFR title. We expect to complete the process in calendar year 2006.

Conforming 2 CFR part 215 (OMB Circular A–110). We also are making the following two changes to 2 CFR part 215, in order to conform the OMB guidance in that part with the guidance on nonprocurement debarment and suspension:

- We dropped the reference in § 215.13 to the common rule on nonprocurement debarment and suspension, in anticipation of agencies adoption of the guidance and removal of the common rule from their titles in the CFR.
- We revised Paragraph 8 in Appendix A to 2 CFR part 215, to correct: (1) The name of the Excluded Parties List System; and (2) the threshold for coverage of procurement contracts awarded by recipients of Federal financial assistance awards.

List of Subjects

2 CFR Part 180

Administrative practice and procedure, Grant programs, Loan programs, Reporting and recordkeeping requirements.

2 CFR Part 215

Accounting, Colleges and Universities, Grant programs, Hospitals, Nonprofit organizations, Reporting and recordkeeping requirements.

Dated: August 8, 2005.

Joshua B. Bolten,

Director.

Authority and Issuance

■ For the reasons set forth above, the Office of Management and Budget amends 2 CFR, Subtitle A, as follows:

Chapter I—Office of Management and Budget Governmentwide Guidance for Grants and Agreements

■ 1. A heading is added to chapter I to read as set forth above.

■ 2. Part 180 is added to Chapter I, to read as follows:

PART 180—OMB GUIDELINES TO AGENCIES ON GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.

Authority: Sec. 2455, Pub. L. 103–355, 108 Stat. 3327; E.O. 12549, 3 CFR, 1986 Comp., p.189; E.O. 12689, 3 CFR, 1989 Comp., p. 235.

§ 180.5 What does this part do?

This part provides Office of Management and Budget (OMB) guidance for Federal agencies on the governmentwide debarment and suspension system for nonprocurement programs and activities.

§ 180.10 How is this part organized?

This part is organized in two segments.

(a) Sections 180.5 through 180.45 contain general policy direction for Federal agencies' use of the standards in subparts A through I of this part.

(b) Subparts A through I of this part contain uniform governmentwide standards that Federal agencies are to use to specify—

(1) The types of transactions that are covered by the nonprocurement debarment and suspension system;

(2) The effects of an exclusion under that nonprocurement system, including reciprocal effects with the governmentwide debarment and suspension system for procurement;

(3) The criteria and minimum due process to be used in nonprocurement debarment and suspension actions; and

(4) Related policies and procedures to ensure the effectiveness of those actions.

§ 180.15 To whom does the guidance apply?

The guidance provides OMB guidance only to Federal agencies. Publication of the guidance in the CFR does not change its nature—it is guidance and not regulation. Federal agencies' implementation of the guidance governs the rights and responsibilities of other persons affected by the nonprocurement debarment and suspension system.

§ 180.20 What must a Federal agency do to implement these guidelines?

As required by Section 3 of E.O. 12549, each Federal agency with nonprocurement programs and activities covered by subparts A through I of the guidance must issue regulations consistent with those subparts.

§ 180.25 What must a Federal agency address in its implementation of the guidance?

Each Federal agency implementing regulation:

(a) Must establish policies and procedures for that agency's nonprocurement debarment and suspension programs and activities that are consistent with the guidance. When adopted by a Federal agency, the provisions of the guidance has regulatory effect for that agency's programs and activities.

(b) Must address some matters for which these guidelines give each Federal agency some discretion. Specifically, the regulation must—

(1) Identify either the Federal agency head or the title of the designated official who is authorized to grant exceptions under § 180.135 to let an excluded person participate in a covered transaction.

(2) State whether the agency includes as covered transactions an additional tier of contracts awarded under covered nonprocurement transactions, as permitted under § 180.220(c).

(3) Identify the method(s) an agency official may use, when entering into a covered transaction with a primary tier participant, to communicate to the participant the requirements described in § 180.435. Examples of methods are an award term that requires compliance as a condition of the award; an assurance of compliance obtained at time of application; or a certification.

(4) State whether the Federal agency's policy is to restrict participants' collection of certifications to verify that lower-tier participants are not excluded or disqualified (see § 180.300(b)). If it is the policy, the regulation needs to require agency officials, when entering into covered transactions with primary tier participants, to communicate that policy.

(5) State whether the Federal agency specifies a particular method that participants must use to communicate compliance requirements to lower-tier participants, as described in § 180.330(a). If there is a specified method, the regulation needs to require agency officials, when entering into covered transactions with primary tier participants, to communicate that requirement.

(c) May also, at the agency's option:

(1) Identify any specific types of transactions that the Federal agency includes as "nonprocurement transactions" in addition to the examples provided in § 180.970.

(2) Identify any types of nonprocurement transactions that the Federal agency exempts from coverage under these guidelines, as authorized under § 180.330(g)(2).

(3) Identify specific examples of types of individuals who would be "principals" under the Federal agency's nonprocurement programs and transactions, in addition to the types of individuals described at § 180.995.

(4) Specify the Federal agency's procedures, if any, by which a respondent may appeal a suspension or debarment decision.

(5) Identify by title the officials designated by the Federal agency head as debarring officials under § 180.930 or suspending officials under § 180.1010.

(6) Include a subpart covering disqualifications, as authorized in § 180.45.

§ 180.30 Where does a Federal agency implement these guidelines?

Each Federal agency that participates in the governmentwide nonprocurement debarment and suspension system must issue a regulation implementing these guidelines within its chapter in subtitle B of this title of the Code of Federal Regulations.

§ 180.35 By when must a Federal agency implement these guidelines?

Federal agencies must submit proposed regulations to the OMB for review within nine months of the issuance of these guidelines and issue final regulations within eighteen months of these guidelines.

§ 180.40 How are these guidelines maintained?

The Interagency Committee on Debarment and Suspension established by section 4 of E.O. 12549 recommends to the OMB any needed revisions to the guidelines in this part. The OMB publishes proposed changes to the guidelines in the **Federal Register** for public comment, considers comments with the help of the Interagency Committee on Debarment and Suspension, and issues the final guidelines.

§ 180.45 Do these guidelines cover persons who are disqualified, as well as those who are excluded from nonprocurement transactions?

A Federal agency may add a subpart covering disqualifications to its regulation implementing these guidelines, but the guidelines in subparts A through I of this part—

(a) Address disqualified persons only to—

(1) Provide for their inclusion in the EPLS; and

(2) State responsibilities of Federal agencies and participants to check for disqualified persons before entering into covered transactions.

(b) Do not specify the—

(1) Transactions for which a disqualified person is ineligible. Those transactions vary on a case-by-case basis, because they depend on the language of the specific statute, Executive order or regulation that caused the disqualification;

(2) Entities to which a disqualification applies; or

(3) Process that a Federal agency uses to disqualify a person. Unlike exclusion under subparts A through I of this part, disqualification is frequently not a discretionary action that a Federal

agency takes, and may include special procedures.

Subpart A—General

§ 180.100 How are subparts A through I organized?

(a) Each subpart contains information related to a broad topic or specific audience with special responsibilities, as shown in the following table:

In subpart . . .	You will find provisions related to . . .
A	general information about Subparts A through I of this part.
B	the types of transactions that are covered by the Governmentwide nonprocurement suspension and debarment system.
C	the responsibilities of persons who participate in covered transactions.
D	the responsibilities of Federal agency officials who are authorized to enter into covered transactions.
E	the responsibilities of Federal agencies for entering information into the EPLS
F	the general principles governing suspension, debarment, voluntary exclusion and settlement.
G	suspension actions.
H	debarment actions.
I	definitions of terms used in this part.

(b) The following table shows which subparts may be of special interest to you, depending on who you are:

If you are . . .	See Subpart(s) . . .
(1) a participant or principal in a nonprocurement transaction	A, B, C and I.
(2) a respondent in a suspension action	A, B, F, G and I.
(3) a respondent in a debarment action	A, B, F, H and I.
(4) a suspending official	A, B, E, F, G and I.
(5) a debarring official	A, B, D, F, H and I.
(6) an Federal agency official authorized to enter into a covered transaction	A, B, D, E and I.

§ 180.105 How is this part written?

(a) This part uses a "plain language" format to make it easier for the general public and business community to use. The section headings and text, often in the form of questions and answers, must be read together.

(b) Pronouns used within this part, such as "I" and "you," change from subpart to subpart depending on the audience being addressed.

(c) The "Covered Transactions" diagram in the appendix to this part shows the levels or "tiers" at which a Federal agency may enforce an exclusion.

§ 180.110 Do terms in this part have special meanings?

This part uses terms throughout the text that have special meaning. Those terms are defined in subpart I of this part. For example, three important terms are—

(a) *Exclusion or excluded,* which refers only to discretionary actions taken by a suspending or debarring official under Executive Order 12549 and Executive Order 12689 or under the Federal Acquisition Regulation (48 CFR part 9, subpart 9.4);

(b) *Disqualification or disqualified,* which refers to prohibitions under specific statutes, executive orders (other than Executive Order 12549 and Executive Order 12689), or other authorities. Disqualifications frequently are not subject to the discretion of a Federal agency official, may have a different scope than exclusions, or have special conditions that apply to the disqualification; and

(c) *Ineligibility or ineligible,* which generally refers to a person who is either excluded or disqualified.

§ 180.115 What do Subparts A through I of this part do?

Subparts A through I of this part provide for reciprocal exclusion of persons who have been excluded under the Federal Acquisition Regulation, and provide for the consolidated listing of all persons who are excluded, or disqualified by statute, executive order or other legal authority.

§ 180.120 Do subparts A through I of this part apply to me?

Portions of subparts A through I of this part (see table at § 180.100(b)) apply to you if you are a—

(a) Person who has been, is, or may reasonably be expected to be, a participant or principal in a covered transaction;

(b) Respondent (a person against whom a Federal agency has initiated a debarment or suspension action);

(c) Federal agency debarring or suspending official; or

(d) Federal agency official who is authorized to enter into covered transactions with non-Federal parties.

§ 180.125 What is the purpose of the nonprocurement debarment and suspension system?

(a) To protect the public interest, the Federal Government ensures the integrity of Federal programs by conducting business only with responsible persons.

(b) A Federal agency uses the nonprocurement debarment and suspension system to exclude from Federal programs persons who are not presently responsible.

(c) An exclusion is a serious action that a Federal agency may take only to protect the public interest. A Federal agency may not exclude a person or commodity for the purposes of punishment.

§ 180.130 How does an exclusion restrict a person's involvement in covered transactions?

With the exceptions stated in §§ 180.135, 315, and 420, a person who is excluded by any Federal agency may not:

(a) Be a participant in a Federal agency transaction that is a covered transaction; or

(b) Act as a principal of a person participating in one of those covered transactions.

§ 180.135 May a Federal agency grant an exception to let an excluded person participate in a covered transaction?

(a) A Federal agency head or designee may grant an exception permitting an excluded person to participate in a particular covered transaction. If the agency head or designee grants an exception, the exception must be in writing and state the reason(s) for deviating from the governmentwide policy in Executive Order 12549.

(b) An exception granted by one Federal agency for an excluded person does not extend to the covered transactions of another Federal agency.

§ 180.140 Does an exclusion under the nonprocurement system affect a person's eligibility for Federal procurement contracts?

If any Federal agency excludes a person under Executive Order 12549 or Executive Order 12689, on or after August 25, 1995, the excluded person is also ineligible for Federal procurement transactions under the FAR. Therefore, an exclusion under this part has reciprocal effect in Federal procurement transactions.

§ 180.145 Does an exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?

If any Federal agency excludes a person under the FAR on or after August 25, 1995, the excluded person is also ineligible to participate in Federal agencies' nonprocurement covered transactions. Therefore, an exclusion under the FAR has reciprocal effect in Federal nonprocurement transactions.

§ 180.150 Against whom may a Federal agency take an exclusion action?

Given a cause that justifies an exclusion under this part, a Federal agency may exclude any person who has been, is, or may reasonably be expected to be a participant or principal in a covered transaction.

§ 180.155 How do I know if a person is excluded?

Check the Governmentwide Excluded Parties List System (EPLS) to determine whether a person is excluded. The General Services Administration (GSA) maintains the EPLS and makes it available, as detailed in Subpart E of this part. When a Federal agency takes an action to exclude a person under the nonprocurement or procurement debarment and suspension system, the agency enters the information about the excluded person into the EPLS.

Subpart B—Covered Transactions

§ 180.200 What is a covered transaction?

A covered transaction is a nonprocurement or procurement transaction that is subject to the prohibitions of this part. It may be a transaction at—

(a) The primary tier, between a Federal agency and a person (see appendix to this part); or

(b) A lower tier, between a participant in a covered transaction and another person.

§ 180.205 Why is it important if a particular transaction is a covered transaction?

The importance of whether a transaction is a covered transaction depends upon who you are.

(a) As a participant in the transaction, you have the responsibilities laid out in subpart C of this part. Those include responsibilities to the person or Federal agency at the next higher tier from whom you received the transaction, if any. They also include responsibilities if you subsequently enter into other covered transactions with persons at the next lower tier.

(b) As a Federal official who enters into a primary tier transaction, you have the responsibilities laid out in subpart D of this part.

(c) As an excluded person, you may not be a participant or principal in the transaction unless—

(1) The person who entered into the transaction with you allows you to continue your involvement in a transaction that predates your exclusion, as permitted under § 180.310 or § 180.415; or

(2) A Federal agency official obtains an exception from the agency head or designee to allow you to be involved in the transaction, as permitted under § 180.135.

§ 180.210 Which nonprocurement transactions are covered transactions?

All nonprocurement transactions, as defined in § 180.970, are covered transactions unless listed in the exemptions under § 180.215.

§ 180.215 Which nonprocurement transactions are not covered transactions?

The following types of nonprocurement transactions are not covered transactions:

(a) A direct award to—

(1) A foreign government or foreign governmental entity;

(2) A public international organization;

(3) An entity owned (in whole or in part) or controlled by a foreign government; or

(4) Any other entity consisting wholly or partially of one or more foreign governments or foreign governmental entities.

(b) A benefit to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted). For example, if a person receives social security benefits under the Supplemental Security Income provisions of the Social Security Act, 42 U.S.C. 1301 *et seq.*, those benefits are not covered transactions and, therefore, are not affected if the person is excluded.

(c) Federal employment.

(d) A transaction that a Federal agency needs to respond to a national or agency-recognized emergency or disaster.

(e) A permit, license, certificate or similar instrument issued as a means to regulate public health, safety or the environment, unless a Federal agency specifically designates it to be a covered transaction.

(f) An incidental benefit that results from ordinary governmental operations.

(g) Any other transaction if—

(1) The application of an exclusion to the transaction is prohibited by law; or

(2) A Federal agency's regulation exempts it from coverage under this part.

§ 180.220 Are any procurement contracts included as covered transactions?

(a) Covered transactions under this part—

(1) Do not include any procurement contracts awarded directly by a Federal agency; but

(2) Do include some procurement contracts awarded by non-Federal participants in nonprocurement covered transactions.

(b) Specifically, a contract for goods or services is a covered transaction if any of the following applies:

(1) The contract is awarded by a participant in a nonprocurement transaction that is covered under § 180.210, and the amount of the contract is expected to equal or exceed $25,000.

(2) The contract requires the consent of an official of a Federal agency. In that case, the contract, regardless of the amount, always is a covered transaction, and it does not matter who awarded it. For example, it could be a subcontract awarded by a contractor at a tier below a nonprocurement transaction, as shown in the appendix to this part.

(3) The contract is for Federally-required audit services.

(c) A subcontract also is a covered transaction if,—

(1) It is awarded by a participant in a procurement transaction under a

nonprocurement transaction of a Federal agency that extends the coverage of paragraph (b)(1) of this section to any additional tier of contracts (see the diagram in the appendix to this part showing that optional lower tier coverage); and

(2) The value of the subcontract exceeds or is expected to exceed $25,000.

§ 180.225 How do I know if a transaction in which I may participate is a covered transaction?

As a participant in a transaction, you will know that it is a covered transaction because the Federal agency regulations governing the transaction, the appropriate Federal agency official or participant at the next higher tier who enters into the transaction with you, will tell you that you must comply with applicable portions of this part.

Subpart C—Responsibilities of Participants Regarding Transactions Doing Business With Other Persons

§ 180.300 What must I do before I enter into a covered transaction with another person at the next lower tier?

When you enter into a covered transaction with another person at the next lower tier, you must verify that the person with whom you intend to do business is not excluded or disqualified. You do this by:

(a) Checking the EPLS; or

(b) Collecting a certification from that person if allowed by the Federal agency responsible for the transaction; or

(c) Adding a clause or condition to the covered transaction with that person.

§ 180.305 May I enter into a covered transaction with an excluded or disqualified person?

(a) You as a participant may not enter into a covered transaction with an excluded person, unless the Federal agency responsible for the transaction grants an exception under § 180.135.

(b) You may not enter into any transaction with a person who is disqualified from that transaction, unless you have obtained an exception under the disqualifying statute, Executive order, or regulation.

§ 180.310 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?

(a) You as a participant may continue covered transactions with an excluded person if the transactions were in existence when the agency excluded the person. However, you are not required to continue the transactions, and you may consider termination. You should make a decision about whether to terminate and the type of termination action, if any, only after a thorough review to ensure that the action is proper and appropriate.

(b) You may not renew or extend covered transactions (other than no-cost time extensions) with any excluded person, unless the Federal agency responsible for the transaction grants an exception under § 180.135.

§ 180.315 May I use the services of an excluded person as a principal under a covered transaction?

(a) You as a participant may continue to use the services of an excluded person as a principal under a covered transaction if you were using the services of that person in the transaction before the person was excluded. However, you are not required to continue using that person's services as a principal. You should make a decision about whether to discontinue that person's services only after a thorough review to ensure that the action is proper and appropriate.

(b) You may not begin to use the services of an excluded person as a principal under a covered transaction unless the Federal agency responsible for the transaction grants an exception under § 180.135.

§ 180.320 Must I verify that principals of my covered transactions are eligible to participate?

Yes, you as a participant are responsible for determining whether any of your principals of your covered transactions is excluded or disqualified from participating in the transaction.

You may decide the method and frequency by which you do so. You may, but you are not required to, check the EPLS.

§ 180.325 What happens if I do business with an excluded person in a covered transaction?

If as a participant you knowingly do business with an excluded person, the Federal agency responsible for your transaction may disallow costs, annul or terminate the transaction, issue a stop work order, debar or suspend you, or take other remedies as appropriate.

§ 180.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

Before entering into a covered transaction with a participant at the next lower tier, you must require that participant to—

(a) Comply with this subpart as a condition of participation in the transaction. You may do so using any method(s), unless the regulation of the Federal agency responsible for the transaction requires you to use specific methods.

(b) Pass the requirement to comply with this subpart to each person with whom the participant enters into a covered transaction at the next lower tier.

Disclosing Information—Primary Tier Participants

§ 180.335 What information must I provide before entering into a covered transaction with a Federal agency?

Before you enter into a covered transaction at the primary tier, you as the participant must notify the Federal agency office that is entering into the transaction with you, if you know that you or any of the principals for that covered transaction:

(a) Are presently excluded or disqualified;

(b) Have been convicted within the preceding three years of any of the offenses listed in § 180.800(a) or had a civil judgment rendered against you for one of those offenses within that time period;

(c) Are presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses listed in § 180.800(a); or

(d) Have had one or more public transactions (Federal, State, or local) terminated within the preceding three years for cause or default.

§ 180.340 If I disclose unfavorable information required under § 180.335, will I be prevented from participating in the transaction?

As a primary tier participant, your disclosure of unfavorable information about yourself or a principal under § 180.335 will not necessarily cause a Federal agency to deny your participation in the covered transaction. The agency will consider the information when it determines whether to enter into the covered transaction. The agency will also consider any additional information or explanation that you elect to submit with the disclosed information.

§ 180.345 What happens if I fail to disclose information required under § 180.335?

If a Federal agency later determines that you failed to disclose information under § 180.335 that you knew at the time you entered into the covered transaction, the agency may—

(a) Terminate the transaction for material failure to comply with the terms and conditions of the transaction; or

(b) Pursue any other available remedies, including suspension and debarment.

§ 180.350 What must I do if I learn of information required under § 180.335 after entering into a covered transaction with a Federal agency?

At any time after you enter into a covered transaction, you must give immediate written notice to the Federal agency office with which you entered into the transaction if you learn either that—

(a) You failed to disclose information earlier, as required by § 180.335; or

(b) Due to changed circumstances, you or any of the principals for the transaction now meet any of the criteria in § 180.335.

Disclosing Information—Lower Tier Participants

§ 180.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?

Before you enter into a covered transaction with a person at the next higher tier, you as a lower tier participant must notify that person if you know that you or any of the principals are presently excluded or disqualified.

§ 180.360 What happens if I fail to disclose information required under § 180.355?

If a Federal agency later determines that you failed to tell the person at the higher tier that you were excluded or disqualified at the time you entered into the covered transaction with that person, the agency may pursue any available remedies, including suspension and debarment.

§ 180.365 What must I do if I learn of information required under § 180.355 after entering into a covered transaction with a higher tier participant?

At any time after you enter into a lower tier covered transaction with a person at a higher tier, you must provide immediate written notice to that person if you learn either that—

(a) You failed to disclose information earlier, as required by § 180.355; or

(b) Due to changed circumstances, you or any of the principals for the transaction now meet any of the criteria in § 180.355.

Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

§ 180.400 May I enter into a transaction with an excluded or disqualified person?

(a) You as a Federal agency official may not enter into a covered transaction with an excluded person unless you obtain an exception under § 180.135.

(b) You may not enter into any transaction with a person who is disqualified from that transaction, unless you obtain a waiver or exception under the statute, Executive order, or regulation that is the basis for the person's disqualification.

§ 180.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?

As a Federal agency official, you may not enter into a covered transaction with a participant if you know that a principal of the transaction is excluded, unless you obtain an exception under § 180.135.

§ 180.410 May I approve a participant's use of the services of an excluded person?

After entering into a covered transaction with a participant, you as a Federal agency official may not approve a participant's use of an excluded person as a principal under that transaction, unless you obtain an exception under § 180.135.

§ 180.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?

(a) You as a Federal agency official may continue covered transactions with an excluded person, or under which an excluded person is a principal, if the transactions were in existence when the person was excluded. You are not required to continue the transactions, however, and you may consider termination. You should make a decision about whether to terminate and the type of termination action, if any, only after a thorough review to ensure that the action is proper.

(b) You may not renew or extend covered transactions (other than no-cost time extensions) with any excluded person, or under which an excluded person is a principal, unless you obtain an exception under § 180.135.

§ 180.420 May I approve a transaction with an excluded or disqualified person at a lower tier?

If a transaction at a lower tier is subject to your approval, you as a Federal agency official may not approve—

(a) A covered transaction with a person who is currently excluded, unless you obtain an exception under § 180.135; or

(b) A transaction with a person who is disqualified from that transaction, unless you obtain a waiver or exception under the statute, Executive order, or regulation that is the basis for the person's disqualification.

§ 180.425 When do I check to see if a person is excluded or disqualified?

As a Federal agency official, you must check to see if a person is excluded or disqualified before you—

(a) Enter into a primary tier covered transaction;

(b) Approve a principal in a primary tier covered transaction;

(c) Approve a lower tier participant if your agency's approval of the lower tier participant is required; or

(d) Approve a principal in connection with a lower tier transaction if your agency's approval of the principal is required.

§ 180.430 How do I check to see if a person is excluded or disqualified?

You check to see if a person is excluded or disqualified in two ways:

(a) You as a Federal agency official must check the EPLS when you take any action listed in § 180.425.

(b) You must review information that a participant gives you, as required by § 180.335, about its status or the status of the principals of a transaction.

§ 180.435 What must I require of a primary tier participant?

You as a Federal agency official must require each participant in a primary tier covered transaction to—

(a) Comply with subpart C of this part as a condition of participation in the transaction; and

(b) Communicate the requirement to comply with Subpart C of this part to persons at the next lower tier with whom the primary tier participant enters into covered transactions.

§ 180.440 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?

If a participant knowingly does business with an excluded or disqualified person, you as a Federal agency official may refer the matter for suspension and debarment consideration. You may also disallow costs, annul or terminate the transaction, issue a stop work order, or take any other appropriate remedy.

§ 180.445 What action may I take if a primary tier participant fails to disclose the information required under § 180.335?

If you as a Federal agency official determine that a participant failed to disclose information, as required by § 180.335, at the time it entered into a covered transaction with you, you may—

(a) Terminate the transaction for material failure to comply with the terms and conditions of the transaction; or

(b) Pursue any other available remedies, including suspension and debarment.

§ 180.450 What action may I take if a lower tier participant fails to disclose the information required under § 180.355 to the next higher tier?

If you as a Federal agency official determine that a lower tier participant failed to disclose information, as required by § 180.355, at the time it entered into a covered transaction with a participant at the next higher tier, you may pursue any remedies available to you, including the initiation of a suspension or debarment action.

Subpart E—Excluded Parties List System

§ 180.500 What is the purpose of the Excluded Parties List System (EPLS)?

The EPLS is a widely available source of the most current information about persons who are excluded or disqualified from covered transactions.

§ 180.505 Who uses the EPLS?

(a) Federal agency officials use the EPLS to determine whether to enter into a transaction with a person, as required under § 180.430.

(b) Participants also may, but are not required to, use the EPLS to determine if—

(1) Principals of their transactions are excluded or disqualified, as required under § 180.320; or

(2) Persons with whom they are entering into covered transactions at the next lower tier are excluded or disqualified.

(c) The EPLS is available to the general public.

§ 180.510 Who maintains the EPLS?

The General Services Administration (GSA) maintains the EPLS. When a Federal agency takes an action to exclude a person under the nonprocurement or procurement debarment and suspension system, the agency enters the information about the excluded person into the EPLS.

§ 180.515 What specific information is in the EPLS?

(a) At a minimum, the EPLS indicates—

(1) The full name (where available) and address of each excluded and disqualified person, in alphabetical order, with cross references if more than one name is involved in a single action;

(2) The type of action;

(3) The cause for the action;

(4) The scope of the action;

(5) Any termination date for the action;

(6) The Federal agency and name and telephone number of the agency point of contact for the action; and

(7) The Dun and Bradstreet Number (DUNS), or other similar code approved by the GSA, of the excluded or disqualified person, if available.

(b)(1) The database for the EPLS includes a field for the Taxpayer Identification Number (TIN) (the social security number (SSN) for an individual) of an excluded or disqualified person.

(2) Agencies disclose the SSN of an individual to verify the identity of an individual, only if permitted under the Privacy Act of 1974 and, if appropriate, the Computer Matching and Privacy Protection Act of 1988, as codified in 5 U.S.C. 552(a).

§ 180.520 Who places the information into the EPLS?

Federal agency officials who take actions to exclude persons under this part or officials who are responsible for identifying disqualified persons must enter the following information about those persons into the EPLS:

(a) Information required by § 180.515(a);

(b) The Taxpayer Identification Number (TIN) of the excluded or disqualified person, including the social security number (SSN) for an individual, if the number is available and may be disclosed under law;

(c) Information about an excluded or disqualified person, generally within five working days, after—

(1) Taking an exclusion action;

(2) Modifying or rescinding an exclusion action;

(3) Finding that a person is disqualified; or

(4) Finding that there has been a change in the status of a person who is listed as disqualified.

§ 180.525 Whom do I ask if I have questions about a person in the EPLS?

If you have questions about a listed person in the EPLS, ask the point of contact for the Federal agency that placed the person's name into the EPLS. You may find the agency point of contact from the EPLS.

§ 180.530 Where can I find the EPLS?

You may access the EPLS through the Internet, currently at *http://epls.arnet.gov* or *http://www.epls.gov*.

Subpart F—General Principles Relating to Suspension and Debarment Actions

§ 180.600 How do suspension and debarment actions start?

When Federal agency officials receive information from any source concerning a cause for suspension or debarment, they will promptly report it and the agency will investigate. The officials refer the question of whether to suspend or debar you to their suspending or debarring official for consideration, if appropriate.

§ 180.605 How does suspension differ from debarment?

Suspension differs from debarment in that—

A suspending official . . .	A debarring official . . .
(a) Imposes suspension as a temporary status of in eligibility for procurement and nonprocurement transactions, pending completion of an investigation or legal proceedings.	Imposes debarment for a specified period as a final determination that a person is not presently responsible.
(b) Must—	
(1) Have *adequate evidence* that there may be a cause for debarment of a person; and	
(2) Conclude that *immediate action* is necessary to protect the Federal interest	Must conclude, based on a *preponderance of the evidence*, that the person has engaged in conduct that warrants debarment.
(c) Usually imposes the suspension *first*, and then promptly notifies the suspended person, giving the person an opportunity to contest the suspension and have it lifted.	Imposes debarment *after* giving the respondent notice of the action and an opportunity to contest the proposed debarment.

§ 180.610 What procedures does a Federal agency use in suspension and debarment actions?

In deciding whether to suspend or debar you, a Federal agency handles the actions as informally as practicable, consistent with principles of fundamental fairness.

(a) For suspension actions, a Federal agency uses the procedures in this subpart and Subpart G of this part.

(b) For debarment actions, a Federal agency uses the procedures in this subpart and Subpart H of this part.

§ 180.615 How does a Federal agency notify a person of a suspension or debarment action?

(a) The suspending or debarring official sends a written notice to the last known street address, facsimile number, or e-mail address of—

(1) You or your identified counsel; or

(2) Your agent for service of process, or any of your partners, officers, directors, owners, or joint venturers.

(b) The notice is effective if sent to any of these persons.

§ 180.620 Do Federal agencies coordinate suspension and debarment actions?

Yes, when more than one Federal agency has an interest in a suspension or debarment, the agencies may consider designating one agency as the lead agency for making the decision. Agencies are encouraged to establish methods and procedures for coordinating their suspension and debarment actions.

§ 180.625 What is the scope of a suspension or debarment?

If you are suspended or debarred, the suspension or debarment is effective as follows:

(a) Your suspension or debarment constitutes suspension or debarment of all of your divisions and other organizational elements from all covered transactions, unless the suspension or debarment decision is limited—

(1) By its terms to one or more specifically identified individuals, divisions, or other organizational elements; or

(2) To specific types of transactions.

(b) Any affiliate of a participant may be included in a suspension or debarment action if the suspending or debarring official—

(1) Officially names the affiliate in the notice; and

(2) Gives the affiliate an opportunity to contest the action.

§ 180.630 May a Federal agency impute the conduct of one person to another?

For purposes of actions taken under this part, a Federal agency may impute conduct as follows:

(a) *Conduct imputed from an individual to an organization.* A Federal agency may impute the fraudulent, criminal, or other improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with an organization, to that organization when the improper conduct occurred in connection with the individual's performance of duties for or on behalf of that organization, or with the organization's knowledge, approval or acquiescence. The organization's acceptance of the benefits derived from the conduct is evidence of knowledge, approval or acquiescence.

(b) *Conduct imputed from an organization to an individual, or between individuals.* A Federal agency may impute the fraudulent, criminal, or other improper conduct of any organization to an individual, or from one individual to another individual, if the individual to whom the improper conduct is imputed either participated in, had knowledge of, or reason to know of the improper conduct.

(c) *Conduct imputed from one organization to another organization.* A Federal agency may impute the fraudulent, criminal, or other improper conduct of one organization to another organization when the improper conduct occurred in connection with a partnership, joint venture, joint application, association or similar arrangement, or when the organization to whom the improper conduct is imputed has the power to direct, manage, control or influence the activities of the organization responsible for the improper conduct. Acceptance of the benefits derived from the conduct is evidence of knowledge, approval or acquiescence.

§ 180.635 May a Federal agency settle a debarment or suspension action?

Yes, a Federal agency may settle a debarment or suspension action at any time if it is in the best interest of the Federal Government.

§ 180.640 May a settlement include a voluntary exclusion?

Yes, if a Federal agency enters into a settlement with you in which you agree to be excluded, it is called a voluntary exclusion and has governmentwide effect.

§ 180.645 Do other Federal agencies know if an agency agrees to a voluntary exclusion?

(a) Yes, the Federal agency agreeing to the voluntary exclusion enters information about it into the EPLS.

(b) Also, any agency or person may contact the Federal agency that agreed to the voluntary exclusion to find out the details of the voluntary exclusion.

Subpart G—Suspension

§ 180.700 When may the suspending official issue a suspension?

Suspension is a serious action. Using the procedures of this subpart and Subpart F of this part, the suspending official may impose suspension only when that official determines that—

(a) There exists an indictment for, or other adequate evidence to suspect, an offense listed under § 180.800(a), or

(b) There exists adequate evidence to suspect any other cause for debarment listed under § 180.800(b) through (d); and

(c) Immediate action is necessary to protect the public interest.

§ 180.705 What does the suspending official consider in issuing a suspension?

(a) In determining the adequacy of the evidence to support the suspension, the suspending official considers how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result. During this assessment, the suspending official may examine the basic documents, including grants, cooperative agreements, loan authorizations, contracts, and other relevant documents.

(b) An indictment, conviction, civil judgment, or other official findings by Federal, State, or local bodies that determine factual and/or legal matters, constitutes adequate evidence for purposes of suspension actions.

(c) In deciding whether immediate action is needed to protect the public interest, the suspending official has wide discretion. For example, the suspending official may infer the necessity for immediate action to protect the public interest either from the nature of the circumstances giving rise to a cause for suspension or from potential business relationships or involvement with a program of the Federal Government.

§ 180.710 When does a suspension take effect?

A suspension is effective when the suspending official signs the decision to suspend.

§ 180.715 What notice does the suspending official give me if I am suspended?

After deciding to suspend you, the suspending official promptly sends you a Notice of Suspension advising you—

(a) That you have been suspended;

(b) That your suspension is based on—

(1) An indictment;

(2) A conviction;

(3) Other adequate evidence that you have committed irregularities which seriously reflect on the propriety of further Federal Government dealings with you; or

(4) Conduct of another person that has been imputed to you, or your affiliation with a suspended or debarred person;

(c) Of any other irregularities in terms sufficient to put you on notice without disclosing the Federal Government's evidence;

(d) Of the cause(s) upon which the suspending official relied under § 180.700 for imposing suspension;

(e) That your suspension is for a temporary period pending the completion of an investigation or resulting legal or debarment proceedings;

(f) Of the applicable provisions of this subpart, Subpart F of this part, and any other agency procedures governing suspension decisionmaking; and

(g) Of the governmentwide effect of your suspension from procurement and nonprocurement programs and activities.

§ 180.720 How may I contest a suspension?

If you as a respondent wish to contest a suspension, you or your representative must provide the suspending official with information in opposition to the suspension. You may do this orally or in writing, but any information provided orally that you consider important must also be submitted in writing for the official record.

§ 180.725 How much time do I have to contest a suspension?

(a) As a respondent you or your representative must either send, or make arrangements to appear and present, the information and argument to the suspending official within 30 days after you receive the Notice of Suspension.

(b) The Federal agency taking the action considers the notice to be received by you—

(1) When delivered, if the agency mails the notice to the last known street address, or five days after the agency sends it if the letter is undeliverable;

(2) When sent, if the agency sends the notice by facsimile or five days after the agency sends it if the facsimile is undeliverable; or

(3) When delivered, if the agency sends the notice by e-mail or five days after the agency sends it if the e-mail is undeliverable.

§ 180.730 What information must I provide to the suspending official if I contest the suspension?

(a) In addition to any information and argument in opposition, as a respondent your submission to the suspending official must identify—

(1) Specific facts that contradict the statements contained in the Notice of Suspension. A general denial is insufficient to raise a genuine dispute over facts material to the suspension;

(2) All existing, proposed, or prior exclusions under regulations implementing Executive Order 12549 and all similar actions taken by Federal, State, or local agencies, including administrative agreements that affect only those agencies;

(3) All criminal and civil proceedings not included in the Notice of Suspension that grew out of facts relevant to the cause(s) stated in the notice; and

(4) All of your affiliates.

(b) If you fail to disclose this information, or provide false information, the Federal agency taking the action may seek further criminal, civil or administrative action against you, as appropriate.

§ 180.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?

(a) You as a respondent will not have an additional opportunity to challenge the facts if the suspending official determines that—

(1) Your suspension is based upon an indictment, conviction, civil judgment, or other finding by a Federal, State, or local body for which an opportunity to contest the facts was provided;

(2) Your presentation in opposition contains only general denials to information contained in the Notice of Suspension;

(3) The issues raised in your presentation in opposition to the suspension are not factual in nature, or are not material to the suspending official's initial decision to suspend, or the official's decision whether to continue the suspension; or

(4) On the basis of advice from the Department of Justice, an office of the United States Attorney, a State attorney general's office, or a State or local prosecutor's office, that substantial interests of the government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced by conducting fact-finding.

(b) You will have an opportunity to challenge the facts if the suspending official determines that—

(1) The conditions in paragraph (a) of this section do not exist; and

(2) Your presentation in opposition raises a genuine dispute over facts material to the suspension.

(c) If you have an opportunity to challenge disputed material facts under this section, the suspending official or designee must conduct additional proceedings to resolve those facts.

§ 180.740 Are suspension proceedings formal?

(a) Suspension proceedings are conducted in a fair and informal manner. The suspending official may use flexible procedures to allow you to present matters in opposition. In so doing, the suspending official is not required to follow formal rules of evidence or procedure in creating an official record upon which the official will base a final suspension decision.

(b) You as a respondent or your representative must submit any documentary evidence you want the suspending official to consider.

§ 180.745 How is fact-finding conducted?

(a) If fact-finding is conducted—

(1) You may present witnesses and other evidence, and confront any witness presented; and

(2) The fact-finder must prepare written findings of fact for the record.

(b) A transcribed record of fact-finding proceedings must be made, unless you as a respondent and the Federal agency agree to waive it in advance. If you want a copy of the transcribed record, you may purchase it.

§ 180.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?

(a) The suspending official bases the decision on all information contained in the official record. The record includes—

(1) All information in support of the suspending official's initial decision to suspend you;

(2) Any further information and argument presented in support of, or opposition to, the suspension; and

(3) Any transcribed record of fact-finding proceedings.

(b) The suspending official may refer disputed material facts to another official for findings of fact. The suspending official may reject any resulting findings, in whole or in part, only after specifically determining them

to be arbitrary, capricious, or clearly erroneous.

§ 180.755 When will I know whether the suspension is continued or terminated?

The suspending official must make a written decision whether to continue, modify, or terminate your suspension within 45 days of closing the official record. The official record closes upon the suspending official's receipt of final submissions, information and findings of fact, if any. The suspending official may extend that period for good cause.

§ 180.760 How long may my suspension last?

(a) If legal or debarment proceedings are initiated at the time of, or during your suspension, the suspension may continue until the conclusion of those proceedings. However, if proceedings are not initiated, a suspension may not exceed 12 months.

(b) The suspending official may extend the 12 month limit under paragraph (a) of this section for an additional 6 months if an office of a U.S. Assistant Attorney General, U.S. Attorney, or other responsible prosecuting official requests an extension in writing. In no event may a suspension exceed 18 months without initiating proceedings under paragraph (a) of this section.

(c) The suspending official must notify the appropriate officials under paragraph (b) of this section of an impending termination of a suspension at least 30 days before the 12 month period expires to allow the officials an opportunity to request an extension.

Subpart H—Debarment

§ 180.800 What are the causes for debarment?

A Federal agency may debar a person for—

(a) Conviction of or civil judgment for—

(1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;

(2) Violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging;

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice; or

(4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects your present responsibility;

(b) Violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program, such as—

(1) A willful failure to perform in accordance with the terms of one or more public agreements or transactions;

(2) A history of failure to perform or of unsatisfactory performance of one or more public agreements or transactions; or

(3) A willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction;

(c) Any of the following causes:

(1) A nonprocurement debarment by any Federal agency taken before October 1, 1988, or a procurement debarment by any Federal agency taken pursuant to 48 CFR part 9, subpart 9.4, before August 25, 1995;

(2) Knowingly doing business with an ineligible person, except as permitted under § 180.135;

(3) Failure to pay a single substantial debt, or a number of outstanding debts (including disallowed costs and overpayments, but not including sums owed the Federal Government under the Internal Revenue Code) owed to any Federal agency or instrumentality, provided the debt is uncontested by the debtor or, if contested, provided that the debtor's legal and administrative remedies have been exhausted;

(4) Violation of a material provision of a voluntary exclusion agreement entered into under § 180.640 or of any settlement of a debarment or suspension action; or

(5) Violation of the provisions of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701); or

(d) Any other cause of so serious or compelling a nature that it affects your present responsibility.

§ 180.805 What notice does the debarring official give me if I am proposed for debarment?

After consideration of the causes in § 180.800, if the debarring official proposes to debar you, the official sends you a Notice of Proposed Debarment, pursuant to § 180.615, advising you—

(a) That the debarring official is considering debarring you;

(b) Of the reasons for proposing to debar you in terms sufficient to put you on notice of the conduct or transactions upon which the proposed debarment is based;

(c) Of the cause(s) under § 180.800 upon which the debarring official relied for proposing your debarment;

(d) Of the applicable provisions of this subpart, Subpart F of this part, and any other agency procedures governing debarment; and

(e) Of the governmentwide effect of a debarment from procurement and nonprocurement programs and activities.

§ 180.810 When does a debarment take effect?

Unlike suspension, a debarment is not effective until the debarring official issues a decision. The debarring official does not issue a decision until the respondent has had an opportunity to contest the proposed debarment.

§ 180.815 How may I contest a proposed debarment?

If you as a respondent wish to contest a proposed debarment, you or your representative must provide the debarring official with information in opposition to the proposed debarment. You may do this orally or in writing, but any information provided orally that you consider important must also be submitted in writing for the official record.

§ 180.820 How much time do I have to contest a proposed debarment?

(a) As a respondent you or your representative must either send, or make arrangements to appear and present, the information and argument to the debarring official within 30 days after you receive the Notice of Proposed Debarment.

(b) The Federal agency taking the action considers the Notice of Proposed Debarment to be received by you—

(1) When delivered, if the agency mails the notice to the last known street address, or five days after the agency sends it if the letter is undeliverable;

(2) When sent, if the agency sends the notice by facsimile or five days after the agency sends it if the facsimile is undeliverable; or

(3) When delivered, if the agency sends the notice by e-mail or five days after the agency sends it if the e-mail is undeliverable.

§ 180.825 What information must I provide to the debarring official if I contest the proposed debarment?

(a) In addition to any information and argument in opposition, as a respondent your submission to the debarring official must identify—

(1) Specific facts that contradict the statements contained in the Notice of Proposed Debarment. Include any information about any of the factors listed in § 180.860. A general denial is insufficient to raise a genuine dispute over facts material to the debarment;

(2) All existing, proposed, or prior exclusions under regulations

implementing Executive Order 12549 and all similar actions taken by Federal, State, or local agencies, including administrative agreements that affect only those agencies;

(3) All criminal and civil proceedings not included in the Notice of Proposed Debarment that grew out of facts relevant to the cause(s) stated in the notice; and

(4) All of your affiliates.

(b) If you fail to disclose this information, or provide false information, the Federal agency taking the action may seek further criminal, civil or administrative action against you, as appropriate.

§ 180.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?

(a) You as a respondent will not have an additional opportunity to challenge the facts if the debarring official determines that—

(1) Your debarment is based upon a conviction or civil judgment;

(2) Your presentation in opposition contains only general denials to information contained in the Notice of Proposed Debarment; or

(3) The issues raised in your presentation in opposition to the proposed debarment are not factual in nature, or are not material to the debarring official's decision whether to debar.

(b) You will have an additional opportunity to challenge the facts if the debarring official determines that—

(1) The conditions in paragraph (a) of this section do not exist; and

(2) Your presentation in opposition raises a genuine dispute over facts material to the proposed debarment.

(c) If you have an opportunity to challenge disputed material facts under this section, the debarring official or designee must conduct additional proceedings to resolve those facts.

§ 180.835 Are debarment proceedings formal?

(a) Debarment proceedings are conducted in a fair and informal manner. The debarring official may use flexible procedures to allow you as a respondent to present matters in opposition. In so doing, the debarring official is not required to follow formal rules of evidence or procedure in creating an official record upon which the official will base the decision whether to debar.

(b) You or your representative must submit any documentary evidence you want the debarring official to consider.

§ 180.840 How is fact-finding conducted?

(a) If fact-finding is conducted—

(1) You may present witnesses and other evidence, and confront any witness presented; and

(2) The fact-finder must prepare written findings of fact for the record.

(b) A transcribed record of fact-finding proceedings must be made, unless you as a respondent and the Federal agency agree to waive it in advance. If you want a copy of the transcribed record, you may purchase it.

§ 180.845 What does the debarring official consider in deciding whether to debar me?

(a) The debarring official may debar you for any of the causes in § 180.800. However, the official need not debar you even if a cause for debarment exists. The official may consider the seriousness of your acts or omissions and the mitigating or aggravating factors set forth at § 180.860.

(b) The debarring official bases the decision on all information contained in the official record. The record includes—

(1) All information in support of the debarring official's proposed debarment;

(2) Any further information and argument presented in support of, or in opposition to, the proposed debarment; and

(3) Any transcribed record of fact-finding proceedings.

(c) The debarring official may refer disputed material facts to another official for findings of fact. The debarring official may reject any resultant findings, in whole or in part, only after specifically determining them to be arbitrary, capricious, or clearly erroneous.

§ 180.850 What is the standard of proof in a debarment action?

(a) In any debarment action, the Federal agency must establish the cause for debarment by a preponderance of the evidence.

(b) If the proposed debarment is based upon a conviction or civil judgment, the standard of proof is met.

§ 180.855 Who has the burden of proof in a debarment action?

(a) The Federal agency has the burden to prove that a cause for debarment exists.

(b) Once a cause for debarment is established, you as a respondent have the burden of demonstrating to the satisfaction of the debarring official that you are presently responsible and that debarment is not necessary.

§ 180.860 What factors may influence the debarring official's decision?

This section lists the mitigating and aggravating factors that the debarring official may consider in determining whether to debar you and the length of your debarment period. The debarring official may consider other factors if appropriate in light of the circumstances of a particular case. The existence or nonexistence of any factor, such as one of those set forth in this section, is not necessarily determinative of your present responsibility. In making a debarment decision, the debarring official may consider the following factors:

(a) The actual or potential harm or impact that results or may result from the wrongdoing.

(b) The frequency of incidents and/or duration of the wrongdoing.

(c) Whether there is a pattern or prior history of wrongdoing. For example, if you have been found by another Federal agency or a State agency to have engaged in wrongdoing similar to that found in the debarment action, the existence of this fact may be used by the debarring official in determining that you have a pattern or prior history of wrongdoing.

(d) Whether you are or have been excluded or disqualified by an agency of the Federal Government or have not been allowed to participate in State or local contracts or assistance agreements on a basis of conduct similar to one or more of the causes for debarment specified in this part.

(e) Whether you have entered into an administrative agreement with a Federal agency or a State or local government that is not governmentwide but is based on conduct similar to one or more of the causes for debarment specified in this part.

(f) Whether and to what extent you planned, initiated, or carried out the wrongdoing.

(g) Whether you have accepted responsibility for the wrongdoing and recognize the seriousness of the misconduct that led to the cause for debarment.

(h) Whether you have paid or agreed to pay all criminal, civil and administrative liabilities for the improper activity, including any investigative or administrative costs incurred by the government, and have made or agreed to make full restitution.

(i) Whether you have cooperated fully with the government agencies during the investigation and any court or administrative action. In determining the extent of cooperation, the debarring official may consider when the cooperation began and whether you disclosed all pertinent information known to you.

(j) Whether the wrongdoing was pervasive within your organization.

(k) The kind of positions held by the individuals involved in the wrongdoing.

(l) Whether your organization took appropriate corrective action or remedial measures, such as establishing ethics training and implementing programs to prevent recurrence.

(m) Whether your principals tolerated the offense.

(n) Whether you brought the activity cited as a basis for the debarment to the attention of the appropriate government agency in a timely manner.

(o) Whether you have fully investigated the circumstances surrounding the cause for debarment and, if so, made the result of the investigation available to the debarring official.

(p) Whether you had effective standards of conduct and internal control systems in place at the time the questioned conduct occurred.

(q) Whether you have taken appropriate disciplinary action against the individuals responsible for the activity which constitutes the cause for debarment.

(r) Whether you have had adequate time to eliminate the circumstances within your organization that led to the cause for the debarment.

(s) Other factors that are appropriate to the circumstances of a particular case.

§ 180.865 How long may my debarment last?

(a) If the debarring official decides to debar you, your period of debarment will be based on the seriousness of the cause(s) upon which your debarment is based. Generally, debarment should not exceed three years. However, if circumstances warrant, the debarring official may impose a longer period of debarment.

(b) In determining the period of debarment, the debarring official may consider the factors in § 180.860. If a suspension has preceded your debarment, the debarring official must consider the time you were suspended.

(c) If the debarment is for a violation of the provisions of the Drug-Free Workplace Act of 1988, your period of debarment may not exceed five years.

§ 180.870 When do I know if the debarring official debars me?

(a) The debarring official must make a written decision whether to debar within 45 days of closing the official record. The official record closes upon the debarring official's receipt of final submissions, information and findings of fact, if any. The debarring official may extend that period for good cause.

(b) The debarring official sends you written notice, pursuant to § 180.615 that the official decided, either—

(1) Not to debar you; or

(2) To debar you. In this event, the notice:

(i) Refers to the Notice of Proposed Debarment;

(ii) Specifies the reasons for your debarment;

(iii) States the period of your debarment, including the effective dates; and

(iv) Advises you that your debarment is effective for covered transactions and contracts that are subject to the Federal Acquisition Regulation (48 CFR chapter 1), throughout the executive branch of the Federal Government unless an agency head or an authorized designee grants an exception.

§ 180.875 May I ask the debarring official to reconsider a decision to debar me?

Yes, as a debarred person you may ask the debarring official to reconsider the debarment decision or to reduce the time period or scope of the debarment. However, you must put your request in writing and support it with documentation.

§ 180.880 What factors may influence the debarring official during reconsideration?

The debarring official may reduce or terminate your debarment based on—

(a) Newly discovered material evidence;

(b) A reversal of the conviction or civil judgment upon which your debarment was based;

(c) A bona fide change in ownership or management;

(d) Elimination of other causes for which the debarment was imposed; or

(e) Other reasons the debarring official finds appropriate.

§ 180.885 May the debarring official extend a debarment?

(a) Yes, the debarring official may extend a debarment for an additional period, if that official determines that an extension is necessary to protect the public interest.

(b) However, the debarring official may not extend a debarment solely on the basis of the facts and circumstances upon which the initial debarment action was based.

(c) If the debarring official decides that a debarment for an additional period is necessary, the debarring official must follow the applicable procedures in this subpart, and Subpart F of this part, to extend the debarment.

Subpart I—Definitions

§ 180.900 Adequate evidence.

Adequate evidence means information sufficient to support the reasonable belief that a particular act or omission has occurred.

§ 180.905 Affiliate.

Persons are *affiliates* of each other if, directly or indirectly, either one controls or has the power to control the other or a third person controls or has the power to control both. The ways a Federal agency may determine control include, but are not limited to—

(a) Interlocking management or ownership;

(b) Identity of interests among family members;

(c) Shared facilities and equipment;

(d) Common use of employees; or

(e) A business entity which has been organized following the exclusion of a person which has the same or similar management, ownership, or principal employees as the excluded person.

§ 180.910 Agent or representative.

Agent or representative means any person who acts on behalf of, or who is authorized to commit a participant in a covered transaction.

§ 180.915 Civil judgment.

Civil judgment means the disposition of a civil action by any court of competent jurisdiction, whether by verdict, decision, settlement, stipulation, other disposition which creates a civil liability for the complained of wrongful acts, or a final determination of liability under the Program Fraud Civil Remedies Act of 1988 (31 U.S.C. 3801–3812).

§ 180.920 Conviction.

Conviction means—

(a) A judgment or any other determination of guilt of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or plea, including a plea of nolo contendere; or

(b) Any other resolution that is the functional equivalent of a judgment, including probation before judgment and deferred prosecution. A disposition without the participation of the court is the functional equivalent of a judgment only if it includes an admission of guilt.

§ 180.925 Debarment.

Debarment means an action taken by a debarring official under Subpart H of this part to exclude a person from participating in covered transactions and transactions covered under the Federal Acquisition Regulation (48 CFR chapter 1). A person so excluded is debarred.

§ 180.930 Debarring official.

Debarring official means an agency official who is authorized to impose debarment. A debarring official is either—

(a) The agency head; or

(b) An official designated by the agency head.

§ 180.935 Disqualified.

Disqualified means that a person is prohibited from participating in specified Federal procurement or nonprocurement transactions as required under a statute, Executive order (other than Executive Orders 12549 and 12689) or other authority. Examples of disqualifications include persons prohibited under—

(a) The Davis-Bacon Act (40 U.S.C. 276(a));

(b) The equal employment opportunity acts and Executive orders; or

(c) The Clean Air Act (42 U.S.C. 7606), Clean Water Act (33 U.S.C. 1368) and Executive Order 11738 (3 CFR, 1973 Comp., p. 799).

§ 180.940 Excluded or exclusion.

Excluded or exclusion means—

(a) That a person or commodity is prohibited from being a participant in covered transactions, whether the person has been suspended; debarred; proposed for debarment under 48 CFR part 9, subpart 9.4; voluntarily excluded; or

(b) The act of excluding a person.

§ 180.945 Excluded Parties List System (EPLS).

Excluded Parties List System (EPLS) means the list maintained and disseminated by the General Services Administration (GSA) containing the names and other information about persons who are ineligible.

§ 180.950 Federal agency.

Federal agency means any United States executive department, military department, defense agency or any other agency of the executive branch. Other agencies of the Federal government are not considered "agencies" for the purposes of this part unless they issue regulations adopting the governmentwide Debarment and Suspension system under Executive Orders 12549 and 12689.

§ 180.955 Indictment.

Indictment means an indictment for a criminal offense. A presentment, information, or other filing by a competent authority charging a criminal offense shall be given the same effect as an indictment.

§ 180.960 Ineligible or ineligibility.

Ineligible or ineligibility means that a person or commodity is prohibited from covered transactions because of an exclusion or disqualification.

§ 180.965 Legal proceedings.

Legal proceedings means any criminal proceeding or any civil judicial proceeding, including a proceeding under the Program Fraud Civil Remedies Act (31 U.S.C. 3801–3812), to which the Federal Government or a State or local government or quasi-governmental authority is a party. The term also includes appeals from those proceedings.

§ 180.970 Nonprocurement transaction.

(a) *Nonprocurement transaction* means any transaction, regardless of type (except procurement contracts), including, but not limited to the following:

(1) Grants.
(2) Cooperative agreements.
(3) Scholarships.
(4) Fellowships.
(5) Contracts of assistance.
(6) Loans.
(7) Loan guarantees.
(8) Subsidies.
(9) Insurances.
(10) Payments for specified uses.
(11) Donation agreements.

(b) A nonprocurement transaction at any tier does not require the transfer of Federal funds.

§ 180.975 Notice.

Notice means a written communication served in person, sent by certified mail or its equivalent, or sent electronically by e-mail or facsimile. (See § 180. 615.)

§ 180.980 Participant.

Participant means any person who submits a proposal for or who enters into a covered transaction, including an agent or representative of a participant.

§ 180.985 Person.

Person means any individual, corporation, partnership, association, unit of government, or legal entity, however organized.

§ 180.990 Preponderance of the evidence.

Preponderance of the evidence means proof by information that, compared with information opposing it, leads to the conclusion that the fact at issue is more probably true than not.

§ 180.995 Principal.

Principal means—

(a) An officer, director, owner, partner, principal investigator, or other person within a participant with management or supervisory responsibilities related to a covered transaction; or

(b) A consultant or other person, whether or not employed by the participant or paid with Federal funds, who—

(1) Is in a position to handle Federal funds;

(2) Is in a position to influence or control the use of those funds; or,

(3) Occupies a technical or professional position capable of substantially influencing the development or outcome of an activity required to perform the covered transaction.

§ 180.1000 Respondent.

Respondent means a person against whom an agency has initiated a debarment or suspension action.

§ 180.1005 State.

(a) *State* means—

(1) Any of the states of the United States;

(2) The District of Columbia;

(3) The Commonwealth of Puerto Rico;

(4) Any territory or possession of the United States; or

(5) Any agency or instrumentality of a state.

(b) For purposes of this part, *State* does not include institutions of higher education, hospitals, or units of local government.

§ 180.1010 Suspending official.

(a) *Suspending official* means an agency official who is authorized to impose suspension. The suspending official is either:

(1) The agency head; or

(2) An official designated by the agency head.

§ 180.1015 Suspension.

Suspension is an action taken by a suspending official under subpart G of this part that immediately prohibits a person from participating in covered transactions and transactions covered under the Federal Acquisition Regulation (48 CFR chapter 1) for a temporary period, pending completion of an agency investigation and any judicial or administrative proceedings that may ensue. A person so excluded is suspended.

§ 180.1020 Voluntary exclusion or voluntarily excluded.

(a) *Voluntary exclusion* means a person's agreement to be excluded under the terms of a settlement between the person and one or more agencies. Voluntary exclusion must have governmentwide effect.

(b) *Voluntarily excluded* means the status of a person who has agreed to a voluntary exclusion.

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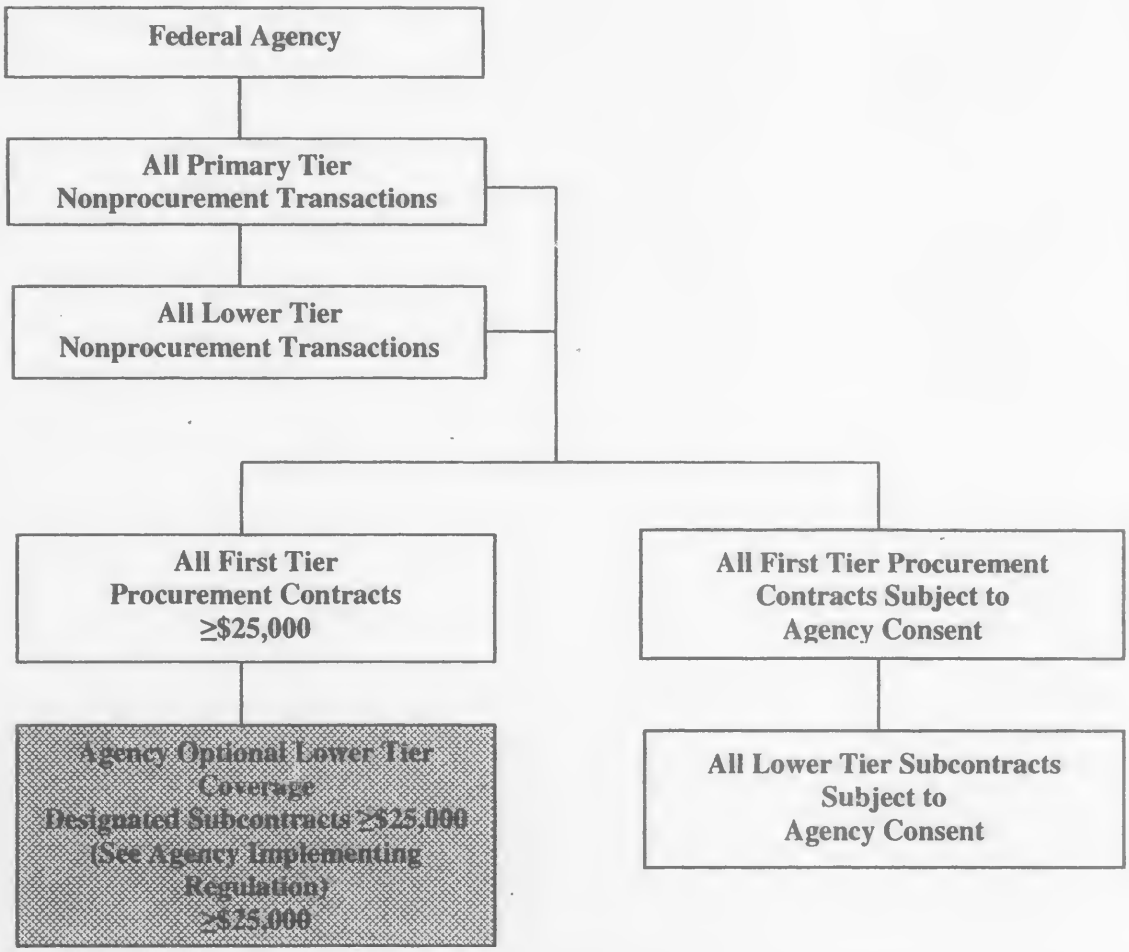
Appendix to Part 180___- Covered Transactions

COVERED TRANSACTIONS



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PART 215—[AMENDED]

■ 3. The authority citation for part 215 continues to read as follows:

Authority: 31 U.S.C. 503; 31 U.S.C. 1111; 41 U.S.C. 405; Reorganization Plan No. 2 of 1970; E.O. 11541, 35 FR 10737, 3 CFR, 1966–1970, p. 939.

■ 4. Section 215.13 is revised to read as follows:

§ 215.13 Debarment and suspension.

Federal awarding agencies and recipients shall comply with Federal agency regulations implementing E.O.s 12549 and 12689, ''Debarment and Suspension.'' Under those regulations, certain parties who are debarred, suspended or otherwise excluded may not be participants or principals in Federal assistance awards and subawards, and in certain contracts under those awards and subawards.

■ 5. Paragraph 8 of Appendix A to part 215 is revised to read as follows:

Appendix A to Part 215—Contract Provisions

* * * * *

8. Debarment and Suspension (E.O.s 12549 and 12689)—A contract award with an amount expected to equal or exceed $25,000 and certain other contract awards (see 2 CFR 180.220) shall not be made to parties listed on the government-wide Excluded Parties List System, in accordance with the OMB guidelines at 2 CFR part 180 that implement

E.O.s 12549 (3 CFR, 1986 Comp., p. 189) and 12689 (3 CFR, 1989 Comp., p. 235), "Debarment and Suspension." The Excluded Parties List System contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than E.O. 12549.

[FR Doc. 05–16647 Filed 8–30–05; 8:45 am]
BILLING CODE 3110–01–P

OFFICE OF MANAGEMENT AND BUDGET

2 CFR Parts 215 and 220

Cost Principles for Educational Institutions (OMB Circular A–21)

AGENCY: Office of Management and Budget.

ACTION: Relocation of policy guidance to 2 CFR chapter II.

SUMMARY: The Office of Management and Budget (OMB) is relocating OMB Circular A–21, "Cost Principles for Educational Institutions," to Title 2 in the Code of Federal Regulations (2 CFR), subtitle A, chapter II, part 220. This relocation is part of our broader initiative to create 2 CFR as a single location where the public can find both OMB guidance for grants and agreements and the associated Federal agency implementing regulations. The broader initiative provides a good foundation for streamlining and simplifying the policy framework for grants and agreements, one objective of OMB and Federal agency efforts to implement the Federal Financial Assistance Management Improvement Act of 1999 (Pub. L. 106–107).

Furthermore, this document makes changes to 2 CFR part 215, Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations (OMB Circular A–110). The changes will add to part 215 new references to 2 CFR parts 220, 225, and 230 for the cost principles in OMB Circulars A–21, A–87, and A–122, respectively; will update part 215 to include a citation for the Social Security Administration's grant regulation; and will correct part 215 to add the amendatory language of A–110 published on October 8, 1999, and to correct a typographic error.

DATES: This document is effective August 31, 2005. This document republishes the existing OMB Circular A–21, which already is in effect.

FOR FURTHER INFORMATION CONTACT: Gil Tran, Office of Federal Financial Management, Office of Management and Budget, telephone (202) 395–3052 (direct) or (202) 395–3993 (main office) and e-mail *Hai_M._Tran@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: On May 10, 2004 [69 FR 25970], we revised the three OMB circulars containing Federal cost principles. The purpose of those revisions was to simplify the cost principles by making the descriptions of similar cost items consistent across the circulars where possible, thereby reducing the possibility of misinterpretation. Those revisions resulted from OMB and Federal agency efforts to implement Public Law 106–107, and were effective on June 9, 2004.

In this document and the two documents immediately following this one, we relocate those three OMB circulars to the CFR, in Title 2 which was established on May 11, 2004 [69 FR 26276] as a central location for OMB and Federal agency policies on grants and agreements. When we established 2 CFR and relocated OMB Circular A–110 in that new title, we stated that we would relocate in the near future the other OMB circulars related to grants and agreements. Today's documents are a significant step toward that end.

Our relocation of OMB Circular A–21 does not change the substance of the circular. Other than adjustments needed to conform to the formatting requirements of the CFR, this notice relocates in 2 CFR the version of OMB Circular A–21 as revised by the May 10, 2004 notice.

Conforming changes to 2 CFR part 215. There is a need for conforming changes to 2 CFR part 215, which contains administrative requirements for grants and other financial assistance agreements with educational institutions and other nonprofit organizations. The amendments to § 215.25(c)(6) and (e), § 215.27, and § 215.29(b) add the new references to 2 CFR parts 220, 225, and 230 for the cost principles in OMB Circulars A–21, A–87, and A–122, respectively.

Update and corrections to 2 CFR part 215. Additional changes to 2 CFR part 215 are needed to update § 215.5 and to correct § 215.36 and § 215.72. The update to § 215.5 adds the CFR citation for the Social Security Administration's (SSA) implementation of the grants management common rule, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments." The changes to § 215.36 provide the corrections needed to include the amendments to OMB Circular A–110 that were published as final on October 8, 1999 [64 FR 54926] and were inadvertently omitted from our publication of part 215 last year [69 FR 26281]. The change to § 215.72 provides correction for a long-standing typo.

List of Subjects

2 CFR Part 215

Accounting, Colleges and universities, Cooperative agreements, Grant programs, Grants administration, Hospitals, Nonprofit organizations, Reporting and recordkeeping requirements.

2 CFR Part 220

Accounting, Colleges and universities, Grant programs, Grant administrations, Reporting and recordkeeping requirements.

Dated: August 8, 2005.

Joshua B. Bolten,

Director.

Authority and Issuance

■ For the reasons set forth above, the Office of Management and Budget amends 2 CFR, subtitle A, chapter II, as follows:

PART 215—[AMENDED]

■ 1. The authority citation for part 215 continues to read as follows:

Authority: 31 U.S.C. 503; 31 U.S.C. 1111; 41 U.S.C. 405; Reorganization Plan No. 2 of 1970; E.O. 11541, 35 FR 10737, 3 CFR, 1966–1970, p. 939.

§ 215.5 [Amended]

■ 2. Section 215.5 is amended by adding "20 CFR part 437," following "15 CFR part 24,".

■ 3. Section 215.25 is amended by revising paragraphs (c)(6) and (e) to read as follows:

§ 215.25 Revision of budget and program plans.

* * * * *

(c) * * *

(6) The inclusion, unless waived by the Federal awarding agency, of costs that require prior approval in accordance with any of the following, as applicable:

(i) 2 CFR part 220, "Cost Principles for Educational Institutions (OMB Circular A–21);"

(ii) 2 CFR part 230, "Cost Principles for Non-Profit Organizations (OMB Circular A–122);"

(iii) 45 CFR part 74, Appendix E, "Principles for Determining Costs Applicable to Research and Development under Grants and Contracts with Hospitals;" and

(iv) 48 CFR part 31, "Contract Cost Principles and Procedures."

* * * * *

(e) Except for requirements listed in paragraphs (c)(1) and (c)(4) of this

section, Federal awarding agencies are authorized, at their option, to waive cost-related and administrative prior written approvals required by 2 CFR parts 220 and 230 (OMB Circulars A–21 and A–122). Such waivers may include authorizing recipients to do any one or more of the following.

* * * * *

■ 4. Section 215.27 is revised to read as follows:

§ 215.27 Allowable costs.

For each kind of recipient, there is a set of Federal principles for determining allowable costs. Allowability of costs shall be determined in accordance with the cost principles applicable to the entity incurring the costs. Thus, allowability of costs incurred by State, local or federally-recognized Indian tribal governments is determined in accordance with the provisions of 2 CFR part 225, "Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A–87." The allowability of costs incurred by non-profit organizations is determined in accordance with the provisions of 2 CFR part 230, "Cost Principles for Non-Profit Organizations (OMB Circular A–122)." The allowability of costs incurred by institutions of higher education is determined in accordance with the provisions of 2 CFR part 220, "Cost Principles for Educational Institutions (OMB Circular A–21)." The allowability of costs incurred by hospitals is determined in accordance with the provisions of Appendix E of 45 CFR part 74, "Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals." The allowability of costs incurred by commercial organizations and those non-profit organizations listed in Attachment C to Circular A–122 is determined in accordance with the provisions of the Federal Acquisition Regulation (FAR) at 48 CFR part 31.

■ 5. Section 215.29 is amended by:

■ a. Revising paragraph (b) to read as set forth below; and

■ b. Revising "the provisions of OMB Circular A–87 and extend such policies" in paragraph (c) to read "the provisions of 2 CFR part 225, "Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A–87)" and extend such policies".

§ 215.29 Conditional exemptions.

* * * * *

(b) To promote efficiency in State and local program administration, when Federal non-entitlement programs with common purposes have specific statutorily-authorized consolidated planning and consolidated administrative funding and where most of the State agency's resources come from non-Federal sources, Federal agencies may exempt these covered State-administered, non-entitlement grant programs from certain OMB grants management requirements. The exemptions would be from:

(1) The requirements in 2 CFR part 225, "Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A–87)" other than the allocability of costs provisions that are contained in subsection C.3 of Appendix A to that part;

(2) The requirements in 2 CFR part 220, "Cost Principles for Educational Institutions (OMB Circular A–21)" other than the allocability of costs provisions that are contained in paragraph C.4 in section C of the Appendix to that part;

(3) The requirements in 2 CFR part 230, "Cost Principles for Non-Profit Organizations (OMB Circular A–122)" other than the allocability of costs provisions that are in paragraph A.4 in section A of Appendix A to that part;

(4) The administrative requirements provisions of part 215 (OMB Circular A–110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations,"); and

(5) The agencies' grants management common rule (see § 215.5).

* * * * *

■ 6. Section 215.36 is amended as follows:

■ a. Paragraph (d) is redesignated as paragraph (e).

■ b. Paragraph (c) is amended by removing from the first sentence "Unless waived by the Federal awarding agency," and capitalizing the new opening word "The".

■ c. A new paragraph (d) is added, as follows:

§ 215.36 Intangible property.

* * * * *

(d) (1) In addition, in response to a Freedom of Information Act (FOIA) request for research data relating to published research findings produced under an award that was used by the Federal Government in developing an agency action that has the force and effect of law, the Federal awarding agency shall request, and the recipient shall provide, within a reasonable time, the research data so that they can be made available to the public through the procedures established under the FOIA. If the Federal awarding agency obtains the research data solely in response to a FOIA request, the agency may charge the requester a reasonable fee equaling the full incremental cost of obtaining the research data. This fee should reflect costs incurred by the agency, the recipient, and the applicable subrecipients. This fee is in addition to any fees the agency may assess under the FOIA (5 U.S.C. 552(a)(4)(A)).

(2) The following definitions apply for purposes of paragraph (d) of this section:

(i) Research data is defined as the recorded factual material commonly accepted in the scientific community as necessary to validate research findings, but not any of the following: Preliminary analyses, drafts of scientific papers, plans for future research, peer reviews, or communications with colleagues. This "recorded" material excludes physical objects (*e.g.*, laboratory samples). Research data also do not include:

(A) Trade secrets, commercial information, materials necessary to be held confidential by a researcher until they are published, or similar information which is protected under law; and

(B) Personnel and medical information and similar information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, such as information that could be used to identify a particular person in a research study.

(ii) Published is defined as either when:

(A) Research findings are published in a peer-reviewed scientific or technical journal; or

(B) A Federal agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.

(iii) Used by the Federal Government in developing an agency action that has the force and effect of law is defined as when an agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.

* * * * *

§ 215.72 [Amended]

■ 7. Section 215.72 is amended by removing from paragraph (b) the reference to "§ 215.73(a)," and adding "paragraph (a) of this section," in its place.

■ 8. Part 220 is added to Chapter II to read as follows:

PART 220—COST PRINCIPLES FOR EDUCATIONAL INSTITUTIONS (OMB CIRCULAR A–21)

Sec.

220.5 Purpose.

Authority: 31 U.S.C. 503; 31 U.S.C. 1111; 41 U.S.C. 405; Reorganization Plan No. 2 of 1970; E.O. 11541, 35 FR 10737, 3 CFR, 1966–1970, p. 939.

§ 220.5 Purpose.

This part establishes principles for determining costs applicable to grants, contracts, and other agreements with educational institutions.

§ 220.10 Scope.

The principles in this part deal with the subject of cost determination, and make no attempt to identify the circumstances or dictate the extent of agency and institutional participation in the financing of a particular project. Provision for profit or other increment above cost is outside the scope of this part.

§ 220.15 Policy.

The principles in this part are designed to provide that the Federal Government bear its fair share of total costs, determined in accordance with generally accepted accounting principles, except where restricted or prohibited by law. Agencies are not expected to place additional restrictions on individual items of cost. The successful application of cost accounting principles requires development of mutual understanding between representatives of educational institutions and of the Federal Government as to their scope, implementation, and interpretation.

§ 220.20 Applicability.

(a) All Federal agencies that sponsor research and development, training, and other work at educational institutions shall apply the provisions of Appendix A to this part in determining the costs incurred for such work. The principles shall also be used as a guide in the pricing of fixed price or lump sum agreements.

(b) Each federal agency that awards defense-related contracts to a Federally Funded Research and Development Center (FFRDC) associated with an educational institution shall require the FFRDC to comply with the Cost Accounting Standards and with the rules and regulations issued by the Cost Accounting Standards Board and set forth in 47 CFR part 99.

§ 220.25 OMB responsibilities.

OMB is responsible for:

(a) Issuing and maintaining the guidance in this part.

(b) Interpreting the policy requirements in this part and providing assistance to ensure effective and efficient implementation.

(c) Granting any deviations to Federal agencies from the guidance in this part, as provided in Appendix A to this part. Exceptions will only be made in particular cases where adequate justification is presented.

(d) Conducting broad oversight of government-wide compliance with the guidance in this part.

§ 220.30 Federal Agency responsibilities.

The head of each Federal agency that awards and administers grants and agreements subject to this part is responsible for requesting approval from and/or consulting with OMB (as applicable) for deviations from the guidance in Appendix A to this part and performing the applicable functions specified in Appendix A to this part.

§ 220.35 Effective date for changes.

Institutions as of the start of their first fiscal year beginning after that date shall implement the provisions. Earlier implementation, or a delay in implementation of individual provisions, is permitted by mutual agreement between an institution and the cognizant Federal agency.

§ 220.40 Relationship to previous issuance.

(a) The guidance in this part previously was issued as OMB Circular A–21. Designations of the attachment to the Circular and the appendices to that attachment have changed, as shown in the following table:

The portion of OMB Circular A–21 that was designated as . . .	Is designated in this part as . . .
(1) The Attachment to the circular, entitled "Principles For Determining Costs Applicable to Grants, Contracts, and Other Agreements with Educational Institutions,".	Appendix A to Part 220—Principles For Determining Costs Applicable to Grants, Contracts, and Other Agreements with Educational Institutions.
(2) Exhibit A in the attachment to the circular, entitled "List of Colleges and Universities Subject to Section J.12.h of Circular A–21,".	Exhibit A, List of Colleges and Universities Subject to Section J.12.h of Circular A–21, to Appendix A.
(3) Exhibit B in the attachment to the circular, entitled "Listing of Institutions that are eligible for the utility cost adjustment,".	Exhibit B, Listing of Institutions that are eligible for the utility cost adjustment, to Appendix A.
(4) Exhibit C in the attachment to the circular, entitled "Examples of 'major project' where direct charging of administrative or clerical staff salaries may be appropriate,".	Exhibit C, Examples of "major project" where direct charging of administrative or clerical staff salaries may be appropriate, to Appendix A.
(5) Appendix A to the attachment to the circular, entitled "CASB's Cost Accounting Standards (CAS),".	Attachment A, CASB's Cost Accounting Standards (CAS), to Appendix A.
(6) Appendix B to the attachment to the circular, entitled "CASB's Disclosure Statement (DS–2),".	Attachment B, CASB's Disclosure Statement (DS–2), to Appendix A.
(7) Appendix C to the attachment to the circular, entitled "Documentation Requirements for Facilities and Administrative (F&A) Rate Proposals,".	Attachment C, Documentation Requirements for Facilities and Administrative (F&A) Rate Proposals, to Appendix A.

(b) Historically, OMB Circular A–21 superseded Federal Management Circular 73–8, dated December 19, 1973. FMC 73–8 was revised and reissued under its original designation of OMB Circular No. A–21. The provisions of A–21 were effective October 1, 1979, except for subsequent amendments incorporated herein for which the effective dates were specified in these revisions (47 FR 33658, 51 FR 20908, 51 FR 43487, 56 FR 50224, 58 FR 39996, 61 FR 20880, 63 FR 29786, 63 FR 57332, 65 FR 48566 and 69 FR 25970).

§ 220.45 Information contact.

Further information concerning this part may be obtained by contacting the Office of Federal Financial Management, Office of Management and Budget, Washington, DC 20503, telephone (202) 395–3993.

Appendix A to Part 220—Principles for Determining Costs Applicable to Grants, Contracts, and Other Agreements With Educational Institutions

Table of Contents

A. Purpose and Scope

1. Objectives. This Appendix provides principles for determining the costs applicable to research and development, training, and other sponsored work performed by colleges and universities under grants, contracts, and other agreements with the Federal Government. These agreements are referred to as sponsored agreements.

2. Policy guides. The successful application of these cost accounting principles requires development of mutual understanding between representatives of universities and of the Federal Government as to their scope, implementation, and interpretation. It is recognized that—

a. The arrangements for Federal agency and institutional participation in the financing of a research, training, or other project are properly subject to negotiation between the agency and the institution concerned, in accordance with such governmentwide criteria or legal requirements as may be applicable.

b. Each institution, possessing its own unique combination of staff, facilities, and experience, should be encouraged to conduct research and educational activities in a manner consonant with its own academic philosophies and institutional objectives.

c. The dual role of students engaged in research and the resulting benefits to sponsored agreements are fundamental to the research effort and shall be recognized in the application of these principles.

d. Each institution, in the fulfillment of its obligations, should employ sound management practices.

e. The application of these cost accounting principles should require no significant changes in the generally accepted accounting practices of colleges and universities. However, the accounting practices of individual colleges and universities must support the accumulation of costs as required by the principles, and must provide for adequate documentation to support costs charged to sponsored agreements.

f. Cognizant Federal agencies involved in negotiating facilities and administrative (F&A) cost rates and auditing should assure that institutions are generally applying these cost accounting principles on a consistent basis. Where wide variations exist in the treatment of a given cost item among institutions, the reasonableness and equitableness of such treatments should be fully considered during the rate negotiations and audit.

3. Application. These principles shall be used in determining the allowable costs of work performed by colleges and universities

under sponsored agreements. The principles shall also be used in determining the costs of work performed by such institutions under subgrants, cost-reimbursement subcontracts, and other awards made to them under sponsored agreements. They also shall be used as a guide in the pricing of fixed-price contracts and subcontracts where costs are used in determining the appropriate price. The principles do not apply to:

a. Arrangements under which Federal financing is in the form of loans, scholarships, fellowships, traineeships, or other fixed amounts based on such items as education allowance or published tuition rates and fees of an institution.

b. Capitation awards.

c. Other awards under which the institution is not required to account to the Federal Government for actual costs incurred.

d. Conditional exemptions.

(1) OMB authorizes conditional exemption from OMB administrative requirements and cost principles for certain Federal programs with statutorily-authorized consolidated planning and consolidated administrative funding, that are identified by a Federal agency and approved by the head of the Executive department or establishment. A Federal agency shall consult with OMB during its consideration of whether to grant such an exemption.

(2) To promote efficiency in State and local program administration, when Federal non-entitlement programs with common purposes have specific statutorily-authorized consolidated planning and consolidated administrative funding and where most of the State agency's resources come from non-Federal sources, Federal agencies may exempt these covered State-administered, non-entitlement grant programs from certain OMB grants management requirements. The exemptions would be from all but the allocability of costs provisions of subsection C.3 of Appendix A to 2 CFR part 225 Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A–87), Section C, subpart 4 to 2 CFR part 220 Cost Principles for Educational Institutions (OMB Circular A–21), and subsection A.4 of Appendix A to 2 CFR part 230 Cost Principles for Non-Profit Organizations," (OMB Circular A–122), and from all of the administrative requirements provisions of 2 CFR part 215, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations (OMB Circular A–110), and the agencies' grants management common rule (see § 215.5 of this subtitle).

(3) When a Federal agency provides this flexibility, as a prerequisite to a State's exercising this option, a State must adopt its own written fiscal and administrative requirements for expending and accounting for all funds, which are consistent with the provisions of 2 CFR part 225 (OMB Circular A–87), and extend such policies to all subrecipients. These fiscal and administrative requirements must be sufficiently specific to ensure that: Funds are used in compliance with all applicable Federal statutory and regulatory provisions, costs are reasonable and necessary for operating these programs, and funds are not to be used for general expenses required to carry out other responsibilities of a State or its subrecipients.

4. Inquiries.

All inquiries from Federal agencies concerning the cost principles contained in this Appendix to 2 CFR part 220, including the administration and implementation of the Cost Accounting Standards (CAS) (described in Sections C.10 through C.13) and disclosure statement (DS–2) requirements, shall be addressed by the Office of Management and Budget (OMB), Office of Federal Financial Management, in coordination with the Cost Accounting Standard Board (CASB) with respect to inquiries concerning CAS. Educational institutions' inquiries should be addressed to the cognizant agency.

B. Definition of Terms

1. Major functions of an institution refers to instruction, organized research, other sponsored activities and other institutional activities as defined below:

a. Instruction means the teaching and training activities of an institution. Except for research training as provided in subsection b, this term includes all teaching and training activities, whether they are offered for credits toward a degree or certificate or on a non-credit basis, and whether they are offered through regular academic departments or separate divisions, such as a summer school division or an extension division. Also considered part of this major function are departmental research, and, where agreed to, university research.

(1) Sponsored instruction and training means specific instructional or training activity established by grant, contract, or cooperative agreement. For purposes of the cost principles, this activity may be considered a major function even though an institution's accounting treatment may include it in the instruction function.

(2) Departmental research means research, development and scholarly activities that are not organized research and, consequently, are not separately budgeted and accounted for. Departmental research, for purposes of this document, is not considered as a major function, but as a part of the instruction function of the institution.

b. Organized research means all research and development activities of an institution that are separately budgeted and accounted for. It includes:

(1) Sponsored research means all research and development activities that are sponsored by Federal and non-Federal agencies and organizations. This term includes activities involving the training of individuals in research techniques (commonly called research training) where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.

(2) University research means all research and development activities that are separately budgeted and accounted for by the institution under an internal application of institutional funds. University research, for purposes of this document, shall be combined with sponsored research under the function of organized research.

c. Other sponsored activities means programs and projects financed by Federal and non-Federal agencies and organizations which involve the performance of work other than instruction and organized research. Examples of such programs and projects are health service projects, and community service programs. However, when any of these activities are undertaken by the institution without outside support, they may be classified as other institutional activities.

d. Other institutional activities means all activities of an institution except:

(1) Instruction, departmental research, organized research, and other sponsored activities, as defined above;

(2) F&A cost activities identified in Section F of this Appendix; and

(3) Specialized service facilities described in Section J.47 of this Appendix. Other institutional activities include operation of residence halls, dining halls, hospitals and clinics, student unions, intercollegiate athletics, bookstores, faculty housing, student apartments, guest houses, chapels, theaters, public museums, and other similar auxiliary enterprises. This definition also includes any other categories of activities, costs of which are "unallowable" to sponsored agreements, unless otherwise indicated in the agreements.

2. Sponsored agreement, for purposes of this Appendix, means any grant, contract, or other agreement between the institution and the Federal Government.

3. Allocation means the process of assigning a cost, or a group of costs, to one or more cost objective, in reasonable and realistic proportion to the benefit provided or other equitable relationship. A cost objective may be a major function of the institution, a particular service or project, a sponsored agreement, or an F&A cost activity, as described in Section F of this Appendix. The process may entail assigning a cost(s) directly to a final cost objective or through one or more intermediate cost objectives.

4. Facilities and administrative (F&A) costs, for the purpose of this Appendix, means costs that are incurred for common or joint objectives and, therefore, cannot be identified readily and specifically with a particular sponsored project, an instructional activity, or any other institutional activity. F&A costs are synonymous with "indirect" costs, as previously used in this Appendix and as currently used in attachments A and B to this Appendix. The F&A cost categories are described in Section F.1 of this Appendix.

C. Basic Considerations

1. Composition of total costs. The cost of a sponsored agreement is comprised of the allowable direct costs incident to its performance, plus the allocable portion of the allowable F&A costs of the institution, less applicable credits as described in subsection C.5 of this Appendix.

2. Factors affecting allowability of costs. The tests of allowability of costs under these principles are: they must be reasonable; they must be allocable to sponsored agreements under the principles and methods provided herein; they must be given consistent treatment through application of those generally accepted accounting principles

appropriate to the circumstances; and they must conform to any limitations or exclusions set forth in these principles or in the sponsored agreement as to types or amounts of cost items.

3. Reasonable costs. A cost may be considered reasonable if the nature of the goods or services acquired or applied, and the amount involved therefore, reflect the action that a prudent person would have taken under the circumstances prevailing at the time the decision to incur the cost was made. Major considerations involved in the determination of the reasonableness of a cost are: whether or not the cost is of a type generally recognized as necessary for the operation of the institution or the performance of the sponsored agreement; the restraints or requirements imposed by such factors as arm's-length bargaining, Federal and State laws and regulations, and sponsored agreement terms and conditions; whether or not the individuals concerned acted with due prudence in the circumstances, considering their responsibilities to the institution, its employees, its students, the Federal Government, and the public at large; and, the extent to which the actions taken with respect to the incurrence of the cost are consistent with established institutional policies and practices applicable to the work of the institution generally, including sponsored agreements.

4. Allocable costs.

a. A cost is allocable to a particular cost objective (*i.e.*, a specific function, project, sponsored agreement, department, or the like) if the goods or services involved are chargeable or assignable to such cost objective in accordance with relative benefits received or other equitable relationship. Subject to the foregoing, a cost is allocable to a sponsored agreement if it is incurred solely to advance the work under the sponsored agreement; it benefits both the sponsored agreement and other work of the institution, in proportions that can be approximated through use of reasonable methods, or it is necessary to the overall operation of the institution and, in light of the principles provided in this Appendix, is deemed to be assignable in part to sponsored projects. Where the purchase of equipment or other capital items is specifically authorized under a sponsored agreement, the amounts thus authorized for such purchases are assignable to the sponsored agreement regardless of the use that may subsequently be made of the equipment or other capital items involved.

b. Any costs allocable to a particular sponsored agreement under the standards provided in this Appendix may not be shifted to other sponsored agreements in order to meet deficiencies caused by overruns or other fund considerations, to avoid restrictions imposed by law or by terms of the sponsored agreement, or for other reasons of convenience.

c. Any costs allocable to activities sponsored by industry, foreign governments or other sponsors may not be shifted to federally-sponsored agreements.

d. Allocation and documentation standard.

(1) Cost principles. The recipient institution is responsible for ensuring that costs charged to a sponsored agreement are allowable, allocable, and reasonable under these cost principles.

(2) Internal controls. The institution's financial management system shall ensure that no one person has complete control over all aspects of a financial transaction.

(3) Direct cost allocation principles. If a cost benefits two or more projects or activities in proportions that can be determined without undue effort or cost, the cost should be allocated to the projects based on the proportional benefit. If a cost benefits two or more projects or activities in proportions that cannot be determined because of the interrelationship of the work involved, then, notwithstanding subsection b, the costs may be allocated or transferred to benefited projects on any reasonable basis, consistent with subsections C.4.d. (1) and (2) of this Appendix.

(4) Documentation. Federal requirements for documentation are specified in this Appendix, 2 CFR Part 215, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," and specific agency policies on cost transfers. If the institution authorizes the principal investigator or other individual to have primary responsibility, given the requirements of subsection C.4.d. (2) of this Appendix, for the management of sponsored agreement funds, then the institution's documentation requirements for the actions of those individuals (*e.g.*, signature or initials of the principal investigator or designee or use of a password) will normally be considered sufficient.

5. Applicable credits.

a. The term "applicable credits" refers to those receipts or negative expenditures that operate to offset or reduce direct or F&A cost items. Typical examples of such transactions are: purchase discounts, rebates, or allowances; recoveries or indemnities on losses; and adjustments of overpayments or erroneous charges. This term also includes "educational discounts" on products or services provided specifically to educational institutions, such as discounts on computer equipment, except where the arrangement is clearly and explicitly identified as a gift by the vendor.

b. In some instances, the amounts received from the Federal Government to finance institutional activities or service operations should be treated as applicable credits. Specifically, the concept of netting such credit items against related expenditures should be applied by the institution in determining the rates or amounts to be charged to sponsored agreements for services rendered whenever the facilities or other resources used in providing such services have been financed directly, in whole or in part, by Federal funds. (See Sections F.10, J.14, and J.47 of this Appendix for areas of potential application in the matter of direct Federal financing.)

6. Costs incurred by State and local governments. Costs incurred or paid by State or local governments on behalf of their colleges and universities for fringe benefit programs, such as pension costs and FICA and any other costs specifically incurred on behalf of, and in direct benefit to, the institutions, are allowable costs of such institutions whether or not these costs are recorded in the accounting records of the institutions, subject to the following:

a. The costs meet the requirements of subsections C.1 through 5 of this Appendix.

b. The costs are properly supported by cost allocation plans in accordance with applicable Federal cost accounting principles.

c. The costs are not otherwise borne directly or indirectly by the Federal Government.

7. Limitations on allowance of costs. Sponsored agreements may be subject to statutory requirements that limit the allowance of costs. When the maximum amount allowable under a limitation is less than the total amount determined in accordance with the principles in this Appendix, the amount not recoverable under a sponsored agreement may not be charged to other sponsored agreements.

8. Collection of unallowable costs, excess costs due to noncompliance with cost policies, increased costs due to failure to follow a disclosed accounting practice and increased costs resulting from a change in cost accounting practice. The following costs shall be refunded (including interest) in accordance with applicable Federal agency regulations:

a. Costs specifically identified as unallowable in Section J of this Appendix, either directly or indirectly, and charged to the Federal Government.

b. Excess costs due to failure by the educational institution to comply with the cost policies in this Appendix.

c. Increased costs due to a noncompliant cost accounting practice used to estimate, accumulate, or report costs.

d. Increased costs resulting from a change in accounting practice.

9. Adjustment of previously negotiated F&A cost rates containing unallowable costs. Negotiated F&A cost rates based on a proposal later found to have included costs that are unallowable as specified by law or regulation, Section J of this Appendix, terms and conditions of sponsored agreements, or, are unallowable because they are clearly not allocable to sponsored agreements, shall be adjusted, or a refund shall be made, in accordance with the requirements of this section. These adjustments or refunds are designed to correct the proposals used to establish the rates and do not constitute a reopening of the rate negotiation. The adjustments or refunds will be made regardless of the type of rate negotiated (predetermined, final, fixed, or provisional).

a. For rates covering a future fiscal year of the institution, the unallowable costs will be removed from the F&A cost pools and the rates appropriately adjusted.

b. For rates covering a past period, the Federal share of the unallowable costs will be computed for each year involved and a cash refund (including interest chargeable in accordance with applicable regulations) will be made to the Federal Government. If cash refunds are made for past periods covered by provisional or fixed rates, appropriate adjustments will be made when the rates are

finalized to avoid duplicate recovery of the unallowable costs by the Federal Government.

c. For rates covering the current period, either a rate adjustment or a refund, as described in subsections a and b, shall be required by the cognizant agency. The choice of method shall be at the discretion of the cognizant agency, based on its judgment as to which method would be most practical.

d. The amount or proportion of unallowable costs included in each year's rate will be assumed to be the same as the amount or proportion of unallowable costs included in the base year proposal used to establish the rate.

10. Consistency in estimating, accumulating and reporting costs.

a. An educational institution's practices used in estimating costs in pricing a proposal shall be consistent with the educational institution's cost accounting practices used in accumulating and reporting costs.

b. An educational institution's cost accounting practices used in accumulating and reporting actual costs for a sponsored agreement shall be consistent with the educational institution's practices used in estimating costs in pricing the related proposal or application.

c. The grouping of homogeneous costs in estimates prepared for proposal purposes shall not per se be deemed an inconsistent application of cost accounting practices under subsection a when such costs are accumulated and reported in greater detail on an actual cost basis during performance of the sponsored agreement.

d. Attachment A to this Appendix also reflects this requirement, along with the purpose, definitions, and techniques for application, all of which are authoritative.

11. Consistency in allocating costs incurred for the same purpose.

a. All costs incurred for the same purpose, in like circumstances, are either direct costs only or F&A costs only with respect to final cost objectives. No final cost objective shall have allocated to it as a cost any cost, if other costs incurred for the same purpose, in like circumstances, have been included as a direct cost of that or any other final cost objective. Further, no final cost objective shall have allocated to it as a direct cost any cost, if other costs incurred for the same purpose, in like circumstances, have been included in any F&A cost pool to be allocated to that or any other final cost objective.

b. Attachment A to this Appendix reflects this requirement along with its purpose, definitions, and techniques for application, illustrations and interpretations, all of which are authoritative.

12. Accounting for unallowable costs.

a. Costs expressly unallowable or mutually agreed to be unallowable, including costs mutually agreed to be unallowable directly associated costs, shall be identified and excluded from any billing, claim, application, or proposal applicable to a sponsored agreement.

b. Costs which specifically become designated as unallowable as a result of a written decision furnished by a Federal official pursuant to sponsored agreement disputes procedures shall be identified if included in or used in the computation of any billing, claim, or proposal applicable to a sponsored agreement. This identification requirement applies also to any costs incurred for the same purpose under like circumstances as the costs specifically identified as unallowable under either this subsection or subsection a.

c. Costs which, in a Federal official's written decision furnished pursuant to sponsored agreement disputes procedures, are designated as unallowable directly associated costs of unallowable costs covered by either subsection a or b shall be accorded the identification required by subsection b.

d. The costs of any work project not contractually authorized by a sponsored agreement, whether or not related to performance of a proposed or existing sponsored agreement, shall be accounted for, to the extent appropriate, in a manner which permits ready separation from the costs of authorized work projects.

e. All unallowable costs covered by subsections a through d shall be subject to the same cost accounting principles governing cost allocability as allowable costs. In circumstances where these unallowable costs normally would be part of a regular F&A cost allocation base or bases, they shall remain in such base or bases. Where a directly associated cost is part of a category of costs normally included in a F&A cost pool that shall be allocated over a base containing the unallowable cost with which it is associated, such a directly associated cost shall be retained in the F&A cost pool and be allocated through the regular allocation process.

f. Where the total of the allocable and otherwise allowable costs exceeds a limitation-of-cost or ceiling-price provision in a sponsored agreement, full direct and F&A cost allocation shall be made to the sponsored agreement cost objective, in accordance with established cost accounting practices and standards which regularly govern a given entity's allocations to sponsored agreement cost objectives. In any determination of a cost overrun, the amount thereof shall be identified in terms of the excess of allowable costs over the ceiling amount, rather than through specific identification of particular cost items or cost elements.

g. Attachment A reflects this requirement, along with its purpose, definitions, techniques for application, and illustrations of this standard, all of which are authoritative.

13. Cost accounting period.

a. Educational institutions shall use their fiscal year as their cost accounting period, except that:

(1) Costs of a F&A function which exists for only a part of a cost accounting period may be allocated to cost objectives of that same part of the period on the basis of data for that part of the cost accounting period if the cost is material in amount, accumulated in a separate F&A cost pool or expense pool, and allocated on the basis of an appropriate direct measure of the activity or output of the function during that part of the period.

(2) An annual period other than the fiscal year may, upon mutual agreement with the Federal Government, be used as the cost accounting period if the use of such period is an established practice of the educational institution and is consistently used for managing and controlling revenues and disbursements, and appropriate accruals, deferrals or other adjustments are made with respect to such annual periods.

(3) A transitional cost accounting period other than a year shall be used whenever a change of fiscal year occurs.

b. An educational institution shall follow consistent practices in the selection of the cost accounting period or periods in which any types of expense and any types of adjustment to expense (including prior-period adjustments) are accumulated and allocated.

c. The same cost accounting period shall be used for accumulating costs in a F&A cost pool as for establishing its allocation base, except that the Federal Government and educational institution may agree to use a different period for establishing an allocation base, provided:

(1) The practice is necessary to obtain significant administrative convenience,

(2) The practice is consistently followed by the educational institution,

(3) The annual period used is representative of the activity of the cost accounting period for which the F&A costs to be allocated are accumulated, and

(4) The practice can reasonably be estimated to provide a distribution to cost objectives of the cost accounting period not materially different from that which otherwise would be obtained.

d. Attachment A reflects this requirement, along with its purpose, definitions, techniques for application and illustrations, all of which are authoritative.

14. Disclosure Statement.

a. Educational institutions that received aggregate sponsored agreements totaling $25 million or more subject to this Appendix during their most recently completed fiscal year shall disclose their cost accounting practices by filing a Disclosure Statement (DS–2), which is reproduced in Attachment B to this Appendix. With the approval of the cognizant agency, an educational institution may meet the DS–2 submission by submitting the DS–2 for each business unit that received $25 million or more in sponsored agreements.

b. The DS–2 shall be submitted to the cognizant agency with a copy to the educational institution's audit cognizant office.

c. Educational institutions receiving $25 million or more in sponsored agreements that are not required to file a DS–2 pursuant to 48 CFR 9903.202–1 shall file a DS–2 covering the first fiscal year beginning after the publication date of this revision, within six months after the end of that fiscal year. Extensions beyond the above due date may be granted by the cognizant agency on a case-by-case basis.

d. Educational institutions are responsible for maintaining an accurate DS–2 and complying with disclosed cost accounting practices. Educational institutions must file amendments to the DS–2 when disclosed practices are changed to comply with a new

or modified standard, or when practices are changed for other reasons. Amendments of a DS–2 may be submitted at any time. If the change is expected to have a material impact on the educational institution's negotiated F&A cost rates, the revision shall be approved by the cognizant agency before it is implemented. Resubmission of a complete, updated DS–2 is discouraged except when there are extensive changes to disclosed practices.

e. Cost and funding adjustments. Cost adjustments shall be made by the cognizant agency if an educational institution fails to comply with the cost policies in this Appendix or fails to consistently follow its established or disclosed cost accounting practices when estimating, accumulating or reporting the costs of sponsored agreements, if aggregate cost impact on sponsored agreements is material. The cost adjustment shall normally be made on an aggregate basis for all affected sponsored agreements through an adjustment of the educational institution's future F&A costs rates or other means considered appropriate by the cognizant agency. Under the terms of CAS-covered contracts, adjustments in the amount of funding provided may also be required when the estimated proposal costs were not determined in accordance with established cost accounting practices.

f. Overpayments. Excess amounts paid in the aggregate by the Federal Government under sponsored agreements due to a noncompliant cost accounting practice used to estimate, accumulate, or report costs shall be credited or refunded, as deemed appropriate by the cognizant agency. Interest applicable to the excess amounts paid in the aggregate during the period of noncompliance shall also be determined and collected in accordance with applicable Federal agency regulations.

g. Compliant cost accounting practice changes. Changes from one compliant cost accounting practice to another compliant practice that are approved by the cognizant agency may require cost adjustments if the change has a material effect on sponsored agreements and the changes are deemed appropriate by the cognizant agency.

h. Responsibilities. The cognizant agency shall:

(1) Determine cost adjustments for all sponsored agreements in the aggregate on behalf of the Federal Government. Actions of the cognizant agency official in making cost adjustment determinations shall be coordinated with all affected Federal agencies to the extent necessary.

(2) Prescribe guidelines and establish internal procedures to promptly determine on behalf of the Federal Government that a DS–2 adequately discloses the educational institution's cost accounting practices and that the disclosed practices are compliant with applicable CAS and the requirements of Attachment A to this Appendix.

(3) Distribute to all affected agencies any DS–2 determination of adequacy and/or noncompliance.

D. Direct Costs

1. General. Direct costs are those costs that can be identified specifically with a particular sponsored project, an instructional activity, or any other institutional activity, or that can be directly assigned to such activities relatively easily with a high degree of accuracy. Costs incurred for the same purpose in like circumstances must be treated consistently as either direct or F&A costs. Where an institution treats a particular type of cost as a direct cost of sponsored agreements, all costs incurred for the same purpose in like circumstances shall be treated as direct costs of all activities of the institution.

2. Application to sponsored agreements. Identification with the sponsored work rather than the nature of the goods and services involved is the determining factor in distinguishing direct from F&A costs of sponsored agreements. Typical costs charged directly to a sponsored agreement are the compensation of employees for performance of work under the sponsored agreement, including related fringe benefit costs to the extent they are consistently treated, in like circumstances, by the institution as direct rather than F&A costs; the costs of materials consumed or expended in the performance of the work; and other items of expense incurred for the sponsored agreement, including extraordinary utility consumption. The cost of materials supplied from stock or services rendered by specialized facilities or other institutional service operations may be included as direct costs of sponsored agreements, provided such items are consistently treated, in like circumstances, by the institution as direct rather than F&A costs, and are charged under a recognized method of computing actual costs, and conform to generally accepted cost accounting practices consistently followed by the institution.

E. F&A Costs

1. General. F&A costs are those that are incurred for common or joint objectives and therefore cannot be identified readily and specifically with a particular sponsored project, an instructional activity, or any other institutional activity. See Section F.1 of this Appendix for a discussion of the components of F&A costs.

2. Criteria for distribution.

a. Base period. A base period for distribution of F&A costs is the period during which the costs are incurred. The base period normally should coincide with the fiscal year established by the institution, but in any event the base period should be so selected as to avoid inequities in the distribution of costs.

b. Need for cost groupings. The overall objective of the F&A cost allocation process is to distribute the F&A costs described in Section F of this Appendix to the major functions of the institution in proportions reasonably consistent with the nature and extent of their use of the institution's resources. In order to achieve this objective, it may be necessary to provide for selective distribution by establishing separate groupings of cost within one or more of the F&A cost categories referred to in subsection E.1 of this Appendix. In general, the cost groupings established within a category should constitute, in each case, a pool of those items of expense that are considered to be of like nature in terms of their relative contribution to (or degree of remoteness from) the particular cost objectives to which distribution is appropriate. Cost groupings should be established considering the general guides provided in subsection E.2.c. of this Appendix. Each such pool or cost grouping should then be distributed individually to the related cost objectives, using the distribution base or method most appropriate in the light of the guides set forth in subsection E.2.d. of this Appendix.

c. General considerations on cost groupings. The extent to which separate cost groupings and selective distribution would be appropriate at an institution is a matter of judgment to be determined on a case-by-case basis. Typical situations which may warrant the establishment of two or more separate cost groupings (based on account classification or analysis) within an F&A cost category include but are not limited to the following:

(1) Where certain items or categories of expense relate solely to one of the major functions of the institution or to less than all functions, such expenses should be set aside as a separate cost grouping for direct assignment or selective allocation in accordance with the guides provided in subsections b and d.

(2) Where any types of expense ordinarily treated as general administration or departmental administration are charged to sponsored agreements as direct costs, expenses applicable to other activities of the institution when incurred for the same purposes in like circumstances must, through separate cost groupings, be excluded from the F&A costs allocable to those sponsored agreements and included in the direct cost of other activities for cost allocation purposes.

(3) Where it is determined that certain expenses are for the support of a service unit or facility whose output is susceptible of measurement on a workload or other quantitative basis, such expenses should be set aside as a separate cost grouping for distribution on such basis to organized research, instructional, and other activities at the institution or within the department.

(4) Where activities provide their own purchasing, personnel administration, building maintenance or similar service, the distribution of general administration and general expenses, or operation and maintenance expenses to such activities should be accomplished through cost groupings which include only that portion of central F&A costs (such as for overall management) which are properly allocable to such activities.

(5) Where the institution elects to treat fringe benefits as F&A charges, such costs should be set aside as a separate cost grouping for selective distribution to related cost objectives.

(6) The number of separate cost groupings within a category should be held within practical limits, after taking into consideration the materiality of the amounts involved and the degree of precision attainable through less selective methods of distribution.

d. Selection of distribution method.

(1) Actual conditions must be taken into account in selecting the method or base to be used in distributing individual cost groupings. The essential consideration in selecting a base is that it be the one best suited for assigning the pool of costs to cost objectives in accordance with benefits derived; a traceable cause and effect relationship; or logic and reason, where neither benefit nor cause and effect relationship is determinable.

(2) Where a cost grouping can be identified directly with the cost objective benefited, it should be assigned to that cost objective.

(3) Where the expenses in a cost grouping are more general in nature, the distribution may be based on a cost analysis study which results in an equitable distribution of the costs. Such cost analysis studies may take into consideration weighting factors, population, or space occupied if appropriate. Cost analysis studies, however, must be appropriately documented in sufficient detail for subsequent review by the cognizant Federal agency, distribute the costs to the related cost objectives in accordance with the relative benefits derived, be statistically sound, be performed specifically at the institution at which the results are to be used, and be reviewed periodically, but not less frequently than every two years, updated if necessary, and used consistently. Any assumptions made in the study must be stated and explained. The use of cost analysis studies and periodic changes in the method of cost distribution must be fully justified.

(4) If a cost analysis study is not performed, or if the study does not result in an equitable distribution of the costs, the distribution shall be made in accordance with the appropriate base cited in Section F, unless one of the following conditions is met: it can be demonstrated that the use of a different base would result in a more equitable allocation of the costs, or that a more readily available base would not increase the costs charged to sponsored agreements, or the institution qualifies for, and elects to use, the simplified method for computing F&A cost rates described in Section H of this Appendix.

(5) Notwithstanding subsection E.2.d.(3) of this Appendix, effective July 1, 1998, a cost analysis or base other than that in Section F of this Appendix shall not be used to distribute utility or student services costs. Instead, subsections F.4.c and F.4.d may be used in the recovery of utility costs.

e. Order of distribution.

(1) F&A costs are the broad categories of costs discussed in Section F.1 of this Appendix.

(2) Depreciation and use allowances, operation and maintenance expenses, and general administrative and general expenses should be allocated in that order to the remaining F&A cost categories as well as to the major functions and specialized service facilities of the institution. Other cost categories may be allocated in the order determined to be most appropriate by the institutions. When cross allocation of costs is made as provided in subsection (3), this order of allocation does not apply.

(3) Normally an F&A cost category will be considered closed once it has been allocated to other cost objectives, and costs may not be subsequently allocated to it. However, a cross allocation of costs between two or more F&A cost categories may be used if such allocation will result in a more equitable allocation of costs. If a cross allocation is used, an appropriate modification to the composition of the F&A cost categories described in Section F of this Appendix is required.

F. Identification and Assignment of F&A Costs

1. Definition of Facilities and Administration. F&A costs are broad categories of costs. "Facilities" is defined as depreciation and use allowances, interest on debt associated with certain buildings, equipment and capital improvements, operation and maintenance expenses, and library expenses. "Administration" is defined as general administration and general expenses, departmental administration, sponsored projects administration, student administration and services, and all other types of expenditures not listed specifically under one of the subcategories of Facilities (including cross allocations from other pools).

2. Depreciation and use allowances.

a. The expenses under this heading are the portion of the costs of the institution's buildings, capital improvements to land and buildings, and equipment which are computed in accordance with Section J.14 of this Appendix.

b. In the absence of the alternatives provided for in Section E.2.d of this Appendix, the expenses included in this category shall be allocated in the following manner:

(1) Depreciation or use allowances on buildings used exclusively in the conduct of a single function, and on capital improvements and equipment used in such buildings, shall be assigned to that function.

(2) Depreciation or use allowances on buildings used for more than one function, and on capital improvements and equipment used in such buildings, shall be allocated to the individual functions performed in each building on the basis of usable square feet of space, excluding common areas such as hallways, stairwells, and rest rooms.

(3) Depreciation or use allowances on buildings, capital improvements and equipment related to space (*e.g.*, individual rooms, laboratories) used jointly by more than one function (as determined by the users of the space) shall be treated as follows. The cost of each jointly used unit of space shall be allocated to benefiting functions on the basis of:

(a) The employee full-time equivalents (FTEs) or salaries and wages of those individual functions benefiting from the use of that space; or

(b) Institution-wide employee FTEs or salaries and wages applicable to the benefiting major functions (see Section B.1 of this Appendix) of the institution.

(4) Depreciation or use allowances on certain capital improvements to land, such as paved parking areas, fences, sidewalks, and the like, not included in the cost of buildings, shall be allocated to user categories of students and employees on a full-time equivalent basis. The amount allocated to the student category shall be assigned to the instruction function of the institution. The amount allocated to the employee category shall be further allocated to the major functions of the institution in proportion to the salaries and wages of all employees applicable to those functions.

c. Large research facilities. The following provisions apply to large research facilities that are included in F&A rate proposals negotiated after January 1, 2000, and on which the design and construction begin after July 1, 1998. Large facilities, for this provision, are defined as buildings with construction costs of more than $10 million. The determination of the Federal participation (use) percentage in a building is based on institution's estimates of building use over its life, and is made during the planning phase for the building.

(1) When an institution has large research facilities, of which 40 percent or more of total assignable space is expected for Federal use, the institution must maintain an adequate review and approval process to ensure that construction costs are reasonable.

(a)The review process shall address and document relevant factors affecting construction costs, such as:

i. Life cycle costs
ii. Unique research needs
iii. Special building needs
iv. Building site preparation
v. Environmental consideration
vi. Federal construction code requirements
vii. Competitive procurement practices

(b) The approval process shall include review and approval of the projects by the institution's Board of Trustees (which can also be called Board of Directors, Governors or Regents) or other independent entities.

(2) For research facilities costing more than $25 million, of which 50 percent or more of total assignable space is expected for Federal use, the institution must document the review steps performed to assure that construction costs are reasonable. The review should include an analysis of construction costs and a comparison of these costs with relevant construction data, including the National Science Foundation data for research facilities based on its biennial survey, "Science and Engineering Facilities at Colleges and Universities." The documentation must be made available for review by Federal negotiators, when requested.

3. Interest. Interest on debt associated with certain buildings, equipment and capital improvements, as defined in Section J.25 of this Appendix, shall be classified as an expenditure under the category Facilities. These costs shall be allocated in the same manner as the depreciation or use allowances on the buildings, equipment and capital improvements to which the interest relates.

4. Operation and maintenance expenses.

a. The expenses under this heading are those that have been incurred for the administration, supervision, operation, maintenance, preservation, and protection of the institution's physical plant. They include expenses normally incurred for such items as janitorial and utility services; repairs and ordinary or normal alterations of buildings,

furniture and equipment; care of grounds; maintenance and operation of buildings and other plant facilities; security; earthquake and disaster preparedness; environmental safety; hazardous waste disposal; property, liability and all other insurance relating to property; space and capital leasing; facility planning and management; and, central receiving. The operation and maintenance expense category should also include its allocable share of fringe benefit costs, depreciation and use allowances, and interest costs.

b. In the absence of the alternatives provided for in Section E.2.d of this Appendix, the expenses included in this category shall be allocated in the same manner as described in subsection E.2.b for depreciation and use allowances.

c. For F&A rates negotiated on or after July 1, 1998, an institution that previously employed a utility special cost study in its most recently negotiated F&A rate proposal in accordance with Section E.2.d of this Appendix, may add a utility cost adjustment (UCA) of 1.3 percentage points to its negotiated overall F&A rate for organized research. Exhibit B to this Appendix displays the list of eligible institutions. The allocation of utility costs to the benefiting functions shall otherwise be made in the same manner as described in subsection F.4.b of this Appendix. Beginning on July 1, 2002, Federal agencies shall reassess periodically the eligibility of institutions to receive the UCA.

d. Beginning on July 1, 2002, Federal agencies may receive applications for utilization of the UCA from institutions not subject to the provisions of subsection F.4.c of this Appendix.

5. General administration and general expenses.

a. The expenses under this heading are those that have been incurred for the general executive and administrative offices of educational institutions and other expense of a general character which do not relate solely to any major function of the institution; *i.e.*, solely to instruction, organized research, other sponsored activities, or other institutional activities. The general administration and general expense category should also include its allocable share of fringe benefit costs, operation and maintenance expense, depreciation and use allowances, and interest costs. Examples of general administration and general expenses include: those expenses incurred by administrative offices that serve the entire university system of which the institution is a part; central offices of the institution such as the President's or Chancellor's office, the offices for institution-wide financial management, business services, budget and planning, personnel management, and safety and risk management; the office of the General Counsel; and, the operations of the central administrative management information systems. General administration and general expenses shall not include expenses incurred within non-university-wide deans' offices, academic departments, organized research units, or similar organizational units. (See subsection F.6. of this Appendix, Departmental administration expenses.)

b. In the absence of the alternatives provided for in Section E.2.d of this Appendix, the expenses included in this category shall be grouped first according to common major functions of the institution to which they render services or provide benefits. The aggregate expenses of each group shall then be allocated to serviced or benefited functions on the modified total cost basis. Modified total costs consist of the same elements as those in Section G.2 of this Appendix. When an activity included in this F&A cost category provides a service or product to another institution or organization, an appropriate adjustment must be made to either the expenses or the basis of allocation or both, to assure a proper allocation of costs.

6. Departmental administration expenses.

a. The expenses under this heading are those that have been incurred for administrative and supporting services that benefit common or joint departmental activities or objectives in academic deans' offices, academic departments and divisions, and organized research units. Organized research units include such units as institutes, study centers, and research centers. Departmental administration expenses are subject to the following limitations.

(1) Academic deans' offices. Salaries and operating expenses are limited to those attributable to administrative functions.

(2) Academic departments:

(a) Salaries and fringe benefits attributable to the administrative work (including bid and proposal preparation) of faculty (including department heads), and other professional personnel conducting research and/or instruction, shall be allowed at a rate of 3.6 percent of modified total direct costs. This category does not include professional business or professional administrative officers. This allowance shall be added to the computation of the F&A cost rate for major functions in Section G of this Appendix; the expenses covered by the allowance shall be excluded from the departmental administration cost pool. No documentation is required to support this allowance.

(b) Other administrative and supporting expenses incurred within academic departments are allowable provided they are treated consistently in like circumstances. This would include expenses such as the salaries of secretarial and clerical staffs, the salaries of administrative officers and assistants, travel, office supplies, stockrooms, and the like.

(3) Other fringe benefit costs applicable to the salaries and wages included in subsections F.6.a.(1) and (2) of this Appendix are allowable, as well as an appropriate share of general administration and general expenses, operation and maintenance expenses, and depreciation and/or use allowances.

(4) Federal agencies may authorize reimbursement of additional costs for department heads and faculty only in exceptional cases where an institution can demonstrate undue hardship or detriment to project performance.

b. The following guidelines apply to the determination of departmental administrative costs as direct or F&A costs.

(1) In developing the departmental administration cost pool, special care should be exercised to ensure that costs incurred for the same purpose in like circumstances are treated consistently as either direct or F&A costs. For example, salaries of technical staff, laboratory supplies (*e.g.*, chemicals), telephone toll charges, animals, animal care costs, computer costs, travel costs, and specialized shop costs shall be treated as direct cost wherever identifiable to a particular cost objective. Direct charging of these costs may be accomplished through specific identification of individual costs to benefiting cost objectives, or through recharge centers or specialized service facilities, as appropriate under the circumstances.

(2) The salaries of administrative and clerical staff should normally be treated as F&A costs. Direct charging of these costs may be appropriate where a major project or activity explicitly budgets for administrative or clerical services and individuals involved can be specifically identified with the project or activity. "Major project" is defined as a project that requires an extensive amount of administrative or clerical support, which is significantly greater than the routine level of such services provided by academic departments. Some examples of major projects are described in Exhibit C to this Appendix.

(3) Items such as office supplies, postage, local telephone costs, and memberships shall normally be treated as F&A costs.

c. In the absence of the alternatives provided for in Section E.2.d of this Appendix, the expenses included in this category shall be allocated as follows:

(1) The administrative expenses of the dean's office of each college and school shall be allocated to the academic departments within that college or school on the modified total cost basis.

(2) The administrative expenses of each academic department, and the department's share of the expenses allocated in subsection F.6.b.(1) of this Appendix shall be allocated to the appropriate functions of the department on the modified total cost basis.

7. Sponsored projects administration.

a. The expenses under this heading are limited to those incurred by a separate organization(s) established primarily to administer sponsored projects, including such functions as grant and contract administration (Federal and non-Federal), special security, purchasing, personnel, administration, and editing and publishing of research and other reports. They include the salaries and expenses of the head of such organization, assistants, and immediate staff, together with the salaries and expenses of personnel engaged in supporting activities maintained by the organization, such as stock rooms, stenographic pools and the like. This category also includes an allocable share of fringe benefit costs, general administration and general expenses, operation and maintenance expenses, depreciation/use allowances. Appropriate adjustments will be made for services provided to other functions or organizations.

b. In the absence of the alternatives provided for in Section E.2.d of this

Appendix, the expenses included in this category shall be allocated to the major functions of the institution under which the sponsored projects are conducted on the basis of the modified total cost of sponsored projects.

c. An appropriate adjustment shall be made to eliminate any duplicate charges to sponsored agreements when this category includes similar or identical activities as those included in the general administration and general expense category or other F&A cost items, such as accounting, procurement, or personnel administration.

8. Library expenses.

a. The expenses under this heading are those that have been incurred for the operation of the library, including the cost of books and library materials purchased for the library, less any items of library income that qualify as applicable credits under Section C.5 of this Appendix. The library expense category should also include the fringe benefits applicable to the salaries and wages included therein, an appropriate share of general administration and general expense, operation and maintenance expense, and depreciation and use allowances. Costs incurred in the purchases of rare books (museum-type books) with no value to sponsored agreements should not be allocated to them.

b. In the absence of the alternatives provided for in Section E.2.d of this Appendix, the expenses included in this category shall be allocated first on the basis of primary categories of users, including students, professional employees, and other users.

(1) The student category shall consist of full-time equivalent students enrolled at the institution, regardless of whether they earn credits toward a degree or certificate.

(2) The professional employee category shall consist of all faculty members and other professional employees of the institution, on a full-time equivalent basis.

(3) The other users category shall consist of all other users of library facilities.

c. Amount allocated in subsection E.8.b of this Appendix shall be assigned further as follows:

(1) The amount in the student category shall be assigned to the instruction function of the institution.

(2) The amount in the professional employee category shall be assigned to the major functions of the institution in proportion to the salaries and wages of all faculty members and other professional employees applicable to those functions.

(3) The amount in the other users category shall be assigned to the other institutional activities function of the institution.

9. Student administration and services.

a. The expenses under this heading are those that have been incurred for the administration of student affairs and for services to students, including expenses of such activities as deans of students, admissions, registrar, counseling and placement services, student advisers, student health and infirmary services, catalogs, and commencements and convocations. The salaries of members of the academic staff whose responsibilities to the institution require administrative work that benefits sponsored projects may also be included to the extent that the portion charged to student administration is determined in accordance with Section J.10 of this Appendix. This expense category also includes the fringe benefit costs applicable to the salaries and wages included therein, an appropriate share of general administration and general expenses, operation and maintenance, and use allowances and/or depreciation.

b. In the absence of the alternatives provided for in Section E.2.d of this Appendix, the expenses in this category shall be allocated to the instruction function, and subsequently to sponsored agreements in that function.

10. Offset for F&A expenses otherwise provided for by the Federal Government.

a. The items to be accumulated under this heading are the reimbursements and other payments from the Federal Government that are made to the institution to support solely, specifically, and directly, in whole or in part, any of the administrative or service activities described in subsections F.2 through 9 of this Appendix.

b. The items in this group shall be treated as a credit to the affected individual F&A cost category before that category is allocated to benefiting functions.

G. Determination and Application of F&A Cost Rate or Rates

1. F&A cost pools.

a. (1) Subject to subsection b, the separate categories of F&A costs allocated to each major function of the institution as prescribed in Section F shall be aggregated and treated as a common pool for that function. The amount in each pool shall be divided by the distribution base described in subsection G.2 of this Appendix to arrive at a single F&A cost rate for each function.

(2) The rate for each function is used to distribute F&A costs to individual sponsored agreements of that function. Since a common pool is established for each major function of the institution, a separate F&A cost rate would be established for each of the major functions described in Section B.1 of this Appendix under which sponsored agreements are carried out.

(3) Each institution's F&A cost rate process must be appropriately designed to ensure that Federal sponsors do not in any way subsidize the F&A costs of other sponsors, specifically activities sponsored by industry and foreign governments. Accordingly, each allocation method used to identify and allocate the F&A cost pools, as described in Sections E.2 and F.2 through F.9 of this Appendix, must contain the full amount of the institution's modified total costs or other appropriate units of measurement used to make the computations. In addition, the final rate distribution base (as defined in subsection G.2 of this Appendix) for each major function (organized research, instruction, etc., as described in Section B.1 of this Appendix) shall contain all the programs or activities that utilize the F&A costs allocated to that major function. At the time a F&A cost proposal is submitted to a cognizant Federal agency, each institution must describe the process it uses to ensure that Federal funds are not used to subsidize industry and foreign government funded programs.

b. In some instances a single rate basis for use across the board on all work within a major function at an institution may not be appropriate. A single rate for research, for example, might not take into account those different environmental factors and other conditions which may affect substantially the F&A costs applicable to a particular segment of research at the institution. A particular segment of research may be that performed under a single sponsored agreement or it may consist of research under a group of sponsored agreements performed in a common environment. The environmental factors are not limited to the physical location of the work. Other important factors are the level of the administrative support required, the nature of the facilities or other resources employed, the scientific disciplines or technical skills involved, the organizational arrangements used, or any combination thereof. Where a particular segment of a sponsored agreement is performed within an environment which appears to generate a significantly different level of F&A costs, provisions should be made for a separate F&A cost pool applicable to such work. The separate F&A cost pool should be developed during the regular course of the rate determination process and the separate F&A cost rate resulting therefrom should be utilized; provided it is determined that such F&A cost rate differs significantly from that which would have been obtained under subsection G.1.a of this Appendix, and the volume of work to which such rate would apply is material in relation to other sponsored agreements at the institution.

2. The distribution basis. F&A costs shall be distributed to applicable sponsored agreements and other benefiting activities within each major function (see Section B.1) on the basis of modified total direct costs, consisting of all salaries and wages, fringe benefits, materials and supplies, services, travel, and subgrants and subcontracts up to the first $25,000 of each subgrant or subcontract (regardless of the period covered by the subgrant or subcontract). Equipment, capital expenditures, charges for patient care and tuition remission, rental costs, scholarships, and fellowships as well as the portion of each subgrant and subcontract in excess of $25,000 shall be excluded from modified total direct costs. Other items may only be excluded where necessary to avoid a serious inequity in the distribution of F&A costs. For this purpose, a F&A cost rate should be determined for each of the separate F&A cost pools developed pursuant to subsection G.1 of this Appendix. The rate in each case should be stated as the percentage that the amount of the particular F&A cost pool is of the modified total direct costs identified with such pool.

3. Negotiated lump sum for F&A costs. A negotiated fixed amount in lieu of F&A costs may be appropriate for self-contained, off-campus, or primarily subcontracted activities where the benefits derived from an institution's F&A services cannot be readily determined. Such negotiated F&A costs will

be treated as an offset before allocation to instruction, organized research, other sponsored activities, and other institutional activities. The base on which such remaining expenses are allocated should be appropriately adjusted.

4. Predetermined rates for F&A costs. Public Law 87–638 (76 Stat. 437) authorizes the use of predetermined rates in determining the "indirect costs" (F&A costs in this Appendix) applicable under research agreements with educational institutions. The stated objectives of the law are to simplify the administration of cost-type research and development contracts (including grants) with educational institutions, to facilitate the preparation of their budgets, and to permit more expeditious closeout of such contracts when the work is completed. In view of the potential advantages offered by this procedure, negotiation of predetermined rates for F&A costs for a period of two to four years should be the norm in those situations where the cost experience and other pertinent facts available are deemed sufficient to enable the parties involved to reach an informed judgment as to the probable level of F&A costs during the ensuing accounting periods.

5. Negotiated fixed rates and carry-forward provisions. When a fixed rate is negotiated in advance for a fiscal year (or other time period), the over- or under-recovery for that year may be included as an adjustment to the F&A cost for the next rate negotiation. When the rate is negotiated before the carry-forward adjustment is determined, the carry-forward amount may be applied to the next subsequent rate negotiation. When such adjustments are to be made, each fixed rate negotiated in advance for a given period will be computed by applying the expected F&A costs allocable to sponsored agreements for the forecast period plus or minus the carry-forward adjustment (over- or under-recovery) from the prior period, to the forecast distribution base. Unrecovered amounts under lump-sum agreements or cost-sharing provisions of prior years shall not be carried forward for consideration in the new rate negotiation. There must, however, be an advance understanding in each case between the institution and the cognizant Federal agency as to whether these differences will be considered in the rate negotiation rather than making the determination after the differences are known. Further, institutions electing to use this carry-forward provision may not subsequently change without prior approval of the cognizant Federal agency. In the event that an institution returns to a postdetermined rate, any over- or under-recovery during the period in which negotiated fixed rates and carry-forward provisions were followed will be included in the subsequent postdetermined rates. Where multiple rates are used, the same procedure will be applicable for determining each rate.

6. Provisional and final rates for F&A costs. Where the cognizant agency determines that cost experience and other pertinent facts do not justify the use of predetermined rates, or a fixed rate with a carry-forward, or if the parties cannot agree on an equitable rate, a provisional rate shall be established. To prevent substantial overpayment or underpayment, the provisional rate may be adjusted by the cognizant agency during the institution's fiscal year. Predetermined or fixed rates may replace provisional rates at any time prior to the close of the institution's fiscal year. If a provisional rate is not replaced by a predetermined or fixed rate prior to the end of the institution's fiscal year, a final rate will be established and upward or downward adjustments will be made based on the actual allowable costs incurred for the period involved.

7. Fixed rates for the life of the sponsored agreement.

a. Federal agencies shall use the negotiated rates for F&A costs in effect at the time of the initial award throughout the life of the sponsored agreement. "Life" for the purpose of this subsection means each competitive segment of a project. A competitive segment is a period of years approved by the Federal funding agency at the time of the award. If negotiated rate agreements do not extend through the life of the sponsored agreement at the time of the initial award, then the negotiated rate for the last year of the sponsored agreement shall be extended through the end of the life of the sponsored agreement. Award levels for sponsored agreements may not be adjusted in future years as a result of changes in negotiated rates.

b. When an educational institution does not have a negotiated rate with the Federal Government at the time of the award (because the educational institution is a new grantee or the parties cannot reach agreement on a rate), the provisional rate used at the time of the award shall be adjusted once a rate is negotiated and approved by the cognizant agency.

8. Limitation on reimbursement of administrative costs.

a. Notwithstanding the provisions of subsection G.1.a of this Appendix, the administrative costs charged to sponsored agreements awarded or amended (including continuation and renewal awards) with effective dates beginning on or after the start of the institution's first fiscal year which begins on or after October 1, 1991, shall be limited to 26% of modified total direct costs (as defined in subsection G.2 of this Appendix) for the total of General Administration and General Expenses, Departmental Administration, Sponsored Projects Administration, and Student Administration and Services (including their allocable share of depreciation and/or use allowances, interest costs, operation and maintenance expenses, and fringe benefits costs, as provided by Sections F.5, F.6, F.7 and F.9 of this Appendix) and all other types of expenditures not listed specifically under one of the subcategories of facilities in Section F of this Appendix.

b. Existing F&A cost rates that affect institutions' fiscal years which begin on or after October 1, 1991, shall be unilaterally amended by the cognizant Federal agency to reflect the cost limitation in subsection G.8.a of this Appendix.

c. Permanent rates established prior to this revision that have been amended in accordance with subsection G.8.b of this Appendix may be renegotiated. However, no such renegotiated rate may exceed the rate which would have been in effect if the agreement had remained in effect; nor may the administrative portion of any renegotiated rate exceed the limitation in subsection a.

d. Institutions should not change their accounting or cost allocation methods which were in effect on May 1, 1991, if the effect is to change the charging of a particular type of cost from F&A to direct, or reclassify costs, or increase allocations, from the administrative pools identified in subsection to the other F&A cost pools or fringe benefits. Cognizant Federal agencies are authorized to permit changes where an institution's charging practices are at variance with acceptable practices followed by a substantial majority of other institutions.

9. Alternative method for administrative costs.

a. Notwithstanding the provisions of subsection 1.a, an institution may elect to claim fixed allowance for the "Administration" portion of F&A costs. The allowance could be either 24% of modified total direct costs or a percentage equal to 95% of the most recently negotiated fixed or predetermined rate for the cost pools included under "Administration" as defined in Section F.1 of this Appendix, whichever is less, provided that no accounting or cost allocation changes with the effects described in subsection G.8.d of this Appendix have occurred. Under this alternative, no cost proposal need be prepared for the "Administration" portion of the F&A cost rate nor is further identification or documentation of these costs required (see subsection G.9.c of this Appendix). Where a negotiated F&A cost agreement includes this alternative, an institution shall make no further charges for the expenditure categories described in Sections F.5, F.6, F.7 and F.9 of this Appendix.

b. In negotiations of rates for subsequent periods, an institution that has elected the option of subsection a may continue to exercise it at the same rate without further identification or documentation of costs, provided that no accounting or cost allocation changes with the effects described in subsection G.8.d of this Appendix have occurred.

c. If an institution elects to accept a threshold rate, it is not required to perform a detailed analysis of its administrative costs. However, in order to compute the facilities components of its F&A cost rate, the institution must reconcile its F&A cost proposal to its financial statements and make appropriate adjustments and reclassifications to identify the costs of each major function as defined in Section B.1 of this Appendix, as well as to identify and allocate the facilities components. Administrative costs that are not identified as such by the institution's accounting system (such as those incurred in academic departments) will be classified as instructional costs for purposes of reconciling F&A cost proposals to financial statements and allocating facilities costs.

10. Individual rate components.

In order to satisfy the requirements of Section J.14 of this Appendix and to provide

mutually agreed upon information for management purposes, each F&A cost rate negotiation or determination shall include development of a rate for each F&A cost pool as well as the overall F&A cost rate.

11. Negotiation and approval of F&A rate.

a. Cognizant agency assignments. "A cognizant agency" means the Federal agency responsible for negotiating and approving F&A rates for an educational institution on behalf of all Federal agencies.

(1) Cost negotiation cognizance is assigned to the Department of Health and Human Services (HHS) or the Department of Defense's Office of Naval Research (DOD), normally depending on which of the two agencies (HHS or DOD) provides more funds to the educational institution for the most recent three years. Information on funding shall be derived from relevant data gathered by the National Science Foundation. In cases where neither HHS nor DOD provides Federal funding to an educational institution, the cognizant agency assignment shall default to HHS. Notwithstanding the method for cognizance determination described above, other arrangements for cognizance of a particular educational institution may also be based in part on the types of research performed at the educational institution and shall be decided based on mutual agreement between HHS and DOD.

(2) Cognizant assignments as of December 31, 1995, shall continue in effect through educational institutions' fiscal years ending during 1997, or the period covered by negotiated agreements in effect on December 31, 1995, whichever is later, except for those educational institutions with cognizant agencies other than HHS or DOD. Cognizance for these educational institutions shall transfer to HHS or DOD at the end of the period covered by the current negotiated rate agreement. After cognizance is established, it shall continue for a five-year period.

b. Acceptance of rates. The negotiated rates shall be accepted by all Federal agencies. Only under special circumstances, when required by law or regulation, may an agency use a rate different from the negotiated rate for a class of sponsored agreements or a single sponsored agreement.

c. Correcting deficiencies. The cognizant agency shall negotiate changes needed to correct systems deficiencies relating to accountability for sponsored agreements. Cognizant agencies shall address the concerns of other affected agencies, as appropriate.

d. Resolving questioned costs. The cognizant agency shall conduct any necessary negotiations with an educational institution regarding amounts questioned by audit that are due the Federal Government related to costs covered by a negotiated agreement.

e. Reimbursement. Reimbursement to cognizant agencies for work performed under Part 220 may be made by reimbursement billing under the Economy Act, 31 U.S.C. 1535.

f. Procedure for establishing facilities and administrative rates. The cognizant agency shall arrange with the educational institution to provide copies of rate proposals to all interested agencies. Agencies wanting such copies should notify the cognizant agency. Rates shall be established by one of the following methods:

(1) Formal negotiation. The cognizant agency is responsible for negotiating and approving rates for an educational institution on behalf of all Federal agencies. Non-cognizant Federal agencies, which award sponsored agreements to an educational institution, shall notify the cognizant agency of specific concerns (*i.e.*, a need to establish special cost rates) that could affect the negotiation process. The cognizant agency shall address the concerns of all interested agencies, as appropriate. A pre-negotiation conference may be scheduled among all interested agencies, if necessary. The cognizant agency shall then arrange a negotiation conference with the educational institution.

(2) Other than formal negotiation. The cognizant agency and educational institution may reach an agreement on rates without a formal negotiation conference; for example, through correspondence or use of the simplified method described in this Appendix.

g. Formalizing determinations and agreements. The cognizant agency shall formalize all determinations or agreements reached with an educational institution and provide copies to other agencies having an interest.

h. Disputes and disagreements. Where the cognizant agency is unable to reach agreement with an educational institution with regard to rates or audit resolution, the appeal system of the cognizant agency shall be followed for resolution of the disagreement.

12. Standard Format for Submission. For facilities and administrative (F&A) rate proposals submitted on or after July 1, 2001, educational institutions shall use the standard format, shown in Attachment C to this Appendix, to submit their F&A rate proposal to the cognizant agency. The cognizant agency may, on an institution-by-institution basis, grant exceptions from all or portions of Part II of the standard format requirement. This requirement does not apply to educational institutions that use the simplified method for calculating F&A rates, as described in Section H of this Appendix.

H. Simplified Method for Small Institutions

1. General.

a. Where the total direct cost of work covered by Part 220 at an institution does not exceed $10 million in a fiscal year, the use of the simplified procedure described in subsections H.2 or 3 of this Appendix, may be used in determining allowable F&A costs. Under this simplified procedure, the institution's most recent annual financial report and immediately available supporting information shall be utilized as basis for determining the F&A cost rate applicable to all sponsored agreements. The institution may use either the salaries and wages (see subsection H.2 of this Appendix) or modified total direct costs (see subsection H.3 of this Appendix) as distribution basis.

b. The simplified procedure should not be used where it produces results that appear inequitable to the Federal Government or the institution. In any such case, F&A costs should be determined through use of the regular procedure.

2. Simplified procedure—Salaries and wages base.

a. Establish the total amount of salaries and wages paid to all employees of the institution.

b. Establish an F&A cost pool consisting of the expenditures (exclusive of capital items and other costs specifically identified as unallowable) that customarily are classified under the following titles or their equivalents:

(1) General administration and general expenses (exclusive of costs of student administration and services, student activities, student aid, and scholarships). In those cases where expenditures have previously been allocated to other institutional activities, they may be included in the F&A cost pool. The total amount of salaries and wages included in the F&A cost pool must be separately identified.

(2) Operation and maintenance of physical plant; and depreciation and use allowances; after appropriate adjustment for costs applicable to other institutional activities.

(3) Library.

(4) Department administration expenses, which will be computed as 20 percent of the salaries and expenses of deans and heads of departments.

c. Establish a salary and wage distribution base, determined by deducting from the total of salaries and wages as established in subsection a the amount of salaries and wages included under subsection H.2.b of this Appendix.

d. Establish the F&A cost rate, determined by dividing the amount in the F&A cost pool, subsection H.2.b of this Appendix, by the amount of the distribution base, subsection H.2.c of this Appendix.

e. Apply the F&A cost rate to direct salaries and wages for individual agreements to determine the amount of F&A costs allocable to such agreements.

3. Simplified procedure—Modified total direct cost base.

a. Establish the total costs incurred by the institution for the base period.

b. Establish a F&A cost pool consisting of the expenditures (exclusive of capital items and other costs specifically identified as unallowable) that customarily are classified under the following titles or their equivalents:

(1) General administration and general expenses (exclusive of costs of student administration and services, student activities, student aid, and scholarships). In those cases where expenditures have previously been allocated to other institutional activities, they may be included in the F&A cost pool. The modified total direct costs amount included in the F&A cost pool must be separately identified.

(2) Operation and maintenance of physical plant; and depreciation and use allowances; after appropriate adjustment for costs applicable to other institutional activities.

(3) Library.

(4) Department administration expenses, which will be computed as 20 percent of the salaries and expenses of deans and heads of departments.

c. Establish a modified total direct cost distribution base, as defined in Section G.2 of this Appendix, that consists of all institution's direct functions.

d. Establish the F&A cost rate, determined by dividing the amount in the F&A cost pool, subsection b, by the amount of the distribution base, subsection c.

e. Apply the F&A cost rate to the modified total direct costs for individual agreements to determine the amount of F&A costs allocable to such agreements.

I. Reserved

J. General Provisions for Selected Items of Cost

Sections J.1 through 54 of this Appendix provide principles to be applied in establishing the allowability of certain items involved in determining cost. These principles should apply irrespective of whether a particular item of cost is properly treated as direct cost or F&A cost. Failure to mention a particular item of cost is not intended to imply that it is either allowable or unallowable; rather, determination as to allowability in each case should be based on the treatment provided for similar or related items of cost. In case of a discrepancy between the provisions of a specific sponsored agreement and the provisions below, the agreement should govern.

1. Advertising and public relations costs.

a. The term advertising costs means the costs of advertising media and corollary administrative costs. Advertising media include magazines, newspapers, radio and television, direct mail, exhibits, electronic or computer transmittals, and the like.

b. The term public relations includes community relations and means those activities dedicated to maintaining the image of the institution or maintaining or promoting understanding and favorable relations with the community or public at large or any segment of the public.

c. The only allowable advertising costs are those that are solely for:

(1) The recruitment of personnel required for the performance by the institution of obligations arising under a sponsored agreement (See also section J.42.b of this Appendix, Recruiting);

(2) The procurement of goods and services for the performance of a sponsored agreement;

(3) The disposal of scrap or surplus materials acquired in the performance of a sponsored agreement except when non-Federal entities are reimbursed for disposal costs at a predetermined amount; or

(4) Other specific purposes necessary to meet the requirements of the sponsored agreement.

d. The only allowable public relations costs are:

(1) Costs specifically required by the sponsored agreement;

(2) Costs of communicating with the public and press pertaining to specific activities or accomplishments which result from performance of sponsored agreements (these costs are considered necessary as part of the outreach effort for the sponsored agreement); or

(3) Costs of conducting general liaison with news media and government public relations officers, to the extent that such activities are limited to communication and liaison necessary keep the public informed on matters of public concern, such as notices of Federal contract/grant awards, financial matters, etc.

e. Costs identified in subsections c and d if incurred for more than one sponsored agreement or for both sponsored work and other work of the institution, are allowable to the extent that the principles in sections D. ("Direct Costs") and E. ("F & A Costs") of this Appendix are observed.

f. Unallowable advertising and public relations costs include the following:

(1) All advertising and public relations costs other than as specified in subsections J.1.c, 1.d and 1.e of this Appendix.

(2) Costs of meetings, conventions, convocations, or other events related to other activities of the institution, including:

(a) Costs of displays, demonstrations, and exhibits;

(b) Costs of meeting rooms, hospitality suites, and other special facilities used in conjunction with shows and other special events; and

(c) Salaries and wages of employees engaged in setting up and displaying exhibits, making demonstrations, and providing briefings;

(3) Costs of promotional items and memorabilia, including models, gifts, and souvenirs;

(4) Costs of advertising and public relations designed solely to promote the institution.

2. Advisory councils.

Costs incurred by advisory councils or committees are allowable as a direct cost where authorized by the Federal awarding agency or as an indirect cost where allocable to sponsored agreements.

3. Alcoholic beverages.

Costs of alcoholic beverages are unallowable.

4. Alumni/ae activities.

Costs incurred for, or in support of, alumni/ae activities and similar services are unallowable.

5. Audit costs and related services.

a. The costs of audits required by, and performed in accordance with, the Single Audit Act, as implemented by Circular A–133, "Audits of States, Local Governments, and Non-Profit Organizations" are allowable. Also see 31 U.S.C. 7505(b) and section __.230 ("Audit Costs") of Circular A–133.

b. Other audit costs are allowable if included in an indirect cost rate proposal, or if specifically approved by the awarding agency as a direct cost to an award.

c. The cost of agreed-upon procedures engagements to monitor subrecipients who are exempted from A–133 under section __.200(d) are allowable, subject to the conditions listed in A–133, section __.230 (b)(2).

6. Bad Debt.

Bad debts, including losses (whether actual or estimated) arising from uncollectable accounts and other claims, related collection costs, and related legal costs, are unallowable.

7. Bonding costs.

a. Bonding costs arise when the Federal Government requires assurance against financial loss to itself or others by reason of the act or default of the institution. They arise also in instances where the institution requires similar assurance. Included are such bonds as bid, performance, payment, advance payment, infringement, and fidelity bonds.

b. Costs of bonding required pursuant to the terms of the award are allowable.

c. Costs of bonding required by the institution in the general conduct of its operations are allowable to the extent that such bonding is in accordance with sound business practice and the rates and premiums are reasonable under the circumstances.

8. Commencement and convocation costs.

Costs incurred for commencements and convocations are unallowable, except as provided for in Section F.9 of this Appendix.

9. Communication costs.

Costs incurred for telephone services, local and long distance telephone calls, telegrams, postage, messenger, electronic or computer transmittal services and the like are allowable.

10. Compensation for personal services.

a. General. Compensation for personal services covers all amounts paid currently or accrued by the institution for services of employees rendered during the period of performance under sponsored agreements. Such amounts include salaries, wages, and fringe benefits (see subsection J.10.f of this Appendix). These costs are allowable to the extent that the total compensation to individual employees conforms to the established policies of the institution, consistently applied, and provided that the charges for work performed directly on sponsored agreements and for other work allocable as F&A costs are determined and supported as provided below. Charges to sponsored agreements may include reasonable amounts for activities contributing and intimately related to work under the agreements, such as delivering special lectures about specific aspects of the ongoing activity, writing reports and articles, participating in appropriate seminars, consulting with colleagues and graduate students, and attending meetings and conferences. Incidental work (that in excess of normal for the individual), for which supplemental compensation is paid by an institution under institutional policy, need not be included in the payroll distribution systems described below, provided such work and compensation are separately identified and documented in the financial management system of the institution.

b. Payroll distribution.

(1) General Principles.

(a) The distribution of salaries and wages, whether treated as direct or F&A costs, will be based on payrolls documented in accordance with the generally accepted practices of colleges and universities. Institutions may include in a residual category all activities that are not directly charged to sponsored agreements, and that need not be distributed to more than one activity for purposes of identifying F&A costs and the functions to which they are allocable. The components of the residual category are not required to be separately documented.

(b) The apportionment of employees' salaries and wages which are chargeable to more than one sponsored agreement or other cost objective will be accomplished by methods which will—

(1) Be in accordance with Sections A.2 and C of this Appendix;

(2) Produce an equitable distribution of charges for employee's activities; and

(3) Distinguish the employees' direct activities from their F&A activities.

(c) In the use of any methods for apportioning salaries, it is recognized that, in an academic setting, teaching, research, service, and administration are often inextricably intermingled. A precise assessment of factors that contribute to costs is not always feasible, nor is it expected. Reliance, therefore, is placed on estimates in which a degree of tolerance is appropriate.

(d) There is no single best method for documenting the distribution of charges for personal services. Methods for apportioning salaries and wages, however, must meet the criteria specified in subsection J.10.b.(2) of this Appendix. Examples of acceptable methods are contained in subsection c. Other methods that meet the criteria specified in subsection J.10.b.(2) of this Appendix also shall be deemed acceptable, if a mutually satisfactory alternative agreement is reached.

(2) Criteria for Acceptable Methods.

(a) The payroll distribution system will be incorporated into the official records of the institution; reasonably reflect the activity for which the employee is compensated by the institution; and encompass both sponsored and all other activities on an integrated basis, but may include the use of subsidiary records. (Compensation for incidental work described in subsection a need not be included.)

(b) The method must recognize the principle of after-the-fact confirmation or determination so that costs distributed represent actual costs, unless a mutually satisfactory alternative agreement is reached. Direct cost activities and F&A cost activities may be confirmed by responsible persons with suitable means of verification that the work was performed. Confirmation by the employee is not a requirement for either direct or F&A cost activities if other responsible persons make appropriate confirmations.

(c) The payroll distribution system will allow confirmation of activity allocable to each sponsored agreement and each of the categories of activity needed to identify F&A costs and the functions to which they are allocable. The activities chargeable to F&A cost categories or the major functions of the institution for employees whose salaries must be apportioned (see subsection J.10.b.(1)(b) of this Appendix), if not initially identified as separate categories, may be subsequently distributed by any reasonable method mutually agreed to, including, but not limited to, suitably conducted surveys, statistical sampling procedures, or the application of negotiated fixed rates.

(d) Practices vary among institutions and within institutions as to the activity constituting a full workload. Therefore, the payroll distribution system may reflect categories of activities expressed as a percentage distribution of total activities.

(e) Direct and F&A charges may be made initially to sponsored agreements on the basis of estimates made before services are performed. When such estimates are used, significant changes in the corresponding work activity must be identified and entered into the payroll distribution system. Short-term (such as one or two months) fluctuation between workload categories need not be considered as long as the distribution of salaries and wages is reasonable over the longer term, such as an academic period.

(f) The system will provide for independent internal evaluations to ensure the system's effectiveness and compliance with the above standards.

(g) For systems which meet these standards, the institution will not be required to provide additional support or documentation for the effort actually performed.

c. Examples of Acceptable Methods for Payroll Distribution:

(1) Plan-Confirmation: Under this method, the distribution of salaries and wages of professorial and professional staff applicable to sponsored agreements is based on budgeted, planned, or assigned work activity, updated to reflect any significant changes in work distribution. A plan-confirmation system used for salaries and wages charged directly or indirectly to sponsored agreements will meet the following standards:

(a) A system of budgeted, planned, or assigned work activity will be incorporated into the official records of the institution and encompass both sponsored and all other activities on an integrated basis. The system may include the use of subsidiary records.

(b) The system will reasonably reflect only the activity for which the employee is compensated by the institution (compensation for incidental work described in subsection a need not be included). Practices vary among institutions and within institutions as to the activity constituting a full workload. Hence, the system will reflect categories of activities expressed as a percentage distribution of total activities. (See Section H of this Appendix for treatment of F&A costs under the simplified method for small institutions.)

(c) The system will reflect activity applicable to each sponsored agreement and to each category needed to identify F&A costs and the functions to which they are allocable. The system may treat F&A cost activities initially within a residual category and subsequently determine them by alternate methods as discussed in subsection J.10.c.(2)(c) of this Appendix.

(d) The system will provide for modification of an individual's salary or salary distribution commensurate with a significant change in the employee's work activity. Short-term (such as one or two months) fluctuation between workload categories need not be considered as long as the distribution of salaries and wages is reasonable over the longer term, such as an academic period. Whenever it is apparent that a significant change in work activity that is directly or indirectly charged to sponsored agreements will occur or has occurred, the change will be documented over the signature of a responsible official and entered into the system.

(e) At least annually a statement will be signed by the employee, principal investigator, or responsible official(s) using suitable means of verification that the work was performed, stating that salaries and wages charged to sponsored agreements as direct charges, and to residual, F&A cost or other categories are reasonable in relation to work performed.

(f) The system will provide for independent internal evaluation to ensure the system's integrity and compliance with the above standards.

(g) In the use of this method, an institution shall not be required to provide additional support or documentation for the effort actually performed.

(2) After-the-fact Activity Records: Under this system the distribution of salaries and wages by the institution will be supported by activity reports as prescribed below.

(a) Activity reports will reflect the distribution of activity expended by employees covered by the system (compensation for incidental work as described in subsection a need not be included).

(b) These reports will reflect an after-the-fact reporting of the percentage distribution of activity of employees. Charges may be made initially on the basis of estimates made before the services are performed, provided that such charges are promptly adjusted if significant differences are indicated by activity records.

(c) Reports will reasonably reflect the activities for which employees are compensated by the institution. To confirm that the distribution of activity represents a reasonable estimate of the work performed by the employee during the period, the reports will be signed by the employee, principal investigator, or responsible official(s) using suitable means of verification that the work was performed.

(d) The system will reflect activity applicable to each sponsored agreement and to each category needed to identify F&A costs and the functions to which they are allocable. The system may treat F&A cost activities initially within a residual category and subsequently determine them by alternate methods as discussed in subsection J.10.b.(2)(c) of this Appendix.

(e) For professorial and professional staff, the reports will be prepared each academic term, but no less frequently than every six months. For other employees, unless alternate arrangements are agreed to, the reports will be prepared no less frequently than monthly and will coincide with one or more pay periods.

(f) Where the institution uses time cards or other forms of after-the-fact payroll documents as original documentation for payroll and payroll charges, such documents shall qualify as records for this purpose, provided that they meet the requirements in subsections J.10.c.(2)(a) through (e) of this Appendix.

(3) Multiple Confirmation Records: Under this system, the distribution of salaries and wages of professorial and professional staff will be supported by records which certify

separately for direct and F&A cost activities as prescribed below.

(a) For employees covered by the system, there will be direct cost records to reflect the distribution of that activity expended which is to be allocable as direct cost to each sponsored agreement. There will also be F&A cost records to reflect the distribution of that activity to F&A costs. These records may be kept jointly or separately (but are to be certified separately, see below).

(b) Salary and wage charges may be made initially on the basis of estimates made before the services are performed, provided that such charges are promptly adjusted if significant differences occur.

(c) Institutional records will reasonably reflect only the activity for which employees are compensated by the institution (compensation for incidental work as described in subsection a need not be included).

(d) The system will reflect activity applicable to each sponsored agreement and to each category needed to identify F&A costs and the functions to which they are allocable.

(e) To confirm that distribution of activity represents a reasonable estimate of the work performed by the employee during the period, the record for each employee will include:

(1) The signature of the employee or of a person having direct knowledge of the work, confirming that the record of activities allocable as direct costs of each sponsored agreement is appropriate; and,

(2) The record of F&A costs will include the signature of responsible person(s) who use suitable means of verification that the work was performed and is consistent with the overall distribution of the employee's compensated activities. These signatures may all be on the same document.

(f) The reports will be prepared each academic term, but no less frequently than every six months.

(g) Where the institution uses time cards or other forms of after-the-fact payroll documents as original documentation for payroll and payroll charges, such documents shall qualify as records for this purpose, provided they meet the requirements in subsections J.10.c.(3)(a) through (f) of this Appendix.

d. Salary rates for faculty members.

(1) Salary rates for academic year. Charges for work performed on sponsored agreements by faculty members during the academic year will be based on the individual faculty member's regular compensation for the continuous period which, under the policy of the institution concerned, constitutes the basis of his salary. Charges for work performed on sponsored agreements during all or any portion of such period are allowable at the base salary rate. In no event will charges to sponsored agreements, irrespective of the basis of computation, exceed the proportionate share of the base salary for that period. This principle applies to all members of the faculty at an institution. Since intra-university consulting is assumed to be undertaken as a university obligation requiring no compensation in addition to full-time base salary, the principle also applies to faculty members who function as consultants or otherwise contribute to a sponsored agreement conducted by another faculty member of the same institution. However, in unusual cases where consultation is across departmental lines or involves a separate or remote operation, and the work performed by the consultant is in addition to his regular departmental load, any charges for such work representing extra compensation above the base salary are allowable provided that such consulting arrangements are specifically provided for in the agreement or approved in writing by the sponsoring agency.

(2) Periods outside the academic year.

(a) Except as otherwise specified for teaching activity in subsection J.10.d.(2)(b) of this Appendix, charges for work performed by faculty members on sponsored agreements during the summer months or other period not included in the base salary period will be determined for each faculty member at a rate not in excess of the base salary divided by the period to which the base salary relates, and will be limited to charges made in accordance with other parts of this section. The base salary period used in computing charges for work performed during the summer months will be the number of months covered by the faculty member's official academic year appointment.

(b) Charges for teaching activities performed by faculty members on sponsored agreements during the summer months or other periods not included in the base salary period will be based on the normal policy of the institution governing compensation to faculty members for teaching assignments during such periods.

(3) Part-time faculty. Charges for work performed on sponsored agreements by faculty members having only part-time appointments will be determined at a rate not in excess of that regularly paid for the part-time assignments. For example, an institution pays $5000 to a faculty member for half-time teaching during the academic year. He devoted one-half of his remaining time to a sponsored agreement. Thus, his additional compensation, chargeable by the institution to the agreement, would be one-half of $5000, or $2500.

e. Noninstitutional professional activities. Unless an arrangement is specifically authorized by a Federal sponsoring agency, an institution must follow its institution-wide policies and practices concerning the permissible extent of professional services that can be provided outside the institution for noninstitutional compensation. Where such institution-wide policies do not exist or do not adequately define the permissible extent of consulting or other noninstitutional activities undertaken for extra outside pay, the Federal Government may require that the effort of professional staff working on sponsored agreements be allocated between institutional activities, and noninstitutional professional activities. If the sponsoring agency considers the extent of noninstitutional professional effort excessive, appropriate arrangements governing compensation will be negotiated on a case-by-case basis.

f. Fringe benefits.

(1) Fringe benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, sick leave, military leave, and the like, are allowable, provided such costs are distributed to all institutional activities in proportion to the relative amount of time or effort actually devoted by the employees. See subsection J.11.f.(4) of this Appendix for treatment of sabbatical leave.

(2) Fringe benefits in the form of employer contributions or expenses for social security, employee insurance, workmen's compensation insurance, tuition or remission of tuition for individual employees are allowable, provided such benefits are granted in accordance with established educational institutional policies, and are distributed to all institutional activities on an equitable basis. Tuition benefits for family members other than the employee are unallowable for fiscal years beginning after September 30, 1998. See Section J.45.b, Scholarships and student aid costs, of this Appendix for treatment of tuition remission provided to students.

(3) Rules for pension plan costs are as follows:

(a) Costs of the institution's pension plan which are incurred in accordance with the established policies of the institution are allowable, provided such policies meet the test of reasonableness, the methods of cost allocation are equitable for all activities, the amount of pension cost assigned to each fiscal year is determined in accordance with subsection (b), and the cost assigned to a given fiscal year is paid or funded for all plan participants within six months after the end of that year. However, increases to normal and past service pension costs caused by a delay in funding the actuarial liability beyond 30 days after each quarter of the year to which such costs are assignable are unallowable.

(b) The amount of pension cost assigned to each fiscal year shall be determined in accordance with generally accepted accounting principles. Institutions may elect to follow the "Cost Accounting Standard for Composition and Measurement of Pension Cost" (48 Part 9904–412).

(c) Premiums paid for pension plan termination insurance pursuant to the Employee Retirement Income Security Act (ERISA) of 1974 (Pub. L. 93–406) are allowable. Late payment charges on such premiums are unallowable. Excise taxes on accumulated funding deficiencies and prohibited transactions of pension plan fiduciaries imposed under ERISA are also unallowable.

(4) Rules for sabbatical leave are as follows:

(a) Costs of leave of absence by employees for performance of graduate work or sabbatical study, travel, or research are allowable provided the institution has a uniform policy on sabbatical leave for persons engaged in instruction and persons engaged in research. Such costs will be allocated on an equitable basis among all related activities of the institution.

(b) Where sabbatical leave is included in fringe benefits for which a cost is determined for assessment as a direct charge, the aggregate amount of such assessments applicable to all work of the institution during the base period must be reasonable in

relation to the institution's actual experience under its sabbatical leave policy.

(5) Fringe benefits may be assigned to cost objectives by identifying specific benefits to specific individual employees or by allocating on the basis of institution-wide salaries and wages of the employees receiving the benefits. When the allocation method is used, separate allocations must be made to selective groupings of employees, unless the institution demonstrates that costs in relationship to salaries and wages do not differ significantly for different groups of employees. Fringe benefits shall be treated in the same manner as the salaries and wages of the employees receiving the benefits. The benefits related to salaries and wages treated as direct costs shall also be treated as direct costs; the benefits related to salaries and wages treated as F&A costs shall be treated as F&A costs.

g. Institution-furnished automobiles.

That portion of the cost of institution-furnished automobiles that relates to personal use by employees (including transportation to and from work) is unallowable regardless of whether the cost is reported as taxable income to the employees.

h. Severance pay.

(1) Severance pay is compensation in addition to regular salary and wages which is paid by an institution to employees whose services are being terminated. Costs of severance pay are allowable only to the extent that such payments are required by law, by employer-employee agreement, by established policy that constitutes in effect an implied agreement on the institution's part, or by circumstances of the particular employment.

(2) Severance payments that are due to normal recurring turnover and which otherwise meet the conditions of subsection J.10.h.(1) of this Appendix may be allowed provided the actual costs of such severance payments are regarded as expenses applicable to the current fiscal year and are equitably distributed among the institution's activities during that period.

(3) Severance payments that are due to abnormal or mass terminations are of such conjectural nature that allowability must be determined on a case-by-case basis. However, the Federal Government recognizes its obligation to participate, to the extent of its fair share, in any specific payment.

(4) Costs incurred in excess of the institution's normal severance pay policy applicable to all persons employed by the institution upon termination of employment are unallowable.

11. Contingency provisions.

Contributions to a contingency reserve or any similar provision made for events the occurrence of which cannot be foretold with certainty as to time, intensity, or with an assurance of their happening, are unallowable, except as noted in the cost principles in this Appendix regarding self-insurance, pensions, severance and post-retirement health costs.

12. Deans of faculty and graduate schools.

The salaries and expenses of deans of faculty and graduate schools, or their equivalents, and their staffs, are allowable.

13. Defense and prosecution of criminal and civil proceedings, claims, appeals and patent infringement.

a. Definitions.

"Conviction," as used herein, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon verdict or a plea, including a conviction due to a plea of nolo contendere.

"Costs," include, but are not limited to, administrative and clerical expenses; the cost of legal services, whether performed by in-house or private counsel; the costs of the services of accountants, consultants, or others retained by the institution to assist it; costs of employees, officers and trustees, and any similar costs incurred before, during, and after commencement of a judicial or administrative proceeding that bears a direct relationship to the proceedings.

"Fraud," as used herein, means—

(1) Acts of fraud or corruption or attempts to defraud the Federal Government or to corrupt its agents;

(2) Acts that constitute a cause for debarment or suspension (as specified in agency regulations), and

(3) Acts which violate the False Claims Act, 31 U.S.C., sections 3729–3731, or the Anti-kickback Act, 41 U.S.C., sections 51 and 54.

"Penalty," does not include restitution, reimbursement, or compensatory damages.

"Proceeding," includes an investigation.

b. (1) Except as otherwise described herein, costs incurred in connection with any criminal, civil or administrative proceeding (including filing of a false certification) commenced by the Federal Government, or a State, local or foreign government, are not allowable if the proceeding

(a) Relates to a violation of, or failure to comply with, a Federal, State, local or foreign statute or regulation, by the institution (including its agents and employees); and

(b) Results in any of the following dispositions:

(i) In a criminal proceeding, a conviction.

(ii) In a civil or administrative proceeding involving an allegation of fraud or similar misconduct, a determination of institutional liability.

(iii) In the case of any civil or administrative proceeding, the imposition of a monetary penalty.

(iv) A final decision by an appropriate Federal official to debar or suspend the institution, to rescind or void an award, or to terminate an award for default by reason of a violation or failure to comply with a law or regulation.

(v) A disposition by consent or compromise, if the action could have resulted in any of the dispositions described in subsections J.13.b.(1)(b)(i) through (iv) of this Appendix.

(2) If more than one proceeding involves the same alleged misconduct, the costs of all such proceedings shall be unallowable if any one of them results in one of the dispositions shown in subsection b.

c. If a proceeding referred to in subsection J.13.b. of this Appendix is commenced by the Federal Government and is resolved by consent or compromise pursuant to an agreement entered into by the institution and the Federal Government, then the costs incurred by the institution in connection with such proceedings that are otherwise not allowable under subsection b. may be allowed to the extent specifically provided in such agreement.

d. If a proceeding referred to in subsection J.13.b. of this Appendix is commenced by a State, local or foreign government, the authorized Federal official may allow the costs incurred by the institution for such proceedings, if such authorized official determines that the costs were incurred as a result of—

(1) A specific term or condition of a federally-sponsored agreement; or

(2) Specific written direction of an authorized official of the sponsoring agency.

e. Costs incurred in connection with proceedings described in subsection J.13.b of this Appendix, but which are not made unallowable by that subsection, may be allowed by the Federal Government, but only to the extent that:

(1) The costs are reasonable in relation to the activities required to deal with the proceeding and the underlying cause of action;

(2) Payment of the costs incurred, as allowable and allocable costs, is not prohibited by any other provision(s) of the sponsored agreement;

(3) The costs are not otherwise recovered from the Federal Government or a third party, either directly as a result of the proceeding or otherwise; and,

(4) The percentage of costs allowed does not exceed the percentage determined by an authorized Federal official to be appropriate considering the complexity of procurement litigation, generally accepted principles governing the award of legal fees in civil actions involving the United States as a party, and such other factors as may be appropriate. Such percentage shall not exceed 80 percent. However, if an agreement reached under subsection c has explicitly considered this 80 percent limitation and permitted a higher percentage, then the full amount of costs resulting from that agreement shall be allowable.

f. Costs incurred by the institution in connection with the defense of suits brought by its employees or ex-employees under section 2 of the Major Fraud Act of 1988 (Pub. L. 100–700), including the cost of all relief necessary to make such employee whole, where the institution was found liable or settled, are unallowable.

g. Costs of legal, accounting, and consultant services, and related costs, incurred in connection with defense against Federal Government claims or appeals, or the prosecution of claims or appeals against the Federal Government, are unallowable.

h. Costs of legal, accounting, and consultant services, and related costs, incurred in connection with patent infringement litigation, are unallowable unless otherwise provided for in the sponsored agreements.

i. Costs, which may be unallowable under this section, including directly associated costs, shall be segregated and accounted for by the institution separately. During the

pendency of any proceeding covered by subsections J.13.b and f of this Appendix, the Federal Government shall generally withhold payment of such costs. However, if in the best interests of the Federal Government, the Federal Government may provide for conditional payment upon provision of adequate security, or other adequate assurance, and agreement by the institution to repay all unallowable costs, plus interest, if the costs are subsequently determined to be unallowable.

14. Depreciation and use allowances.

a. Institutions may be compensated for the use of their buildings, capital improvements, and equipment, provided that they are used, needed in the institutions' activities, and properly allocable to sponsored agreements. Such compensation shall be made by computing either depreciation or use allowance. Use allowances are the means of providing such compensation when depreciation or other equivalent costs are not computed. The allocation for depreciation or use allowance shall be made in accordance with Section F.2 of this Appendix. Depreciation and use allowances are computed applying the following rules:

b. The computation of depreciation or use allowances shall be based on the acquisition cost of the assets involved. The acquisition cost of an asset donated to the institution by a third party shall be its fair market value at the time of the donation.

c. For this purpose, the acquisition cost will exclude:

(1) The cost of land;

(2) Any portion of the cost of buildings and equipment borne by or donated by the Federal Government, irrespective of where title was originally vested or where it is presently located; and

(3) Any portion of the cost of buildings and equipment contributed by or for the institution where law or agreement prohibits recovery.

d. In the use of the depreciation method, the following shall be observed:

(1) The period of useful service (useful life) established in each case for usable capital assets must take into consideration such factors as type of construction, nature of the equipment, technological developments in the particular area, and the renewal and replacement policies followed for the individual items or classes of assets involved.

(2) The depreciation method used to charge the cost of an asset (or group of assets) to accounting periods shall reflect the pattern of consumption of the asset during its useful life. In the absence of clear evidence indicating that the expected consumption of the asset will be significantly greater in the early portions than in the later portions of its useful life, the straight-line method shall be presumed to be the appropriate method. Depreciation methods once used shall not be changed unless approved in advance by the cognizant Federal agency. The depreciation methods used to calculate the depreciation amounts for F&A rate purposes shall be the same methods used by the institution for its financial statements. This requirement does not apply to those institutions (*e.g.*, public institutions of higher education) which are not required to record depreciation by applicable generally accepted accounting principles (GAAP).

(3) Where the depreciation method is introduced to replace the use allowance method, depreciation shall be computed as if the asset had been depreciated over its entire life (*i.e.*, from the date the asset was acquired and ready for use to the date of disposal or withdrawal from service). The aggregate amount of use allowances and depreciation attributable to an asset (including imputed depreciation applicable to periods prior to the conversion to the use allowance method as well as depreciation after the conversion) may be less than, and in no case, greater than the total acquisition cost of the asset.

(4) The entire building, including the shell and all components, may be treated as a single asset and depreciated over a single useful life. A building may also be divided into multiple components. Each component item may then be depreciated over its estimated useful life. The building components shall be grouped into three general components of a building: building shell (including construction and design costs), building services systems (*e.g.*, elevators, HVAC, plumbing system and heating and air-conditioning system) and fixed equipment (*e.g.*, sterilizers, casework, fume hoods, cold rooms and glassware/washers). In exceptional cases, a Federal cognizant agency may authorize a institution to use more than these three groupings. When a institution elects to depreciate its buildings by its components, the same depreciation methods must be used for F&A purposes and financial statement purposes, as described in subsection d.2.

(5) Where the depreciation method is used for a particular class of assets, no depreciation may be allowed on any such assets that have outlived their depreciable lives. (See also subsection J.14.e.(3) of this Appendix)

e. Under the use allowance method, the following shall be observed:

(1) The use allowance for buildings and improvements (including improvements such as paved parking areas, fences, and sidewalks) shall be computed at an annual rate not exceeding two percent of acquisition cost. The use allowance for equipment shall be computed at an annual rate not exceeding six and two-thirds percent of acquisition cost. Use allowance recovery is limited to the acquisition cost of the assets. For donated assets, use allowance recovery is limited to the fair market value of the assets at the time of donation.

(2) In contrast to the depreciation method, the entire building must be treated as a single asset without separating its "shell" from other building components under the use allowance method. The entire building must be treated as a single asset, and the two-percent use allowance limitation must be applied to all parts of the building. The two-percent limitation, however, need not be applied to equipment or other assets that are merely attached or fastened to the building but not permanently fixed and are used as furnishings, decorations or for specialized purposes (*e.g.*, dentist chairs and dental treatment units, counters, laboratory benches bolted to the floor, dishwashers, modular furniture, and carpeting). Such equipment and assets will be considered as not being permanently fixed to the building if they can be removed without the need for costly or extensive alterations or repairs to the building to make the space usable for other purposes. Equipment and assets that meet these criteria will be subject to the 6⅔ percent equipment use allowance.

(3) A reasonable use allowance may be negotiated for any assets that are considered to be fully depreciated, after taking into consideration the amount of depreciation previously charged to the Federal Government, the estimated useful life remaining at the time of negotiation, the effect of any increased maintenance charges, decreased efficiency due to age, and any other factors pertinent to the utilization of the asset for the purpose contemplated.

(4) Notwithstanding subsection J.14.e.(3) of this Appendix, once a institution converts from one cost recovery methodology to another, acquisition costs not recovered may not be used in the calculation of the use allowance in subsection J.14.e.(3) of this Appendix.

f. Except as otherwise provided in subsections J.14.b. through e. of this Appendix, a combination of the depreciation and use allowance methods may not be used, in like circumstances, for a single class of assets (*e.g.*, buildings, office equipment, and computer equipment).

g. Charges for use allowances or depreciation must be supported by adequate property records, and physical inventories must be taken at least once every two years to ensure that the assets exist and are usable, used, and needed. Statistical sampling techniques may be used in taking these inventories. In addition, when the depreciation method is used, adequate depreciation records showing the amount of depreciation taken each period must also be maintained.

h. This section applies to the largest college and university recipients of Federal research and development funds as displayed in Exhibit A, List of Colleges and Universities Subject to Section J.14.h of this Appendix.

(1) Institutions shall expend currently, or reserve for expenditure within the next five years, the portion of F&A cost payments made for depreciation or use allowances under sponsored research agreements, consistent with Section F.2 of this Appendix, to acquire or improve research facilities. This provision applies only to Federal agreements, which reimburse F&A costs at a full negotiated rate. These funds may only be used for liquidation of the principal of debts incurred to acquire assets that are used directly for organized research activities, or payments to acquire, repair, renovate, or improve buildings or equipment directly used for organized research. For buildings or equipment not exclusively used for organized research activity, only appropriately proportionate amounts will be considered to have been expended for research facilities.

(2) An assurance that an amount equal to the Federal reimbursements has been appropriately expended or reserved to acquire or improve research facilities shall be submitted as part of each F&A cost proposal

submitted to the cognizant Federal agency which is based on costs incurred on or after October 1, 1991. This assurance will cover the cumulative amounts of funds received and expended during the period beginning after the period covered by the previous assurance and ending with the fiscal year on which the proposal is based. The assurance shall also cover any amounts reserved from a prior period in which the funds received exceeded the amounts expended.

15. Donations and contributions.

a. Contributions or Donations rendered.

Contributions or donations, including cash, property, and services, made by the institution, regardless of the recipient, are unallowable.

b. Donated services received.

Donated or volunteer services may be furnished to an institution by professional and technical personnel, consultants, and other skilled and unskilled labor. The value of these services is not reimbursable either as a direct or F&A cost. However, the value of donated services may be used to meet cost sharing or matching requirements in accordance with 2 CFR Part 215.

c. Donated property.

The value of donated property is not reimbursable either as a direct or F&A cost, except that depreciation or use allowances on donated assets are permitted in accordance with Section J.14. The value of donated property may be used to meet cost sharing or matching requirements, in accordance with 2 CFR Part 215.

16. Employee morale, health, and welfare costs and costs.

a. The costs of employee information publications, health or first-aid clinics and/or infirmaries, recreational activities, employee counseling services, and any other expenses incurred in accordance with the institution's established practice or custom for the improvement of working conditions, employer-employee relations, employee morale, and employee performance are allowable.

b. Such costs will be equitably apportioned to all activities of the institution. Income generated from any of these activities will be credited to the cost thereof unless such income has been irrevocably set over to employee welfare organizations.

c. Losses resulting from operating food services are allowable only if the institution's objective is to operate such services on a break-even basis. Losses sustained because of operating objectives other than the above are allowable only where the institution can demonstrate unusual circumstances, and with the approval of the cognizant Federal agency.

17. Entertainment costs.

Costs of entertainment, including amusement, diversion, and social activities and any costs directly associated with such costs (such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities) are unallowable.

18. Equipment and other capital expenditures.

a. For purposes of this subsection, the following definitions apply:

(1) "Capital Expenditures" means expenditures for the acquisition cost of capital assets (equipment, buildings, and land), or expenditures to make improvements to capital assets that materially increase their value or useful life. Acquisition cost means the cost of the asset including the cost to put it in place. Acquisition cost for equipment, for example, means the net invoice price of the equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in transit insurance, freight, and installation may be included in, or excluded from the acquisition cost in accordance with the institution's regular accounting practices.

(2) "Equipment" means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of the capitalization level established by the institution for financial statement purposes, or $5000.

(3) "Special purpose equipment" means equipment which is used only for research, medical, scientific, or other technical activities. Examples of special purpose equipment include microscopes, x-ray machines, surgical instruments, and spectrometers.

(4) "General purpose equipment" means equipment, which is not limited to research, medical, scientific or other technical activities. Examples include office equipment and furnishings, modular offices, telephone networks, information technology equipment and systems, air conditioning equipment, reproduction and printing equipment, and motor vehicles.

b. The following rules of allowability shall apply to equipment and other capital expenditures:

(1) Capital expenditures for general purpose equipment, buildings, and land are unallowable as direct charges, except where approved in advance by the awarding agency.

(2) Capital expenditures for special purpose equipment are allowable as direct costs, provided that items with a unit cost of $5000 or more have the prior approval of the awarding agency.

(3) Capital expenditures for improvements to land, buildings, or equipment which materially increase their value or useful life are unallowable as a direct cost except with the prior approval of the awarding agency.

(4) When approved as a direct charge pursuant to subsections J.18.b(1) through (3) of this Appendix, capital expenditures will be charged in the period in which the expenditure is incurred, or as otherwise determined appropriate by and negotiated with the awarding agency.

(5) Equipment and other capital expenditures are unallowable as indirect costs. However, see section J.14 of this Appendix, Depreciation and use allowances, for rules on the allowability of use allowances or depreciation on buildings, capital improvements, and equipment. Also, see section J.43 of this Appendix, Rental costs of buildings and equipment, for rules on the allowability of rental costs for land, buildings, and equipment.

(6) The unamortized portion of any equipment written off as a result of a change in capitalization levels may be recovered by continuing to claim the otherwise allowable use allowances or depreciation on the equipment, or by amortizing the amount to be written off over a period of years negotiated with the cognizant agency.

19. Fines and penalties.

Costs resulting from violations of, or failure of the institution to comply with, Federal, State, and local or foreign laws and regulations are unallowable, except when incurred as a result of compliance with specific provisions of the sponsored agreement, or instructions in writing from the authorized official of the sponsoring agency authorizing in advance such payments.

20. Fund raising and investment costs.

a. Costs of organized fund raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions, are unallowable.

b. Costs of investment counsel and staff and similar expenses incurred solely to enhance income from investments are unallowable.

c. Costs related to the physical custody and control of monies and securities are allowable.

21. Gain and losses on depreciable assets.

a. (1) Gains and losses on the sale, retirement, or other disposition of depreciable property shall be included in the year in which they occur as credits or charges to the asset cost grouping(s) in which the property was included. The amount of the gain or loss to be included as a credit or charge to the appropriate asset cost grouping(s) shall be the difference between the amount realized on the property and the undepreciated basis of the property.

(2) Gains and losses on the disposition of depreciable property shall not be recognized as a separate credit or charge under the following conditions:

(a) The gain or loss is processed through a depreciation account and is reflected in the depreciation allowable under Section J.14 of this Appendix.

(b) The property is given in exchange as part of the purchase price of a similar item and the gain or loss is taken into account in determining the depreciation cost basis of the new item.

(c) A loss results from the failure to maintain permissible insurance, except as otherwise provided in Section J.25 of this Appendix.

(d) Compensation for the use of the property was provided through use allowances in lieu of depreciation.

b. Gains or losses of any nature arising from the sale or exchange of property other than the property covered in subsection a shall be excluded in computing sponsored agreement costs.

c. When assets acquired with Federal funds, in part or wholly, are disposed of, the distribution of the proceeds shall be made in accordance with 2 CFR Part 215, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations (OMB Circular A–110).

22. Goods or services for personal use.

Costs of goods or services for personal use of the institution's employees are unallowable regardless of whether the cost is reported as taxable income to the employees.

23. Housing and personal living expenses.

a. Costs of housing (*e.g.*, depreciation, maintenance, utilities, furnishings, rent, etc.), housing allowances and personal living expenses for/of the institution's officers are unallowable regardless of whether the cost is reported as taxable income to the employees.

b. The term "officers" includes current and past officers.

24. Idle facilities and idle capacity.

a. As used in this section the following terms have the meanings set forth below:

(1) "Facilities" means land and buildings or any portion thereof, equipment individually or collectively, or any other tangible capital asset, wherever located, and whether owned or leased by the institution.

(2) "Idle facilities" means completely unused facilities that are excess to the institution's current needs.

(3) "Idle capacity" means the unused capacity of partially used facilities. It is the difference between:

(a) That which a facility could achieve under 100 percent operating time on a one-shift basis less operating interruptions resulting from time lost for repairs, setups, unsatisfactory materials, and other normal delays; and

(b) The extent to which the facility was actually used to meet demands during the accounting period. A multi-shift basis should be used if it can be shown that this amount of usage would normally be expected for the type of facility involved.

(4) "Cost of idle facilities or idle capacity" means costs such as maintenance, repair, housing, rent, and other related costs, *e.g.*, insurance, interest, property taxes and depreciation or use allowances.

b. The costs of idle facilities are unallowable except to the extent that:

(1) They are necessary to meet fluctuations in workload; or

(2) Although not necessary to meet fluctuations in workload, they were necessary when acquired and are now idle because of changes in program requirements, efforts to achieve more economical operations, reorganization, termination, or other causes which could not have been reasonably foreseen. Under the exception stated in this subsection, costs of idle facilities are allowable for a reasonable period of time, ordinarily not to exceed one year, depending on the initiative taken to use, lease, or dispose of such facilities.

c. The costs of idle capacity are normal costs of doing business and are a factor in the normal fluctuations of usage or indirect cost rates from period to period. Such costs are allowable, provided that the capacity is reasonably anticipated to be necessary or was originally reasonable and is not subject to reduction or elimination by use on other sponsored agreements, subletting, renting, or sale, in accordance with sound business, economic, or security practices. Widespread idle capacity throughout an entire facility or among a group of assets having substantially the same function may be considered idle facilities.

25. Insurance and indemnification.

a. Costs of insurance required or approved, and maintained, pursuant to the sponsored agreement, are allowable.

b. Costs of other insurance maintained by the institution in connection with the general conduct of its activities, are allowable subject to the following limitations:

(1) Types and extent and cost of coverage must be in accordance with sound institutional practice;

(2) Costs of insurance or of any contributions to any reserve covering the risk of loss of or damage to federally-owned property are unallowable, except to the extent that the Federal Government has specifically required or approved such costs; and

(3) Costs of insurance on the lives of officers or trustees are unallowable except where such insurance is part of an employee plan which is not unduly restricted.

c. Contributions to a reserve for a self-insurance program are allowable, to the extent that the types of coverage, extent of coverage, and the rates and premiums would have been allowed had insurance been purchased to cover the risks.

d. Actual losses which could have been covered by permissible insurance (whether through purchased insurance or self-insurance) are unallowable, unless expressly provided for in the sponsored agreement, except that costs incurred because of losses not covered under existing deductible clauses for insurance coverage provided in keeping with sound management practice as well as minor losses not covered by insurance, such as spoilage, breakage and disappearance of small hand tools, which occur in the ordinary course of operations, are allowable.

e. Indemnification includes securing the institution against liabilities to third persons and other losses not compensated by insurance or otherwise. The Federal Government is obligated to indemnify the institution only to the extent expressly provided for in the sponsored agreement, except as provided in subsection J.25.d of this Appendix.

f. Insurance against defects. Costs of insurance with respect to any costs incurred to correct defects in the institution's materials or workmanship are unallowable.

g. Medical liability (malpractice) insurance is an allowable cost of research programs only to the extent that the research involves human subjects. Medical liability insurance costs shall be treated as a direct cost and shall be assigned to individual projects based on the manner in which the insurer allocates the risk to the population covered by the insurance.

26. Interest.

a. Costs incurred for interest on borrowed capital, temporary use of endowment funds, or the use of the institution's own funds, however represented, are unallowable. However, interest on debt incurred after July 1, 1982 to acquire buildings, major reconstruction and remodeling, or the acquisition or fabrication of capital equipment costing $10,000 or more, is allowable.

b. Interest on debt incurred after May 8, 1996 to acquire or replace capital assets (including construction, renovations, alterations, equipment, land, and capital assets acquired through capital leases) acquired after that date and used in support of sponsored agreements is allowable, subject to the following conditions:

(1) For facilities costing over $500,000, the institution shall prepare, prior to acquisition or replacement of the facility, a lease-purchase analysis in accordance with the provisions of §§ 215.30 through 215.37 of 2 CFR part 215 (OMB Circular A–110), which shows that a financed purchase, including a capital lease is less costly to the institution than other operating lease alternatives, on a net present value basis. Discount rates used shall be equal to the institution's anticipated interest rates and shall be no higher than the fair market rate available to the institution from an unrelated ("arm's length") third-party. The lease-purchase analysis shall include a comparison of the net present value of the projected total cost comparisons of both alternatives over the period the asset is expected to be used by the institution. The cost comparisons associated with purchasing the facility shall include the estimated purchase price, anticipated operating and maintenance costs (including property taxes, if applicable) not included in the debt financing, less any estimated asset salvage value at the end of the defined period. The cost comparison for a capital lease shall include the estimated total lease payments, any estimated bargain purchase option, operating and maintenance costs, and taxes not included in the capital leasing arrangement, less any estimated credits due under the lease at the end of the defined period. Projected operating lease costs shall be based on the anticipated cost of leasing comparable facilities at fair market rates under rental agreements that would be renewed or reestablished over the period defined above, and any expected maintenance costs and allowable property taxes to be borne by the institution directly or as part of the lease arrangement.

(2) The actual interest cost claimed is predicated upon interest rates that are no higher than the fair market rate available to the institution from an unrelated (arm's length) third party.

(3) Investment earnings, including interest income on bond or loan principal, pending payment of the construction or acquisition costs, are used to offset allowable interest cost. Arbitrage earnings reportable to the Internal Revenue Service are not required to be offset against allowable interest costs.

(4) Reimbursements are limited to the least costly alternative based on the total cost analysis required under subsection J.26.b.(1) of this Appendix. For example, if an operating lease is determined to be less costly than purchasing through debt financing, then reimbursement is limited to the amount determined if leasing had been used. In all cases where a lease-purchase analysis is required to be performed, Federal reimbursement shall be based upon the least expensive alternative.

(5) For debt arrangements over $1 million, unless the institution makes an initial equity contribution to the asset purchase of 25 percent or more, the institution shall reduce

claims for interest expense by an amount equal to imputed interest earnings on excess cash flow, which is to be calculated as follows. Annually, non-Federal entities shall prepare a cumulative (from the inception of the project) report of monthly cash flows that includes inflows and outflows, regardless of the funding source. Inflows consist of depreciation expense, amortization of capitalized construction interest, and annual interest cost. For cash flow calculations, the annual inflow figures shall be divided by the number of months in the year (*i.e.*, usually 12) that the building is in service for monthly amounts. Outflows consist of initial equity contributions, debt principal payments (less the pro rata share attributable to the unallowable costs of land) and interest payments. Where cumulative inflows exceed cumulative outflows, interest shall be calculated on the excess inflows for that period and be treated as a reduction to allowable interest cost. The rate of interest to be used to compute earnings on excess cash flows shall be the three-month Treasury bill closing rate as of the last business day of that month.

(6) Substantial relocation of federally-sponsored activities from a facility financed by indebtedness, the cost of which was funded in whole or part through Federal reimbursements, to another facility prior to the expiration of a period of 20 years requires notice to the cognizant agency. The extent of the relocation, the amount of the Federal participation in the financing, and the depreciation and interest charged to date may require negotiation and/or downward adjustments of replacement space charged to Federal programs in the future.

(7) The allowable costs to acquire facilities and equipment are limited to a fair market value available to the institution from an unrelated (arm's length) third party.

c. Institutions are also subject to the following conditions:

(1) Interest on debt incurred to finance or refinance assets re-acquired after the applicable effective dates stipulated above is unallowable.

(2) Interest attributable to fully depreciated assets is unallowable.

d. The following definitions are to be used for purposes of this section:

(1) "Re-acquired" assets means assets held by the institution prior to the applicable effective dates stipulated above that have again come to be held by the institution, whether through repurchase or refinancing. It does not include assets acquired to replace older assets.

(2) "Initial equity contribution" means the amount or value of contributions made by non-Federal entities for the acquisition of the asset prior to occupancy of facilities.

(3) "Asset costs" means the capitalizable costs of an asset, including construction costs, acquisition costs, and other such costs capitalized in accordance with Generally Accepted Accounting Principles (GAAP).

27. Labor relations costs.

Costs incurred in maintaining satisfactory relations between the institution and its employees, including costs of labor management committees, employees' publications, and other related activities, are allowable.

28. Lobbying.

Reference is made to the common rule published at 7 CFR part 3018, 10 CFR parts 600 and 601, 12 CFR part 411, 13 CFR part 146, 14 CFR part 1271, 15 CFR part 28, 18 CFR part 1315, 22 CFR parts 138, 227, 311, 519 and 712, 24 CFR part 87, 28 CFR part 69, 29 CFR part 93, 31 CFR part 21, 32 CFR part 282, 34 CFR part 82, 38 CFR part 85, 40 CFR part 34, 41 CFR part 105–69, 43 CFR part 18, 44 CFR part 18, 45 CFR parts 93, 604, 1158, 1168 and 1230, and 49 CFR part 20, and OMB's governmentwide guidance, amendments to OMB's governmentwide guidance, and OMB's clarification notices published at 54 FR 52306 (12/20/89), 61 FR 1412 (1/19/96), 55 FR 24540 (6/15/90) and 57 FR 1772 (1/15/92), respectively. In addition, the following restrictions shall apply:

a. Notwithstanding other provisions of this Appendix, costs associated with the following activities are unallowable:

(1) Attempts to influence the outcomes of any Federal, State, or local election, referendum, initiative, or similar procedure, through in kind or cash contributions, endorsements, publicity, or similar activity;

(2) Establishing, administering, contributing to, or paying the expenses of a political party, campaign, political action committee, or other organization established for the purpose of influencing the outcomes of elections;

(3) Any attempt to influence The introduction of Federal or State legislation; The enactment or modification of any pending Federal or State legislation through communication with any member or employee of the Congress or State legislature, including efforts to influence State or local officials to engage in similar lobbying activity; or any government official or employee in connection with a decision to sign or veto enrolled legislation;

(4) Any attempt to influence The introduction of Federal or State legislation; or The enactment or modification of any pending Federal or State legislation by preparing, distributing, or using publicity or propaganda, or by urging members of the general public, or any segment thereof, to contribute to or participate in any mass demonstration, march, rally, fund raising drive, lobbying campaign or letter writing or telephone campaign; or

(5) Legislative liaison activities, including attendance at legislative sessions or committee hearings, gathering information regarding legislation, and analyzing the effect of legislation, when such activities are carried on in support of or in knowing preparation for an effort to engage in unallowable lobbying.

b. The following activities are excepted from the coverage of subsection J.28.a of this Appendix:

(1) Technical and factual presentations on topics directly related to the performance of a grant, contract, or other agreement (through hearing testimony, statements, or letters to the Congress or a State legislature, or subdivision, member, or cognizant staff member thereof), in response to a documented request (including a Congressional Record notice requesting testimony or statements for the record at a regularly scheduled hearing) made by the recipient member, legislative body or subdivision, or a cognizant staff member thereof, provided such information is readily obtainable and can be readily put in deliverable form, and further provided that costs under this section for travel, lodging or meals are unallowable unless incurred to offer testimony at a regularly scheduled Congressional hearing pursuant to a written request for such presentation made by the Chairman or Ranking Minority Member of the Committee or Subcommittee conducting such hearings;

(2) Any lobbying made unallowable by subsection J.28.a.(3) of this Appendix to influence State legislation in order to directly reduce the cost, or to avoid material impairment of the institution's authority to perform the grant, contract, or other agreement; or

(3) Any activity specifically authorized by statute to be undertaken with funds from the grant, contract, or other agreement.

c. When an institution seeks reimbursement for F&A costs, total lobbying costs shall be separately identified in the F&A cost rate proposal, and thereafter treated as other unallowable activity costs in accordance with the procedures of Section B.1.d of this Appendix.

d. Institutions shall submit as part of their annual F&A cost rate proposal a certification that the requirements and standards of this section have been complied with.

e. Institutions shall maintain adequate records to demonstrate that the determination of costs as being allowable or unallowable pursuant to this section complies with the requirements of this Appendix.

f. Time logs, calendars, or similar records shall not be required to be created for purposes of complying with this section during any particular calendar month when:

(1) the employee engages in lobbying (as defined in subsections J.28.a and b of this Appendix) 25 percent or less of the employee's compensated hours of employment during that calendar month; and

(2) within the preceding five-year period, the institution has not materially misstated allowable or unallowable costs of any nature, including legislative lobbying costs. When conditions in subsections J.28.f.(1) and (2) of this Appendix are met, institutions are not required to establish records to support the allowability of claimed costs in addition to records already required or maintained. Also, when conditions in subsections J.28.f. (1) and (2) of this Appendix are met, the absence of time logs, calendars, or similar records will not serve as a basis for disallowing costs by contesting estimates of lobbying time spent by employees during a calendar month.

g. Agencies shall establish procedures for resolving in advance, in consultation with OMB, any significant questions or disagreements concerning the interpretation or application of this section. Any such advance resolutions shall be binding in any subsequent settlements, audits, or investigations with respect to that grant or contract for purposes of interpretation of this Appendix, provided, however, that this shall not be construed to prevent a contractor or

grantee from contesting the lawfulness of such a determination.

h. Executive lobbying costs.

Costs incurred in attempting to improperly influence either directly or indirectly, an employee or officer of the Executive Branch of the Federal Government to give consideration or to act regarding a sponsored agreement or a regulatory matter are unallowable. Improper influence means any influence that induces or tends to induce a Federal employee or officer to give consideration or to act regarding a federally-sponsored agreement or regulatory matter on any basis other than the merits of the matter.

29. Losses on other sponsored agreements or contracts.

Any excess of costs over income under any other sponsored agreement or contract of any nature is unallowable. This includes, but is not limited to, the institution's contributed portion by reason of cost-sharing agreements or any under-recoveries through negotiation of flat amounts for F&A costs.

30. Maintenance and repair costs.

Costs incurred for necessary maintenance, repair, or upkeep of buildings and equipment (including Federal property unless otherwise provided for) which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are allowable. Costs incurred for improvements which add to the permanent value of the buildings and equipment or appreciably prolong their intended life shall be treated as capital expenditures (see section J.18.a(1) of this Appendix).

31. Material and supplies costs.

a. Costs incurred for materials, supplies, and fabricated parts necessary to carry out a sponsored agreement are allowable.

b. Purchased materials and supplies shall be charged at their actual prices, net of applicable credits. Withdrawals from general stores or stockrooms should be charged at their actual net cost under any recognized method of pricing inventory withdrawals, consistently applied. Incoming transportation charges are a proper part of materials and supplies costs.

c. Only materials and supplies actually used for the performance of a sponsored agreement may be charged as direct costs.

d. Where federally-donated or furnished materials are used in performing the sponsored agreement, such materials will be used without charge.

32. Meetings and Conferences.

Costs of meetings and conferences, the primary purpose of which is the dissemination of technical information, are allowable. This includes costs of meals, transportation, rental of facilities, speakers' fees, and other items incidental to such meetings or conferences. But see section J.17 of this Appendix, Entertainment costs.

33. Memberships, subscriptions and professional activity costs.

a. Costs of the institution's membership in business, technical, and professional organizations are allowable.

b. Costs of the institution's subscriptions to business, professional, and technical periodicals are allowable.

c. Costs of membership in any civic or community organization are unallowable.

d. Costs of membership in any country club or social or dining club or organization are unallowable.

34. Patent costs.

a. The following costs relating to patent and copyright matters are allowable:

(1) Cost of preparing disclosures, reports, and other documents required by the sponsored agreement and of searching the art to the extent necessary to make such disclosures;

(2) Cost of preparing documents and any other patent costs in connection with the filing and prosecution of a United States patent application where title or royalty-free license is required by the Federal Government to be conveyed to the Federal Government; and

(3) General counseling services relating to patent and copyright matters, such as advice on patent and copyright laws, regulations, clauses, and employee agreements (but see sections J.37, Professional service costs, and J.44, Royalties and other costs for use of patents, of this Appendix).

b. The following costs related to patent and copyright matter are unallowable:

(1) Cost of preparing disclosures, reports, and other documents and of searching the art to the extent necessary to make disclosures not required by the award

(2) Costs in connection with filing and prosecuting any foreign patent application, or any United States patent application, where the sponsored agreement award does not require conveying title or a royalty-free license to the Federal Government, (but see section J.44, Royalties and other costs for use of patents, of this Appendix).

35. Plant and homeland security costs.

Necessary and reasonable expenses incurred for routine and homeland security to protect facilities, personnel, and work products are allowable. Such costs include, but are not limited to, wages and uniforms of personnel engaged in security activities; equipment; barriers; contractual security services; consultants; etc. Capital expenditures for homeland and plant security purposes are subject to section J.18, Equipment and other capital expenditures, of this Appendix.

36. Preagreement costs. Costs incurred prior to the effective date of the sponsored agreement, whether or not they would have been allowable thereunder if incurred after such date, are unallowable unless approved by the sponsoring agency.

37. Professional service costs.

a. Costs of professional and consultant services rendered by persons who are members of a particular profession or possess a special skill, and who are not officers or employees of the institution, are allowable, subject to subparagraphs J.37.b and c of this Appendix when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Federal Government. In addition, legal and related services are limited under section J.13 of this Appendix.

b. In determining the allowability of costs in a particular case, no single factor or any special combination of factors is necessarily determinative. However, the following factors are relevant:

(1) The nature and scope of the service rendered in relation to the service required.

(2) The necessity of contracting for the service, considering the institution's capability in the particular area.

(3) The past pattern of such costs, particularly in the years prior to sponsored agreements.

(4) The impact on the institution's business (*i.e.*, what new problems have arisen).

(5) Whether the proportion of Federal work to the institution's total business is such as to influence the institution in favor of incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under Federal grants and contracts.

(6) Whether the service can be performed more economically by direct employment rather than contracting.

(7) The qualifications of the individual or concern rendering the service and the customary fees charged, especially on non-sponsored agreements.

(8) Adequacy of the contractual agreement for the service (*e.g.*, description of the service, estimate of time required, rate of compensation, and termination provisions).

c. In addition to the factors in subparagraph J.37.b of this Appendix, retainer fees to be allowable must be supported by evidence of bona fide services available or rendered.

38. Proposal costs.

Proposal costs are the costs of preparing bids or proposals on potential federally and non-federally-funded sponsored agreements or projects, including the development of data necessary to support the institution's bids or proposals. Proposal costs of the current accounting period of both successful and unsuccessful bids and proposals normally should be treated as F&A costs and allocated currently to all activities of the institution, and no proposal costs of past accounting periods will be allocable to the current period. However, the institution's established practices may be to treat proposal costs by some other recognized method. Regardless of the method used, the results obtained may be accepted only if found to be reasonable and equitable.

39. Publication and printing costs.

a. Publication costs include the costs of printing (including the processes of composition, plate-making, press work, binding, and the end products produced by such processes), distribution, promotion, mailing, and general handling. Publication costs also include page charges in professional publications.

b. If these costs are not identifiable with a particular cost objective, they should be allocated as indirect costs to all benefiting activities of the institution.

c. Page charges for professional journal publications are allowable as a necessary part of research costs where:

(1) The research papers report work supported by the Federal Government: and

(2) The charges are levied impartially on all research papers published by the journal, whether or not by federally-sponsored authors.

40. Rearrangement and alteration costs.

Costs incurred for ordinary or normal rearrangement and alteration of facilities are

allowable. Special arrangement and alteration costs incurred specifically for the project are allowable with the prior approval of the sponsoring agency.

41. Reconversion costs.

Costs incurred in the restoration or rehabilitation of the institution's facilities to approximately the same condition existing immediately prior to commencement of a sponsored agreement, fair wear and tear excepted, are allowable.

42. Recruiting costs.

a. Subject to subsections J.42.b, c, and d of this Appendix, and provided that the size of the staff recruited and maintained is in keeping with workload requirements, costs of "help wanted" advertising, operating costs of an employment office necessary to secure and maintain an adequate staff, costs of operating an aptitude and educational testing program, travel costs of employees while engaged in recruiting personnel, travel costs of applicants for interviews for prospective employment, and relocation costs incurred incident to recruitment of new employees, are allowable to the extent that such costs are incurred pursuant to a well-managed recruitment program. Where the institution uses employment agencies, costs not in excess of standard commercial rates for such services are allowable.

b. In publications, costs of help wanted advertising that includes color, includes advertising material for other than recruitment purposes, or is excessive in size (taking into consideration recruitment purposes for which intended and normal institutional practices in this respect), are unallowable.

c. Costs of help wanted advertising, special emoluments, fringe benefits, and salary allowances incurred to attract professional personnel from other institutions that do not meet the test of reasonableness or do not conform with the established practices of the institution, are unallowable.

d. Where relocation costs incurred incident to recruitment of a new employee have been allowed either as an allocable direct or F&A cost, and the newly hired employee resigns for reasons within his control within 12 months after hire, the institution will be required to refund or credit such relocation costs to the Federal Government.

43. Rental costs of buildings and equipment.

a. Subject to the limitations described in subsections b. through d. of this section, rental costs are allowable to the extent that the rates are reasonable in light of such factors as: rental costs of comparable property, if any; market conditions in the area; alternatives available; and, the type, life expectancy, condition, and value of the property leased. Rental arrangements should be reviewed periodically to determine if circumstances have changed and other options are available.

b. Rental costs under "sale and lease back" arrangements are allowable only up to the amount that would be allowed had the institution continued to own the property. This amount would include expenses such as depreciation or use allowance, maintenance, taxes, and insurance.

c. Rental costs under "less-than-arms-length" leases are allowable only up to the amount (as explained in subsection J.43.b of this Appendix) that would be allowed had title to the property vested in the institution. For this purpose, a less-than-arms-length lease is one under which one party to the lease agreement is able to control or substantially influence the actions of the other. Such leases include, but are not limited to those between—

(1) Divisions of a institution;

(2) Non-Federal entities under common control through common officers, directors, or members; and

(3) An institution and a director, trustee, officer, or key employee of the institution or his immediate family, either directly or through corporations, trusts, or similar arrangements in which they hold a controlling interest. For example, a institution may establish a separate corporation for the sole purpose of owning property and leasing it back to the institution.

d. Rental costs under leases which are required to be treated as capital leases under GAAP are allowable only up to the amount (as explained in subsection J.43.b of this Appendix) that would be allowed had the institution purchased the property on the date the lease agreement was executed. The provisions of Financial Accounting Standards Board Statement 13, Accounting for Leases, shall be used to determine whether a lease is a capital lease. Interest costs related to capital leases are allowable to the extent they meet the criteria in section J.26 of this Appendix. Unallowable costs include amounts paid for profit, management fees, and taxes that would not have been incurred had the institution purchased the facility.

44. Royalties and other costs for use of patents.

a. Royalties on a patent or copyright or amortization of the cost of acquiring by purchase a copyright, patent, or rights thereto, necessary for the proper performance of the award are allowable unless:

(1) The Federal Government has a license or the right to free use of the patent or copyright.

(2) The patent or copyright has been adjudicated to be invalid, or has been administratively determined to be invalid.

(3) The patent or copyright is considered to be unenforceable.

(4) The patent or copyright is expired.

b. Special care should be exercised in determining reasonableness where the royalties may have been arrived at as a result of less-than-arm's-length bargaining, *e.g.:*

(1) Royalties paid to persons, including corporations, affiliated with the institution.

(2) Royalties paid to unaffiliated parties, including corporations, under an agreement entered into in contemplation that a sponsored agreement award would be made.

(3) Royalties paid under an agreement entered into after an award is made to an institution.

c. In any case involving a patent or copyright formerly owned by the institution, the amount of royalty allowed should not exceed the cost which would have been allowed had the institution retained title thereto.

45. Scholarships and student aid costs.

a. Costs of scholarships, fellowships, and other programs of student aid are allowable only when the purpose of the sponsored agreement is to provide training to selected participants and the charge is approved by the sponsoring agency. However, tuition remission and other forms of compensation paid as, or in lieu of, wages to students performing necessary work are allowable provided that—

(1) The individual is conducting activities necessary to the sponsored agreement;

(2) Tuition remission and other support are provided in accordance with established educational institutional policy and consistently provided in a like manner to students in return for similar activities conducted in nonsponsored as well as sponsored activities; and

(3) During the academic period, the student is enrolled in an advanced degree program at the institution or affiliated institution and the activities of the student in relation to the Federally-sponsored research project are related to the degree program;

(4) The tuition or other payments are reasonable compensation for the work performed and are conditioned explicitly upon the performance of necessary work; and

(5) It is the institution's practice to similarly compensate students in nonsponsored as well as sponsored activities.

b. Charges for tuition remission and other forms of compensation paid to students as, or in lieu of, salaries and wages shall be subject to the reporting requirements stipulated in Section J.10 of this Appendix, and shall be treated as direct or F&A cost in accordance with the actual work being performed. Tuition remission may be charged on an average rate basis.

46. Selling and marketing.

Costs of selling and marketing any products or services of the institution are unallowable (unless allowed under subsection J.1 of this Appendix as allowable public relations costs or under subsection J.38 of this Appendix as allowable proposal costs).

47. Specialized service facilities.

a. The costs of services provided by highly complex or specialized facilities operated by the institution, such as computers, wind tunnels, and reactors are allowable, provided the charges for the services meet the conditions of either subsection J.47.b. or 47.c. of this Appendix and, in addition, take into account any items of income or Federal financing that qualify as applicable credits under subsection C.5. of this Appendix.

b. The costs of such services, when material, must be charged directly to applicable awards based on actual usage of the services on the basis of a schedule of rates or established methodology that:

(1) Does not discriminate against federally-supported activities of the institution, including usage by the institution for internal purposes, and

(2) Is designed to recover only the aggregate costs of the services. The costs of each service shall consist normally of both its direct costs and its allocable share of all F&A costs. Rates shall be adjusted at least biennially, and shall take into consideration

over/under applied costs of the previous period(s).

c. Where the costs incurred for a service are not material, they may be allocated as F&A costs.

d. Under some extraordinary circumstances, where it is in the best interest of the Federal Government and the institution to establish alternative costing arrangements, such arrangements may be worked out with the cognizant Federal agency.

48. Student activity costs.

Costs incurred for intramural activities, student publications, student clubs, and other student activities, are unallowable, unless specifically provided for in the sponsored agreements.

49. Taxes.

a. In general, taxes which the institution is required to pay and which are paid or accrued in accordance with generally accepted accounting principles are allowable. Payments made to local governments in lieu of taxes which are commensurate with the local government services received are allowable, except for—

(1) Taxes from which exemptions are available to the institution directly or which are available to the institution based on an exemption afforded the Federal Government, and in the latter case when the sponsoring agency makes available the necessary exemption certificates; and

(2) Special assessments on land which represent capital improvements.

b. Any refund of taxes, interest, or penalties, and any payment to the institution of interest thereon, attributable to taxes, interest, or penalties which were allowed as sponsored agreement costs, will be credited or paid to the Federal Government in the manner directed by the Federal Government. However, any interest actually paid or credited to an institution incident to a refund of tax, interest, and penalty will be paid or credited to the Federal Government only to the extent that such interest accrued over the period during which the institution has been reimbursed by the Federal Government for the taxes, interest, and penalties.

50. Termination costs applicable to sponsored agreements.

Termination of awards generally gives rise to the incurrence of costs, or the need for special treatment of costs. which would not have arisen had the sponsored agreement not been terminated. Cost principles covering these items are set forth below. They are to be used in conjunction with the other provisions of this Appendix in termination situations.

a. The cost of items reasonably usable on the institution's other work shall not be allowable unless the institution submits evidence that it would not retain such items at cost without sustaining a loss. In deciding whether such items are reasonably usable on other work of the institution, the awarding agency should consider the institution's plans and orders for current and scheduled activity. Contemporaneous purchases of common items by the institution shall be regarded as evidence that such items are reasonably usable on the institution's other work. Any acceptance of common items as allocable to the terminated portion of the sponsored agreement shall be limited to the extent that the quantities of such items on hand, in transit, and on order are in excess of the reasonable quantitative requirements of other work.

b. If in a particular case, despite all reasonable efforts by the institution, certain costs cannot be discontinued immediately after the effective date of termination, such costs are generally allowable within the limitations set forth in this Appendix, except that any such costs continuing after termination due to the negligent or willful failure of the institution to discontinue such costs shall be unallowable.

c. Loss of useful value of special tooling, machinery, and equipment is generally allowable if:

(1) Such special tooling, special machinery, or equipment is not reasonably capable of use in the other work of the institution,

(2) The interest of the Federal Government is protected by transfer of title or by other means deemed appropriate by the awarding agency, and

(3) The loss of useful value for any one terminated sponsored agreement is limited to that portion of the acquisition cost which bears the same ratio to the total acquisition cost as the terminated portion of the sponsored agreement bears to the entire terminated sponsored agreement award and other sponsored agreements for which the special tooling, machinery, or equipment was acquired.

d. Rental costs under unexpired leases are generally allowable where clearly shown to have been reasonably necessary for the performance of the terminated sponsored agreement less the residual value of such leases, if:

(1) The amount of such rental claimed does not exceed the reasonable use value of the property leased for the period of the sponsored agreement and such further period as may be reasonable, and

(2) The institution makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of such lease. There also may be included the cost of alterations of such leased property, provided such alterations were necessary for the performance of the sponsored agreement, and of reasonable restoration required by the provisions of the lease.

e. Settlement expenses including the following are generally allowable:

(1) Accounting, legal, clerical, and similar costs reasonably necessary for:

(a) The preparation and presentation to the awarding agency of settlement claims and supporting data with respect to the terminated portion of the sponsored agreement, unless the termination is for default (see § 215.61 of 2 CFR Part 215); and

(b) The termination and settlement of subawards.

(2) Reasonable costs for the storage, transportation, protection, and disposition of property provided by the Federal Government or acquired or produced for the sponsored agreement, except when institutions are reimbursed for disposals at a predetermined amount in accordance with § 215.32 through § 215.37 of 2 CFR Part 215.

(3) F&A costs related to salaries and wages incurred as settlement expenses in subsections J.50.b.(1) and (2) of this Appendix. Normally, such F&A costs shall be limited to fringe benefits, occupancy cost, and immediate supervision.

f. Claims under subawards, including the allocable portion of claims which are common to the sponsored agreement and to other work of the institution, are generally allowable.

g. An appropriate share of the institution's F&A costs may be allocated to the amount of settlements with subcontractors and/or subgrantees, provided that the amount allocated is otherwise consistent with the basic guidelines contained in section E, F&A costs. The F&A costs so allocated shall exclude the same and similar costs claimed directly or indirectly as settlement expenses.

51. Training costs.

The cost of training provided for employee development is allowable.

52. Transportation costs.

Costs incurred for freight, express, cartage, postage, and other transportation services relating either to goods purchased, in process, or delivered, are allowable. When such costs can readily be identified with the items involved, they may be charged directly as transportation costs or added to the cost of such items. Where identification with the materials received cannot readily be made, inbound transportation cost may be charged to the appropriate F&A cost accounts if the institution follows a consistent, equitable procedure in this respect. Outbound freight, if reimbursable under the terms of the sponsored agreement, should be treated as a direct cost.

53. Travel costs.

a. General.

Travel costs are the expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business of the institution. Such costs may be charged on an actual cost basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used is applied to an entire trip and not to selected days of the trip, and results in charges consistent with those normally allowed in like circumstances in the institution's non-federally-sponsored activities.

b. Lodging and subsistence.

Costs incurred by employees and officers for travel, including costs of lodging, other subsistence, and incidental expenses, shall be considered reasonable and allowable only to the extent such costs do not exceed charges normally allowed by the institution in its regular operations as the result of the institution's written travel policy. In the absence of an acceptable, written institution policy regarding travel costs, the rates and amounts established under subchapter I of Chapter 57, Title 5, United States Code ("Travel and Subsistence Expenses; Mileage Allowances"), or by the Administrator of General Services, or by the President (or his or her designee) pursuant to any provisions of such subchapter shall apply to travel under sponsored agreements (48 CFR 31.205–46(a)).

c. Commercial air travel.

(1) Airfare costs in excess of the customary standard commercial airfare (coach or equivalent), Federal Government contract airfare (where authorized and available), or the lowest commercial discount airfare are unallowable except when such accommodations would:

(a) Require circuitous routing;

(b) Require travel during unreasonable hours;

(c) Excessively prolong travel;

(d) Result in additional costs that would offset the transportation savings; or

(e) Offer accommodations not reasonably adequate for the traveler's medical needs. The institution must justify and document these conditions on a case-by-case basis in order for the use of first-class airfare to be allowable in such cases.

(2) Unless a pattern of avoidance is detected, the Federal Government will generally not question an institution's determinations that customary standard airfare or other discount airfare is unavailable for specific trips if the institution can demonstrate either of the following:

(a) That such airfare was not available in the specific case; or

(b) That it is the institution's overall practice to make routine use of such airfare.

d. Air travel by other than commercial carrier.

Costs of travel by institution-owned, -leased, or -chartered aircraft include the cost of lease, charter, operation (including personnel costs), maintenance, depreciation, insurance, and other related costs. The portion of such costs that exceeds the cost of allowable commercial air travel, as provided for in subsection J.53.c. of this Appendix, is unallowable.

54. Trustees.

Travel and subsistence costs of trustees (or directors) are allowable. The costs are subject to restrictions regarding lodging, subsistence and air travel costs provided in Section J.53 of this Appendix.

K. Certification of Charges

1. To assure that expenditures for sponsored agreements are proper and in accordance with the agreement documents and approved project budgets, the annual and/or final fiscal reports or vouchers requesting payment under the agreements will include a certification, signed by an authorized official of the university, which reads essentially as follows: "I certify that all expenditures reported (or payment requested) are for appropriate purposes and in accordance with the provisions of the application and award documents."

2. Certification of F&A costs.

a. Policy.

(1) No proposal to establish F&A cost rates shall be acceptable unless such costs have been certified by the educational institution using the Certificate of F&A Costs set forth in subsection K.2.b of this Appendix. The certificate must be signed on behalf of the institution by an individual at a level no lower than vice president or chief financial officer of the institution that submits the proposal.

(2) No F&A cost rate shall be binding upon the Federal Government if the most recent required proposal from the institution has not been certified. Where it is necessary to establish F&A cost rates, and the institution has not submitted a certified proposal for establishing such rates in accordance with the requirements of this section, the Federal Government shall unilaterally establish such rates. Such rates may be based upon audited historical data or such other data that have been furnished to the cognizant Federal agency and for which it can be demonstrated that all unallowable costs have been excluded. When F&A cost rates are unilaterally established by the Federal Government because of failure of the institution to submit a certified proposal for establishing such rates in accordance with this section, the rates established will be set at a level low enough to ensure that potentially unallowable costs will not be reimbursed.

b. Certificate. The certificate required by this section shall be in the following form:

Certificate of F&A Costs

This is to certify that to the best of my knowledge and belief:

(1) I have reviewed the F&A cost proposal submitted herewith;

(2) All costs included in this proposal [identify date] to establish billing or final F&A costs rate for [identify period covered by rate] are allowable in accordance with the requirements of the Federal agreement(s) to which they apply and with the cost principles applicable to those agreements.

(3) This proposal does not include any costs which are unallowable under applicable cost principles such as (without limitation): advertising and public relations costs, contributions and donations, entertainment costs, fines and penalties, lobbying costs, and defense of fraud proceedings; and

(4) All costs included in this proposal are properly allocable to Federal agreements on the basis of a beneficial or causal relationship between the expenses incurred and the agreements to which they are allocated in accordance with applicable requirements.

For educational institutions that are required to file a DS–2 in accordance with Section C.14 of this Appendix, the following statement shall be added to the "Certificate of F&A Costs":

(5) The rate proposal is prepared using the same cost accounting practices that are disclosed in the DS–2, including its amendments and revisions, filed with and approved by the cognizant agency.

I declare under penalty of perjury that the foregoing is true and correct.

Institution: _____

Signature: _____

Name of Official: _____

Title: _____

Date of Execution: _____

Exhibit A—List of Colleges and Universities Subject to Section J.12.h of This Appendix

1. Johns Hopkins University
2. Stanford University
3. Massachusetts Institute of Technology
4. University of Washington
5. University of California—Los Angeles
6. University of Michigan
7. University of California—San Diego
8. University of California—San Francisco
9. University of Wisconsin—Madison
10. Columbia University
11. Yale University
12. Harvard University
13. Cornell University
14. University of Pennsylvania
15. University of California—Berkeley
16. University of Minnesota
17. Pennsylvania State University
18. University of Southern California
19. Duke University
20. Washington University
21. University of Colorado
22. University of Illinois—Urbana
23. University of Rochester
24. University of North Carolina—Chapel Hill
25. University of Pittsburgh
26. University of Chicago
27. University of Texas—Austin
28. University of Arizona
29. New York University
30. University of Iowa
31. Ohio State University
32. University of Alabama—Birmingham
33. Case Western Reserve
34. Baylor College of Medicine
35. California Institute of Technology
36. Yeshiva University
37. University of Massachusetts
38. Vanderbilt University
39. Purdue University
40. University of Utah
41. Georgia Institute of Technology
42. University of Maryland—College Park
43. University of Miami
44. University of California—Davis
45. Boston University
46. University of Florida
47. Carnegie-Mellon University
48. Northwestern University
49. Indiana University
50. Michigan State University
51. University of Virginia
52. University of Texas—SW Medical Center
53. University of California—Irvine
54. Princeton University
55. Tulane University of Louisiana
56. Emory University
57. University of Georgia
58. Texas A&M University—all campuses
59. New Mexico State University
60. North Carolina State University—Raleigh
61. University of Illinois—Chicago
62. Utah State University
63. Virginia Commonwealth University
64. Oregon State University
65. SUNY-Stony Brook
66. University of Cincinnati
67. CUNY-Mount Sinai School of Medicine
68. University of Connecticut
69. Louisiana State University
70. Tufts University
71. University of California—Santa Barbara
72. University of Hawaii—Manoa
73. Rutgers State University of New Jersey
74. Colorado State University
75. Rockefeller University
76. University of Maryland—Baltimore
77. Virginia Polytechnic Institute & State University
78. SUNY—Buffalo
79. Brown University
80. University of Medicine & Dentistry of New Jersey

81. University of Texas—Health Science Center San Antonio
82. University of Vermont
83. University of Texas—Health Science Center Houston
84. Florida State University
85. University of Texas—MD Anderson Cancer Center
86. University of Kentucky
87. Wake Forest University
88. Wayne State University
89. Iowa State University of Science & Technology
90. University of New Mexico
91. Georgetown University
92. Dartmouth College
93. University of Kansas
94. Oregon Health Sciences University
95. University of Texas—Medical Branch-Galveston
96. University of Missouri—Columbia
97. Temple University
98. George Washington University
99. University of Dayton

Exhibit B—Listing of Institutions That Are Eligible for the Utility Cost Adjustment

1. Baylor University
2. Boston College
3. Boston University
4. California Institute of Technology
5. Carnegie-Mellon University
6. Case Western University
7. Columbia University
8. Cornell University (Endowed)
9. Cornell University (Statutory)
10. Cornell University (Medical)
11. Dayton University
12. Emory University
13. George Washington University (Medical)
14. Georgetown University
15. Harvard Medical School
16. Harvard University (Main Campus)
17. Harvard University (School of Public Health)
18. Johns Hopkins University
19. Massachusetts Institute of Technology
20. Medical University of South Carolina
21. Mount Sinai School of Medicine
22. New York University (except New York University Medical Center)
23. New York University Medical Center
24. North Carolina State University
25. Northeastern University
26. Northwestern University
27. Oregon Health Sciences University
28. Oregon State University
29. Rice University
30. Rockefeller University
31. Stanford University
32. Tufts University
33. Tulane University
34. Vanderbilt University
35. Virginia Commonwealth University
36. Virginia Polytechnic Institute and State University
37. University of Arizona
38. University of CA, Berkeley
39. University of CA, Irvine
40. University of CA, Los Angeles
41. University of CA, San Diego
42. University of CA, San Francisco
43. University of Chicago
44. University of Cincinnati
45. University of Colorado, Health Sciences Center
46. University of Connecticut, Health Sciences Center
47. University of Health Science and The Chicago Medical School
48. University of Illinois, Urbana
49. University of Massachusetts, Medical Center
50. University of Medicine & Dentistry of New Jersey
51. University of Michigan
52. University of Pennsylvania
53. University of Pittsburgh
54. University of Rochester
55. University of Southern California
56. University of Tennessee, Knoxville
57. University of Texas, Galveston
58. University of Texas, Austin
60. University of Texas Southwestern Medical Center
61. University of Virginia
62. University of Vermont & State Agriculture College
63. University of Washington
64. Washington University
65. Yale University
66. Yeshiva University

Exhibit C—Examples of "Major Project" Where Direct Charging of Administrative or Clerical Staff Salaries May Be Appropriate

1. As used in paragraph F.6.b.(2) of this Appendix, below are examples of "major projects":

a. Large, complex programs such as General Clinical Research Centers, Primate Centers, Program Projects, environmental research centers, engineering research centers, and other grants and contracts that entail assembling and managing teams of investigators from a number of institutions.

b. Projects which involve extensive data accumulation, analysis and entry, surveying, tabulation, cataloging, searching literature, and reporting (such as epidemiological studies, clinical trials, and retrospective clinical records studies).

c. Projects that require making travel and meeting arrangements for large numbers of participants, such as conferences and seminars.

d. Projects whose principal focus is the preparation and production of manuals and large reports, books and monographs (excluding routine progress and technical reports).

e. Projects that are geographically inaccessible to normal departmental administrative services, such as research vessels, radio astronomy projects, and other research fields sites that are remote from campus.

f. Individual projects requiring project-specific database management; individualized graphics or manuscript preparation; human or animal protocols; and multiple project-related investigator coordination and communications.

2. These examples are not exhaustive nor are they intended to imply that direct charging of administrative or clerical salaries would always be appropriate for the situations illustrated in the examples. For instance, the examples would be appropriate when the costs of such activities are incurred in unlike circumstances, *i.e.*, the actual activities charged direct are not the same as the actual activities normally included in the institution's facilities and administrative (F&A) cost pools or, if the same, the indirect activity costs are immaterial in amount. It would be inappropriate to charge the cost of such activities directly to specific sponsored agreements if, in similar circumstances, the costs of performing the same type of activity for other sponsored agreements were included as allocable costs in the institution's F&A cost pools. Application of negotiated predetermined F&A cost rates may also be inappropriate if such activity costs charged directly were not provided for in the allocation base that was used to determine the predetermined F&A cost rates.

Attachment A to Appendix A—CASB's Cost Accounting Standards (CAS)

A. CAS 9905.501—Consistency in estimating, accumulating and reporting costs by educational institutions.

1. Purpose

The purpose of this standard is to ensure that each educational institution's practices used in estimating costs for a proposal are consistent with cost accounting practices used by the educational institution in accumulating and reporting costs. Consistency in the application of cost accounting practices is necessary to enhance the likelihood that comparable transactions are treated alike. With respect to individual sponsored agreements, the consistent application of cost accounting practices will facilitate the preparation of reliable cost estimates used in pricing a proposal and their comparison with the costs of performance of the resulting sponsored agreement. Such comparisons provide one important basis for financial control over costs during sponsored agreement performance and aid in establishing accountability for costs in the manner agreed to by both parties at the time of agreement. The comparisons also provide an improved basis for evaluating estimating capabilities.

2. Definitions

(a) The following are definitions of terms which are prominent in this standard.

(1) Accumulating costs means the collecting of cost data in an organized manner, such as through a system of accounts.

(2) Actual cost means an amount determined on the basis of cost incurred (as distinguished from forecasted cost), including standard cost properly adjusted for applicable variance.

(3) Estimating costs means the process of forecasting a future result in terms of cost, based upon information available at the time.

(4) Indirect cost pool means a grouping of incurred costs identified with two or more objectives but not identified specifically with any final cost objective.

(5) Pricing means the process of establishing the amount or amounts to be paid in return for goods or services.

(6) Proposal means any offer or other submission used as a basis for pricing a sponsored agreement, sponsored agreement modification or termination settlement or for securing payments thereunder.

(7) Reporting costs means the providing of cost information to others.

3. Fundamental Requirement

(a) An educational institution's practices used in estimating costs in pricing a proposal shall be consistent with the educational institution's cost accounting practices used in accumulating and reporting costs.

(b) An educational institution's cost accounting practices used in accumulating and reporting actual costs for a sponsored agreement shall be consistent with the educational institution's practices used in estimating costs in the related proposal or application.

(c) The grouping of homogeneous costs in estimates prepared for proposal purposes shall not per se be deemed an inconsistent application of cost accounting practices of this paragraph when such costs are accumulated and reported in greater detail on an actual costs basis during performance of the sponsored agreement.

4. Techniques for application

(a) The standard allows grouping of homogeneous costs in order to cover those cases where it is not practicable to estimate sponsored agreement costs by individual cost element. However, costs estimated for proposal purposes shall be presented in such a manner and in such detail that any significant cost can be compared with the actual cost accumulated and reported therefor. In any event, the cost accounting practices used in estimating costs in pricing a proposal and in accumulating and reporting costs on the resulting sponsored agreement shall be consistent with respect to:

(1) The classification of elements of cost as direct or indirect;

(2) The indirect cost pools to which each element of cost is charged or proposed to be charged; and

(3) The methods of allocating indirect costs to the sponsored agreement.

(b) Adherence to the requirement of this standard shall be determined as of the date of award of the sponsored agreement, unless the sponsored agreement has submitted cost or pricing data pursuant to 10 U.S.C. 2306(a) or 41 U.S.C. 254(d) (Pub. L. 87–653), in which case adherence to the requirement of this standard shall be determined as of the date of final agreement on price, as shown on the signed certificate of current cost or pricing data. Notwithstanding 9905.501–40(b), changes in established cost accounting practices during sponsored agreement performance may be made in accordance with Part 9903 (48 CFR part 9903).

(c) The standard does not prescribe the amount of detail required in accumulating and reporting costs. The basic requirement which must be met, however, is that for any significant amount of estimated cost, the sponsored agreement must be able to accumulate and report actual cost at a level which permits sufficient and meaningful comparison with its estimates. The amount of detail required may vary considerably depending on how the proposed costs were estimated, the data presented in justification or lack thereof, and the significance of each situation. Accordingly, it is neither appropriate nor practical to prescribe a single set of accounting practices which would be consistent in all situations with the practices of estimating costs. Therefore, the amount of accounting and statistical detail to be required and maintained in accounting for estimated costs has been and continues to be a matter to be decided by Government procurement authorities on the basis of the individual facts and circumstances.

B. CAS 9905.502—Consistency in Allocating Costs Incurred for the Same Purpose by Educational Institutions

1. Purpose

The purpose of this standard is to require that each type of cost is allocated only once and on only one basis to any sponsored agreement or other cost objective. The criteria for determining the allocation of costs to a sponsored agreement or other cost objective should be the same for all similar objectives. Adherence to these cost accounting concepts is necessary to guard against the overcharging of some cost objectives and to prevent double counting. Double counting occurs most commonly when cost items are allocated directly to a cost objective without eliminating like cost items from indirect cost pools which are allocated to that cost objective.

2. Definitions

(a) The following are definitions of terms which are prominent in this standard.

(1) Allocate means to assign an item of cost, or a group of items of cost, to one or more cost objectives. This term includes both direct assignment of cost and the reassignment of a share from an indirect cost pool.

(2) Cost objective means a function, organizational subdivision, sponsored agreement, or other work unit for which cost data are desired and for which provision is made to accumulate and measure the cost of processes, products, jobs, capitalized projects, *etc.*

(3) Direct cost means any cost which is identified specifically with a particular final cost objective. Direct costs are not limited to items which are incorporated in the end product as material or labor. Costs identified specifically with a sponsored agreement are direct costs of that sponsored agreement. All costs identified specifically with other final cost objectives of the educational institution are direct costs of those cost objectives.

(4) Final cost objective means a cost objective which has allocated to it both direct and indirect costs, and in the educational institution's accumulation system, is one of the final accumulation points.

(5) Indirect cost means any cost not directly identified with a single final cost objective, but identified with two or more final cost objectives or with at least one intermediate cost objective.

(6) Indirect cost pool means a grouping of incurred costs identified with two or more cost objectives but not identified with any final cost objective.

(7) Intermediate cost objective means a cost objective that is used to accumulate indirect costs or service center costs that are subsequently allocated to one or more indirect cost pools and/or final cost objectives.

3. Fundamental Requirement

All costs incurred for the same purpose, in like circumstances, are either direct costs only or indirect costs only with respect to final cost objectives. No final cost objective shall have allocated to it as an indirect cost any cost, if other costs incurred for the same purpose, in like circumstances, have been included as a direct cost of that or any other final cost objective. Further, no final cost objective shall have allocated to it as a direct cost any cost, if other costs incurred for the same purpose, in like circumstances, have been included in any indirect cost pool to be allocated to that or any other final cost objective.

4. Techniques for Application

(a) The Fundamental Requirement is stated in terms of cost incurred and is equally applicable to estimates of costs to be incurred as used in sponsored agreement proposals.

(b) The Disclosure Statement to be submitted by the educational institution will require that the educational institution set forth its cost accounting practices with regard to the distinction between direct and indirect costs. In addition, for those types of cost which are sometimes accounted for as direct and sometimes accounted for as indirect, the educational institution will set forth in its Disclosure Statement the specific criteria and circumstances for making such distinctions. In essence, the Disclosure Statement submitted by the educational institution, by distinguishing between direct and indirect costs, and by describing the criteria and circumstances for allocating those items which are sometimes direct and sometimes indirect, will be determinative as to whether or not costs are incurred for the same purpose. Disclosure Statement as used herein refers to the statement required to be submitted by educational institutions in Appendix A to Part 220, Section C.14.

(c) In the event that an educational institution has not submitted a Disclosure Statement, the determination of whether specific costs are directly allocable to sponsored agreements shall be based upon the educational institution's cost accounting practices used at the time of sponsored agreement proposal.

(d) Whenever costs which serve the same purpose cannot equitably be indirectly allocated to one or more final cost objectives in accordance with the educational institution's disclosed accounting practices, the educational institution may either (1) use a method for reassigning all such costs which would provide an equitable distribution to all final cost objectives, or (2) directly assign all such costs to final cost objectives with which they are specifically identified. In the event the educational institution decides to make a change for either purpose, the Disclosure Statement shall be amended to reflect the revised accounting practices involved.

(e) Any direct cost of minor dollar amount may be treated as an indirect cost for reasons of practicality where the accounting treatment for such cost is consistently applied to all final cost objectives, provided that such treatment produces results which are substantially the same as the results which would have been obtained if such cost had been treated as a direct cost.

5. Illustrations

(a) Illustrations of costs which are incurred for the same purpose:

(1) An educational institution normally allocates all travel as an indirect cost and previously disclosed this accounting practice to the Government. For purposes of a new proposal, the educational institution intends to allocate the travel costs of personnel whose time is accounted for as direct labor directly to the sponsored agreement. Since travel costs of personnel whose time is accounted for as direct labor working on other sponsored agreements are costs which are incurred for the same purpose, these costs may no longer be included within indirect cost pools for purposes of allocation to any covered Government sponsored agreement. The educational institution's Disclosure Statement must be amended for the proposed changes in accounting practices.

(2) An educational institution normally allocates purchasing activity costs indirectly and allocates this cost to instruction and research on the basis of modified total costs. A proposal for a new sponsored agreement requires a disproportionate amount of subcontract administration to be performed by the purchasing activity. The educational institution prefers to continue to allocate purchasing activity costs indirectly. In order to equitably allocate the total purchasing activity costs, the educational institution may use a method for allocating all such costs which would provide an equitable distribution to all applicable indirect cost pools. For example, the educational institution may use the number of transactions processed rather than its former allocation base of modified total costs. The educational institution's Disclosure Statement must be amended for the proposed changes in accounting practices.

(b) Illustrations of costs which are not incurred for the same purpose:

(1) An educational institution normally allocates special test equipment costs directly to sponsored agreements. The costs of general purpose test equipment are normally included in the indirect cost pool which is allocated to sponsored agreements. Both of these accounting practices were previously disclosed to the Government. Since both types of costs involved were not incurred for the same purpose in accordance with the criteria set forth in the educational institution's Disclosure Statement, the allocation of general purpose test equipment costs from the indirect cost pool to the sponsored agreement, in addition to the directly allocated special test equipment costs, is not considered a violation of the standard.

(2) An educational institution proposes to perform a sponsored agreement which will require three firemen on 24-hour duty at a fixed-post to provide protection against damage to highly inflammable materials used on the sponsored agreement. The educational institution presently has a firefighting force of 10 employees for general protection of its facilities. The educational institution's costs for these latter firemen are treated as indirect costs and allocated to all sponsored agreements; however, it wants to allocate the three fixed-post firemen directly to the particular sponsored agreement requiring them and also allocate a portion of the cost of the general firefighting force to the same sponsored agreement. The educational institution may do so but only on condition that its disclosed practices indicate that the costs of the separate classes of firemen serve different purposes and that it is the educational institution's practice to allocate the general firefighting force indirectly and to allocate fixed-post firemen directly.

6. Interpretation

(a) Consistency in Allocating Costs Incurred for the Same Purpose by Educational Institutions, provides, in this standard, that "* * * no final cost objective shall have allocated to it as a direct cost any cost, if other costs incurred for the same purpose, in like circumstances, have been included in any indirect cost pool to be allocated to that or any other final cost objective."

(b) This interpretation deals with the way this standard applies to the treatment of costs incurred in preparing, submitting, and supporting proposals. In essence, it is addressed to whether or not, under the standard, all such costs are incurred for the same purpose, in like circumstances.

(c) Under this standard, costs incurred in preparing, submitting, and supporting proposals pursuant to a specific requirement of an existing sponsored agreement are considered to have been incurred in different circumstances from the circumstances under which costs are incurred in preparing proposals which do not result from such specific requirement. The circumstances are different because the costs of preparing proposals specifically required by the provisions of an existing sponsored agreement relate only to that sponsored agreement while other proposal costs relate to all work of the educational institution.

(d) This interpretation does not preclude the allocation, as indirect costs, of costs incurred in preparing all proposals. The cost accounting practices used by the educational institution, however, must be followed consistently and the method used to reallocate such costs, of course, must provide an equitable distribution to all final cost objectives.

C. CAS 9905.505—Accounting for Unallowable Costs—Educational Institutions

1. Purpose

(a) The purpose of this standard is to facilitate the negotiation, audit, administration and settlement of sponsored agreements by establishing guidelines covering (1) identification of costs specifically described as unallowable, at the time such costs first become defined or authoritatively designated as unallowable, and (2) the cost accounting treatment to be accorded such identified unallowable costs in order to promote the consistent application of sound cost accounting principles covering all incurred costs. The standard is predicated on the proposition that costs incurred in carrying on the activities of an educational institution—regardless of the allowability of such costs under Government sponsored agreements—are allocable to the cost objectives with which they are identified on the basis of their beneficial or causal relationships.

(b) This standard does not govern the allowability of costs. This is a function of the appropriate procurement or reviewing authority.

2. Definitions

(a) The following are definitions of terms which are prominent in this standard.

(1) Directly associated cost means any cost which is generated solely as a result of the incurrence of another cost, and which would not have been incurred had the other cost not been incurred.

(2) Expressly unallowable cost means a particular item or type of cost which, under the express provisions of an applicable law, regulation, or sponsored agreement, is specifically named and stated to be unallowable.

(3) Indirect cost means any cost not directly identified with a single final cost objective, but identified with two or more final cost objectives or with at least one intermediate cost objective.

(4) Unallowable cost means any cost which, under the provisions of any pertinent law, regulation, or sponsored agreement, cannot be included in prices, cost reimbursements, or settlements under a Government sponsored agreement to which it is allocable.

3. Fundamental Requirement

(a) Costs expressly unallowable or mutually agreed to be unallowable, including costs mutually agreed to be unallowable directly associated costs, shall be identified and excluded from any billing, claim, application, or proposal applicable to a Government sponsored agreement.

(b) Costs which specifically become designated as unallowable as a result of a written decision furnished by a Federal official pursuant to sponsored agreement disputes procedures shall be identified if included in or used in the computation of any billing, claim, or proposal applicable to a sponsored agreement. This identification requirement applies also to any costs incurred for the same purpose under like circumstances as the costs specifically identified as unallowable under either this paragraph or paragraph (a) of this subsection.

(c) Costs which, in a Federal official's written decision furnished pursuant to disputes procedures, are designated as unallowable directly associated costs of unallowable costs covered by either paragraph (a) or (b) of this subsection shall be accorded the identification required by paragraph b. of this subsection.

(d) The costs of any work project not contractually authorized, whether or not related to performance of a proposed or existing contract, shall be accounted for, to the extent appropriate, in a manner which permits ready separation from the costs of authorized work projects.

(e) All unallowable costs covered by paragraphs (a) through (d) of this subsection shall be subject to the same cost accounting principles governing cost allocability as allowable costs. In circumstances where these unallowable costs normally would be

part of a regular indirect-cost allocation base or bases, they shall remain in such base or bases. Where a directly associated cost is part of a category of costs normally included in an indirect-cost pool that will be allocated over a base containing the unallowable cost with which it is associated, such a directly associated cost shall be retained in the indirect-cost pool and be allocated through the regular allocation process.

(f) Where the total of the allocable and otherwise allowable costs exceeds a limitation-of-cost or ceiling-price provision in a sponsored agreement, full direct and indirect cost allocation shall be made to the cost objective, in accordance with established cost accounting practices and Standards which regularly govern a given entity's allocations to Government sponsored agreement cost objectives. In any determination of unallowable cost overrun, the amount thereof shall be identified in terms of the excess of allowable costs over the ceiling amount, rather than through specific identification of particular cost items or cost elements.

4. Techniques for Application

(a) The detail and depth of records required as backup support for proposals, billings, or claims shall be that which is adequate to establish and maintain visibility of identified unallowable costs (including directly associated costs), their accounting status in terms of their allocability to sponsored agreement cost objectives, and the cost accounting treatment which has been accorded such costs. Adherence to this cost accounting principle does not require that allocation of unallowable costs to final cost objectives be made in the detailed cost accounting records. It does require that unallowable costs be given appropriate consideration in any cost accounting determinations governing the content of allocation bases used for distributing indirect costs to cost objectives. Unallowable costs involved in the determination of rates used for standard costs, or for indirect-cost bidding or billing, need be identified only at the time rates are proposed, established, revised or adjusted.

(b) The visibility requirement of paragraph (a) of this subsection, may be satisfied by any form of cost identification which is adequate for purposes of sponsored agreement cost determination and verification. The standard does not require such cost identification for purposes which are not relevant to the determination of Government sponsored agreement cost. Thus, to provide visibility for incurred costs, acceptable alternative practices would include the segregation of unallowable costs in separate accounts maintained for this purpose in the regular books of account, the development and maintenance of separate accounting records or workpapers, or the use of any less formal cost accounting techniques which establishes and maintains adequate cost identification to permit audit verification of the accounting recognition given unallowable costs. Educational institutions may satisfy the visibility requirements for estimated costs either by designation and description (in backup data, workpapers, etc.) of the amounts and types of any unallowable costs which have specifically been identified and recognized in making the estimates, or by description of any other estimating technique employed to provide appropriate recognition of any unallowable costs pertinent to the estimates.

(c) Specific identification of unallowable costs is not required in circumstances where, based upon considerations of materiality, the Government and the educational institution reach agreement on an alternate method that satisfies the purpose of the standard.

5. Illustrations

(a) An auditor recommends disallowance of certain direct labor and direct material costs, for which a billing has been submitted under a sponsored agreement, on the basis that these particular costs were not required for performance and were not authorized by the sponsored agreement. The Federal officer issues a written decision which supports the auditor's position that the questioned costs are unallowable. Following receipt of the Federal officer's decision, the educational institution must clearly identify the disallowed direct labor and direct material costs in the educational institution's accounting records and reports covering any subsequent submission which includes such costs. Also, if the educational institution's base for allocation of any indirect cost pool relevant to the subject sponsored agreement consists of direct labor, direct material, total prime cost, total cost input, etc., the educational institution must include the disallowed direct labor and material costs in its allocation base for such pool. Had the Federal officer's decision been against the auditor, the educational institution would not, of course, have been required to account separately for the costs questioned by the auditor.

(b) An educational institution incurs, and separately identifies, as a part of a service center or expense pool, certain costs which are expressly unallowable under the existing and currently effective regulations. If the costs of the service center or indirect expense pool are regularly a part of the educational institution's base for allocation of general administration and general expenses (GA&GE) or other indirect expenses, the educational institution must allocate the GA&GE or other indirect expenses to sponsored agreements and other final cost objectives by means of a base which includes the identified unallowable indirect costs.

(c) An auditor recommends disallowance of certain indirect costs. The educational institution claims that the costs in question are allowable under the provisions of Appendix A to Part 220, Cost Principles For Educational Institutions; the auditor disagrees. The issue is referred to the Federal officer for resolution pursuant to the sponsored agreement disputes clause. The Federal officer issues a written decision supporting the auditor's position that the total costs questioned are unallowable under Appendix A. Following receipt of the Federal officer's decision, the educational institution must identify the disallowed costs and specific other costs incurred for the same purpose in like circumstances in any subsequent estimating, cost accumulation or reporting for Government sponsored agreements, in which such costs are included. If the Federal officer's decision had supported the educational institution's contention, the costs questioned by the auditor would have been allowable and the educational institution would not have been required to provide special identification.

(d) An educational institution incurred certain unallowable costs that were charged indirectly as general administration and general expenses (GA&GE). In the educational institution's proposals for final indirect cost rates to be applied in determining allowable sponsored agreement costs, the educational institution identified and excluded the expressly unallowable costs. In addition, during the course of negotiation of indirect cost rates to be used for bidding and billing purposes, the educational institution agreed to classify as unallowable cost, various directly associated costs of the identifiable unallowable costs. On the basis of negotiations and agreements between the educational institution and the Federal officer's authorized representatives, indirect cost rates were established, based on the net balance of allowable GA&GE. Application of the rates negotiated to proposals, and to billings, for covered sponsored agreements constitutes compliance with the standard.

(e) An employee, whose salary, travel, and subsistence expenses are charged regularly to the general administration and general expenses (GA&GE) pool, takes several business associates on what is clearly a business entertainment trip. The entertainment costs of such trips is expressly unallowable because it constitutes entertainment expense prohibited by Appendix A to Part 220, and is separately identified by the educational institution. The educational institution does not regularly include its GA&GE in any indirect-expense allocation base. In these circumstances, the employee's travel and subsistence expenses would be directly associated costs for identification with the unallowable entertainment expense. However, unless this type of activity constituted a significant part of the employee's regular duties and responsibilities on which his salary was based, no part of the employee's salary would be required to be identified as a directly associated cost of the unallowable entertainment expense.

D. CAS 9905.506—Cost Accounting Period—Educational Institutions

1. Purpose

The purpose of this standard is to provide criteria for the selection of the time periods to be used as cost accounting periods for sponsored agreement cost estimating, accumulating, and reporting. This standard will reduce the effects of variations in the flow of costs within each cost accounting period. It will also enhance objectivity, consistency, and verifiability, and promote uniformity and comparability in sponsored agreement cost measurements.

2. Definitions

(a) The following are definitions of terms which are prominent in this standard.

(1) Allocate means to assign an item of cost, or a group of items of cost, to one or

more cost objectives. This term includes both direct assignment of cost and the reassignment of a share from an indirect cost pool.

(2) Cost Objective means a function, organizational subdivision, sponsored agreement, or other work unit for which cost data are desired and for which provision is made to accumulate and measure the cost of processes, products, jobs, capitalized projects, etc.

(3) Fiscal year means the accounting period for which annual financial statements are regularly prepared, generally a period of 12 months, 52 weeks, or 53 weeks.

(4) Indirect cost pool means a grouping of incurred costs identified with two or more cost objectives but not identified specifically with any final cost objective.

3. Fundamental Requirement

(a) Educational institutions shall use their fiscal year as their cost accounting period, except that:

(b) Costs of an indirect function which exists for only a part of a cost accounting period may be allocated to cost objectives of that same part of the period.

(c) An annual period other than the fiscal year may be used as the cost accounting period if its use is an established practice of the educational institution.

(d) A transitional cost accounting period other than a year shall be used whenever a change of fiscal year occurs.

(e) An educational institution shall follow consistent practices in the selection of the cost accounting period or periods in which any types of expense and any types of adjustment to expense (including prior-period adjustments) are accumulated and allocated.

(f) The same cost accounting period shall be used for accumulating costs in an indirect cost pool as for establishing its allocation base, except that the contracting parties may agree to use a different period for establishing an allocation base.

4. Techniques for Application

(a) The cost of an indirect function which exists for only a part of a cost accounting period may be allocated on the basis of data for that part of the cost accounting period if the cost is material in amount, accumulated in a separate indirect cost pool or expense pool, and allocated on the basis of an appropriate direct measure of the activity or output of the function during that part of the period.

(b) The practices required by this standard shall include appropriate practices for deferrals, accruals, and other adjustments to be used in identifying the cost accounting periods among which any types of expense and any types of adjustment to expense are distributed. If an expense, such as insurance or employee leave, is identified with a fixed, recurring, annual period which is different from the educational institution's cost accounting period, the standard permits continued use of that different period. Such expenses shall be distributed to cost accounting periods in accordance with the educational institution's established practices for accruals, deferrals, and other adjustments.

(c) Indirect cost allocation rates, based on estimates, which are used for the purpose of expediting the closing of sponsored agreements which are terminated or completed prior to the end of a cost accounting period need not be those finally determined or negotiated for that cost accounting period. They shall, however, be developed to represent a full cost accounting period, except as provided in paragraph (a) of this subsection.

(d) An educational institution may, upon mutual agreement with the Government, use as its cost accounting period a fixed annual period other than its fiscal year, if the use of such a period is an established practice of the educational institution and is consistently used for managing and controlling revenues and disbursements, and appropriate accruals, deferrals or other adjustments are made with respect to such annual periods.

(e) The parties may agree to use an annual period which does not coincide precisely with the cost accounting period for developing the data used in establishing an allocation base: Provided,

(1) The practice is necessary to obtain significant administrative convenience,

(2) The practice is consistently followed by the educational institution,

(3) The annual period used is representative of the activity of the cost accounting period for which the indirect costs to be allocated are accumulated, and

(4) The practice can reasonably be estimated to provide a distribution to cost objectives of the cost accounting period not materially different from that which otherwise would be obtained.

(f) When a transitional cost accounting period is required, educational institution may select any one of the following: the period, less than a year in length, extending from the end of its previous cost accounting period to the beginning of its next regular cost accounting period, a period in excess of a year, but not longer than 15 months, obtained by combining the period described in subparagraph (f)(1) of this subsection with the previous cost accounting period, or a period in excess of a year, but not longer than 15 months, obtained by combining the period described in subparagraph (f)(1) of this subsection with the next regular cost accounting period. A change in the educational institution's cost accounting period is a change in accounting practices for which an adjustment in the sponsored agreement price may be required.

5. Illustrations

(a) An educational institution allocates indirect expenses for Organized Research on the basis of a modified total direct cost base. In a proposal for a sponsored agreement, it estimates the allocable expenses based solely on the estimated amount of indirect costs allocated to Organized Research and the amount of the modified total direct cost base estimated to be incurred during the 8 months in which performance is scheduled to be commenced and completed. Such a proposal would be in violation of the requirements of this standard that the calculation of the amounts of both the indirect cost pools and the allocation bases be based on the educational institution's cost accounting period.

(b) An educational institution whose cost accounting period is the calendar year, installs a computer service center to begin operations on May 1. The operating expense related to the new service center is expected to be material in amount, will be accumulated in an intermediate cost objective, and will be allocated to the benefitting cost objectives on the basis of measured usage. The total operating expenses of the computer service center for the 8-month part of the cost accounting period may be allocated to the benefitting cost objectives of that same 8-month period.

(c) An educational institution changes its fiscal year from a calendar year to the 12-month period ending May 31. For financial reporting purposes, it has a 5-month transitional "fiscal year." The same 5-month period must be used as the transitional cost accounting period; it may not be combined, because the transitional period would be longer than 15 months. The new fiscal year must be adopted thereafter as its regular cost accounting period. The change in its cost accounting period is a change in accounting practices; adjustments of the sponsored agreement prices may thereafter be required.

(d) Financial reports are prepared on a calendar year basis on a university-wide basis. However, the contracting segment does all internal financial planning, budgeting, and internal reporting on the basis of a twelve month period ended June 30. The contracting parties agree to use the period ended June 30 and they agree to overhead rates on the June 30 basis. They also agree on a technique for prorating fiscal year assignment of the university's central system office expenses between such June 30 periods. This practice is permitted by the standard.

(e) Most financial accounts and sponsored agreement cost records are maintained on the basis of a fiscal year which ends November 30 each year. However, employee vacation allowances are regularly managed on the basis of a "vacation year" which ends September 30 each year. Vacation expenses are estimated uniformly during each "vacation year." Adjustments are made each October to adjust the accrued liability to actual, and the estimating rates are modified to the extent deemed appropriate. This use of a separate annual period for determining the amounts of vacation expense is permitted.

Attachment B to Appendix A—CASB's Disclosure Statement (DS–2) is available on the OMB Web site at *http://www.whitehouse.gov/omb/grants/a21-appx_b.pdf*

Attachment C to Appendix A—Documentation Requirements for Facilities and Administrative (F&A) Rate Proposals is available on the OMB Web site at *http://www.whitehouse.gov/omb/grants/a21-appx_c.pdf*

[FR Doc. 05–16648 Filed 8–30–05; 8:45 am]

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OFFICE OF MANAGEMENT AND BUDGET

2 CFR Part 225

Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A–87)

AGENCY: Office of Management and Budget

ACTION: Relocation of policy guidance to 2 CFR chapter II.

SUMMARY: The Office of Management and Budget (OMB) is relocating Circular A–87, "Cost Principles for State, Local, and Indian Tribal Governments," to Title 2 in the Code of Federal Regulations (2 CFR), Subtitle A, Chapter II, part 225 as part of an initiative to provide the public with a central location for Federal government policies on grants and other financial assistance and nonprocurement agreements. Consolidating the OMB guidance and co-locating the agency regulations provides a good foundation for streamlining and simplifying the policy framework for grants and agreements as part of the efforts to implement the Federal Financial Assistance Management Improvement Act of 1999 (Pub. L. 106–107).

DATES: This document is effective August 31, 2005. This document republishes the existing OMB Circular A–87, which already is in effect.

FOR FURTHER INFORMATION CONTACT: Gil Tran, Office of Federal Financial Management, Office of Management and Budget, telephone 202–395–3052 (direct) or 202–395–3993 (main office) and e-mail: *Hai_M._Tran@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: On May 10, 2004 [69 FR 25970], we revised the three OMB circulars containing Federal cost principles. The purpose of those revisions was to simplify the cost principles by making the descriptions of similar cost items consistent across the circulars where possible, thereby reducing the possibility of misinterpretation. Those revisions, a result of OMB and Federal agency efforts to implement Public Law 106–107, were effective on June 9, 2004.

In this document, we relocate OMB Circular A–87 to the CFR, in Title 2 which was established on May 11, 2004 [69 FR 26276] as a central location for OMB and Federal agency policies on grants and agreements.

Our relocation of OMB Circular A–87 does not change the substance of the circular. Other than adjustments needed to conform to the formatting requirements of the CFR, this notice relocates in 2 CFR the version of OMB Circular A–87 as revised by the May 10, 2004 notice.

List of Subjects in 2 CFR Part 225

Accounting, Grant administration, Grant programs, Reporting and recordkeeping requirements, State, local, and Indian tribal governments.

Dated: August 8, 2005.

Joshua B. Bolten,

Director.

Authority and Issuance

■ For the reasons set forth above, the Office of Management and Budget amends 2 CFR Subtitle A, Chapter II, by adding a part 225 as set forth below.

PART 225—COST PRINCIPLES FOR STATE, LOCAL, AND INDIAN TRIBAL GOVERNMENTS (OMB CIRCULAR A–87)

Sec.

Authority: 31 U.S.C. 503; 31 U.S.C. 1111; 41 U.S.C. 405; Reorganization Plan No. 2 of 1970; E.O. 11541, 35 FR 10737, 3 CFR, 1966–1970, p. 939.

§ 225.5 Purpose.

This part establishes principles and standards for determining costs for Federal awards carried out through grants, cost reimbursement contracts, and other agreements with State and local governments and federally-recognized Indian tribal governments (governmental units).

§ 225.10 Authority.

This part is issued under the authority of the Budget and Accounting Act of 1921, as amended; the Budget and Accounting Procedures Act of 1950, as amended; the Chief Financial Officers Act of 1990; Reorganization Plan No. 2 of 1970; and Executive Order No. 11541 ("Prescribing the Duties of the Office of Management and Budget and the Domestic Policy Council in the Executive Office of the President").

§ 225.15 Background.

As part of the government-wide grant streamlining effort under Public Law 106–107, Federal Financial Award Management Improvement Act of 1999, OMB led an interagency workgroup to simplify and make consistent, to the extent feasible, the various rules used to award Federal grants. An interagency task force was established in 2001 to review existing cost principles for Federal awards to State, local, and Indian tribal governments; colleges and universities; and non-profit organizations. The task force studied "Selected Items of Cost" in each of the three cost principles to determine which items of costs could be stated consistently and/or more clearly.

§ 225.20 Policy.

This part establishes principles and standards to provide a uniform approach for determining costs and to promote effective program delivery, efficiency, and better relationships between governmental units and the Federal Government. The principles are for determining allowable costs only. They are not intended to identify the circumstances or to dictate the extent of Federal and governmental unit participation in the financing of a particular Federal award. Provision for profit or other increment above cost is outside the scope of this part.

§ 225.25 Definitions.

Definitions of key terms used in this part are contained in Appendix A to this part, Section B.

§ 225.30 OMB responsibilities.

The Office of Management and Budget (OMB) will review agency regulations and implementation of this part, and will provide policy interpretations and assistance to insure effective and efficient implementation. Any exceptions will be subject to approval by OMB. Exceptions will only be made in particular cases where adequate justification is presented.

§ 225.35 Federal agency responsibilities.

Agencies responsible for administering programs that involve cost reimbursement contracts, grants, and other agreements with governmental units shall issue regulations to implement the provisions of this part and its appendices.

§ 225.40 Effective date of changes.

This part is effective August 31, 2005.

§ 225.45 Relationship to previous issuance.

(a) The guidance in this part previously was issued as OMB Circular

A–87. Appendix A to this part contains the guidance that was in Attachment A (general principles) to the OMB circular; Appendix B contains the guidance that was in Attachment B (selected items of cost); Appendix C contains the information that was in Attachment C (state/local-wide central service cost allocation plans); Appendix D contains the guidance that was in Attachment D (public assistance cost allocation plans); and Appendix E contains the guidance that was in Attachment E (state and local indirect cost rate proposals).

(b) This part supersedes OMB Circular A–87, as amended May 10, 2004, which superseded Circular A–87, as amended and issued May 4, 1995.

§ 225.50 Policy review date.

This part will have a policy review three years from the date of issuance.

§ 225.55 Information contact.

Further information concerning this part may be obtained by contacting the Office of Federal Financial Management, Financial Standards and Reporting Branch, Office of Management and Budget, Washington, DC 20503, telephone 202–395–3993.

Appendix A to Part 225—General Principles for Determining Allowable Costs

Table of Contents

A. *Purpose and Scope*

1. Objectives. This Appendix establishes principles for determining the allowable costs incurred by State, local, and federally-recognized Indian tribal governments (governmental units) under grants, cost reimbursement contracts, and other agreements with the Federal Government (collectively referred to in this appendix and other appendices to 2 CFR part 225 as "Federal awards"). The principles are for the purpose of cost determination and are not intended to identify the circumstances or dictate the extent of Federal or governmental unit participation in the financing of a particular program or project. The principles are designed to provide that Federal awards bear their fair share of cost recognized under these principles except where restricted or prohibited by law. Provision for profit or other increment above cost is outside the scope of 2 CFR part 225.

2. Policy guides.

a. The application of these principles is based on the fundamental premises that:

(1) Governmental units are responsible for the efficient and effective administration of Federal awards through the application of sound management practices.

(2) Governmental units assume responsibility for administering Federal funds in a manner consistent with underlying agreements, program objectives, and the terms and conditions of the Federal award.

(3) Each governmental unit, in recognition of its own unique combination of staff, facilities, and experience, will have the primary responsibility for employing whatever form of organization and management techniques may be necessary to assure proper and efficient administration of Federal awards.

b. Federal agencies should work with States or localities which wish to test alternative mechanisms for paying costs for administering Federal programs. The Office of Management and Budget (OMB) encourages Federal agencies to test fee-for-service alternatives as a replacement for current cost-reimbursement payment methods in response to the National Performance Review's (NPR) recommendation. The NPR recommended the fee-for-service approach to reduce the burden associated with maintaining systems for charging administrative costs to Federal programs and preparing and approving cost allocation plans. This approach should also increase incentives for administrative efficiencies and improve outcomes.

3. Application.

a. These principles will be applied by all Federal agencies in determining costs incurred by governmental units under Federal awards (including subawards) except those with (1) publicly-financed educational institutions subject to, 2 CFR part 220, Cost Principles for Educational Institutions (OMB Circular A–21), and (2) programs administered by publicly-owned hospitals and other providers of medical care that are subject to requirements promulgated by the sponsoring Federal agencies. However, 2 CFR part 225 does apply to all central service and department/agency costs that are allocated or billed to those educational institutions, hospitals, and other providers of medical care or services by other State and local government departments and agencies.

b. All subawards are subject to those Federal cost principles applicable to the particular organization concerned. Thus, if a subaward is to a governmental unit (other than a college, university or hospital), 2 CFR part 225 shall apply; if a subaward is to a commercial organization, the cost principles applicable to commercial organizations shall apply; if a subaward is to a college or university, 2 CFR part 220 (Circular A–21) shall apply; if a subaward is to a hospital, the cost principles used by the Federal awarding agency for awards to hospitals shall apply, subject to the provisions of subsection A.3.a. of this Appendix; if a subaward is to some other non-profit organization, 2 CFR part 230, Cost Principles for Non-Profit Organizations (Circular A–122), shall apply.

c. These principles shall be used as a guide in the pricing of fixed price arrangements where costs are used in determining the appropriate price.

d. Where a Federal contract awarded to a governmental unit incorporates a Cost Accounting Standards (CAS) clause, the requirements of that clause shall apply. In such cases, the governmental unit and the cognizant Federal agency shall establish an appropriate advance agreement on how the governmental unit will comply with applicable CAS requirements when estimating, accumulating and reporting costs under CAS-covered contracts. The agreement shall indicate that 2 CFR part 225 (OMB Circular A–87) requirements will be applied to other Federal awards. In all cases, only one set of records needs to be maintained by the governmental unit.

e. Conditional exemptions.

(1) OMB authorizes conditional exemption from OMB administrative requirements and cost principles for certain Federal programs with statutorily-authorized consolidated planning and consolidated administrative funding, that are identified by a Federal agency and approved by the head of the Executive department or establishment. A Federal agency shall consult with OMB during its consideration of whether to grant such an exemption.

(2) To promote efficiency in State and local program administration, when Federal non-entitlement programs with common purposes have specific statutorily-authorized consolidated planning and consolidated administrative funding and where most of the State agency's resources come from non-Federal sources, Federal agencies may exempt these covered State-administered, non-entitlement grant programs from certain OMB grants management requirements. The

exemptions would be from all but the allocability of costs provisions of Appendix A subsection C.3 of 2 CFR part 225, Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A–87); Appendix A, Section C.4 of 2 CFR 220, Cost Principles for Educational Institutions (Circular A–21); Appendix A, subsection A.4 of 2 CFR 230 Cost Principles for Non-Profit Organizations (Circular A–122); and from all of the administrative requirements provisions of 2 CFR part 215, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations (Circular A–110), and the agencies' grants management common rule.

(3) When a Federal agency provides this flexibility, as a prerequisite to a State's exercising this option, a State must adopt its own written fiscal and administrative requirements for expending and accounting for all funds, which are consistent with the provisions of 2 CFR part 225 (OMB Circular A–87), and extend such policies to all subrecipients. These fiscal and administrative requirements must be sufficiently specific to ensure that: Funds are used in compliance with all applicable Federal statutory and regulatory provisions, costs are reasonable and necessary for operating these programs, and funds are not used for general expenses required to carry out other responsibilities of a State or its subrecipients.

B. *Definitions*

1. "Approval or authorization of the awarding or cognizant Federal agency" means documentation evidencing consent prior to incurring a specific cost. If such costs are specifically identified in a Federal award document, approval of the document constitutes approval of the costs. If the costs are covered by a State/local-wide cost allocation plan or an indirect cost proposal, approval of the plan constitutes the approval.

2. "Award" means grants, cost reimbursement contracts and other agreements between a State, local and Indian tribal government and the Federal Government.

3. "Awarding agency" means (a) with respect to a grant, cooperative agreement, or cost reimbursement contract, the Federal agency, and (b) with respect to a subaward, the party that awarded the subaward.

4. "Central service cost allocation plan" means the documentation identifying, accumulating, and allocating or developing billing rates based on the allowable costs of services provided by a governmental unit on a centralized basis to its departments and agencies. The costs of these services may be allocated or billed to users.

5. "Claim" means a written demand or written assertion by the governmental unit or grantor seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of award terms, or other relief arising under or relating to the award. A voucher, invoice or other routine request for payment that is not a dispute when submitted is not a claim. Appeals, such as those filed by a governmental unit in response to questioned audit costs, are not considered claims until a final management decision is made by the Federal awarding agency.

6. "Cognizant agency" means the Federal agency responsible for reviewing, negotiating, and approving cost allocation plans or indirect cost proposals developed under 2 CFR part 225 on behalf of all Federal agencies. OMB publishes a listing of cognizant agencies.

7. "Common Rule" means the "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments; Final Rule" originally issued at 53 FR 8034–8103 (March 11, 1988). Other common rules will be referred to by their specific titles.

8. "Contract" means a mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them. It includes all types of commitments that obligate the government to an expenditure of appropriated funds and that, except as otherwise authorized, are in writing. In addition to bilateral instruments, contracts include (but are not limited to): Awards and notices of awards; job orders or task orders issued under basic ordering agreements; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; and, bilateral contract modifications. Contracts do not include grants and cooperative agreements covered by 31 U.S.C. 6301 *et seq.*

9. "Cost" means an amount as determined on a cash, accrual, or other basis acceptable to the Federal awarding or cognizant agency. It does not include transfers to a general or similar fund.

10. "Cost allocation plan" means central service cost allocation plan, public assistance cost allocation plan, and indirect cost rate proposal. Each of these terms is further defined in this section.

11. "Cost objective" means a function, organizational subdivision, contract, grant, or other activity for which cost data are needed and for which costs are incurred.

12. "Federally-recognized Indian tribal government" means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any native village as defined in Section 3 of the Alaska Native Claims Settlement Act, 85 Stat. 688) certified by the Secretary of the Interior as eligible for the special programs and services provided through the Bureau of Indian Affairs.

13. "Governmental unit" means the entire State, local, or federally-recognized Indian tribal government, including any component thereof. Components of governmental units may function independently of the governmental unit in accordance with the term of the award.

14. "Grantee department or agency" means the component of a State, local, or federally-recognized Indian tribal government which is responsible for the performance or administration of all or some part of a Federal award.

15. "Indirect cost rate proposal" means the documentation prepared by a governmental unit or component thereof to substantiate its request for the establishment of an indirect cost rate as described in Appendix E of 2 CFR part 225.

16. "Local government" means a county, municipality, city, town, township, local public authority, school district, special district, intrastate district, council of governments (whether or not incorporated as a non-profit corporation under State law), any other regional or interstate government entity, or any agency or instrumentality of a local government.

17. "Public assistance cost allocation plan" means a narrative description of the procedures that will be used in identifying, measuring and allocating all administrative costs to all of the programs administered or supervised by State public assistance agencies as described in Appendix D of 2 CFR part 225.

18. "State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments.

C. *Basic Guidelines*

1. Factors affecting allowability of costs. To be allowable under Federal awards, costs must meet the following general criteria:

a. Be necessary and reasonable for proper and efficient performance and administration of Federal awards.

b. Be allocable to Federal awards under the provisions of 2 CFR part 225.

c. Be authorized or not prohibited under State or local laws or regulations.

d. Conform to any limitations or exclusions set forth in these principles, Federal laws, terms and conditions of the Federal award, or other governing regulations as to types or amounts of cost items.

e. Be consistent with policies, regulations, and procedures that apply uniformly to both Federal awards and other activities of the governmental unit.

f. Be accorded consistent treatment. A cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost.

g. Except as otherwise provided for in 2 CFR part 225, be determined in accordance with generally accepted accounting principles.

h. Not be included as a cost or used to meet cost sharing or matching requirements of any other Federal award in either the current or a prior period, except as specifically provided by Federal law or regulation.

i. Be the net of all applicable credits.

j. Be adequately documented.

2. Reasonable costs. A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. The question of reasonableness is particularly important when governmental units or components are predominately federally-funded. In determining reasonableness of a given cost, consideration shall be given to:

a. Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the governmental unit or the performance of the Federal award.

b. The restraints or requirements imposed by such factors as: Sound business practices; arm's-length bargaining; Federal, State and other laws and regulations; and, terms and conditions of the Federal award.

c. Market prices for comparable goods or services.

d. Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to the governmental unit, its employees, the public at large, and the Federal Government.

e. Significant deviations from the established practices of the governmental unit which may unjustifiably increase the Federal award's cost.

3. Allocable costs.

a. A cost is allocable to a particular cost objective if the goods or services involved are chargeable or assignable to such cost objective in accordance with relative benefits received.

b. All activities which benefit from the governmental unit's indirect cost, including unallowable activities and services donated to the governmental unit by third parties, will receive an appropriate allocation of indirect costs.

c. Any cost allocable to a particular Federal award or cost objective under the principles provided for in 2 CFR part 225 may not be charged to other Federal awards to overcome fund deficiencies, to avoid restrictions imposed by law or terms of the Federal awards, or for other reasons.

d. Where an accumulation of indirect costs will ultimately result in charges to a Federal award, a cost allocation plan will be required as described in Appendices C, D, and E to this part.

4. Applicable credits.

a. Applicable credits refer to those receipts or reduction of expenditure-type transactions that offset or reduce expense items allocable to Federal awards as direct or indirect costs. Examples of such transactions are: Purchase discounts, rebates or allowances, recoveries or indemnities on losses, insurance refunds or rebates, and adjustments of overpayments or erroneous charges. To the extent that such credits accruing to or received by the governmental unit relate to allowable costs, they shall be credited to the Federal award either as a cost reduction or cash refund, as appropriate.

b. In some instances, the amounts received from the Federal Government to finance activities or service operations of the governmental unit should be treated as applicable credits. Specifically, the concept of netting such credit items (including any amounts used to meet cost sharing or matching requirements) should be recognized in determining the rates or amounts to be charged to Federal awards. (See Appendix B to this part, item 11, "Depreciation and use allowances," for areas of potential application in the matter of Federal financing of activities.)

D. *Composition of Cost*

1. Total cost. The total cost of Federal awards is comprised of the allowable direct cost of the program, plus its allocable portion of allowable indirect costs, less applicable credits.

2. Classification of costs. There is no universal rule for classifying certain costs as either direct or indirect under every accounting system. A cost may be direct with respect to some specific service or function, but indirect with respect to the Federal award or other final cost objective. Therefore, it is essential that each item of cost be treated consistently in like circumstances either as a direct or an indirect cost. Guidelines for determining direct and indirect costs charged to Federal awards are provided in the sections that follow.

E. *Direct Costs*

1. General. Direct costs are those that can be identified specifically with a particular final cost objective.

2. Application. Typical direct costs chargeable to Federal awards are:

a. Compensation of employees for the time devoted and identified specifically to the performance of those awards.

b. Cost of materials acquired, consumed, or expended specifically for the purpose of those awards.

c. Equipment and other approved capital expenditures.

d. Travel expenses incurred specifically to carry out the award.

3. Minor items. Any direct cost of a minor amount may be treated as an indirect cost for reasons of practicality where such accounting treatment for that item of cost is consistently applied to all cost objectives.

F. *Indirect Costs*

1. General. Indirect costs are those: Incurred for a common or joint purpose benefiting more than one cost objective, and not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved. The term "indirect costs," as used herein, applies to costs of this type originating in the grantee department, as well as those incurred by other departments in supplying goods, services, and facilities. To facilitate equitable distribution of indirect expenses to the cost objectives served, it may be necessary to establish a number of pools of indirect costs within a governmental unit department or in other agencies providing services to a governmental unit department. Indirect cost pools should be distributed to benefitted cost objectives on bases that will produce an equitable result in consideration of relative benefits derived.

2. Cost allocation plans and indirect cost proposals. Requirements for development and submission of cost allocation plans and indirect cost rate proposals are contained in Appendices C, D, and E to this part.

3. Limitation on indirect or administrative costs.

a. In addition to restrictions contained in 2 CFR part 225, there may be laws that further limit the amount of administrative or indirect cost allowed.

b. Amounts not recoverable as indirect costs or administrative costs under one Federal award may not be shifted to another Federal award, unless specifically authorized by Federal legislation or regulation.

G. Interagency Services. The cost of services provided by one agency to another within the governmental unit may include allowable direct costs of the service plus a pro rate share of indirect costs. A standard indirect cost allowance equal to ten percent of the direct salary and wage cost of providing the service (excluding overtime, shift premiums, and fringe benefits) may be used in lieu of determining the actual indirect costs of the service. These services do not include centralized services included in central service cost allocation plans as described in Appendix C to this part.

H. Required Certifications. Each cost allocation plan or indirect cost rate proposal required by Appendices C and E to this part must comply with the following:

1. No proposal to establish a cost allocation plan or an indirect cost rate, whether submitted to a Federal cognizant agency or maintained on file by the governmental unit, shall be acceptable unless such costs have been certified by the governmental unit using the Certificate of Cost Allocation Plan or Certificate of Indirect Costs as set forth in Appendices C and E to this part. The certificate must be signed on behalf of the governmental unit by an individual at a level no lower than chief financial officer of the governmental unit that submits the proposal or component covered by the proposal.

2. No cost allocation plan or indirect cost rate shall be approved by the Federal Government unless the plan or rate proposal has been certified. Where it is necessary to establish a cost allocation plan or an indirect cost rate and the governmental unit has not submitted a certified proposal for establishing such a plan or rate in accordance with the requirements, the Federal Government may either disallow all indirect costs or unilaterally establish such a plan or rate. Such a plan or rate may be based upon audited historical data or such other data that have been furnished to the cognizant Federal agency and for which it can be demonstrated that all unallowable costs have been excluded. When a cost allocation plan or indirect cost rate is unilaterally established by the Federal Government because of failure of the governmental unit to submit a certified proposal, the plan or rate established will be set to ensure that potentially unallowable costs will not be reimbursed.

Appendix B to Part 225—Selected Items of Cost

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Sections 1 through 43 provide principles to be applied in establishing the allowability or unallowability of certain items of cost. These principles apply whether a cost is treated as direct or indirect. A cost is allowable for Federal reimbursement only to the extent of benefits received by Federal awards and its conformance with the general policies and principles stated in Appendix A to this part. Failure to mention a particular item of cost in these sections is not intended to imply that it is either allowable or unallowable; rather, determination of allowability in each case should be based on the treatment or standards provided for similar or related items of cost.

1. *Advertising and public relations costs.*

a. The term advertising costs means the costs of advertising media and corollary administrative costs. Advertising media include magazines, newspapers, radio and television, direct mail, exhibits, electronic or computer transmittals, and the like.

b. The term public relations includes community relations and means those activities dedicated to maintaining the image of the governmental unit or maintaining or promoting understanding and favorable relations with the community or public at large or any segment of the public.

c. The only allowable advertising costs are those which are solely for:

(1) The recruitment of personnel required for the performance by the governmental unit of obligations arising under a Federal award;

(2) The procurement of goods and services for the performance of a Federal award;

(3) The disposal of scrap or surplus materials acquired in the performance of a Federal award except when governmental units are reimbursed for disposal costs at a predetermined amount; or

(4) Other specific purposes necessary to meet the requirements of the Federal award.

d. The only allowable public relations costs are:

(1) Costs specifically required by the Federal award;

(2) Costs of communicating with the public and press pertaining to specific activities or accomplishments which result from performance of Federal awards (these costs are considered necessary as part of the outreach effort for the Federal award); or

(3) Costs of conducting general liaison with news media and government public relations officers, to the extent that such activities are limited to communication and liaison necessary keep the public informed on matters of public concern, such as notices of Federal contract/grant awards, financial matters, etc.

e. Costs identified in subsections c and d if incurred for more than one Federal award or for both sponsored work and other work of the governmental unit, are allowable to the extent that the principles in Appendix A to this part, sections E. ("Direct Costs") and F. ("Indirect Costs") are observed.

f. Unallowable advertising and public relations costs include the following:

(1) All advertising and public relations costs other than as specified in subsections 1.c, d, and e of this appendix;

(2) Costs of meetings, conventions, convocations, or other events related to other activities of the governmental unit, including:

(a) Costs of displays, demonstrations, and exhibits;

(b) Costs of meeting rooms, hospitality suites, and other special facilities used in conjunction with shows and other special events; and

(c) Salaries and wages of employees engaged in setting up and displaying exhibits, making demonstrations, and providing briefings;

(3) Costs of promotional items and memorabilia, including models, gifts, and souvenirs;

(4) Costs of advertising and public relations designed solely to promote the governmental unit.

2. *Advisory councils.* Costs incurred by advisory councils or committees are allowable as a direct cost where authorized by the Federal awarding agency or as an indirect cost where allocable to Federal awards.

3. *Alcoholic beverages.* Costs of alcoholic beverages are unallowable.

4. *Audit costs and related services.*

a. The costs of audits required by , and performed in accordance with, the Single Audit Act, as implemented by Circular A–133, "Audits of States, Local Governments, and Non-Profit Organizations" are allowable. Also see 31 U.S.C. 7505(b) and section 230 ("Audit Costs") of Circular A–133.

b. Other audit costs are allowable if included in a cost allocation plan or indirect cost proposal, or if specifically approved by the awarding agency as a direct cost to an award.

c. The cost of agreed-upon procedures engagements to monitor subrecipients who are exempted from A–133 under section 200(d) are allowable, subject to the conditions listed in A–133, section 230 (b)(2).

5. *Bad debts.* Bad debts, including losses (whether actual or estimated) arising from uncollectable accounts and other claims, related collection costs, and related legal costs, are unallowable.

6. *Bonding costs.*

a. Bonding costs arise when the Federal Government requires assurance against financial loss to itself or others by reason of the act or default of the governmental unit. They arise also in instances where the governmental unit requires similar assurance. Included are such bonds as bid, performance, payment, advance payment, infringement, and fidelity bonds.

b. Costs of bonding required pursuant to the terms of the award are allowable.

c. Costs of bonding required by the governmental unit in the general conduct of its operations are allowable to the extent that such bonding is in accordance with sound business practice and the rates and premiums are reasonable under the circumstances.

7. *Communication costs.* Costs incurred for telephone services, local and long distance telephone calls, telegrams, postage, messenger, electronic or computer transmittal services and the like are allowable.

8. *Compensation for personal services.*

a. General. Compensation for personnel services includes all remuneration, paid currently or accrued, for services rendered during the period of performance under Federal awards, including but not necessarily limited to wages, salaries, and fringe benefits. The costs of such compensation are allowable to the extent that they satisfy the specific requirements of this and other appendices under 2 CFR Part 225, and that the total compensation for individual employees:

(1) Is reasonable for the services rendered and conforms to the established policy of the governmental unit consistently applied to both Federal and non-Federal activities;

(2) Follows an appointment made in accordance with a governmental unit's laws and rules and meets merit system or other requirements required by Federal law, where applicable; and

(3) Is determined and supported as provided in subsection h.

b. Reasonableness. Compensation for employees engaged in work on Federal awards will be considered reasonable to the extent that it is consistent with that paid for similar work in other activities of the governmental unit. In cases where the kinds of employees required for Federal awards are not found in the other activities of the governmental unit, compensation will be considered reasonable to the extent that it is comparable to that paid for similar work in the labor market in which the employing government competes for the kind of employees involved. Compensation surveys providing data representative of the labor market involved will be an acceptable basis for evaluating reasonableness.

c. Unallowable costs. Costs which are unallowable under other sections of these principles shall not be allowable under this section solely on the basis that they constitute personnel compensation.

d. Fringe benefits.

(1) Fringe benefits are allowances and services provided by employers to their

employees as compensation in addition to regular salaries and wages. Fringe benefits include, but are not limited to, the costs of leave, employee insurance, pensions, and unemployment benefit plans. Except as provided elsewhere in these principles, the costs of fringe benefits are allowable to the extent that the benefits are reasonable and are required by law, governmental unit-employee agreement, or an established policy of the governmental unit.

(2) The cost of fringe benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, sick leave, holidays, court leave, military leave, and other similar benefits, are allowable if: They are provided under established written leave policies; the costs are equitably allocated to all related activities, including Federal awards; and, the accounting basis (cash or accrual) selected for costing each type of leave is consistently followed by the governmental unit.

(3) When a governmental unit uses the cash basis of accounting, the cost of leave is recognized in the period that the leave is taken and paid for. Payments for unused leave when an employee retires or terminates employment are allowable in the year of payment provided they are allocated as a general administrative expense to all activities of the governmental unit or component.

(4) The accrual basis may be only used for those types of leave for which a liability as defined by Generally Accepted Accounting Principles (GAAP) exists when the leave is earned. When a governmental unit uses the accrual basis of accounting, in accordance with GAAP, allowable leave costs are the lesser of the amount accrued or funded.

(5) The cost of fringe benefits in the form of employer contributions or expenses for social security; employee life, health, unemployment, and worker's compensation insurance (except as indicated in section 22, Insurance and indemnification); pension plan costs (see subsection e.); and other similar benefits are allowable, provided such benefits are granted under established written policies. Such benefits, whether treated as indirect costs or as direct costs, shall be allocated to Federal awards and all other activities in a manner consistent with the pattern of benefits attributable to the individuals or group(s) of employees whose salaries and wages are chargeable to such Federal awards and other activities.

e. Pension plan costs. Pension plan costs may be computed using a pay-as-you-go method or an acceptable actuarial cost method in accordance with established written policies of the governmental unit.

(1) For pension plans financed on a pay-as-you-go method, allowable costs will be limited to those representing actual payments to retirees or their beneficiaries.

(2) Pension costs calculated using an actuarial cost-based method recognized by GAAP are allowable for a given fiscal year if they are funded for that year within six months after the end of that year. Costs funded after the six month period (or a later period agreed to by the cognizant agency) are allowable in the year funded. The cognizant agency may agree to an extension of the six month period if an appropriate adjustment is made to compensate for the timing of the charges to the Federal Government and related Federal reimbursement and the governmental unit's contribution to the pension fund. Adjustments may be made by cash refund or other equitable procedures to compensate the Federal Government for the time value of Federal reimbursements in excess of contributions to the pension fund.

(3) Amounts funded by the governmental unit in excess of the actuarially determined amount for a fiscal year may be used as the governmental unit's contribution in future periods.

(4) When a governmental unit converts to an acceptable actuarial cost method, as defined by GAAP, and funds pension costs in accordance with this method, the unfunded liability at the time of conversion shall be allowable if amortized over a period of years in accordance with GAAP.

(5) The Federal Government shall receive an equitable share of any previously allowed pension costs (including earnings thereon) which revert or inure to the governmental unit in the form of a refund, withdrawal, or other credit.

f. Post-retirement health benefits. Post-retirement health benefits (PRHB) refers to costs of health insurance or health services not included in a pension plan covered by subsection 8.e. of this appendix for retirees and their spouses, dependents, and survivors. PRHB costs may be computed using a pay-as-you-go method or an acceptable actuarial cost method in accordance with established written polices of the governmental unit.

(1) For PRHB financed on a pay as-you-go method, allowable costs will be limited to those representing actual payments to retirees or their beneficiaries.

(2) PRHB costs calculated using an actuarial cost method recognized by GAAP are allowable if they are funded for that year within six months after the end of that year. Costs funded after the six month period (or a later period agreed to by the cognizant agency) are allowable in the year funded. The cognizant agency may agree to an extension of the six month period if an appropriate adjustment is made to compensate for the timing of the charges to the Federal Government and related Federal reimbursements and the governmental unit's contributions to the PRHB fund. Adjustments may be made by cash refund, reduction in current year's PRHB costs, or other equitable procedures to compensate the Federal Government for the time value of Federal reimbursements in excess of contributions to the PRHB fund.

(3) Amounts funded in excess of the actuarially determined amount for a fiscal year may be used as the government's contribution in a future period.

(4) When a governmental unit converts to an acceptable actuarial cost method and funds PRHB costs in accordance with this method, the initial unfunded liability attributable to prior years shall be allowable if amortized over a period of years in accordance with GAAP, or, if no such GAAP period exists, over a period negotiated with the cognizant agency.

(5) To be allowable in the current year, the PRHB costs must be paid either to:

(a) An insurer or other benefit provider as current year costs or premiums, or

(b) An insurer or trustee to maintain a trust fund or reserve for the sole purpose of providing post-retirement benefits to retirees and other beneficiaries.

(6) The Federal Government shall receive an equitable share of any amounts of previously allowed post-retirement benefit costs (including earnings thereon) which revert or inure to the governmental unit in the form of a refund, withdrawal, or other credit.

g. Severance pay.

(1) Payments in addition to regular salaries and wages made to workers whose employment is being terminated are allowable to the extent that, in each case, they are required by law, employer-employee agreement, or established written policy.

(2) Severance payments (but not accruals) associated with normal turnover are allowable. Such payments shall be allocated to all activities of the governmental unit as an indirect cost.

(3) Abnormal or mass severance pay will be considered on a case-by-case basis and is allowable only if approved by the cognizant Federal agency.

h. Support of salaries and wages. These standards regarding time distribution are in addition to the standards for payroll documentation.

(1) Charges to Federal awards for salaries and wages, whether treated as direct or indirect costs, will be based on payrolls documented in accordance with generally accepted practice of the governmental unit and approved by a responsible official(s) of the governmental unit.

(2) No further documentation is required for the salaries and wages of employees who work in a single indirect cost activity.

(3) Where employees are expected to work solely on a single Federal award or cost objective, charges for their salaries and wages will be supported by periodic certifications that the employees worked solely on that program for the period covered by the certification. These certifications will be prepared at least semi-annually and will be signed by the employee or supervisory official having first hand knowledge of the work performed by the employee.

(4) Where employees work on multiple activities or cost objectives, a distribution of their salaries or wages will be supported by personnel activity reports or equivalent documentation which meets the standards in subsection 8.h.(5) of this appendix unless a statistical sampling system (see subsection 8.h.(6) of this appendix) or other substitute system has been approved by the cognizant Federal agency. Such documentary support will be required where employees work on:

(a) More than one Federal award,

(b) A Federal award and a non-Federal award,

(c) An indirect cost activity and a direct cost activity,

(d) Two or more indirect activities which are allocated using different allocation bases, or

(e) An unallowable activity and a direct or indirect cost activity.

(5) Personnel activity reports or equivalent documentation must meet the following standards:

(a) They must reflect an after-the-fact distribution of the actual activity of each employee,

(b) They must account for the total activity for which each employee is compensated,

(c) They must be prepared at least monthly and must coincide with one or more pay periods, and

(d) They must be signed by the employee.

(e) Budget estimates or other distribution percentages determined before the services are performed do not qualify as support for charges to Federal awards but may be used for interim accounting purposes, provided that:

(i) The governmental unit's system for establishing the estimates produces reasonable approximations of the activity actually performed;

(ii) At least quarterly, comparisons of actual costs to budgeted distributions based on the monthly activity reports are made. Costs charged to Federal awards to reflect adjustments made as a result of the activity actually performed may be recorded annually if the quarterly comparisons show the differences between budgeted and actual costs are less than ten percent; and

(iii) The budget estimates or other distribution percentages are revised at least quarterly, if necessary, to reflect changed circumstances.

(6) Substitute systems for allocating salaries and wages to Federal awards may be used in place of activity reports. These systems are subject to approval if required by the cognizant agency. Such systems may include, but are not limited to, random moment sampling, case counts, or other quantifiable measures of employee effort.

(a) Substitute systems which use sampling methods (primarily for Temporary Assistance to Needy Families (TANF), Medicaid, and other public assistance programs) must meet acceptable statistical sampling standards including:

(i) The sampling universe must include all of the employees whose salaries and wages are to be allocated based on sample results except as provided in subsection 8.h.(6)(c) of this appendix;

(ii) The entire time period involved must be covered by the sample; and

(iii) The results must be statistically valid and applied to the period being sampled.

(b) Allocating charges for the sampled employees' supervisors, clerical and support staffs, based on the results of the sampled employees, will be acceptable.

(c) Less than full compliance with the statistical sampling standards noted in subsection 8.h.(6)(a) of this appendix may be accepted by the cognizant agency if it concludes that the amounts to be allocated to Federal awards will be minimal, or if it concludes that the system proposed by the governmental unit will result in lower costs to Federal awards than a system which complies with the standards.

(7) Salaries and wages of employees used in meeting cost sharing or matching requirements of Federal awards must be supported in the same manner as those claimed as allowable costs under Federal awards.

i. Donated services.

(1) Donated or volunteer services may be furnished to a governmental unit by professional and technical personnel, consultants, and other skilled and unskilled labor. The value of these services is not reimbursable either as a direct or indirect cost. However, the value of donated services may be used to meet cost sharing or matching requirements in accordance with the provisions of the Common Rule.

(2) The value of donated services utilized in the performance of a direct cost activity shall, when material in amount, be considered in the determination of the governmental unit's indirect costs or rate(s) and, accordingly, shall be allocated a proportionate share of applicable indirect costs.

(3) To the extent feasible, donated services will be supported by the same methods used by the governmental unit to support the allocability of regular personnel services.

9. *Contingency provisions.* Contributions to a contingency reserve or any similar provision made for events the occurrence of which cannot be foretold with certainty as to time, intensity, or with an assurance of their happening, are unallowable. The term "contingency reserve" excludes self-insurance reserves (see section 22.c. of this appendix), pension plan reserves (see section 8.e.), and post-retirement health and other benefit reserves (section 8.f.) computed using acceptable actuarial cost methods.

10. *Defense and prosecution of criminal and civil proceedings, and claims.*

a. The following costs are unallowable for contracts covered by 10 U.S.C. 2324(k), "Allowable costs under defense contracts."

(1) Costs incurred in defense of any civil or criminal fraud proceeding or similar proceeding (including filing of false certification brought by the United States where the contractor is found liable or has pleaded nolo contendere to a charge of fraud or similar proceeding (including filing of a false certification).

(2) Costs incurred by a contractor in connection with any criminal, civil or administrative proceedings commenced by the United States or a State to the extent provided in 10 U.S.C. 2324(k).

b. Legal expenses required in the administration of Federal programs are allowable. Legal expenses for prosecution of claims against the Federal Government are unallowable.

11. *Depreciation and use allowances.*

a. Depreciation and use allowances are means of allocating the cost of fixed assets to periods benefiting from asset use. Compensation for the use of fixed assets on hand may be made through depreciation or use allowances. A combination of the two methods may not be used in connection with a single class of fixed assets (*e.g.*, buildings, office equipment, computer equipment, etc.) except as provided for in subsection g. Except for enterprise funds and internal service funds that are included as part of a State/local cost allocation plan, classes of assets shall be determined on the same basis used for the government-wide financial statements.

b. The computation of depreciation or use allowances shall be based on the acquisition cost of the assets involved. Where actual cost records have not been maintained, a reasonable estimate of the original acquisition cost may be used. The value of an asset donated to the governmental unit by an unrelated third party shall be its fair market value at the time of donation. Governmental or quasi-governmental organizations located within the same State shall not be considered unrelated third parties for this purpose.

c. The computation of depreciation or use allowances will exclude:

(1) The cost of land;

(2) Any portion of the cost of buildings and equipment borne by or donated by the Federal Government irrespective of where title was originally vested or where it presently resides; and

(3) Any portion of the cost of buildings and equipment contributed by or for the governmental unit, or a related donor organization, in satisfaction of a matching requirement.

d. Where the depreciation method is followed, the following general criteria apply:

(1) The period of useful service (useful life) established in each case for usable capital assets must take into consideration such factors as type of construction, nature of the equipment used, historical usage patterns, technological developments, and the renewal and replacement policies of the governmental unit followed for the individual items or classes of assets involved. In the absence of clear evidence indicating that the expected consumption of the asset will be significantly greater in the early portions than in the later portions of its useful life, the straight line method of depreciation shall be used.

(2) Depreciation methods once used shall not be changed unless approved by the Federal cognizant or awarding agency. When the depreciation method is introduced for application to an asset previously subject to a use allowance, the annual depreciation charge thereon may not exceed the amount that would have resulted had the depreciation method been in effect from the date of acquisition of the asset. The combination of use allowances and depreciation applicable to the asset shall not exceed the total acquisition cost of the asset or fair market value at time of donation.

e. When the depreciation method is used for buildings, a building's shell may be segregated from the major component of the building (*e.g.*, plumbing system, heating, and air conditioning system, etc.) and each major component depreciated over its estimated useful life, or the entire building (*i.e.*, the shell and all components) may be treated as a single asset and depreciated over a single useful life.

f. Where the use allowance method is followed, the following general criteria apply:

(1) The use allowance for buildings and improvements (including land improvements, such as paved parking areas, fences, and sidewalks) will be computed at an annual rate not exceeding two percent of acquisition costs.

(2) The use allowance for equipment will be computed at an annual rate not exceeding 6⅔ percent of acquisition cost.

(3) When the use allowance method is used for buildings, the entire building must be treated as a single asset; the building's components (*e.g.*, plumbing system, heating and air condition, etc.) cannot be segregated from the building's shell. The two percent limitation, however, need not be applied to equipment which is merely attached or fastened to the building but not permanently fixed to it and which is used as furnishings or decorations or for specialized purposes (*e.g.*, dentist chairs and dental treatment units, counters, laboratory benches bolted to the floor, dishwashers, modular furniture, carpeting, etc.). Such equipment will be considered as not being permanently fixed to the building if it can be removed without the destruction of, or need for costly or extensive alterations or repairs, to the building or the equipment. Equipment that meets these criteria will be subject to the 6⅔ percent equipment use allowance limitation.

g. A reasonable use allowance may be negotiated for any assets that are considered to be fully depreciated, after taking into consideration the amount of depreciation previously charged to the government, the estimated useful life remaining at the time of negotiation, the effect of any increased maintenance charges, decreased efficiency due to age, and any other factors pertinent to the utilization of the asset for the purpose contemplated.

h. Charges for use allowances or depreciation must be supported by adequate property records. Physical inventories must be taken at least once every two years (a statistical sampling approach is acceptable) to ensure that assets exist, and are in use. Governmental units will manage equipment in accordance with State laws and procedures. When the depreciation method is followed, depreciation records indicating the amount of depreciation taken each period must also be maintained.

12. *Donations and contributions.*

a. Contributions or donations rendered. Contributions or donations, including cash, property, and services, made by the governmental unit, regardless of the recipient, are unallowable.

b. Donated services received:

(1) Donated or volunteer services may be furnished to a governmental unit by professional and technical personnel, consultants, and other skilled and unskilled labor. The value of these services is not reimbursable either as a direct or indirect cost. However, the value of donated services may be used to meet cost sharing or matching requirements in accordance with the Federal Grants Management Common Rule.

(2) The value of donated services utilized in the performance of a direct cost activity shall, when material in amount, be considered in the determination of the governmental unit's indirect costs or rate(s) and, accordingly, shall be allocated a proportionate share of applicable indirect costs.

(3) To the extent feasible, donated services will be supported by the same methods used by the governmental unit to support the allocability of regular personnel services.

13. *Employee morale, health, and welfare costs.*

a. The costs of employee information publications, health or first-aid clinics and/or infirmaries, recreational activities, employee counseling services, and any other expenses incurred in accordance with the governmental unit's established practice or custom for the improvement of working conditions, employer-employee relations, employee morale, and employee performance are allowable.

b. Such costs will be equitably apportioned to all activities of the governmental unit. Income generated from any of these activities will be offset against expenses.

14. *Entertainment.* Costs of entertainment, including amusement, diversion, and social activities and any costs directly associated with such costs (such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities) are unallowable.

15. *Equipment and other capital expenditures.*

a. For purposes of this subsection 15, the following definitions apply:

(1) "Capital Expenditures" means expenditures for the acquisition cost of capital assets (equipment, buildings, land), or expenditures to make improvements to capital assets that materially increase their value or useful life. Acquisition cost means the cost of the asset including the cost to put it in place. Acquisition cost for equipment, for example, means the net invoice price of the equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in transit insurance, freight, and installation may be included in, or excluded from the acquisition cost in accordance with the governmental unit's regular accounting practices.

(2) "Equipment" means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of the capitalization level established by the governmental unit for financial statement purposes, or $5000.

(3) "Special purpose equipment" means equipment which is used only for research, medical, scientific, or other technical activities. Examples of special purpose equipment include microscopes, x-ray machines, surgical instruments, and spectrometers.

(4) "General purpose equipment" means equipment, which is not limited to research, medical, scientific or other technical activities. Examples include office equipment and furnishings, modular offices, telephone networks, information technology equipment and systems, air conditioning equipment, reproduction and printing equipment, and motor vehicles.

b. The following rules of allowability shall apply to equipment and other capital expenditures:

(1) Capital expenditures for general purpose equipment, buildings, and land are unallowable as direct charges, except where approved in advance by the awarding agency.

(2) Capital expenditures for special purpose equipment are allowable as direct costs, provided that items with a unit cost of $5000 or more have the prior approval of the awarding agency.

(3) Capital expenditures for improvements to land, buildings, or equipment which materially increase their value or useful life are unallowable as a direct cost except with the prior approval of the awarding agency.

(4) When approved as a direct charge pursuant to section 15.b(1), (2), and (3)of this appendix, capital expenditures will be charged in the period in which the expenditure is incurred, or as otherwise determined appropriate and negotiated with the awarding agency. In addition, Federal awarding agencies are authorized at their option to waive or delegate the prior approval requirement.

(5) Equipment and other capital expenditures are unallowable as indirect costs. However, see section 11 of this appendix, Depreciation and use allowance, for rules on the allowability of use allowances or depreciation on buildings, capital improvements, and equipment. Also, see section 37 of this appendix, Rental costs, concerning the allowability of rental costs for land, buildings, and equipment.

(6) The unamortized portion of any equipment written off as a result of a change in capitalization levels may be recovered by continuing to claim the otherwise allowable use allowances or depreciation on the equipment, or by amortizing the amount to be written off over a period of years negotiated with the cognizant agency.

(7) When replacing equipment purchased in whole or in part with Federal funds, the governmental unit may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property.

16. *Fines and penalties.* Fines, penalties, damages, and other settlements resulting from violations (or alleged violations) of, or failure of the governmental unit to comply with, Federal, State, local, or Indian tribal laws and regulations are unallowable except when incurred as a result of compliance with specific provisions of the Federal award or written instructions by the awarding agency authorizing in advance such payments.

17. *Fund raising and investment management costs.*

a. Costs of organized fund raising, including financial campaigns, solicitation of gifts and bequests, and similar expenses incurred to raise capital or obtain contributions are unallowable, regardless of the purpose for which the funds will be used.

b. Costs of investment counsel and staff and similar expenses incurred to enhance income from investments are unallowable. However, such costs associated with investments covering pension, self-insurance, or other funds which include Federal participation allowed by this and other appendices of 2 CFR part 225 are allowable.

c. Fund raising and investment activities shall be allocated an appropriate share of indirect costs under the conditions described in subsection C.3.b. of Appendix A to this part.

18. *Gains and losses on disposition of depreciable property and other capital assets*

and substantial relocation of Federal programs.

a. (1) Gains and losses on the sale, retirement, or other disposition of depreciable property shall be included in the year in which they occur as credits or charges to the asset cost grouping(s) in which the property was included. The amount of the gain or loss to be included as a credit or charge to the appropriate asset cost grouping(s) shall be the difference between the amount realized on the property and the undepreciated basis of the property.

(2) Gains and losses on the disposition of depreciable property shall not be recognized as a separate credit or charge under the following conditions:

(a) The gain or loss is processed through a depreciation account and is reflected in the depreciation allowable under sections 11 and 15 of this appendix.

(b) The property is given in exchange as part of the purchase price of a similar item and the gain or loss is taken into account in determining the depreciation cost basis of the new item.

(c) A loss results from the failure to maintain permissible insurance, except as otherwise provided in subsection 22.d of this appendix.

(d) Compensation for the use of the property was provided through use allowances in lieu of depreciation.

b. Substantial relocation of Federal awards from a facility where the Federal Government participated in the financing to another facility prior to the expiration of the useful life of the financed facility requires Federal agency approval. The extent of the relocation, the amount of the Federal participation in the financing, and the depreciation charged to date may require negotiation of space charges for Federal awards.

c. Gains or losses of any nature arising from the sale or exchange of property other than the property covered in subsection 18.a. of this appendix, *e.g.*, land or included in the fair market value used in any adjustment resulting from a relocation of Federal awards covered in subsection b. shall be excluded in computing Federal award costs.

19. *General government expenses.*

a. The general costs of government are unallowable (except as provided in section 43 of this appendix, Travel costs). These include:

(1) Salaries and expenses of the Office of the Governor of a State or the chief executive of a political subdivision or the chief executive of federally-recognized Indian tribal government;

(2) Salaries and other expenses of a State legislature, tribal council, or similar local governmental body, such as a county supervisor, city council, school board, etc., whether incurred for purposes of legislation or executive direction;

(3) Costs of the judiciary branch of a government;

(4) Costs of prosecutorial activities unless treated as a direct cost to a specific program if authorized by program statute or regulation (however, this does not preclude the allowability of other legal activities of the Attorney General); and

(5) Costs of other general types of government services normally provided to the general public, such as fire and police, unless provided for as a direct cost under a program statute or regulation.

b. For federally-recognized Indian tribal governments and Councils Of Governments (COGs), the portion of salaries and expenses directly attributable to managing and operating Federal programs by the chief executive and his staff is allowable.

20. *Goods or services for personal use.* Costs of goods or services for personal use of the governmental unit's employees are unallowable regardless of whether the cost is reported as taxable income to the employees.

21. *Idle facilities and idle capacity.*

As used in this section the following terms have the meanings set forth below:

(1) "Facilities" means land and buildings or any portion thereof, equipment individually or collectively, or any other tangible capital asset, wherever located, and whether owned or leased by the governmental unit.

(2) "Idle facilities" means completely unused facilities that are excess to the governmental unit's current needs.

(3) "Idle capacity" means the unused capacity of partially used facilities. It is the difference between: that which a facility could achieve under 100 percent operating time on a one-shift basis less operating interruptions resulting from time lost for repairs, setups, unsatisfactory materials, and other normal delays; and the extent to which the facility was actually used to meet demands during the accounting period. A multi-shift basis should be used if it can be shown that this amount of usage would normally be expected for the type of facility involved.

(4) "Cost of idle facilities or idle capacity" means costs such as maintenance, repair, housing, rent, and other related costs, e.g., insurance, interest, property taxes and depreciation or use allowances.

b. The costs of idle facilities are unallowable except to the extent that:

(1) They are necessary to meet fluctuations in workload; or

(2) Although not necessary to meet fluctuations in workload, they were necessary when acquired and are now idle because of changes in program requirements, efforts to achieve more economical operations, reorganization, termination, or other causes which could not have been reasonably foreseen. Under the exception stated in this subsection, costs of idle facilities are allowable for a reasonable period of time, ordinarily not to exceed one year, depending on the initiative taken to use, lease, or dispose of such facilities.

c. The costs of idle capacity are normal costs of doing business and are a factor in the normal fluctuations of usage or indirect cost rates from period to period. Such costs are allowable, provided that the capacity is reasonably anticipated to be necessary or was originally reasonable and is not subject to reduction or elimination by use on other Federal awards, subletting, renting, or sale, in accordance with sound business, economic, or security practices. Widespread idle capacity throughout an entire facility or among a group of assets having substantially the same function may be considered idle facilities.

22. *Insurance and indemnification.*

a. Costs of insurance required or approved and maintained, pursuant to the Federal award, are allowable.

b. Costs of other insurance in connection with the general conduct of activities are allowable subject to the following limitations:

(1) Types and extent and cost of coverage are in accordance with the governmental unit's policy and sound business practice.

(2) Costs of insurance or of contributions to any reserve covering the risk of loss of, or damage to, Federal Government property are unallowable except to the extent that the awarding agency has specifically required or approved such costs.

c. Actual losses which could have been covered by permissible insurance (through a self-insurance program or otherwise) are unallowable, unless expressly provided for in the Federal award or as described below. However, the Federal Government will participate in actual losses of a self insurance fund that are in excess of reserves. Costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound management practice, and minor losses not covered by insurance, such as spoilage, breakage, and disappearance of small hand tools, which occur in the ordinary course of operations, are allowable.

d. Contributions to a reserve for certain self-insurance programs including workers compensation, unemployment compensation, and severance pay are allowable subject to the following provisions:

(1) The type of coverage and the extent of coverage and the rates and premiums would have been allowed had insurance (including reinsurance) been purchased to cover the risks. However, provision for known or reasonably estimated self-insured liabilities, which do not become payable for more than one year after the provision is made, shall not exceed the discounted present value of the liability. The rate used for discounting the liability must be determined by giving consideration to such factors as the governmental unit's settlement rate for those liabilities and its investment rate of return.

(2) Earnings or investment income on reserves must be credited to those reserves.

(3) Contributions to reserves must be based on sound actuarial principles using historical experience and reasonable assumptions. Reserve levels must be analyzed and updated at least biennially for each major risk being insured and take into account any reinsurance, coinsurance, etc. Reserve levels related to employee-related coverages will normally be limited to the value of claims submitted and adjudicated but not paid, submitted but not adjudicated, and incurred but not submitted. Reserve levels in excess of the amounts based on the above must be identified and justified in the cost allocation plan or indirect cost rate proposal.

(4) Accounting records, actuarial studies, and cost allocations (or billings) must recognize any significant differences due to types of insured risk and losses generated by the various insured activities or agencies of the governmental unit. If individual departments or agencies of the governmental

unit experience significantly different levels of claims for a particular risk, those differences are to be recognized by the use of separate allocations or other techniques resulting in an equitable allocation.

(5) Whenever funds are transferred from a self-insurance reserve to other accounts (e.g., general fund), refunds shall be made to the Federal Government for its share of funds transferred, including earned or imputed interest from the date of transfer.

e. Actual claims paid to or on behalf of employees or former employees for workers' compensation, unemployment compensation, severance pay, and similar employee benefits (e.g., subsection 8.f. for post retirement health benefits), are allowable in the year of payment provided the governmental unit follows a consistent costing policy and they are allocated as a general administrative expense to all activities of the governmental unit.

f. Insurance refunds shall be credited against insurance costs in the year the refund is received.

g. Indemnification includes securing the governmental unit against liabilities to third persons and other losses not compensated by insurance or otherwise. The Federal Government is obligated to indemnify the governmental unit only to the extent expressly provided for in the Federal award, except as provided in subsection 22.d of this appendix.

h. Costs of commercial insurance that protects against the costs of the contractor for correction of the contractor's own defects in materials or workmanship are unallowable.

23. *Interest.*

a. Costs incurred for interest on borrowed capital or the use of a governmental unit's own funds, however represented, are unallowable except as specifically provided in subsection b. or authorized by Federal legislation.

b. Financing costs (including interest) paid or incurred which are associated with the otherwise allowable costs of building acquisition, construction, or fabrication, reconstruction or remodeling completed on or after October 1, 1980 is allowable subject to the conditions in section 23.b.(1) through (4) of this appendix. Financing costs (including interest) paid or incurred on or after September 1, 1995 for land or associated with otherwise allowable costs of equipment is allowable, subject to the conditions in section 23.b. (1) through (4) of this appendix.

(1) The financing is provided (from other than tax or user fee sources) by a bona fide third party external to the governmental unit;

(2) The assets are used in support of Federal awards;

(3) Earnings on debt service reserve funds or interest earned on borrowed funds pending payment of the construction or acquisition costs are used to offset the current period's cost or the capitalized interest, as appropriate. Earnings subject to being reported to the Federal Internal Revenue Service under arbitrage requirements are excludable.

(4) For debt arrangements over $1 million, unless the governmental unit makes an initial equity contribution to the asset purchase of 25 percent or more, the governmental unit shall reduce claims for interest cost by an amount equal to imputed interest earnings on excess cash flow, which is to be calculated as follows. Annually, non-Federal entities shall prepare a cumulative (from the inception of the project) report of monthly cash flows that includes inflows and outflows, regardless of the funding source. Inflows consist of depreciation expense, amortization of capitalized construction interest, and annual interest cost. For cash flow calculations, the annual inflow figures shall be divided by the number of months in the year (i.e., usually 12) that the building is in service for monthly amounts. Outflows consist of initial equity contributions, debt principal payments (less the pro rata share attributable to the unallowable costs of land) and interest payments. Where cumulative inflows exceed cumulative outflows, interest shall be calculated on the excess inflows for that period and be treated as a reduction to allowable interest cost. The rate of interest to be used to compute earnings on excess cash flows shall be the three-month Treasury bill closing rate as of the last business day of that month.

(5) Interest attributable to fully depreciated assets is unallowable.

24. *Lobbying.*

a. General. The cost of certain influencing activities associated with obtaining grants, contracts, cooperative agreements, or loans is an unallowable cost. Lobbying with respect to certain grants, contracts, cooperative agreements, and loans shall be governed by the common rule, "New Restrictions on Lobbying" (see Section J.24 of Appendix A to 2 CFR part 220), including definitions, and the Office of Management and Budget "Government-wide Guidance for New Restrictions on Lobbying" and notices published at 54 FR 52306 (December 20, 1989), 55 FR 24540 (June 15, 1990), and 57 FR 1772 (January 15, 1992), respectively.

b. Executive lobbying costs. Costs incurred in attempting to improperly influence either directly or indirectly, an employee or officer of the Executive Branch of the Federal Government to give consideration or to act regarding a sponsored agreement or a regulatory matter are unallowable. Improper influence means any influence that induces or tends to induce a Federal employee or officer to give consideration or to act regarding a federally-sponsored agreement or regulatory matter on any basis other than the merits of the matter.

25. *Maintenance, operations, and repairs.* Unless prohibited by law, the cost of utilities, insurance, security, janitorial services, elevator service, upkeep of grounds, necessary maintenance, normal repairs and alterations, and the like are allowable to the extent that they: keep property (including Federal property, unless otherwise provided for) in an efficient operating condition, do not add to the permanent value of property or appreciably prolong its intended life, and are not otherwise included in rental or other charges for space. Costs which add to the permanent value of property or appreciably prolong its intended life shall be treated as capital expenditures (see sections 11 and 15 of this appendix).

26. *Materials and supplies costs.*

a. Costs incurred for materials, supplies, and fabricated parts necessary to carry out a Federal award are allowable.

b. Purchased materials and supplies shall be charged at their actual prices, net of applicable credits. Withdrawals from general stores or stockrooms should be charged at their actual net cost under any recognized method of pricing inventory withdrawals, consistently applied. Incoming transportation charges are a proper part of materials and supplies costs.

c. Only materials and supplies actually used for the performance of a Federal award may be charged as direct costs.

d. Where federally-donated or furnished materials are used in performing the Federal award, such materials will be used without charge.

27. *Meetings and conferences.* Costs of meetings and conferences, the primary purpose of which is the dissemination of technical information, are allowable. This includes costs of meals, transportation, rental of facilities, speakers' fees, and other items incidental to such meetings or conferences. But see section 14, Entertainment costs, of this appendix.

28. *Memberships, subscriptions, and professional activity costs.*

a. Costs of the governmental unit's memberships in business, technical, and professional organizations are allowable.

b. Costs of the governmental unit's subscriptions to business, professional, and technical periodicals are allowable.

c. Costs of membership in civic and community, social organizations are allowable as a direct cost with the approval of the Federal awarding agency.

d. Costs of membership in organizations substantially engaged in lobbying are unallowable.

29. *Patent costs.*

a. The following costs relating to patent and copyright matters are allowable: cost of preparing disclosures, reports, and other documents required by the Federal award and of searching the art to the extent necessary to make such disclosures; cost of preparing documents and any other patent costs in connection with the filing and prosecution of a United States patent application where title or royalty-free license is required by the Federal Government to be conveyed to the Federal Government; and general counseling services relating to patent and copyright matters, such as advice on patent and copyright laws, regulations, clauses, and employee agreements (but see sections 32, Professional service costs, and 38, Royalties and other costs for use of patents and copyrights, of this appendix).

b. The following costs related to patent and copyright matter are unallowable: Cost of preparing disclosures, reports, and other documents and of searching the art to the extent necessary to make disclosures not required by the award; costs in connection with filing and prosecuting any foreign patent application; or any United States patent application, where the Federal award does not require conveying title or a royalty-free license to the Federal Government (but see section 38, Royalties and other costs for use of patents and copyrights, of this appendix).

30. *Plant and homeland security costs.* Necessary and reasonable expenses incurred for routine and homeland security to protect facilities, personnel, and work products are allowable. Such costs include, but are not limited to, wages and uniforms of personnel engaged in security activities; equipment; barriers; contractual security services; consultants; etc. Capital expenditures for homeland and plant security purposes are subject to section 15, Equipment and other capital expenditures, of this appendix.

31. *Pre-award costs.* Pre-award costs are those incurred prior to the effective date of the award directly pursuant to the negotiation and in anticipation of the award where such costs are necessary to comply with the proposed delivery schedule or period of performance. Such costs are allowable only to the extent that they would have been allowable if incurred after the date of the award and only with the written approval of the awarding agency.

32. *Professional service costs.*

a. Costs of professional and consultant services rendered by persons who are members of a particular profession or possess a special skill, and who are not officers or employees of the governmental unit, are allowable, subject to subparagraphs b and c when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Federal Government. In addition, legal and related services are limited under section 10 of this appendix.

b. In determining the allowability of costs in a particular case, no single factor or any special combination of factors is necessarily determinative. However, the following factors are relevant:

(1) The nature and scope of the service rendered in relation to the service required.

(2) The necessity of contracting for the service, considering the governmental unit's capability in the particular area.

(3) The past pattern of such costs, particularly in the years prior to Federal awards.

(4) The impact of Federal awards on the governmental unit's business (*i.e.*, what new problems have arisen).

(5) Whether the proportion of Federal work to the governmental unit's total business is such as to influence the governmental unit in favor of incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under Federal grants and contracts.

(6) Whether the service can be performed more economically by direct employment rather than contracting.

(7) The qualifications of the individual or concern rendering the service and the customary fees charged, especially on non-Federal awards.

(8) Adequacy of the contractual agreement for the service (*e.g.*, description of the service, estimate of time required, rate of compensation, and termination provisions).

c. In addition to the factors in subparagraph b, retainer fees to be allowable must be supported by available or rendered evidence of bona fide services available or rendered.

33. *Proposal costs.* Costs of preparing proposals for potential Federal awards are allowable. Proposal costs should normally be treated as indirect costs and should be allocated to all activities of the governmental unit utilizing the cost allocation plan and indirect cost rate proposal. However, proposal costs may be charged directly to Federal awards with the prior approval of the Federal awarding agency.

34. *Publication and printing costs.*

a. Publication costs include the costs of printing (including the processes of composition, plate-making, press work, binding, and the end products produced by such processes), distribution, promotion, mailing, and general handling. Publication costs also include page charges in professional publications.

b. If these costs are not identifiable with a particular cost objective, they should be allocated as indirect costs to all benefiting activities of the governmental unit.

c. Page charges for professional journal publications are allowable as a necessary part of research costs where:

(1) The research papers report work supported by the Federal Government; and

(2) The charges are levied impartially on all research papers published by the journal, whether or not by federally-sponsored authors.

35. *Rearrangement and alteration costs.* Costs incurred for ordinary and normal rearrangement and alteration of facilities are allowable. Special arrangements and alterations costs incurred specifically for a Federal award are allowable with the prior approval of the Federal awarding agency.

36. *Reconversion costs.* Costs incurred in the restoration or rehabilitation of the governmental unit's facilities to approximately the same condition existing immediately prior to commencement of Federal awards, less costs related to normal wear and tear, are allowable.

37. *Rental costs of buildings and equipment.*

a. Subject to the limitations described in subsections b. through d. of this section, rental costs are allowable to the extent that the rates are reasonable in light of such factors as: rental costs of comparable property, if any; market conditions in the area; alternatives available; and the type, life expectancy, condition, and value of the property leased. Rental arrangements should be reviewed periodically to determine if circumstances have changed and other options are available.

b. Rental costs under "sale and lease back" arrangements are allowable only up to the amount that would be allowed had the governmental unit continued to own the property. This amount would include expenses such as depreciation or use allowance, maintenance, taxes, and insurance.

c. Rental costs under "less-than-arm's-length" leases are allowable only up to the amount (as explained in section 37.b of this appendix) that would be allowed had title to the property vested in the governmental unit. For this purpose, a less-than-arm's-length lease is one under which one party to the lease agreement is able to control or substantially influence the actions of the other. Such leases include, but are not limited to those between divisions of a governmental unit; governmental units under common control through common officers, directors, or members; and a governmental unit and a director, trustee, officer, or key employee of the governmental unit or his immediate family, either directly or through corporations, trusts, or similar arrangements in which they hold a controlling interest. For example, a governmental unit may establish a separate corporation for the sole purpose of owning property and leasing it back to the governmental unit.

d. Rental costs under leases which are required to be treated as capital leases under GAAP are allowable only up to the amount (as explained in subsection 37.b of this appendix) that would be allowed had the governmental unit purchased the property on the date the lease agreement was executed. The provisions of Financial Accounting Standards Board Statement 13, Accounting for Leases, shall be used to determine whether a lease is a capital lease. Interest costs related to capital leases are allowable to the extent they meet the criteria in section 23 of this appendix. Unallowable costs include amounts paid for profit, management fees, and taxes that would not have been incurred had the governmental unit purchased the facility.

38. *Royalties and other costs for the use of patents.*

a. Royalties on a patent or copyright or amortization of the cost of acquiring by purchase a copyright, patent, or rights thereto, necessary for the proper performance of the award are allowable unless:

(1) The Federal Government has a license or the right to free use of the patent or copyright.

(2) The patent or copyright has been adjudicated to be invalid, or has been administratively determined to be invalid.

(3) The patent or copyright is considered to be unenforceable.

(4) The patent or copyright is expired.

b. Special care should be exercised in determining reasonableness where the royalties may have been arrived at as a result of less-than-arm's-length bargaining, *e.g.:*

(1) Royalties paid to persons, including corporations, affiliated with the governmental unit.

(2) Royalties paid to unaffiliated parties, including corporations, under an agreement entered into in contemplation that a Federal award would be made.

(3) Royalties paid under an agreement entered into after an award is made to a governmental unit.

c. In any case involving a patent or copyright formerly owned by the governmental unit, the amount of royalty allowed should not exceed the cost which would have been allowed had the governmental unit retained title thereto.

39. *Selling and marketing.* Costs of selling and marketing any products or services of the governmental unit are unallowable (unless allowed under section 1. of this appendix as allowable public relations costs or under section 33. of this appendix as allowable proposal costs.

40. *Taxes.*

a. Taxes that a governmental unit is legally required to pay are allowable, except for self-

assessed taxes that disproportionately affect Federal programs or changes in tax policies that disproportionately affect Federal programs. This provision is applicable to taxes paid during the governmental unit's first fiscal year that begins on or after January 1, 1998, and applies thereafter.

b. Gasoline taxes, motor vehicle fees, and other taxes that are in effect user fees for benefits provided to the Federal Government are allowable.

c. This provision does not restrict the authority of Federal agencies to identify taxes where Federal participation is inappropriate. Where the identification of the amount of unallowable taxes would require an inordinate amount of effort, the cognizant agency may accept a reasonable approximation thereof.

41. *Termination costs applicable to sponsored agreements.* Termination of awards generally gives rise to the incurrence of costs, or the need for special treatment of costs, which would not have arisen had the Federal award not been terminated. Cost principles covering these items are set forth below. They are to be used in conjunction with the other provisions of this appendix in termination situations.

a. The cost of items reasonably usable on the governmental unit's other work shall not be allowable unless the governmental unit submits evidence that it would not retain such items at cost without sustaining a loss. In deciding whether such items are reasonably usable on other work of the governmental unit, the awarding agency should consider the governmental unit's plans and orders for current and scheduled activity. Contemporaneous purchases of common items by the governmental unit shall be regarded as evidence that such items are reasonably usable on the governmental unit's other work. Any acceptance of common items as allocable to the terminated portion of the Federal award shall be limited to the extent that the quantities of such items on hand, in transit, and on order are in excess of the reasonable quantitative requirements of other work.

b. If in a particular case, despite all reasonable efforts by the governmental unit, certain costs cannot be discontinued immediately after the effective date of termination, such costs are generally allowable within the limitations set forth in this and other appendices of 2 CFR part 225, except that any such costs continuing after termination due to the negligent or willful failure of the governmental unit to discontinue such costs shall be unallowable.

c. Loss of useful value of special tooling, machinery, and equipment is generally allowable if:

(1) Such special tooling, special machinery, or equipment is not reasonably capable of use in the other work of the governmental unit,

(2) The interest of the Federal Government is protected by transfer of title or by other means deemed appropriate by the awarding agency, and

(3) The loss of useful value for any one terminated Federal award is limited to that portion of the acquisition cost which bears the same ratio to the total acquisition cost as the terminated portion of the Federal award bears to the entire terminated Federal award and other Federal awards for which the special tooling, machinery, or equipment was acquired.

d. Rental costs under unexpired leases are generally allowable where clearly shown to have been reasonably necessary for the performance of the terminated Federal award less the residual value of such leases, if:

(1) The amount of such rental claimed does not exceed the reasonable use value of the property leased for the period of the Federal award and such further period as may be reasonable, and

(2) The governmental unit makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of such lease. There also may be included the cost of alterations of such leased property, provided such alterations were necessary for the performance of the Federal award, and of reasonable restoration required by the provisions of the lease.

e. Settlement expenses including the following are generally allowable:

(1) Accounting, legal, clerical, and similar costs reasonably necessary for:

(a) The preparation and presentation to the awarding agency of settlement claims and supporting data with respect to the terminated portion of the Federal award, unless the termination is for default (see Subpart __.44 of the Grants Management Common Rule (see § 215.5) implementing OMB Circular A–102); and

(b) The termination and settlement of subawards.

(2) Reasonable costs for the storage, transportation, protection, and disposition of property provided by the Federal Government or acquired or produced for the Federal award, except when grantees or contractors are reimbursed for disposals at a predetermined amount in accordance with Subparts __.31 and __.32 of the Grants Management Common Rule (see § 215.5) implementing OMB Circular A–102.

f. Claims under subawards, including the allocable portion of claims which are common to the Federal award, and to other work of the governmental unit are generally allowable. An appropriate share of the governmental unit's indirect expense may be allocated to the amount of settlements with subcontractors and/or subgrantees, provided that the amount allocated is otherwise consistent with the basic guidelines contained in Appendix A to this part. The indirect expense so allocated shall exclude the same and similar costs claimed directly or indirectly as settlement expenses.

42. *Training costs.* The cost of training provided for employee development is allowable.

43. *Travel costs.*

a. General. Travel costs are the expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business of the governmental unit. Such costs may be charged on an actual cost basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used is applied to an entire trip and not to selected days of the trip, and results in charges consistent with those normally allowed in like circumstances in the governmental unit's non-federally-sponsored activities. Notwithstanding the provisions of section 19 of this appendix, General government expenses, travel costs of officials covered by that section are allowable with the prior approval of an awarding agency when they are specifically related to Federal awards.

b. Lodging and subsistence. Costs incurred by employees and officers for travel, including costs of lodging, other subsistence, and incidental expenses, shall be considered reasonable and allowable only to the extent such costs do not exceed charges normally allowed by the governmental unit in its regular operations as the result of the governmental unit's written travel policy. In the absence of an acceptable, written governmental unit policy regarding travel costs, the rates and amounts established under subchapter I of Chapter 57, Title 5, United States Code ("Travel and Subsistence Expenses; Mileage Allowances"), or by the Administrator of General Services, or by the President (or his or her designee) pursuant to any provisions of such subchapter shall apply to travel under Federal awards (48 CFR 31.205–46(a)).

c. Commercial air travel.

(1) Airfare costs in excess of the customary standard commercial airfare (coach or equivalent), Federal Government contract airfare (where authorized and available), or the lowest commercial discount airfare are unallowable except when such accommodations would:

(a) Require circuitous routing;

(b) Require travel during unreasonable hours;

(c) Excessively prolong travel;

(d) Result in additional costs that would offset the transportation savings; or

(e) Offer accommodations not reasonably adequate for the traveler's medical needs. The governmental unit must justify and document these conditions on a case-by-case basis in order for the use of first-class airfare to be allowable in such cases.

(2) Unless a pattern of avoidance is detected, the Federal Government will generally not question a governmental unit's determinations that customary standard airfare or other discount airfare is unavailable for specific trips if the governmental unit can demonstrate either of the following:

(aa) That such airfare was not available in the specific case; or

(b) That it is the governmental unit's overall practice to make routine use of such airfare.

d. Air travel by other than commercial carrier. Costs of travel by governmental unit-owned, -leased, or -chartered aircraft include the cost of lease, charter, operation (including personnel costs), maintenance, depreciation, insurance, and other related costs. The portion of such costs that exceeds the cost of allowable commercial air travel, as provided for in subsection 43.c. of this appendix, is unallowable.

e. Foreign travel. Direct charges for foreign travel costs are allowable only when the travel has received prior approval of the awarding agency. Each separate foreign trip

must receive such approval. For purposes of this provision, "foreign travel" includes any travel outside Canada, Mexico, the United States, and any United States territories and possessions. However, the term "foreign travel" for a governmental unit located in a foreign country means travel outside that country.

Appendix C to Part 225—State/Local-Wide Central Service Cost Allocation Plans

Table of Contents

A. *General.*

1. Most governmental units provide certain services, such as motor pools, computer centers, purchasing, accounting, etc., to operating agencies on a centralized basis. Since federally-supported awards are performed within the individual operating agencies, there needs to be a process whereby these central service costs can be identified and assigned to benefitted activities on a reasonable and consistent basis. The central service cost allocation plan provides that process. All costs and other data used to distribute the costs included in the plan should be supported by formal accounting and other records that will support the propriety of the costs assigned to Federal awards.

2. Guidelines and illustrations of central service cost allocation plans are provided in a brochure published by the Department of Health and Human Services entitled "A Guide for State and Local Government Agencies: Cost Principles and Procedures for Establishing Cost Allocation Plans and Indirect Cost Rates for Grants and Contracts with the Federal Government." A copy of this brochure may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20401.

B. *Definitions.*

1. "Billed central services" means central services that are billed to benefitted agencies and/or programs on an individual fee-for-service or similar basis. Typical examples of billed central services include computer services, transportation services, insurance, and fringe benefits.

2. "Allocated central services" means central services that benefit operating agencies but are not billed to the agencies on a fee-for-service or similar basis. These costs are allocated to benefitted agencies on some reasonable basis. Examples of such services might include general accounting, personnel administration, purchasing, etc.

3. "Agency or operating agency" means an organizational unit or sub-division within a governmental unit that is responsible for the performance or administration of awards or activities of the governmental unit.

C. *Scope of the Central Service Cost Allocation Plans.* The central service cost allocation plan will include all central service costs that will be claimed (either as a billed or an allocated cost) under Federal awards and will be documented as described in section E. Costs of central services omitted from the plan will not be reimbursed.

D. *Submission Requirements.*

1. Each State will submit a plan to the Department of Health and Human Services for each year in which it claims central service costs under Federal awards. The plan should include a projection of the next year's allocated central service cost (based either on actual costs for the most recently completed year or the budget projection for the coming year), and a reconciliation of actual allocated central service costs to the estimated costs used for either the most recently completed year or the year immediately preceding the most recently completed year.

2. Each local government that has been designated as a "major local government" by the Office of Management and Budget (OMB) is also required to submit a plan to its cognizant agency annually. OMB periodically lists major local governments in the **Federal Register**.

3. All other local governments claiming central service costs must develop a plan in accordance with the requirements described in this appendix and maintain the plan and related supporting documentation for audit. These local governments are not required to submit their plans for Federal approval unless they are specifically requested to do so by the cognizant agency. Where a local government only receives funds as a sub-recipient, the primary recipient will be responsible for negotiating indirect cost rates and/or monitoring the sub-recipient's plan.

4. All central service cost allocation plans will be prepared and, when required, submitted within six months prior to the beginning of each of the governmental unit's fiscal years in which it proposes to claim central service costs. Extensions may be granted by the cognizant agency on a case-by-case basis.

E. *Documentation Requirements for Submitted Plans.* The documentation requirements described in this section may be modified, expanded, or reduced by the cognizant agency on a case-by-case basis. For example, the requirements may be reduced for those central services which have little or no impact on Federal awards. Conversely, if a review of a plan indicates that certain additional information is needed, and will likely be needed in future years, it may be routinely requested in future plan submissions. Items marked with an asterisk (*) should be submitted only once; subsequent plans should merely indicate any changes since the last plan.

1. General. All proposed plans must be accompanied by the following: An organization chart sufficiently detailed to show operations including the central service activities of the State/local government whether or not they are shown as benefiting from central service functions; a copy of the Comprehensive Annual Financial Report (or a copy of the Executive Budget if budgeted costs are being proposed) to support the allowable costs of each central service activity included in the plan; and, a certification (see subsection 4.) that the plan was prepared in accordance with this and other appendices to this part, contains only allowable costs, and was prepared in a manner that treated similar costs consistently among the various Federal awards and between Federal and non-Federal awards/activities.

2. Allocated central services. For each allocated central service, the plan must also include the following: A brief description of the service*, an identification of the unit rendering the service and the operating agencies receiving the service, the items of expense included in the cost of the service, the method used to distribute the cost of the service to benefitted agencies, and a summary schedule showing the allocation of each service to the specific benefitted agencies. If any self-insurance funds or fringe benefits costs are treated as allocated (rather than billed) central services, documentation discussed in subsections 3.b. and c. shall also be included.

3. Billed services.

a. General. The information described below shall be provided for all billed central services, including internal service funds, self-insurance funds, and fringe benefit funds.

b. Internal service funds.

(1) For each internal service fund or similar activity with an operating budget of $5 million or more, the plan shall include: A brief description of each service; a balance sheet for each fund based on individual accounts contained in the governmental unit's accounting system; a revenue/expenses statement, with revenues broken out by source, *e.g.*, regular billings, interest earned, etc.; a listing of all non-operating transfers (as defined by Generally Accepted Accounting Principles (GAAP)) into and out of the fund; a description of the procedures (methodology) used to charge the costs of each service to users, including how billing rates are determined; a schedule of current rates; and, a schedule comparing total revenues (including imputed revenues) generated by the service to the allowable costs of the service, as determined under this and other appendices of this part, with an explanation of how variances will be handled.

(2) Revenues shall consist of all revenues generated by the service, including unbilled and uncollected revenues. If some users were not billed for the services (or were not billed at the full rate for that class of users), a schedule showing the full imputed revenues associated with these users shall be provided. Expenses shall be broken out by object cost categories (*e.g.*, salaries, supplies, etc.).

c. Self-insurance funds. For each self-insurance fund, the plan shall include: The fund balance sheet; a statement of revenue and expenses including a summary of billings and claims paid by agency; a listing of all non-operating transfers into and out of the fund; the type(s) of risk(s) covered by the fund (*e.g.*, automobile liability, workers' compensation, etc.); an explanation of how the level of fund contributions are determined, including a copy of the current actuarial report (with the actuarial assumptions used) if the contributions are determined on an actuarial basis; and, a description of the procedures used to charge or allocate fund contributions to benefitted activities. Reserve levels in excess of claims submitted and adjudicated but not paid, submitted but not adjudicated, and incurred but not submitted must be identified and explained.

d. Fringe benefits. For fringe benefit costs, the plan shall include: A listing of fringe benefits provided to covered employees, and the overall annual cost of each type of benefit; current fringe benefit policies*; and procedures used to charge or allocate the costs of the benefits to benefitted activities. In addition, for pension and post-retirement health insurance plans, the following information shall be provided: the governmental unit's funding policies, *e.g.*, legislative bills, trust agreements, or State-mandated contribution rules, if different from actuarially determined rates; the pension plan's costs accrued for the year; the amount funded, and date(s) of funding; a copy of the current actuarial report (including the actuarial assumptions); the plan trustee's report; and, a schedule from the activity showing the value of the interest cost associated with late funding.

4. Required certification. Each central service cost allocation plan will be accompanied by a certification in the following form:

Certificate of Cost Allocation Plan

This is to certify that I have reviewed the cost allocation plan submitted herewith and to the best of my knowledge and belief:

(1) All costs included in this proposal [identify date] to establish cost allocations or billings for [identify period covered by plan] are allowable in accordance with the requirements of 2 CFR Part 225, Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A–87), and the Federal award(s) to which they apply. Unallowable costs have been adjusted for in allocating costs as indicated in the cost allocation plan.

(2) All costs included in this proposal are properly allocable to Federal awards on the basis of a beneficial or causal relationship between the expenses incurred and the awards to which they are allocated in accordance with applicable requirements. Further, the same costs that have been treated as indirect costs have not been claimed as direct costs. Similar types of costs have been accounted for consistently.

I declare that the foregoing is true and correct.

Governmental Unit: _____

Signature: _____

Name of Official: _____

Title: _____

Date of Execution: _____

F. *Negotiation and Approval of Central Service Plans.*

1. All proposed central service cost allocation plans that are required to be submitted will be reviewed, negotiated, and approved by the Federal cognizant agency on a timely basis. The cognizant agency will review the proposal within six months of receipt of the proposal and either negotiate/approve the proposal or advise the governmental unit of the additional documentation needed to support/evaluate the proposed plan or the changes required to make the proposal acceptable. Once an agreement with the governmental unit has been reached, the agreement will be accepted and used by all Federal agencies, unless prohibited or limited by statute. Where a Federal funding agency has reason to believe that special operating factors affecting its awards necessitate special consideration, the funding agency will, prior to the time the plans are negotiated, notify the cognizant agency.

2. The results of each negotiation shall be formalized in a written agreement between the cognizant agency and the governmental unit. This agreement will be subject to re-opening if the agreement is subsequently found to violate a statute or the information upon which the plan was negotiated is later found to be materially incomplete or inaccurate. The results of the negotiation shall be made available to all Federal agencies for their use.

3. Negotiated cost allocation plans based on a proposal later found to have included costs that: Are unallowable as specified by law or regulation, as identified in Appendix B of this part, or by the terms and conditions of Federal awards, or are unallowable because they are clearly not allocable to Federal awards, shall be adjusted, or a refund shall be made at the option of the Federal cognizant agency. These adjustments or refunds are designed to correct the plans and do not constitute a reopening of the negotiation.

G. *Other Policies.*

1. Billed central service activities. Each billed central service activity must separately account for all revenues (including imputed revenues) generated by the service, expenses incurred to furnish the service, and profit/loss.

2. Working capital reserves. Internal service funds are dependent upon a reasonable level of working capital reserve to operate from one billing cycle to the next. Charges by an internal service activity to provide for the establishment and maintenance of a reasonable level of working capital reserve, in addition to the full recovery of costs, are allowable. A working capital reserve as part of retained earnings of up to 60 days cash expenses for normal operating purposes is considered reasonable. A working capital reserve exceeding 60 days may be approved by the cognizant Federal agency in exceptional cases.

3. Carry-forward adjustments of allocated central service costs. Allocated central service costs are usually negotiated and approved for a future fiscal year on a "fixed with carry-forward" basis. Under this procedure, the fixed amounts for the future year covered by agreement are not subject to adjustment for that year. However, when the actual costs of the year involved become known, the differences between the fixed amounts previously approved and the actual costs will be carried forward and used as an adjustment to the fixed amounts established for a later year. This "carry-forward" procedure applies to all central services whose costs were fixed in the approved plan. However, a carry-forward adjustment is not permitted, for a central service activity that was not included in the approved plan, or for unallowable costs that must be reimbursed immediately.

4. Adjustments of billed central services. Billing rates used to charge Federal awards shall be based on the estimated costs of providing the services, including an estimate of the allocable central service costs. A comparison of the revenue generated by each billed service (including total revenues whether or not billed or collected) to the actual allowable costs of the service will be made at least annually, and an adjustment will be made for the difference between the revenue and the allowable costs. These adjustments will be made through one of the following adjustment methods: A cash refund to the Federal Government for the Federal share of the adjustment, credits to the amounts charged to the individual programs, adjustments to future billing rates, or adjustments to allocated central service costs. Adjustments to allocated central services will not be permitted where the total amount of the adjustment for a particular service (Federal share and non-Federal) share exceeds $500,000.

5. Records retention. All central service cost allocation plans and related documentation used as a basis for claiming costs under Federal awards must be retained for audit in accordance with the records retention requirements contained in the Common Rule.

6. Appeals. If a dispute arises in the negotiation of a plan between the cognizant agency and the governmental unit, the dispute shall be resolved in accordance with the appeals procedures of the cognizant agency.

7. OMB assistance. To the extent that problems are encountered among the Federal agencies and/or governmental units in connection with the negotiation and approval process, OMB will lend assistance, as required, to resolve such problems in a timely manner.

Appendix D to Part 225—Public Assistance Cost Allocation Plans

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A. *General.* Federally-financed programs administered by State public assistance agencies are funded predominately by the Department of Health and Human Services (HHS). In support of its stewardship requirements, HHS has published requirements for the development, documentation, submission, negotiation, and approval of public assistance cost allocation plans in Subpart E of 45 CFR part 95. All administrative costs (direct and indirect) are normally charged to Federal awards by implementing the public assistance cost allocation plan. This appendix extends these requirements to all Federal agencies whose programs are administered by a State public assistance agency. Major federally-financed programs typically administered by State public assistance agencies include: Temporary Assistance to Needy Families (TANF), Medicaid, Food Stamps, Child Support Enforcement, Adoption Assistance and Foster Care, and Social Services Block Grant.

B. *Definitions.*

1. "State public assistance agency" means a State agency administering or supervising the administration of one or more public assistance programs operated by the State as identified in Subpart E of 45 CFR part 95. For the purpose of this appendix, these programs include all programs administered by the State public assistance agency.

2. "State public assistance agency costs" means all costs incurred by, or allocable to, the State public assistance agency, except expenditures for financial assistance, medical vendor payments, food stamps, and payments for services and goods provided directly to program recipients.

C. *Policy.* State public assistance agencies will develop, document and implement, and the Federal Government will review, negotiate, and approve, public assistance cost allocation plans in accordance with Subpart E of 45 CFR part 95. The plan will include all programs administered by the State public assistance agency. Where a letter of approval or disapproval is transmitted to a State public assistance agency in accordance with Subpart E, the letter will apply to all Federal agencies and programs. The remaining sections of this appendix (except for the requirement for certification) summarize the provisions of Subpart E of 45 CFR part 95.

D. *Submission, Documentation, and Approval of Public Assistance Cost Allocation Plans.*

1. State public assistance agencies are required to promptly submit amendments to the cost allocation plan to HHS for review and approval.

2. Under the coordination process outlined in subsection E, affected Federal agencies will review all new plans and plan amendments and provide comments, as appropriate, to HHS. The effective date of the plan or plan amendment will be the first day of the quarter following the submission of the plan or amendment, unless another date is specifically approved by HHS. HHS, as the cognizant agency acting on behalf of all affected Federal agencies, will, as necessary, conduct negotiations with the State public assistance agency and will inform the State agency of the action taken on the plan or plan amendment.

E. *Review of Implementation of Approved Plans.*

1. Since public assistance cost allocation plans are of a narrative nature, the review during the plan approval process consists of evaluating the appropriateness of the proposed groupings of costs (cost centers) and the related allocation bases. As such, the Federal Government needs some assurance that the cost allocation plan has been implemented as approved. This is accomplished by reviews by the funding agencies, single audits, or audits conducted by the cognizant audit agency.

2. Where inappropriate charges affecting more than one funding agency are identified, the cognizant HHS cost negotiation office will be advised and will take the lead in resolving the issue(s) as provided for in Subpart E of 45 CFR part 95.

3. If a dispute arises in the negotiation of a plan or from a disallowance involving two or more funding agencies, the dispute shall be resolved in accordance with the appeals procedures set out in 45 CFR part 75. Disputes involving only one funding agency will be resolved in accordance with the funding agency's appeal process.

4. To the extent that problems are encountered among the Federal agencies and/or governmental units in connection with the negotiation and approval process, the Office of Management and Budget will lend assistance, as required, to resolve such problems in a timely manner.

F. *Unallowable Costs.* Claims developed under approved cost allocation plans will be based on allowable costs as identified in 2 CFR part 225. Where unallowable costs have been claimed and reimbursed, they will be refunded to the program that reimbursed the unallowable cost using one of the following methods: a cash refund, offset to a subsequent claim, or credits to the amounts charged to individual awards.

Appendix E to Part 225—State and Local Indirect Cost Rate Proposals

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A. *General.*

1. Indirect costs are those that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned directly to Federal awards and other activities as appropriate, indirect costs are those remaining to be allocated to benefitted cost objectives. A cost may not be allocated to a Federal award as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been assigned to a Federal award as a direct cost.

2. Indirect costs include the indirect costs originating in each department or agency of the governmental unit carrying out Federal awards and the costs of central governmental services distributed through the central service cost allocation plan (as described in Appendix C to this part) and not otherwise treated as direct costs.

3. Indirect costs are normally charged to Federal awards by the use of an indirect cost rate. A separate indirect cost rate(s) is usually necessary for each department or agency of the governmental unit claiming indirect costs under Federal awards. Guidelines and illustrations of indirect cost proposals are provided in a brochure published by the Department of Health and Human Services entitled "A Guide for State and Local Government Agencies: Cost Principles and Procedures for Establishing Cost Allocation Plans and Indirect Cost Rates for Grants and Contracts with the Federal Government." A copy of this brochure may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20401.

4. Because of the diverse characteristics and accounting practices of governmental units, the types of costs which may be classified as indirect costs cannot be specified in all situations. However, typical examples of indirect costs may include certain State/local-wide central service costs, general administration of the grantee department or agency, accounting and personnel services performed within the grantee department or agency, depreciation

or use allowances on buildings and equipment, the costs of operating and maintaining facilities, etc.

5. This appendix does not apply to State public assistance agencies. These agencies should refer instead to Appendix D to this part.

B. *Definitions.*

1. "Indirect cost rate proposal" means the documentation prepared by a governmental unit or subdivision thereof to substantiate its request for the establishment of an indirect cost rate.

2. "Indirect cost rate" is a device for determining in a reasonable manner the proportion of indirect costs each program should bear. It is the ratio (expressed as a percentage) of the indirect costs to a direct cost base.

3. "Indirect cost pool" is the accumulated costs that jointly benefit two or more programs or other cost objectives.

4. "Base" means the accumulated direct costs (normally either total direct salaries and wages or total direct costs exclusive of any extraordinary or distorting expenditures) used to distribute indirect costs to individual Federal awards. The direct cost base selected should result in each award bearing a fair share of the indirect costs in reasonable relation to the benefits received from the costs.

5. "Predetermined rate" means an indirect cost rate, applicable to a specified current or future period, usually the governmental unit's fiscal year. This rate is based on an estimate of the costs to be incurred during the period. Except under very unusual circumstances, a predetermined rate is not subject to adjustment. (Because of legal constraints, predetermined rates are not permitted for Federal contracts; they may, however, be used for grants or cooperative agreements.) Predetermined rates may not be used by governmental units that have not submitted and negotiated the rate with the cognizant agency. In view of the potential advantages offered by this procedure, negotiation of predetermined rates for indirect costs for a period of two to four years should be the norm in those situations where the cost experience and other pertinent facts available are deemed sufficient to enable the parties involved to reach an informed judgment as to the probable level of indirect costs during the ensuing accounting periods.

6. "Fixed rate" means an indirect cost rate which has the same characteristics as a predetermined rate, except that the difference between the estimated costs and the actual, allowable costs of the period covered by the rate is carried forward as an adjustment to the rate computation of a subsequent period.

7. "Provisional rate" means a temporary indirect cost rate applicable to a specified period which is used for funding, interim reimbursement, and reporting indirect costs on Federal awards pending the establishment of a "final" rate for that period.

8. "Final rate" means an indirect cost rate applicable to a specified past period which is based on the actual allowable costs of the period. A final audited rate is not subject to adjustment.

9. "Base period" for the allocation of indirect costs is the period in which such costs are incurred and accumulated for allocation to activities performed in that period. The base period normally should coincide with the governmental unit's fiscal year, but in any event, shall be so selected as to avoid inequities in the allocation of costs.

C. *Allocation of Indirect Costs and Determination of Indirect Cost Rates.*

1. General.

a. Where a governmental unit's department or agency has only one major function, or where all its major functions benefit from the indirect costs to approximately the same degree, the allocation of indirect costs and the computation of an indirect cost rate may be accomplished through simplified allocation procedures as described in subsection 2 of this appendix.

b. Where a governmental unit's department or agency has several major functions which benefit from its indirect costs in varying degrees, the allocation of indirect costs may require the accumulation of such costs into separate cost groupings which then are allocated individually to benefitted functions by means of a base which best measures the relative degree of benefit. The indirect costs allocated to each function are then distributed to individual awards and other activities included in that function by means of an indirect cost rate(s).

c. Specific methods for allocating indirect costs and computing indirect cost rates along with the conditions under which each method should be used are described in subsections 2, 3 and 4 of this appendix.

2. Simplified method.

a. Where a grantee agency's major functions benefit from its indirect costs to approximately the same degree, the allocation of indirect costs may be accomplished by classifying the grantee agency's total costs for the base period as either direct or indirect, and dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to individual Federal awards. The rate should be expressed as the percentage which the total amount of allowable indirect costs bears to the base selected. This method should also be used where a governmental unit's department or agency has only one major function encompassing a number of individual projects or activities, and may be used where the level of Federal awards to that department or agency is relatively small.

b. Both the direct costs and the indirect costs shall exclude capital expenditures and unallowable costs. However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

c. The distribution base may be total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), direct salaries and wages, or another base which results in an equitable distribution.

3. Multiple allocation base method.

a. Where a grantee agency's indirect costs benefit its major functions in varying degrees, such costs shall be accumulated into separate cost groupings. Each grouping shall then be allocated individually to benefitted functions by means of a base which best measures the relative benefits.

b. The cost groupings should be established so as to permit the allocation of each grouping on the basis of benefits provided to the major functions. Each grouping should constitute a pool of expenses that are of like character in terms of the functions they benefit and in terms of the allocation base which best measures the relative benefits provided to each function. The number of separate groupings should be held within practical limits, taking into consideration the materiality of the amounts involved and the degree of precision needed.

c. Actual conditions must be taken into account in selecting the base to be used in allocating the expenses in each grouping to benefitted functions. When an allocation can be made by assignment of a cost grouping directly to the function benefitted, the allocation shall be made in that manner. When the expenses in a grouping are more general in nature, the allocation should be made through the use of a selected base which produces results that are equitable to both the Federal Government and the governmental unit. In general, any cost element or related factor associated with the governmental unit's activities is potentially adaptable for use as an allocation base provided that: it can readily be expressed in terms of dollars or other quantitative measures (total direct costs, direct salaries and wages, staff hours applied, square feet used, hours of usage, number of documents processed, population served, and the like), and it is common to the benefitted functions during the base period.

d. Except where a special indirect cost rate(s) is required in accordance with subsection 4, the separate groupings of indirect costs allocated to each major function shall be aggregated and treated as a common pool for that function. The costs in the common pool shall then be distributed to individual Federal awards included in that function by use of a single indirect cost rate.

e. The distribution base used in computing the indirect cost rate for each function may be total direct costs (excluding capital expenditures and other distorting items such as pass-through funds, major subcontracts, etc.), direct salaries and wages, or another base which results in an equitable distribution. An indirect cost rate should be developed for each separate indirect cost pool developed. The rate in each case should be stated as the percentage relationship between the particular indirect cost pool and the distribution base identified with that pool.

4. Special indirect cost rates.

a. In some instances, a single indirect cost rate for all activities of a grantee department or agency or for each major function of the agency may not be appropriate. It may not take into account those different factors which may substantially affect the indirect costs applicable to a particular program or group of programs. The factors may include the physical location of the work, the level of administrative support required, the nature of the facilities or other resources

employed, the organizational arrangements used, or any combination thereof. When a particular award is carried out in an environment which appears to generate a significantly different level of indirect costs, provisions should be made for a separate indirect cost pool applicable to that award. The separate indirect cost pool should be developed during the course of the regular allocation process, and the separate indirect cost rate resulting therefrom should be used, provided that: the rate differs significantly from the rate which would have been developed under subsections 2. and 3. of this appendix, and the award to which the rate would apply is material in amount.

b. Although 2 CFR part 225 adopts the concept of the full allocation of indirect costs, there are some Federal statutes which restrict the reimbursement of certain indirect costs. Where such restrictions exist, it may be necessary to develop a special rate for the affected award. Where a "restricted rate" is required, the procedure for developing a non-restricted rate will be used except for the additional step of the elimination from the indirect cost pool those costs for which the law prohibits reimbursement.

D. *Submission and Documentation of Proposals.*

1. Submission of indirect cost rate proposals.

a. All departments or agencies of the governmental unit desiring to claim indirect costs under Federal awards must prepare an indirect cost rate proposal and related documentation to support those costs. The proposal and related documentation must be retained for audit in accordance with the records retention requirements contained in the Common Rule.

b. A governmental unit for which a cognizant agency assignment has been specifically designated must submit its indirect cost rate proposal to its cognizant agency. The Office of Management and Budget (OMB) will periodically publish lists of governmental units identifying the appropriate Federal cognizant agencies. The cognizant agency for all governmental units or agencies not identified by OMB will be determined based on the Federal agency providing the largest amount of Federal funds. In these cases, a governmental unit must develop an indirect cost proposal in accordance with the requirements of 2 CFR 225 and maintain the proposal and related supporting documentation for audit. These governmental units are not required to submit their proposals unless they are specifically requested to do so by the cognizant agency. Where a local government only receives funds as a sub-recipient, the primary recipient will be responsible for negotiating and/or monitoring the sub-recipient's plan.

c. Each Indian tribal government desiring reimbursement of indirect costs must submit its indirect cost proposal to the Department of the Interior (its cognizant Federal agency).

d. Indirect cost proposals must be developed (and, when required, submitted) within six months after the close of the governmental unit's fiscal year, unless an exception is approved by the cognizant Federal agency. If the proposed central service cost allocation plan for the same period has not been approved by that time, the indirect cost proposal may be prepared including an amount for central services that is based on the latest federally-approved central service cost allocation plan. The difference between these central service amounts and the amounts ultimately approved will be compensated for by an adjustment in a subsequent period.

2. Documentation of proposals. The following shall be included with each indirect cost proposal:

a. The rates proposed, including subsidiary work sheets and other relevant data, cross referenced and reconciled to the financial data noted in subsection b of this appendix. Allocated central service costs will be supported by the summary table included in the approved central service cost allocation plan. This summary table is not required to be submitted with the indirect cost proposal if the central service cost allocation plan for the same fiscal year has been approved by the cognizant agency and is available to the funding agency.

b. A copy of the financial data (financial statements, comprehensive annual financial report, executive budgets, accounting reports, etc.) upon which the rate is based. Adjustments resulting from the use of unaudited data will be recognized, where appropriate, by the Federal cognizant agency in a subsequent proposal.

c. The approximate amount of direct base costs incurred under Federal awards. These costs should be broken out between salaries and wages and other direct costs.

d. A chart showing the organizational structure of the agency during the period for which the proposal applies, along with a functional statement(s) noting the duties and/or responsibilities of all units that comprise the agency. (Once this is submitted, only revisions need be submitted with subsequent proposals.)

3. Required certification. Each indirect cost rate proposal shall be accompanied by a certification in the following form:

Certificate of Indirect Costs

This is to certify that I have reviewed the indirect cost rate proposal submitted herewith and to the best of my knowledge and belief:

(1) All costs included in this proposal [identify date] to establish billing or final indirect costs rates for [identify period covered by rate] are allowable in accordance with the requirements of the Federal award(s) to which they apply and 2 CFR part 225, Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A–87). Unallowable costs have been adjusted for in allocating costs as indicated in the cost allocation plan.

(2) All costs included in this proposal are properly allocable to Federal awards on the basis of a beneficial or causal relationship between the expenses incurred and the agreements to which they are allocated in accordance with applicable requirements. Further, the same costs that have been treated as indirect costs have not been claimed as direct costs. Similar types of costs have been accounted for consistently and the Federal Government will be notified of any accounting changes that would affect the predetermined rate.

I declare that the foregoing is true and correct.

Governmental Unit: _____

Signature: _____

Name of Official: _____

Title: _____

Date of Execution: _____

E. *Negotiation and Approval of Rates.*

1. Indirect cost rates will be reviewed, negotiated, and approved by the cognizant Federal agency on a timely basis. Once a rate has been agreed upon, it will be accepted and used by all Federal agencies unless prohibited or limited by statute. Where a Federal funding agency has reason to believe that special operating factors affecting its awards necessitate special indirect cost rates, the funding agency will, prior to the time the rates are negotiated, notify the cognizant Federal agency.

2. The use of predetermined rates, if allowed, is encouraged where the cognizant agency has reasonable assurance based on past experience and reliable projection of the grantee agency's costs, that the rate is not likely to exceed a rate based on actual costs. Long-term agreements utilizing predetermined rates extending over two or more years are encouraged, where appropriate.

3. The results of each negotiation shall be formalized in a written agreement between the cognizant agency and the governmental unit. This agreement will be subject to re-opening if the agreement is subsequently found to violate a statute, or the information upon which the plan was negotiated is later found to be materially incomplete or inaccurate. The agreed upon rates shall be made available to all Federal agencies for their use.

4. Refunds shall be made if proposals are later found to have included costs that are unallowable as specified by law or regulation, as identified in Appendix B to this part, or by the terms and conditions of Federal awards, or are unallowable because they are clearly not allocable to Federal awards. These adjustments or refunds will be made regardless of the type of rate negotiated (predetermined, final, fixed, or provisional).

F. *Other Policies.*

1. Fringe benefit rates. If overall fringe benefit rates are not approved for the governmental unit as part of the central service cost allocation plan, these rates will be reviewed, negotiated and approved for individual grantee agencies during the indirect cost negotiation process. In these cases, a proposed fringe benefit rate computation should accompany the indirect cost proposal. If fringe benefit rates are not used at the grantee agency level (*i.e.*, the agency specifically identifies fringe benefit costs to individual employees), the governmental unit should so advise the cognizant agency.

2. Billed services provided by the grantee agency. In some cases, governmental units provide and bill for services similar to those covered by central service cost allocation plans (*e.g.*, computer centers). Where this

occurs, the governmental unit should be guided by the requirements in Appendix C to this part relating to the development of billing rates and documentation requirements, and should advise the cognizant agency of any billed services. Reviews of these types of services (including reviews of costing/billing methodology, profits or losses, etc.) will be made on a case-by-case basis as warranted by the circumstances involved.

3. Indirect cost allocations not using rates. In certain situations, a governmental unit, because of the nature of its awards, may be required to develop a cost allocation plan that distributes indirect (and, in some cases, direct) costs to the specific funding sources. In these cases, a narrative cost allocation methodology should be developed, documented, maintained for audit, or submitted, as appropriate, to the cognizant agency for review, negotiation, and approval.

4. Appeals. If a dispute arises in a negotiation of an indirect cost rate (or other rate) between the cognizant agency and the governmental unit, the dispute shall be resolved in accordance with the appeals procedures of the cognizant agency.

5. Collection of unallowable costs and erroneous payments. Costs specifically identified as unallowable and charged to Federal awards either directly or indirectly will be refunded (including interest chargeable in accordance with applicable Federal agency regulations).

6. OMB assistance. To the extent that problems are encountered among the Federal agencies and/or governmental units in connection with the negotiation and approval process, OMB will lend assistance, as required, to resolve such problems in a timely manner.

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OFFICE OF MANAGEMENT AND BUDGET

2 CFR Part 230

Cost Principles for Non-Profit Organizations (OMB Circular A–122)

AGENCY: Office of Management and Budget.

ACTION: Relocation of policy guidance to 2 CFR chapter II.

SUMMARY: The Office of Management and Budget (OMB) is relocating Circular A–122, "Cost Principles for Non-Profit Organizations," to Title 2 in the Code of Federal Regulations (CFR), subtitle A, chapter II, part 230. This relocation is part of our broader initiative to create 2 CFR as a single location where the public can find both OMB guidance for grants and agreements and the associated Federal agency implementing regulations. The broader initiative provides a good foundation for streamlining and simplifying the policy framework for grants and agreements, one objective of OMB and Federal agency efforts to implement the Federal Financial Assistance Management Improvement Act of 1999 (Pub. L. 106–107).

DATES: Part 230 is effective August 31, 2005. This document republishes the existing OMB Circular A–122, which already is in effect.

FOR FURTHER INFORMATION CONTACT: Gil Tran, Office of Federal Financial Management, Office of Management and Budget, telephone 202–395–3052 (direct) or 202–395–3993 (main office) and e-mail: *Hai_M_Tran@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: On May 10, 2004 [69 FR 25970], we revised the three OMB circulars containing Federal cost principles. The purpose of those revisions was to simplify the cost principles by making the descriptions of similar cost items consistent across the circulars where possible, thereby reducing the possibility of misinterpretation. Those revisions, a result of OMB and Federal agency efforts to implement Public Law 106–107, were effective on June 9, 2004.

In this document, we relocate OMB Circular A–122 to the CFR, in Title 2 which was established on May 11, 2004 [69 FR 26276] as a central location for OMB and Federal agency policies on grants and agreements.

Our relocation of OMB Circular A–122 does not change the substance of the circular. Other than adjustments needed to conform to the formatting requirements of the CFR, this document relocates in 2 CFR the version of OMB Circular A–122 as revised by the May 10, 2004 notice.

List of Subjects in 2 CFR Part 230

Accounting, Grant programs, Grants administration, Non-profit organizations, Reporting and recordkeeping requirements.

Dated: August 8, 2005.

Joshua B. Bolten,

Director.

Authority and Issuance

■ For the reasons set forth above, the Office of Management and Budget amends 2 CFR Subtitle A, chapter II, by adding a part 230 as set forth below.

PART 230—COST PRINCIPLES FOR NON-PROFIT ORGANIZATIONS (OMB CIRCULAR A–122)

Sec.

Authority: 31 U.S.C. 503; 31 U.S.C. 1111; 41 U.S.C. 405; Reorganization Plan No. 2 of 1970; E.O. 11541, 35 FR 10737, 3 CFR, 1966–1970, p. 939

§ 230.5 Purpose.

This part establishes principles for determining costs of grants, contracts and other agreements with non-profit organizations.

§ 230.10 Scope.

(a) This part does not apply to colleges and universities which are covered by 2 CFR part 220 Cost Principles for Educational Institutions (OMB Circular A–21); State, local, and federally-recognized Indian tribal governments which are covered by 2 CFR part 225 Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A–87); or hospitals.

(b) The principles deal with the subject of cost determination, and make no attempt to identify the circumstances or dictate the extent of agency and non-profit organization participation in the financing of a particular project. Provision for profit or other increment above cost is outside the scope of this part.

§ 230.15 Policy.

The principles are designed to provide that the Federal Government bear its fair share of costs except where restricted or prohibited by law. The principles do not attempt to prescribe the extent of cost sharing or matching on grants, contracts, or other agreements. However, such cost sharing or matching shall not be accomplished through arbitrary limitations on individual cost elements by Federal agencies.

§ 230.20 Applicability.

(a) These principles shall be used by all Federal agencies in determining the costs of work performed by non-profit organizations under grants, cooperative agreements, cost reimbursement contracts, and other contracts in which costs are used in pricing, administration, or settlement. All of these instruments are hereafter referred to as awards. The principles do not apply to awards under which an organization is not required to account to the Federal Government for actual costs incurred.

(b) All cost reimbursement subawards (subgrants, subcontracts, etc.) are subject to those Federal cost principles applicable to the particular organization concerned. Thus, if a subaward is to a non-profit organization, this part shall apply; if a subaward is to a commercial organization, the cost principles applicable to commercial concerns shall apply; if a subaward is to a college or university, 2 CFR part 220 shall apply; if a subaward is to a State, local, or federally-recognized Indian tribal government, 2 CFR part 225 shall apply.

(c) Exclusion of some non-profit organizations. Some non-profit organizations, because of their size and nature of operations, can be considered to be similar to commercial concerns for purpose of applicability of cost principles. Such non-profit organizations shall operate under Federal cost principles applicable to commercial concerns. A listing of these organizations is contained in Appendix C to this part. Other organizations may be added from time to time.

§ 230.25 Definitions.

(a) Non-profit organization means any corporation, trust, association, cooperative, or other organization which:

(1) Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;

(2) Is not organized primarily for profit; and

(3) Uses its net proceeds to maintain, improve, and/or expand its operations. For this purpose, the term "non-profit organization" excludes colleges and universities; hospitals; State, local, and federally-recognized Indian tribal governments; and those non-profit organizations which are excluded from coverage of this part in accordance with § 230.20(c).

(b) Prior approval means securing the awarding agency's permission in advance to incur cost for those items that are designated as requiring prior approval by the part and its Appendices. Generally this permission will be in writing. Where an item of cost requiring prior approval is specified in the budget of an award, approval of the budget constitutes approval of that cost.

§ 230.30 OMB responsibilities.

OMB may grant exceptions to the requirements of this part when permissible under existing law. However, in the interest of achieving maximum uniformity, exceptions will be permitted only in highly unusual circumstances.

§ 230.35 Federal agency responsibilities.

The head of each Federal agency that awards and administers grants and agreements subject to this part is responsible for requesting approval from and/or consulting with OMB (as applicable) for deviations from the guidance in the appendices to this part and performing the applicable functions specified in the appendices to this part.

§ 230.40 Effective date of changes.

The provisions of this part are effective August 31, 2005. Implementation shall be phased in by incorporating the provisions into new awards made after the start of the organization's next fiscal year. For existing awards, the new principles may be applied if an organization and the cognizant Federal agency agree. Earlier implementation, or a delay in implementation of individual provisions, is also permitted by mutual agreement between an organization and the cognizant Federal agency.

§ 230.45 Relationship to previous issuance.

(a) The guidance in this part previously was issued as OMB Circular A–122. Appendix A to this part contains the guidance that was in Attachment A (general principles) to the OMB circular; Appendix B contains the guidance that was in Attachment B (selected items of cost) to the OMB circular; and Appendix C contains the information that was in Attachment C (non-profit organizations not subject to the Circular) to the OMB circular.

(b) Historically, OMB Circular A–122 superseded cost principles issued by individual agencies for non-profit organizations.

§ 230.50 Information contact.

Further information concerning this part may be obtained by contacting the Office of Federal Financial Management, OMB, Washington, DC 20503, telephone (202) 395–3993.

Appendix A to Part 230—General Principles

General Principles

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General Principles

A. Basic Considerations

1. Composition of total costs. The total cost of an award is the sum of the allowable direct and allocable indirect costs less any applicable credits.

2. Factors affecting allowability of costs. To be allowable under an award, costs must meet the following general criteria:

a. Be reasonable for the performance of the award and be allocable thereto under these principles.

b. Conform to any limitations or exclusions set forth in these principles or in the award as to types or amount of cost items.

c. Be consistent with policies and procedures that apply uniformly to both federally-financed and other activities of the organization.

d. Be accorded consistent treatment.

e. Be determined in accordance with generally accepted accounting principles (GAAP).

f. Not be included as a cost or used to meet cost sharing or matching requirements of any other federally-financed program in either the current or a prior period.

g. Be adequately documented.

3. Reasonable costs. A cost is reasonable if, in its nature or amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the costs. The question of the reasonableness of specific costs must be scrutinized with particular care in connection with organizations or separate divisions thereof which receive the preponderance of their support from awards made by Federal agencies. In determining the reasonableness of a given cost, consideration shall be given to:

a. Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the organization or the performance of the award.

b. The restraints or requirements imposed by such factors as generally accepted sound business practices, arms length bargaining, Federal and State laws and regulations, and terms and conditions of the award.

c. Whether the individuals concerned acted with prudence in the circumstances, considering their responsibilities to the organization, its members, employees, and clients, the public at large, and the Federal Government.

d. Significant deviations from the established practices of the organization which may unjustifiably increase the award costs.

4. Allocable costs. a. A cost is allocable to a particular cost objective, such as a grant, contract, project, service, or other activity, in accordance with the relative benefits received. A cost is allocable to a Federal award if it is treated consistently with other

costs incurred for the same purpose in like circumstances and if it:

(1) Is incurred specifically for the award.

(2) Benefits both the award and other work and can be distributed in reasonable proportion to the benefits received, or

(3) Is necessary to the overall operation of the organization, although a direct relationship to any particular cost objective cannot be shown.

b. Any cost allocable to a particular award or other cost objective under these principles may not be shifted to other Federal awards to overcome funding deficiencies, or to avoid restrictions imposed by law or by the terms of the award.

5. Applicable credits. a. The term applicable credits refers to those receipts, or reduction of expenditures which operate to offset or reduce expense items that are allocable to awards as direct or indirect costs. Typical examples of such transactions are: Purchase discounts, rebates or allowances, recoveries or indemnities on losses, insurance refunds, and adjustments of overpayments or erroneous charges. To the extent that such credits accruing or received by the organization relate to allowable cost, they shall be credited to the Federal Government either as a cost reduction or cash refund, as appropriate.

b. In some instances, the amounts received from the Federal Government to finance organizational activities or service operations should be treated as applicable credits. Specifically, the concept of netting such credit items against related expenditures should be applied by the organization in determining the rates or amounts to be charged to Federal awards for services rendered whenever the facilities or other resources used in providing such services have been financed directly, in whole or in part, by Federal funds.

c. For rules covering program income (i.e., gross income earned from federally-supported activities) see § 215.24 of 2 CFR part 215 Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations (OMB Circular A–110).

6. Advance understandings. Under any given award, the reasonableness and allocability of certain items of costs may be difficult to determine. This is particularly true in connection with organizations that receive a preponderance of their support from Federal agencies. In order to avoid subsequent disallowance or dispute based on unreasonableness or nonallocability, it is often desirable to seek a written agreement with the cognizant or awarding agency in advance of the incurrence of special or unusual costs. The absence of an advance agreement on any element of cost will not, in itself, affect the reasonableness or allocability of that element.

7. Conditional exemptions. a. OMB authorizes conditional exemption from OMB administrative requirements and cost principles for certain Federal programs with statutorily-authorized consolidated planning and consolidated administrative funding, that are identified by a Federal agency and approved by the head of the Executive department or establishment. A Federal agency shall consult with OMB during its consideration of whether to grant such an exemption.

b. To promote efficiency in State and local program administration, when Federal non-entitlement programs with common purposes have specific statutorily-authorized consolidated planning and consolidated administrative funding and where most of the State agency's resources come from non-Federal sources, Federal agencies may exempt these covered State-administered, non-entitlement grant programs from certain OMB grants management requirements. The exemptions would be from all but the allocability of costs provisions of Appendix A, subsection C.e. of 2 CFR part 225 (OMB Circular A–87); Appendix A, Section C.4. of 2 CFR part 220 (OMB Circular A–21); Section A.4. of this appendix; and from all of the administrative requirements provisions of 2 CFR part 215 (OMB Circular A–110) and the agencies' grants management common rule.

c. When a Federal agency provides this flexibility, as a prerequisite to a State's exercising this option, a State must adopt its own written fiscal and administrative requirements for expending and accounting for all funds, which are consistent with the provisions of 2 CFR part 225 (OMB Circular A–87), and extend such policies to all subrecipients. These fiscal and administrative requirements must be sufficiently specific to ensure that: Funds are used in compliance with all applicable Federal statutory and regulatory provisions, costs are reasonable and necessary for operating these programs, and funds are not to be used for general expenses required to carry out other responsibilities of a State or its subrecipients.

B. Direct Costs

1. Direct costs are those that can be identified specifically with a particular final cost objective, i.e., a particular award, project, service, or other direct activity of an organization. However, a cost may not be assigned to an award as a direct cost if any other cost incurred for the same purpose, in like circumstance, has been allocated to an award as an indirect cost. Costs identified specifically with awards are direct costs of the awards and are to be assigned directly thereto. Costs identified specifically with other final cost objectives of the organization are direct costs of those cost objectives and are not to be assigned to other awards directly or indirectly.

2. Any direct cost of a minor amount may be treated as an indirect cost for reasons of practicality where the accounting treatment for such cost is consistently applied to all final cost objectives.

3. The cost of certain activities are not allowable as charges to Federal awards (see, for example, fundraising costs in paragraph 17 of Appendix B to this part). However, even though these costs are unallowable for purposes of computing charges to Federal awards, they nonetheless must be treated as direct costs for purposes of determining indirect cost rates and be allocated their share of the organization's indirect costs if they represent activities which include the salaries of personnel, occupy space, and benefit from the organization's indirect costs.

4. The costs of activities performed primarily as a service to members, clients, or the general public when significant and necessary to the organization's mission must be treated as direct costs whether or not allowable and be allocated an equitable share of indirect costs. Some examples of these types of activities include:

a. Maintenance of membership rolls, subscriptions, publications, and related functions.

b. Providing services and information to members, legislative or administrative bodies, or the public.

c. Promotion, lobbying, and other forms of public relations.

d. Meetings and conferences except those held to conduct the general administration of the organization.

e. Maintenance, protection, and investment of special funds not used in operation of the organization.

f. Administration of group benefits on behalf of members or clients, including life and hospital insurance, annuity or retirement plans, financial aid, etc.

C. Indirect Costs

1. Indirect costs are those that have been incurred for common or joint objectives and cannot be readily identified with a particular final cost objective. Direct cost of minor amounts may be treated as indirect costs under the conditions described in subparagraph B.2 of this appendix. After direct costs have been determined and assigned directly to awards or other work as appropriate, indirect costs are those remaining to be allocated to benefiting cost objectives. A cost may not be allocated to an award as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been assigned to an award as a direct cost.

2. Because of the diverse characteristics and accounting practices of non-profit organizations, it is not possible to specify the types of cost which may be classified as indirect cost in all situations. However, typical examples of indirect cost for many non-profit organizations may include depreciation or use allowances on buildings and equipment, the costs of operating and maintaining facilities, and general administration and general expenses, such as the salaries and expenses of executive officers, personnel administration, and accounting.

3. Indirect costs shall be classified within two broad categories: "Facilities" and "Administration." "Facilities" is defined as depreciation and use allowances on buildings, equipment and capital improvement, interest on debt associated with certain buildings, equipment and capital improvements, and operations and maintenance expenses. "Administration" is defined as general administration and general expenses such as the director's office, accounting, personnel, library expenses and all other types of expenditures not listed specifically under one of the subcategories of "Facilities" (including cross allocations from other pools, where applicable). See indirect cost rate reporting requirements in

subparagraphs D.2.e and D.3.g of this appendix.

D. Allocation of Indirect Costs and Determination of Indirect Cost Rates

1. General. a. Where a non-profit organization has only one major function, or where all its major functions benefit from its indirect costs to approximately the same degree, the allocation of indirect costs and the computation of an indirect cost rate may be accomplished through simplified allocation procedures, as described in subparagraph D.2 of this appendix.

b. Where an organization has several major functions which benefit from its indirect costs in varying degrees, allocation of indirect costs may require the accumulation of such costs into separate cost groupings which then are allocated individually to benefiting functions by means of a base which best measures the relative degree of benefit. The indirect costs allocated to each function are then distributed to individual awards and other activities included in that function by means of an indirect cost rate(s).

c. The determination of what constitutes an organization's major functions will depend on its purpose in being; the types of services it renders to the public, its clients, and its members; and the amount of effort it devotes to such activities as fundraising, public information and membership activities.

d. Specific methods for allocating indirect costs and computing indirect cost rates along with the conditions under which each method should be used are described in subparagraphs D.2 through 5 of this appendix.

e. The base period for the allocation of indirect costs is the period in which such costs are incurred and accumulated for allocation to work performed in that period. The base period normally should coincide with the organization's fiscal year but, in any event, shall be so selected as to avoid inequities in the allocation of the costs.

2. Simplified allocation method. a. Where an organization's major functions benefit from its indirect costs to approximately the same degree, the allocation of indirect costs may be accomplished by separating the organization's total costs for the base period as either direct or indirect, and dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to individual awards. The rate should be expressed as the percentage which the total amount of allowable indirect costs bears to the base selected. This method should also be used where an organization has only one major function encompassing a number of individual projects or activities, and may be used where the level of Federal awards to an organization is relatively small.

b. Both the direct costs and the indirect costs shall exclude capital expenditures and unallowable costs. However, unallowable costs which represent activities must be included in the direct costs under the conditions described in subparagraph B.3 of this appendix.

c. The distribution base may be total direct costs (excluding capital expenditures and other distorting items, such as major subcontracts or subgrants), direct salaries and wages, or other base which results in an equitable distribution. The distribution base shall generally exclude participant support costs as defined in paragraph 32 of Appendix B.

d. Except where a special rate(s) is required in accordance with subparagraph 5 of this appendix, the indirect cost rate developed under the above principles is applicable to all awards at the organization. If a special rate(s) is required, appropriate modifications shall be made in order to develop the special rate(s).

e. For an organization that receives more than $10 million in Federal funding of direct costs in a fiscal year, a breakout of the indirect cost component into two broad categories, Facilities and Administration as defined in subparagraph C.3 of this appendix, is required. The rate in each case shall be stated as the percentage which the amount of the particular indirect cost category (*i.e.*, Facilities or Administration) is of the distribution base identified with that category.

3. Multiple allocation base method.

a. General. Where an organization's indirect costs benefit its major functions in varying degrees, indirect costs shall be accumulated into separate cost groupings, as described in subparagraph D.3.b of this appendix. Each grouping shall then be allocated individually to benefiting functions by means of a base which best measures the relative benefits. The default allocation bases by cost pool are described in subparagraph D.3.c of this appendix.

b. Identification of indirect costs. Cost groupings shall be established so as to permit the allocation of each grouping on the basis of benefits provided to the major functions. Each grouping shall constitute a pool of expenses that are of like character in terms of functions they benefit and in terms of the allocation base which best measures the relative benefits provided to each function. The groupings are classified within the two broad categories: "Facilities" and "Administration," as described in subparagraph C.3 of this appendix. The indirect cost pools are defined as follows:

(1) Depreciation and use allowances. The expenses under this heading are the portion of the costs of the organization's buildings, capital improvements to land and buildings, and equipment which are computed in accordance with paragraph 11 of Appendix B to this part ("Depreciation and use allowances").

(2) Interest. Interest on debt associated with certain buildings, equipment and capital improvements are computed in accordance with paragraph 23 of Appendix B to this part ("Interest").

(3) Operation and maintenance expenses. The expenses under this heading are those that have been incurred for the administration, operation, maintenance, preservation, and protection of the organization's physical plant. They include expenses normally incurred for such items as: Janitorial and utility services; repairs and ordinary or normal alterations of buildings, furniture and equipment; care of grounds; maintenance and operation of buildings and other plant facilities; security; earthquake and disaster preparedness; environmental safety; hazardous waste disposal; property, liability and other insurance relating to property; space and capital leasing; facility planning and management; and, central receiving. The operation and maintenance expenses category shall also include its allocable share of fringe benefit costs, depreciation and use allowances, and interest costs.

(4) General administration and general expenses. (a) The expenses under this heading are those that have been incurred for the overall general executive and administrative offices of the organization and other expenses of a general nature which do not relate solely to any major function of the organization. This category shall also include its allocable share of fringe benefit costs, operation and maintenance expense, depreciation and use allowances, and interest costs. Examples of this category include central offices, such as the director's office, the office of finance, business services, budget and planning, personnel, safety and risk management, general counsel, management information systems, and library costs.

(b) In developing this cost pool, special care should be exercised to ensure that costs incurred for the same purpose in like circumstances are treated consistently as either direct or indirect costs. For example, salaries of technical staff, project supplies, project publication, telephone toll charges, computer costs, travel costs, and specialized services costs shall be treated as direct costs wherever identifiable to a particular program. The salaries and wages of administrative and pooled clerical staff should normally be treated as indirect costs. Direct charging of these costs may be appropriate where a major project or activity explicitly requires and budgets for administrative or clerical services and other individuals involved can be identified with the program or activity. Items such as office supplies, postage, local telephone costs, periodicals and memberships should normally be treated as indirect costs.

c. Allocation bases. Actual conditions shall be taken into account in selecting the base to be used in allocating the expenses in each grouping to benefiting functions. The essential consideration in selecting a method or a base is that it is the one best suited for assigning the pool of costs to cost objectives in accordance with benefits derived; a traceable cause and effect relationship; or logic and reason, where neither the cause nor the effect of the relationship is determinable. When an allocation can be made by assignment of a cost grouping directly to the function benefited, the allocation shall be made in that manner. When the expenses in a cost grouping are more general in nature, the allocation shall be made through the use of a selected base which produces results that are equitable to both the Federal Government and the organization. The distribution shall be made in accordance with the bases described herein unless it can be demonstrated that the use of a different base would result in a more equitable allocation

of the costs, or that a more readily available base would not increase the costs charged to sponsored awards. The results of special cost studies (such as an engineering utility study) shall not be used to determine and allocate the indirect costs to sponsored awards.

(1) Depreciation and use allowances. Depreciation and use allowances expenses shall be allocated in the following manner:

(a) Depreciation or use allowances on buildings used exclusively in the conduct of a single function, and on capital improvements and equipment used in such buildings, shall be assigned to that function.

(b) Depreciation or use allowances on buildings used for more than one function, and on capital improvements and equipment used in such buildings, shall be allocated to the individual functions performed in each building on the basis of usable square feet of space, excluding common areas, such as hallways, stairwells, and restrooms.

(c) Depreciation or use allowances on buildings, capital improvements and equipment related space (*e.g.*, individual rooms, and laboratories) used jointly by more than one function (as determined by the users of the space) shall be treated as follows. The cost of each jointly used unit of space shall be allocated to the benefiting functions on the basis of either the employees and other users on a full-time equivalent (FTE) basis or salaries and wages of those individual functions benefiting from the use of that space; or organization-wide employee FTEs or salaries and wages applicable to the benefiting functions of the organization.

(d) Depreciation or use allowances on certain capital improvements to land, such as paved parking areas, fences, sidewalks, and the like, not included in the cost of buildings, shall be allocated to user categories on a FTE basis and distributed to major functions in proportion to the salaries and wages of all employees applicable to the functions.

(2) Interest. Interest costs shall be allocated in the same manner as the depreciation or use allowances on the buildings, equipment and capital equipments to which the interest relates.

(3) Operation and maintenance expenses. Operation and maintenance expenses shall be allocated in the same manner as the depreciation and use allowances.

(4) General administration and general expenses. General administration and general expenses shall be allocated to benefiting functions based on modified total direct costs (MTDC), as described in subparagraph D.3.f of this appendix. The expenses included in this category could be grouped first according to major functions of the organization to which they render services or provide benefits. The aggregate expenses of each group shall then be allocated to benefiting functions based on MTDC.

d. Order of distribution. (1) Indirect cost categories consisting of depreciation and use allowances, interest, operation and maintenance, and general administration and general expenses shall be allocated in that order to the remaining indirect cost categories as well as to the major functions of the organization. Other cost categories could be allocated in the order determined to be most appropriate by the organization. When cross allocation of costs is made as provided in subparagraph D.3.d.(2) of this appendix, this order of allocation does not apply.

(2) Normally, an indirect cost category will be considered closed once it has been allocated to other cost objectives, and costs shall not be subsequently allocated to it. However, a cross allocation of costs between two or more indirect costs categories could be used if such allocation will result in a more equitable allocation of costs. If a cross allocation is used, an appropriate modification to the composition of the indirect cost categories is required.

e. Application of indirect cost rate or rates. Except where a special indirect cost rate(s) is required in accordance with subparagraph D.5 of this appendix, the separate groupings of indirect costs allocated to each major function shall be aggregated and treated as a common pool for that function. The costs in the common pool shall then be distributed to individual awards included in that function by use of a single indirect cost rate.

f. Distribution basis. Indirect costs shall be distributed to applicable sponsored awards and other benefiting activities within each major function on the basis of MTDC. MTDC consists of all salaries and wages, fringe benefits, materials and supplies, services, travel, and subgrants and subcontracts up to the first $25,000 of each subgrant or subcontract (regardless of the period covered by the subgrant or subcontract). Equipment, capital expenditures, charges for patient care, rental costs and the portion in excess of $25,000 shall be excluded from MTDC. Participant support costs shall generally be excluded from MTDC. Other items may only be excluded when the Federal cost cognizant agency determines that an exclusion is necessary to avoid a serious inequity in the distribution of indirect costs.

g. Individual Rate Components. An indirect cost rate shall be determined for each separate indirect cost pool developed. The rate in each case shall be stated as the percentage which the amount of the particular indirect cost pool is of the distribution base identified with that pool. Each indirect cost rate negotiation or determination agreement shall include development of the rate for each indirect cost pool as well as the overall indirect cost rate. The indirect cost pools shall be classified within two broad categories: "Facilities" and "Administration," as described in subparagraph C.3 of this appendix.

4. Direct allocation method. a. Some non-profit organizations treat all costs as direct costs except general administration and general expenses. These organizations generally separate their costs into three basic categories: General administration and general expenses, fundraising, and other direct functions (including projects performed under Federal awards). Joint costs, such as depreciation, rental costs, operation and maintenance of facilities, telephone expenses, and the like are prorated individually as direct costs to each category and to each award or other activity using a base most appropriate to the particular cost being prorated.

b. This method is acceptable, provided each joint cost is prorated using a base which accurately measures the benefits provided to each award or other activity. The bases must be established in accordance with reasonable criteria, and be supported by current data. This method is compatible with the Standards of Accounting and Financial Reporting for Voluntary Health and Welfare Organizations issued jointly by the National Health Council, Inc., the National Assembly of Voluntary Health and Social Welfare Organizations, and the United Way of America.

c. Under this method, indirect costs consist exclusively of general administration and general expenses. In all other respects, the organization's indirect cost rates shall be computed in the same manner as that described in subparagraph D.2 of this appendix.

5. Special indirect cost rates. In some instances, a single indirect cost rate for all activities of an organization or for each major function of the organization may not be appropriate, since it would not take into account those different factors which may substantially affect the indirect costs applicable to a particular segment of work. For this purpose, a particular segment of work may be that performed under a single award or it may consist of work under a group of awards performed in a common environment. These factors may include the physical location of the work, the level of administrative support required, the nature of the facilities or other resources employed, the scientific disciplines or technical skills involved, the organizational arrangements used, or any combination thereof. When a particular segment of work is performed in an environment which appears to generate a significantly different level of indirect costs, provisions should be made for a separate indirect cost pool applicable to such work. The separate indirect cost pool should be developed during the course of the regular allocation process, and the separate indirect cost rate resulting therefrom should be used, provided it is determined that the rate differs significantly from that which would have been obtained under subparagraphs D.2, 3, and 4 of this appendix, and the volume of work to which the rate would apply is material.

E. Negotiation and Approval of Indirect Cost Rates

1. Definitions. As used in this section, the following terms have the meanings set forth below:

a. Cognizant agency means the Federal agency responsible for negotiating and approving indirect cost rates for a non-profit organization on behalf of all Federal agencies.

b. Predetermined rate means an indirect cost rate, applicable to a specified current or future period, usually the organization's fiscal year. The rate is based on an estimate of the costs to be incurred during the period. A predetermined rate is not subject to adjustment.

c. Fixed rate means an indirect cost rate which has the same characteristics as a predetermined rate, except that the difference between the estimated costs and the actual costs of the period covered by the rate is

carried forward as an adjustment to the rate computation of a subsequent period.

d. Final rate means an indirect cost rate applicable to a specified past period which is based on the actual costs of the period. A final rate is not subject to adjustment.

e. Provisional rate or billing rate means a temporary indirect cost rate applicable to a specified period which is used for funding, interim reimbursement, and reporting indirect costs on awards pending the establishment of a final rate for the period.

f. Indirect cost proposal means the documentation prepared by an organization to substantiate its claim for the reimbursement of indirect costs. This proposal provides the basis for the review and negotiation leading to the establishment of an organization's indirect cost rate.

g. Cost objective means a function, organizational subdivision, contract, grant, or other work unit for which cost data are desired and for which provision is made to accumulate and measure the cost of processes, projects, jobs and capitalized projects.

2. Negotiation and approval of rates. a. Unless different arrangements are agreed to by the agencies concerned, the Federal agency with the largest dollar value of awards with an organization will be designated as the cognizant agency for the negotiation and approval of the indirect cost rates and, where necessary, other rates such as fringe benefit and computer charge-out rates. Once an agency is assigned cognizance for a particular non-profit organization, the assignment will not be changed unless there is a major long-term shift in the dollar volume of the Federal awards to the organization. All concerned Federal agencies shall be given the opportunity to participate in the negotiation process but, after a rate has been agreed upon, it will be accepted by all Federal agencies. When a Federal agency has reason to believe that special operating factors affecting its awards necessitate special indirect cost rates in accordance with subparagraph D.5 of this appendix, it will, prior to the time the rates are negotiated, notify the cognizant agency.

b. A non-profit organization which has not previously established an indirect cost rate with a Federal agency shall submit its initial indirect cost proposal immediately after the organization is advised that an award will be made and, in no event, later than three months after the effective date of the award.

c. Organizations that have previously established indirect cost rates must submit a new indirect cost proposal to the cognizant agency within six months after the close of each fiscal year.

d. A predetermined rate may be negotiated for use on awards where there is reasonable assurance, based on past experience and reliable projection of the organization's costs, that the rate is not likely to exceed a rate based on the organization's actual costs.

e. Fixed rates may be negotiated where predetermined rates are not considered appropriate. A fixed rate, however, shall not be negotiated if all or a substantial portion of the organization's awards are expected to expire before the carry-forward adjustment can be made; the mix of Federal and non-Federal work at the organization is too erratic to permit an equitable carry-forward adjustment; or the organization's operations fluctuate significantly from year to year.

f. Provisional and final rates shall be negotiated where neither predetermined nor fixed rates are appropriate.

g. The results of each negotiation shall be formalized in a written agreement between the cognizant agency and the non-profit organization. The cognizant agency shall distribute copies of the agreement to all concerned Federal agencies.

h. If a dispute arises in a negotiation of an indirect cost rate between the cognizant agency and the non-profit organization, the dispute shall be resolved in accordance with the appeals procedures of the cognizant agency.

i. To the extent that problems are encountered among the Federal agencies in connection with the negotiation and approval process, OMB will lend assistance as required to resolve such problems in a timely manner.

Appendix B to Part 230—Selected Items of Cost

Selected Items of Cost

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Appendix B to Part 230—Selected Items of Cost

Paragraphs 1 through 52 of this appendix provide principles to be applied in establishing the allowability of certain items of cost. These principles apply whether a cost is treated as direct or indirect. Failure to mention a particular item of cost is not intended to imply that it is unallowable; rather, determination as to allowability in each case should be based on the treatment or principles provided for similar or related items of cost.

1. Advertising and public relations costs. a. The term advertising costs means the costs of advertising media and corollary administrative costs. Advertising media include magazines, newspapers, radio and television, direct mail, exhibits, electronic or computer transmittals, and the like.

b. The term public relations includes community relations and means those activities dedicated to maintaining the image of the non-profit organization or maintaining or promoting understanding and favorable relations with the community or public at large or any segment of the public.

c. The only allowable advertising costs are those which are solely for:

(1) The recruitment of personnel required for the performance by the non-profit organization of obligations arising under a Federal award (See also paragraph 41, Recruiting costs, and paragraph 42, Relocation costs, of this appendix);

(2) The procurement of goods and services for the performance of a Federal award;

(3) The disposal of scrap or surplus materials acquired in the performance of a Federal award except when non-profit organizations are reimbursed for disposal costs at a predetermined amount; or

(4) Other specific purposes necessary to meet the requirements of the Federal award.

d. The only allowable public relations costs are:

(1) Costs specifically required by the Federal award;

(2) Costs of communicating with the public and press pertaining to specific activities or accomplishments which result from performance of Federal awards (these costs are considered necessary as part of the outreach effort for the Federal award); or

(3) Costs of conducting general liaison with news media and government public relations officers, to the extent that such activities are limited to communication and liaison

necessary keep the public informed on matters of public concern, such as notices of Federal contract/grant awards, financial matters, etc.

e. Costs identified in subparagraphs c and d if incurred for more than one Federal award or for both sponsored work and other work of the non-profit organization, are allowable to the extent that the principles in Appendix A to this part, paragraphs B. ("Direct Costs") and C. ("Indirect Costs") are observed.

f. Unallowable advertising and public relations costs include the following:

(1) All advertising and public relations costs other than as specified in subparagraphs c, d, and e;

(2) Costs of meetings, conventions, convocations, or other events related to other activities of the non-profit organization, including:

(a) Costs of displays, demonstrations, and exhibits;

(b) Costs of meeting rooms, hospitality suites, and other special facilities used in conjunction with shows and other special events; and

(c) Salaries and wages of employees engaged in setting up and displaying exhibits, making demonstrations, and providing briefings;

(3) Costs of promotional items and memorabilia, including models, gifts, and souvenirs;

(4) Costs of advertising and public relations designed solely to promote the non-profit organization.

2. Advisory Councils. Costs incurred by advisory councils or committees are allowable as a direct cost where authorized by the Federal awarding agency or as an indirect cost where allocable to Federal awards.

3. Alcoholic beverages. Costs of alcoholic beverages are unallowable.

4. Audit costs and related services. a. The costs of audits required by, and performed in accordance with, the Single Audit Act, as implemented by Circular A–133, "Audits of States, Local Governments, and Non-Profit Organizations" are allowable. Also see 31 U.S.C. 7505(b) and section 230 ("Audit Costs") of Circular A–133.

b. Other audit costs are allowable if included in an indirect cost rate proposal, or if specifically approved by the awarding agency as a direct cost to an award.

c. The cost of agreed-upon procedures engagements to monitor subrecipients who are exempted from A–133 under section 200(d) are allowable, subject to the conditions listed in A–133, section 230 (b)(2).

5. Bad debts. Bad debts, including losses (whether actual or estimated) arising from uncollectable accounts and other claims, related collection costs, and related legal costs, are unallowable.

6. Bonding costs. a. Bonding costs arise when the Federal Government requires assurance against financial loss to itself or others by reason of the act or default of the non-profit organization. They arise also in instances where the non-profit organization requires similar assurance. Included are such bonds as bid, performance, payment, advance payment, infringement, and fidelity bonds.

b. Costs of bonding required pursuant to the terms of the award are allowable.

c. Costs of bonding required by the non-profit organization in the general conduct of its operations are allowable to the extent that such bonding is in accordance with sound business practice and the rates and premiums are reasonable under the circumstances.

7. Communication costs. Costs incurred for telephone services, local and long distance telephone calls, telegrams, postage, messenger, electronic or computer transmittal services and the like are allowable.

8. Compensation for personal services. a. Definition. Compensation for personal services includes all compensation paid currently or accrued by the organization for services of employees rendered during the period of the award (except as otherwise provided in subparagraph 8.h of this appendix). It includes, but is not limited to, salaries, wages, director's and executive committee member's fees, incentive awards, fringe benefits, pension plan costs, allowances for off-site pay, incentive pay, location allowances, hardship pay, and cost of living differentials.

b. Allowability. Except as otherwise specifically provided in this paragraph, the costs of such compensation are allowable to the extent that:

(1) Total compensation to individual employees is reasonable for the services rendered and conforms to the established policy of the organization consistently applied to both Federal and non-Federal activities; and

(2) Charges to awards whether treated as direct or indirect costs are determined and supported as required in this paragraph.

c. Reasonableness. (1) When the organization is predominantly engaged in activities other than those sponsored by the Federal Government, compensation for employees on federally-sponsored work will be considered reasonable to the extent that it is consistent with that paid for similar work in the organization's other activities.

(2) When the organization is predominantly engaged in federally-sponsored activities and in cases where the kind of employees required for the Federal activities are not found in the organization's other activities, compensation for employees on federally-sponsored work will be considered reasonable to the extent that it is comparable to that paid for similar work in the labor markets in which the organization competes for the kind of employees involved.

d. Special considerations in determining allowability. Certain conditions require special consideration and possible limitations in determining costs under Federal awards where amounts or types of compensation appear unreasonable. Among such conditions are the following:

(1) Compensation to members of non-profit organizations, trustees, directors, associates, officers, or the immediate families thereof. Determination should be made that such compensation is reasonable for the actual personal services rendered rather than a distribution of earnings in excess of costs.

(2) Any change in an organization's compensation policy resulting in a substantial increase in the organization's level of compensation, particularly when it was concurrent with an increase in the ratio of Federal awards to other activities of the organization or any change in the treatment of allowability of specific types of compensation due to changes in Federal policy.

e. Unallowable costs. Costs which are unallowable under other paragraphs of this appendix shall not be allowable under this paragraph solely on the basis that they constitute personal compensation.

f. Overtime, extra-pay shift, and multi-shift premiums. Premiums for overtime, extra-pay shifts, and multi-shift work are allowable only with the prior approval of the awarding agency except:

(1) When necessary to cope with emergencies, such as those resulting from accidents, natural disasters, breakdowns of equipment, or occasional operational bottlenecks of a sporadic nature.

(2) When employees are performing indirect functions, such as administration, maintenance, or accounting.

(3) In the performance of tests, laboratory procedures, or other similar operations which are continuous in nature and cannot reasonably be interrupted or otherwise completed.

(4) When lower overall cost to the Federal Government will result.

g. Fringe benefits. (1) Fringe benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as vacation leave, sick leave, military leave, and the like, are allowable, provided such costs are absorbed by all organization activities in proportion to the relative amount of time or effort actually devoted to each.

(2) Fringe benefits in the form of employer contributions or expenses for social security, employee insurance, workmen's compensation insurance, pension plan costs (see subparagraph 8.h of this appendix), and the like, are allowable, provided such benefits are granted in accordance with established written organization policies. Such benefits whether treated as indirect costs or as direct costs, shall be distributed to particular awards and other activities in a manner consistent with the pattern of benefits accruing to the individuals or group of employees whose salaries and wages are chargeable to such awards and other activities.

(3)(a) Provisions for a reserve under a self-insurance program for unemployment compensation or workers' compensation are allowable to the extent that the provisions represent reasonable estimates of the liabilities for such compensation, and the types of coverage, extent of coverage, and rates and premiums would have been allowable had insurance been purchased to cover the risks. However, provisions for self-insured liabilities which do not become payable for more than one year after the provision is made shall not exceed the present value of the liability.

(b) Where an organization follows a consistent policy of expensing actual payments to, or on behalf of, employees or former employees for unemployment

compensation or workers' compensation, such payments are allowable in the year of payment with the prior approval of the awarding agency, provided they are allocated to all activities of the organization.

(4) Costs of insurance on the lives of trustees, officers, or other employees holding positions of similar responsibility are allowable only to the extent that the insurance represents additional compensation. The costs of such insurance when the organization is named as beneficiary are unallowable.

h. Organization-furnished automobiles. That portion of the cost of organization-furnished automobiles that relates to personal use by employees (including transportation to and from work) is unallowable as fringe benefit or indirect costs regardless of whether the cost is reported as taxable income to the employees. These costs are allowable as direct costs to sponsored award when necessary for the performance of the sponsored award and approved by awarding agencies.

i. Pension plan costs. (1) Costs of the organization's pension plan which are incurred in accordance with the established policies of the organization are allowable, provided:

(a) Such policies meet the test of reasonableness;

(b) The methods of cost allocation are not discriminatory;

(c) The cost assigned to each fiscal year is determined in accordance with generally accepted accounting principles (GAAP), as prescribed in Accounting Principles Board Opinion No. 8 issued by the American Institute of Certified Public Accountants; and

(d) The costs assigned to a given fiscal year are funded for all plan participants within six months after the end of that year. However, increases to normal and past service pension costs caused by a delay in funding the actuarial liability beyond 30 days after each quarter of the year to which such costs are assignable are unallowable.

(2) Pension plan termination insurance premiums paid pursuant to the Employee Retirement Income Security Act (ERISA) of 1974 (Pub. L. 93–406) are allowable. Late payment charges on such premiums are unallowable.

(3) Excise taxes on accumulated funding deficiencies and other penalties imposed under ERISA are unallowable.

j. Incentive compensation. Incentive compensation to employees based on cost reduction, or efficient performance, suggestion awards, safety awards, etc., are allowable to the extent that the overall compensation is determined to be reasonable and such costs are paid or accrued pursuant to an agreement entered into in good faith between the organization and the employees before the services were rendered, or pursuant to an established plan followed by the organization so consistently as to imply, in effect, an agreement to make such payment.

k. Severance pay. (1) Severance pay, also commonly referred to as dismissal wages, is a payment in addition to regular salaries and wages, by organizations to workers whose employment is being terminated. Costs of severance pay are allowable only to the extent that in each case, it is required by:

(a) Law

(b) Employer-employee agreement

(c) Established policy that constitutes, in effect, an implied agreement on the organization's part, or

(d) Circumstances of the particular employment.

(2) Costs of severance payments are divided into two categories as follows:

(a) Actual normal turnover severance payments shall be allocated to all activities; or, where the organization provides for a reserve for normal severances, such method will be acceptable if the charge to current operations is reasonable in light of payments actually made for normal severances over a representative past period, and if amounts charged are allocated to all activities of the organization.

(b) Abnormal or mass severance pay is of such a conjectural nature that measurement of costs by means of an accrual will not achieve equity to both parties. Thus, accruals for this purpose are not allowable. However, the Federal Government recognizes its obligation to participate, to the extent of its fair share, in any specific payment. Thus, allowability will be considered on a case-by-case basis in the event or occurrence.

(c) Costs incurred in certain severance pay packages (commonly known as "a golden parachute" payment) which are in an amount in excess of the normal severance pay paid by the organization to an employee upon termination of employment and are paid to the employee contingent upon a change in management control over, or ownership of, the organization's assets are unallowable.

(d) Severance payments to foreign nationals employed by the organization outside the United States, to the extent that the amount exceeds the customary or prevailing practices for the organization in the United States are unallowable, unless they are necessary for the performance of Federal programs and approved by awarding agencies.

(e) Severance payments to foreign nationals employed by the organization outside the United States due to the termination of the foreign national as a result of the closing of, or curtailment of activities by, the organization in that country, are unallowable, unless they are necessary for the performance of Federal programs and approved by awarding agencies.

l. Training costs. See paragraph 49 of this appendix.

m. Support of salaries and wages.

(1) Charges to awards for salaries and wages, whether treated as direct costs or indirect costs, will be based on documented payrolls approved by a responsible official(s) of the organization. The distribution of salaries and wages to awards must be supported by personnel activity reports, as prescribed in subparagraph 8.m.(2) of this appendix, except when a substitute system has been approved in writing by the cognizant agency. (See subparagraph E.2 of Appendix A to this part.)

(2) Reports reflecting the distribution of activity of each employee must be maintained for all staff members (professionals and nonprofessionals) whose compensation is charged, in whole or in part, directly to awards. In addition, in order to support the allocation of indirect costs, such reports must also be maintained for other employees whose work involves two or more functions or activities if a distribution of their compensation between such functions or activities is needed in the determination of the organization's indirect cost rate(s) (*e.g.*, an employee engaged part-time in indirect cost activities and part-time in a direct function). Reports maintained by non-profit organizations to satisfy these requirements must meet the following standards:

(a) The reports must reflect an after-the-fact determination of the actual activity of each employee. Budget estimates (*i.e.*, estimates determined before the services are performed) do not qualify as support for charges to awards.

(b) Each report must account for the total activity for which employees are compensated and which is required in fulfillment of their obligations to the organization.

(c) The reports must be signed by the individual employee, or by a responsible supervisory official having first hand knowledge of the activities performed by the employee, that the distribution of activity represents a reasonable estimate of the actual work performed by the employee during the periods covered by the reports.

(d) The reports must be prepared at least monthly and must coincide with one or more pay periods.

(3) Charges for the salaries and wages of nonprofessional employees, in addition to the supporting documentation described in subparagraphs (1) and (2), must also be supported by records indicating the total number of hours worked each day maintained in conformance with Department of Labor regulations implementing the Fair Labor Standards Act (FLSA) (29 CFR part 516). For this purpose, the term "nonprofessional employee" shall have the same meaning as "nonexempt employee," under FLSA.

(4) Salaries and wages of employees used in meeting cost sharing or matching requirements on awards must be supported in the same manner as salaries and wages claimed for reimbursement from awarding agencies.

9. Contingency provisions. Contributions to a contingency reserve or any similar provision made for events the occurrence of which cannot be foretold with certainty as to time, intensity, or with an assurance of their happening, are unallowable. The term "contingency reserve" excludes self-insurance reserves (see Appendix B to this part, paragraphs 8.g.(3) and 22.a(2)(d)); pension funds (see paragraph 8.i); and reserves for normal severance pay (see paragraph 8.k.)

10. Defense and prosecution of criminal and civil proceedings, claims, appeals and patent infringement.

a. Definitions. (1) Conviction, as used herein, means a judgment or a conviction of a criminal offense by any court of competent jurisdiction, whether entered upon as a verdict or a plea, including a conviction due to a plea of nolo contendere.

(2) Costs include, but are not limited to, administrative and clerical expenses; the cost of legal services, whether performed by in-house or private counsel; and the costs of the services of accountants, consultants, or others retained by the organization to assist it; costs of employees, officers and trustees, and any similar costs incurred before, during, and after commencement of a judicial or administrative proceeding that bears a direct relationship to the proceedings.

(3) Fraud, as used herein, means acts of fraud corruption or attempts to defraud the Federal Government or to corrupt its agents, acts that constitute a cause for debarment or suspension (as specified in agency regulations), and acts which violate the False Claims Act, 31 U.S.C., sections 3729–3731, or the Anti-Kickback Act, 41 U.S.C., sections 51 and 54.

(4) Penalty does not include restitution, reimbursement, or compensatory damages.

(5) Proceeding includes an investigation.

b. (1) Except as otherwise described herein, costs incurred in connection with any criminal, civil or administrative proceeding (including filing of a false certification) commenced by the Federal Government, or a State, local or foreign government, are not allowable if the proceeding: Relates to a violation of, or failure to comply with, a Federal, State, local or foreign statute or regulation by the organization (including its agents and employees), and results in any of the following dispositions:

(a) In a criminal proceeding, a conviction.

(b) In a civil or administrative proceeding involving an allegation of fraud or similar misconduct, a determination of organizational liability.

(c) In the case of any civil or administrative proceeding, the imposition of a monetary penalty.

(d) A final decision by an appropriate Federal official to debar or suspend the organization, to rescind or void an award, or to terminate an award for default by reason of a violation or failure to comply with a law or regulation.

(e) A disposition by consent or compromise, if the action could have resulted in any of the dispositions described in subparagraphs 10.b.(1)(a), (b), (c) or (d) of this appendix.

(2) If more than one proceeding involves the same alleged misconduct, the costs of all such proceedings shall be unallowable if any one of them results in one of the dispositions shown in subparagraph 10.b.(1) of this appendix.

c. If a proceeding referred to in subparagraph 10.b of this appendix is commenced by the Federal Government and is resolved by consent or compromise pursuant to an agreement entered into by the organization and the Federal Government, then the costs incurred by the organization in connection with such proceedings that are otherwise not allowable under subparagraph 10.b of this appendix may be allowed to the extent specifically provided in such agreement.

d. If a proceeding referred to in subparagraph 10.b of this appendix is commenced by a State, local or foreign government, the authorized Federal official may allow the costs incurred by the organization for such proceedings, if such authorized official determines that the costs were incurred as a result of a specific term or condition of a federally-sponsored award, or specific written direction of an authorized official of the sponsoring agency.

e. Costs incurred in connection with proceedings described in subparagraph 10.b of this appendix, but which are not made unallowable by that subparagraph, may be allowed by the Federal Government, but only to the extent that:

(1) The costs are reasonable in relation to the activities required to deal with the proceeding and the underlying cause of action;

(2) Payment of the costs incurred, as allowable and allocable costs, is not prohibited by any other provision(s) of the sponsored award;

(3) The costs are not otherwise recovered from the Federal Government or a third party, either directly as a result of the proceeding or otherwise; and,

(4) The percentage of costs allowed does not exceed the percentage determined by an authorized Federal official to be appropriate, considering the complexity of the litigation, generally accepted principles governing the award of legal fees in civil actions involving the United States as a party, and such other factors as may be appropriate. Such percentage shall not exceed 80 percent. However, if an agreement reached under subparagraph 10.c of this appendix has explicitly considered this 80 percent limitation and permitted a higher percentage, then the full amount of costs resulting from that agreement shall be allowable.

f. Costs incurred by the organization in connection with the defense of suits brought by its employees or ex-employees under section 2 of the Major Fraud Act of 1988 (Pub. L. 100–700), including the cost of all relief necessary to make such employee whole, where the organization was found liable or settled, are unallowable.

g. Costs of legal, accounting, and consultant services, and related costs, incurred in connection with defense against Federal Government claims or appeals, antitrust suits, or the prosecution of claims or appeals against the Federal Government, are unallowable.

h. Costs of legal, accounting, and consultant services, and related costs, incurred in connection with patent infringement litigation, are unallowable unless otherwise provided for in the sponsored awards.

i. Costs which may be unallowable under this paragraph, including directly associated costs, shall be segregated and accounted for by the organization separately. During the pendency of any proceeding covered by subparagraphs 10.b and f of this appendix, the Federal Government shall generally withhold payment of such costs. However, if in the best interests of the Federal Government, the Federal Government may provide for conditional payment upon provision of adequate security, or other adequate assurance, and agreements by the organization to repay all unallowable costs, plus interest, if the costs are subsequently determined to be unallowable.

11. Depreciation and use allowances. a. Compensation for the use of buildings, other capital improvements, and equipment on hand may be made through use allowance or depreciation. However, except as provided in paragraph 11.f of this appendix, a combination of the two methods may not be used in connection with a single class of fixed assets (*e.g.*, buildings, office equipment, computer equipment, etc.).

b. The computation of use allowances or depreciation shall be based on the acquisition cost of the assets involved. The acquisition cost of an asset donated to the non-profit organization by a third party shall be its fair market value at the time of the donation.

c. The computation of use allowances or depreciation will exclude:

(1) The cost of land;

(2) Any portion of the cost of buildings and equipment borne by or donated by the Federal Government irrespective of where title was originally vested or where it presently resides; and

(3) Any portion of the cost of buildings and equipment contributed by or for the non-profit organization in satisfaction of a statutory matching requirement.

d. General criteria where depreciation method is followed:

(1) The period of useful service (useful life) established in each case for usable capital assets must take into consideration such factors as type of construction, nature of the equipment used, technological developments in the particular program area, and the renewal and replacement policies followed for the individual items or classes of assets involved. The method of depreciation used to assign the cost of an asset (or group of assets) to accounting periods shall reflect the pattern of consumption of the asset during its useful life.

(2) In the absence of clear evidence indicating that the expected consumption of the asset will be significantly greater or lesser in the early portions of its useful life than in the later portions, the straight-line method shall be presumed to be the appropriate method.

(3) Depreciation methods once used shall not be changed unless approved in advance by the cognizant Federal agency. When the depreciation method is introduced for application to assets previously subject to a use allowance, the combination of use allowances and depreciation applicable to such assets must not exceed the total acquisition cost of the assets.

e. When the depreciation method is used for buildings, a building's shell may be segregated from each building component (*e.g.*, plumbing system, heating, and air conditioning system, etc.) and each item depreciated over its estimated useful life; or the entire building (*i.e.*, the shell and all components) may be treated as a single asset and depreciated over a single useful life.

f. When the depreciation method is used for a particular class of assets, no depreciation may be allowed on any such assets that, under subparagraph 11.d of this appendix, would be viewed as fully depreciated. However, a reasonable use allowance may be negotiated for such assets

if warranted after taking into consideration the amount of depreciation previously charged to the Federal Government, the estimated useful life remaining at time of negotiation, the effect of any increased maintenance charges or decreased efficiency due to age, and any other factors pertinent to the utilization of the asset for the purpose contemplated.

g. Criteria where the use allowance method is followed:

(1) The use allowance for buildings and improvement (including land improvements, such as paved parking areas, fences, and sidewalks) will be computed at an annual rate not exceeding two percent of acquisition cost.

(2) The use allowance for equipment will be computed at an annual rate not exceeding six and two-thirds percent of acquisition cost. When the use allowance method is used for buildings, the entire building must be treated as a single asset; the building's components (*e.g.*, plumbing system, heating and air conditioning, etc.) cannot be segregated from the building's shell.

(3) The two percent limitation, however, need not be applied to equipment which is merely attached or fastened to the building but not permanently fixed to it and which is used as furnishings or decorations or for specialized purposes (*e.g.*, dentist chairs and dental treatment units, counters, laboratory benches bolted to the floor, dishwashers, modular furniture, carpeting, etc.). Such equipment will be considered as not being permanently fixed to the building if it can be removed without the need for costly or extensive alterations or repairs to the building or the equipment. Equipment that meets these criteria will be subject to the 6⅔ percent equipment use allowance limitation.

h. Charges for use allowances or depreciation must be supported by adequate property records and physical inventories must be taken at least once every two years (a statistical sampling basis is acceptable) to ensure that assets exist and are usable and needed. When the depreciation method is followed, adequate depreciation records indicating the amount of depreciation taken each period must also be maintained.

12. Donations and contributions.

a. Contributions or donations rendered. Contributions or donations, including cash, property, and services, made by the organization, regardless of the recipient, are unallowable.

b. Donated services received:

(1) Donated or volunteer services may be furnished to an organization by professional and technical personnel, consultants, and other skilled and unskilled labor. The value of these services is not reimbursable either as a direct or indirect cost. However, the value of donated services may be used to meet cost sharing or matching requirements in accordance with the Common Rule.

(2) The value of donated services utilized in the performance of a direct cost activity shall, when material in amount, be considered in the determination of the non-profit organization's indirect costs or rate(s) and, accordingly, shall be allocated a proportionate share of applicable indirect costs when the following exist:

(a) The aggregate value of the services is material;

(b) The services are supported by a significant amount of the indirect costs incurred by the non-profit organization; and

(c) The direct cost activity is not pursued primarily for the benefit of the Federal Government.

(3) In those instances where there is no basis for determining the fair market value of the services rendered, the recipient and the cognizant agency shall negotiate an appropriate allocation of indirect cost to the services.

(4) Where donated services directly benefit a project supported by an award, the indirect costs allocated to the services will be considered as a part of the total costs of the project. Such indirect costs may be reimbursed under the award or used to meet cost sharing or matching requirements.

(5) The value of the donated services may be used to meet cost sharing or matching requirements under conditions described in Section 215.23 of 2 CFR part 215 (OMB Circular A–110). Where donated services are treated as indirect costs, indirect cost rates will separate the value of the donations so that reimbursement will not be made.

c. Donated goods or space. (1) Donated goods; *i.e.*, expendable personal property/supplies, and donated use of space may be furnished to a non-profit organization. The value of the goods and space is not reimbursable either as a direct or indirect cost.

(2) The value of the donations may be used to meet cost sharing or matching share requirements under the conditions described in 2 CFR part 215 (OMB Circular A–110). Where donations are treated as indirect costs, indirect cost rates will separate the value of the donations so that reimbursement will not be made.

13. Employee morale, health, and welfare costs.

a. The costs of employee information publications, health or first-aid clinics and/or infirmaries, recreational activities, employee counseling services, and any other expenses incurred in accordance with the non-profit organization's established practice or custom for the improvement of working conditions, employer-employee relations, employee morale, and employee performance are allowable.

b. Such costs will be equitably apportioned to all activities of the non-profit organization. Income generated from any of these activities will be credited to the cost thereof unless such income has been irrevocably set over to employee welfare organizations.

14. Entertainment costs. Costs of entertainment, including amusement, diversion, and social activities and any costs directly associated with such costs (such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities) are unallowable.

15. Equipment and other capital expenditures.

a. For purposes of this subparagraph, the following definitions apply:

(1) "Capital Expenditures" means expenditures for the acquisition cost of capital assets (equipment, buildings, land), or expenditures to make improvements to capital assets that materially increase their value or useful life. Acquisition cost means the cost of the asset including the cost to put it in place. Acquisition cost for equipment, for example, means the net invoice price of the equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in transit insurance, freight, and installation may be included in, or excluded from the acquisition cost in accordance with the non-profit organization's regular accounting practices.

(2) "Equipment" means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of the capitalization level established by the non-profit organization for financial statement purposes, or $5000.

(3) "Special purpose equipment" means equipment which is used only for research, medical, scientific, or other technical activities. Examples of special purpose equipment include microscopes, x-ray machines, surgical instruments, and spectrometers.

(4) "General purpose equipment" means equipment, which is not limited to research, medical, scientific or other technical activities. Examples include office equipment and furnishings, modular offices, telephone networks, information technology equipment and systems, air conditioning equipment, reproduction and printing equipment, and motor vehicles.

b. The following rules of allowability shall apply to equipment and other capital expenditures:

(1) Capital expenditures for general purpose equipment, buildings, and land are unallowable as direct charges, except where approved in advance by the awarding agency.

(2) Capital expenditures for special purpose equipment are allowable as direct costs, provided that items with a unit cost of $5000 or more have the prior approval of the awarding agency.

(3) Capital expenditures for improvements to land, buildings, or equipment which materially increase their value or useful life are unallowable as a direct cost except with the prior approval of the awarding agency.

(4) When approved as a direct charge pursuant to paragraph 15.b.(1), (2), and (3) above, capital expenditures will be charged in the period in which the expenditure is incurred, or as otherwise determined appropriate by and negotiated with the awarding agency.

(5) Equipment and other capital expenditures are unallowable as indirect costs. However, see paragraph 11., Depreciation and use allowance, of this appendix for rules on the allowability of use allowances or depreciation on buildings, capital improvements, and equipment. Also, see paragraph 43., Rental costs of buildings and equipment, of this appendix for rules on the allowability of rental costs for land, buildings, and equipment.

(6) The unamortized portion of any equipment written off as a result of a change

in capitalization levels may be recovered by continuing to claim the otherwise allowable use allowances or depreciation on the equipment, or by amortizing the amount to be written off over a period of years negotiated with the cognizant agency.

16. Fines and penalties. Costs of fines and penalties resulting from violations of, or failure of the organization to comply with Federal, State, and local laws and regulations are unallowable except when incurred as a result of compliance with specific provisions of an award or instructions in writing from the awarding agency.

17. Fund raising and investment management costs. a. Costs of organized fund raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions are unallowable.

b. Costs of investment counsel and staff and similar expenses incurred solely to enhance income from investments are unallowable.

c. Fund raising and investment activities shall be allocated an appropriate share of indirect costs under the conditions described in subparagraph B.3 of Appendix A to this part.

18. Gains and losses on depreciable assets. a. (1) Gains and losses on sale, retirement, or other disposition of depreciable property shall be included in the year in which they occur as credits or charges to cost grouping(s) in which the depreciation applicable to such property was included. The amount of the gain or loss to be included as a credit or charge to the appropriate cost grouping(s) shall be the difference between the amount realized on the property and the undepreciated basis of the property.

(2) Gains and losses on the disposition of depreciable property shall not be recognized as a separate credit or charge under the following conditions:

(a) The gain or loss is processed through a depreciation account and is reflected in the depreciation allowable under paragraph 11 of this appendix.

(b) The property is given in exchange as part of the purchase price of a similar item and the gain or loss is taken into account in determining the depreciation cost basis of the new item.

(c) A loss results from the failure to maintain permissible insurance, except as otherwise provided in paragraph 22 of this appendix.

(d) Compensation for the use of the property was provided through use allowances in lieu of depreciation in accordance with paragraph 9 of this appendix.

(e) Gains and losses arising from mass or extraordinary sales, retirements, or other dispositions shall be considered on a case-by-case basis.

b. Gains or losses of any nature arising from the sale or exchange of property other than the property covered in subparagraph a shall be excluded in computing award costs.

19. Goods or services for personal use. Costs of goods or services for personal use of the organization's employees are unallowable regardless of whether the cost is reported as taxable income to the employees.

20. Housing and personal living expenses. a. Costs of housing (*e.g.*, depreciation, maintenance, utilities, furnishings, rent, etc.), housing allowances and personal living expenses for/of the organization's officers are unallowable as fringe benefit or indirect costs regardless of whether the cost is reported as taxable income to the employees. These costs are allowable as direct costs to sponsored award when necessary for the performance of the sponsored award and approved by awarding agencies.

b. The term "officers" includes current and past officers and employees.

21. Idle facilities and idle capacity. a. As used in this section the following terms have the meanings set forth below:

(1) "Facilities" means land and buildings or any portion thereof, equipment individually or collectively, or any other tangible capital asset, wherever located, and whether owned or leased by the non-profit organization.

(2) "Idle facilities" means completely unused facilities that are excess to the non-profit organization's current needs.

(3) "Idle capacity" means the unused capacity of partially used facilities. It is the difference between: That which a facility could achieve under 100 percent operating time on a one-shift basis less operating interruptions resulting from time lost for repairs, setups, unsatisfactory materials, and other normal delays; and the extent to which the facility was actually used to meet demands during the accounting period. A multi-shift basis should be used if it can be shown that this amount of usage would normally be expected for the type of facility involved.

(4) "Cost of idle facilities or idle capacity" means costs such as maintenance, repair, housing, rent, and other related costs, *e.g.*, insurance, interest, property taxes and depreciation or use allowances.

b. The costs of idle facilities are unallowable except to the extent that:

(1) They are necessary to meet fluctuations in workload; or

(2) Although not necessary to meet fluctuations in workload, they were necessary when acquired and are now idle because of changes in program requirements, efforts to achieve more economical operations, reorganization, termination, or other causes which could not have been reasonably foreseen. Under the exception stated in this subparagraph, costs of idle facilities are allowable for a reasonable period of time, ordinarily not to exceed one year, depending on the initiative taken to use, lease, or dispose of such facilities.

c. The costs of idle capacity are normal costs of doing business and are a factor in the normal fluctuations of usage or indirect cost rates from period to period. Such costs are allowable, provided that the capacity is reasonably anticipated to be necessary or was originally reasonable and is not subject to reduction or elimination by use on other Federal awards, subletting, renting, or sale, in accordance with sound business, economic, or security practices. Widespread idle capacity throughout an entire facility or among a group of assets having substantially the same function may be considered idle facilities.

22. Insurance and indemnification. a. Insurance includes insurance which the organization is required to carry, or which is approved, under the terms of the award and any other insurance which the organization maintains in connection with the general conduct of its operations. This paragraph does not apply to insurance which represents fringe benefits for employees (see subparagraphs 8.g and 8.i(2) of this appendix).

(1) Costs of insurance required or approved, and maintained, pursuant to the award are allowable.

(2) Costs of other insurance maintained by the organization in connection with the general conduct of its operations are allowable subject to the following limitations:

(a) Types and extent of coverage shall be in accordance with sound business practice and the rates and premiums shall be reasonable under the circumstances.

(b) Costs allowed for business interruption or other similar insurance shall be limited to exclude coverage of management fees.

(c) Costs of insurance or of any provisions for a reserve covering the risk of loss or damage to Federal property are allowable only to the extent that the organization is liable for such loss or damage.

(d) Provisions for a reserve under a self-insurance program are allowable to the extent that types of coverage, extent of coverage, rates, and premiums would have been allowed had insurance been purchased to cover the risks. However, provision for known or reasonably estimated self-insured liabilities, which do not become payable for more than one year after the provision is made, shall not exceed the present value of the liability.

(e) Costs of insurance on the lives of trustees, officers, or other employees holding positions of similar responsibilities are allowable only to the extent that the insurance represents additional compensation (see subparagraph 8.g(4) of this appendix). The cost of such insurance when the organization is identified as the beneficiary is unallowable.

(f) Insurance against defects. Costs of insurance with respect to any costs incurred to correct defects in the organization's materials or workmanship are unallowable.

(g) Medical liability (malpractice) insurance. Medical liability insurance is an allowable cost of Federal research programs only to the extent that the Federal research programs involve human subjects or training of participants in research techniques. Medical liability insurance costs shall be treated as a direct cost and shall be assigned to individual projects based on the manner in which the insurer allocates the risk to the population covered by the insurance.

(3) Actual losses which could have been covered by permissible insurance (through the purchase of insurance or a self-insurance program) are unallowable unless expressly provided for in the award, except:

(a) Costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound business practice are allowable.

(b) Minor losses not covered by insurance, such as spoilage, breakage, and

disappearance of supplies, which occur in the ordinary course of operations, are allowable.

b. Indemnification includes securing the organization against liabilities to third persons and any other loss or damage, not compensated by insurance or otherwise. The Federal Government is obligated to indemnify the organization only to the extent expressly provided in the award.

23. Interest. a. Costs incurred for interest on borrowed capital, temporary use of endowment funds, or the use of the non-profit organization's own funds, however represented, are unallowable. However, interest on debt incurred after September 29, 1995 to acquire or replace capital assets (including renovations, alterations, equipment, land, and capital assets acquired through capital leases), acquired after September 29, 1995 and used in support of Federal awards is allowable, provided that:

(1) For facilities acquisitions (excluding renovations and alterations) costing over $10 million where the Federal Government's reimbursement is expected to equal or exceed 40 percent of an asset's cost, the non-profit organization prepares, prior to the acquisition or replacement of the capital asset(s), a justification that demonstrates the need for the facility in the conduct of federally-sponsored activities. Upon request, the needs justification must be provided to the Federal agency with cost cognizance authority as a prerequisite to the continued allowability of interest on debt and depreciation related to the facility. The needs justification for the acquisition of a facility should include, at a minimum, the following:

(a) A statement of purpose and justification for facility acquisition or replacement.

(b) A statement as to why current facilities are not adequate.

(c) A statement of planned future use of the facility.

(d) A description of the financing agreement to be arranged for the facility.

(e) A summary of the building contract with estimated cost information and statement of source and use of funds.

(f) A schedule of planned occupancy dates.

(2) For facilities costing over $500,000, the non-profit organization prepares, prior to the acquisition or replacement of the facility, a lease/purchase analysis in accordance with the provisions of §§ 215.30 through 215.37 of 2 CFR 215 (OMB Circular A–110), which shows that a financed purchase or capital lease is less costly to the organization than other leasing alternatives, on a net present value basis. Discount rates used should be equal to the non-profit organization's anticipated interest rates and should be no higher than the fair market rate available to the non-profit organization from an unrelated ("arm's length") third-party. The lease/purchase analysis shall include a comparison of the net present value of the projected total cost comparisons of both alternatives over the period the asset is expected to be used by the non-profit organization. The cost comparisons associated with purchasing the facility shall include the estimated purchase price, anticipated operating and maintenance costs (including property taxes, if applicable) not included in the debt financing, less any estimated asset salvage value at the end of the period defined above. The cost comparison for a capital lease shall include the estimated total lease payments, any estimated bargain purchase option, operating and maintenance costs, and taxes not included in the capital leasing arrangement, less any estimated credits due under the lease at the end of the period defined above. Projected operating lease costs shall be based on the anticipated cost of leasing comparable facilities at fair market rates under rental agreements that would be renewed or reestablished over the period defined above, and any expected maintenance costs and allowable property taxes to be borne by the non-profit organization directly or as part of the lease arrangement.

(3) The actual interest cost claimed is predicated upon interest rates that are no higher than the fair market rate available to the non-profit organization from an unrelated ("arm's length") third party.

(4) Investment earnings, including interest income, on bond or loan principal, pending payment of the construction or acquisition costs, are used to offset allowable interest cost. Arbitrage earnings reportable to the Internal Revenue Service are not required to be offset against allowable interest costs.

(5) Reimbursements are limited to the least costly alternative based on the total cost analysis required under subparagraph 23.b. of this appendix. For example, if an operating lease is determined to be less costly than purchasing through debt financing, then reimbursement is limited to the amount determined if leasing had been used. In all cases where a lease/purchase analysis is performed, Federal reimbursement shall be based upon the least expensive alternative.

(6) Non-profit organizations are also subject to the following conditions:

(a) Interest on debt incurred to finance or refinance assets acquired before or reacquired after September 29, 1995, is not allowable.

(b) Interest attributable to fully depreciated assets is unallowable.

(c) For debt arrangements over $1 million, unless the non-profit organization makes an initial equity contribution to the asset purchase of 25 percent or more, non-profit organizations shall reduce claims for interest expense by an amount equal to imputed interest earnings on excess cash flow, which is to be calculated as follows. Annually, non-profit organizations shall prepare a cumulative (from the inception of the project) report of monthly cash flows that includes inflows and outflows, regardless of the funding source. Inflows consist of depreciation expense, amortization of capitalized construction interest, and annual interest expense. For cash flow calculations, the annual inflow figures shall be divided by the number of months in the year (usually 12) that the building is in service for monthly amounts. Outflows consist of initial equity contributions, debt principal payments (less the pro rata share attributable to the unallowable costs of land) and interest payments. Where cumulative inflows exceed cumulative outflows, interest shall be calculated on the excess inflows for that period and be treated as a reduction to allowable interest expense. The rate of interest to be used to compute earnings on excess cash flows shall be the three month Treasury Bill closing rate as of the last business day of that month.

(d) Substantial relocation of federally-sponsored activities from a facility financed by indebtedness, the cost of which was funded in whole or part through Federal reimbursements, to another facility prior to the expiration of a period of 20 years requires notice to the Federal cognizant agency. The extent of the relocation, the amount of the Federal participation in the financing, and the depreciation and interest charged to date may require negotiation and/or downward adjustments of replacement space charged to Federal programs in the future.

(e) The allowable costs to acquire facilities and equipment are limited to a fair market value available to the non-profit organization from an unrelated ("arm's length") third party.

b. For non-profit organizations subject to "full coverage'" under the Cost Accounting Standards (CAS) as defined at 48 CFR 9903.201, the interest allowability provisions of subparagraph a do not apply. Instead, these organizations' sponsored agreements are subject to CAS 414 (48 CFR 9903.414), cost of money as an element of the cost of facilities capital, and CAS 417 (48 CFR 9903.417), cost of money as an element of the cost of capital assets under construction.

c. The following definitions are to be used for purposes of this paragraph:

(1) Re-acquired assets means assets held by the non-profit organization prior to September 29, 1995 that have again come to be held by the organization, whether through repurchase or refinancing. It does not include assets acquired to replace older assets.

(2) Initial equity contribution means the amount or value of contributions made by non-profit organizations for the acquisition of the asset or prior to occupancy of facilities.

(3) Asset costs means the capitalizable costs of an asset, including construction costs, acquisition costs, and other such costs capitalized in accordance with GAAP.

24. Labor relations costs. Costs incurred in maintaining satisfactory relations between the organization and its employees, including costs of labor management committees, employee publications, and other related activities are allowable.

25. Lobbying. a. Notwithstanding other provisions of this appendix, costs associated with the following activities are unallowable:

(1) Attempts to influence the outcomes of any Federal, State, or local election, referendum, initiative, or similar procedure, through in kind or cash contributions, endorsements, publicity, or similar activity;

(2) Establishing, administering, contributing to, or paying the expenses of a political party, campaign, political action committee, or other organization established for the purpose of influencing the outcomes of elections;

(3) Any attempt to influence: The introduction of Federal or State legislation; or the enactment or modification of any pending Federal or State legislation through communication with any member or employee of the Congress or State legislature (including efforts to influence State or local

officials to engage in similar lobbying activity), or with any Government official or employee in connection with a decision to sign or veto enrolled legislation;

(4) Any attempt to influence: The introduction of Federal or State legislation; or the enactment or modification of any pending Federal or State legislation by preparing, distributing or using publicity or propaganda, or by urging members of the general public or any segment thereof to contribute to or participate in any mass demonstration, march, rally, fundraising drive, lobbying campaign or letter writing or telephone campaign; or

(5) Legislative liaison activities, including attendance at legislative sessions or committee hearings, gathering information regarding legislation, and analyzing the effect of legislation, when such activities are carried on in support of or in knowing preparation for an effort to engage in unallowable lobbying.

b. The following activities are excepted from the coverage of subparagraph 25.a of this appendix:

(1) Providing a technical and factual presentation of information on a topic directly related to the performance of a grant, contract or other agreement through hearing testimony, statements or letters to the Congress or a State legislature, or subdivision, member, or cognizant staff member thereof, in response to a documented request (including a Congressional Record notice requesting testimony or statements for the record at a regularly scheduled hearing) made by the recipient member, legislative body or subdivision, or a cognizant staff member thereof; provided such information is readily obtainable and can be readily put in deliverable form; and further provided that costs under this section for travel, lodging or meals are unallowable unless incurred to offer testimony at a regularly scheduled Congressional hearing pursuant to a written request for such presentation made by the Chairman or Ranking Minority Member of the Committee or Subcommittee conducting such hearing.

(2) Any lobbying made unallowable by subparagraph 25.a.(3) of this appendix to influence State legislation in order to directly reduce the cost, or to avoid material impairment of the organization's authority to perform the grant, contract, or other agreement.

(3) Any activity specifically authorized by statute to be undertaken with funds from the grant, contract, or other agreement.

c. (1) When an organization seeks reimbursement for indirect costs, total lobbying costs shall be separately identified in the indirect cost rate proposal, and thereafter treated as other unallowable activity costs in accordance with the procedures of subparagraph B.3 of Appendix A to this part.

(2) Organizations shall submit, as part of the annual indirect cost rate proposal, a certification that the requirements and standards of this paragraph have been complied with.

(3) Organizations shall maintain adequate records to demonstrate that the determination of costs as being allowable or unallowable pursuant to paragraph 25 complies with the requirements of this Appendix.

(4) Time logs, calendars, or similar records shall not be required to be created for purposes of complying with this paragraph during any particular calendar month when: the employee engages in lobbying (as defined in subparagraphs 25.a. and b. of this appendix) 25 percent or less of the employee's compensated hours of employment during that calendar month, and within the preceding five-year period, the organization has not materially misstated allowable or unallowable costs of any nature, including legislative lobbying costs. When the conditions described in this subparagraph are met, organizations are not required to establish records to support the allowability of claimed costs in addition to records already required or maintained. Also, when the conditions described in this subparagraph are met, the absence of time logs, calendars, or similar records will not serve as a basis for disallowing costs by contesting estimates of lobbying time spent by employees during a calendar month.

(5) Agencies shall establish procedures for resolving in advance, in consultation with OMB, any significant questions or disagreements concerning the interpretation or application of paragraph 25. Any such advance resolution shall be binding in any subsequent settlements, audits or investigations with respect to that grant or contract for purposes of interpretation of this Appendix; provided, however, that this shall not be construed to prevent a contractor or grantee from contesting the lawfulness of such a determination.

d. Executive lobbying costs. Costs incurred in attempting to improperly influence either directly or indirectly, an employee or officer of the Executive Branch of the Federal Government to give consideration or to act regarding a sponsored agreement or a regulatory matter are unallowable. Improper influence means any influence that induces or tends to induce a Federal employee or officer to give consideration or to act regarding a federally-sponsored agreement or regulatory matter on any basis other than the merits of the matter.

26. Losses on other sponsored agreements or contracts. Any excess of costs over income on any award is unallowable as a cost of any other award. This includes, but is not limited to, the organization's contributed portion by reason of cost sharing agreements or any under-recoveries through negotiation of lump sums for, or ceilings on, indirect costs.

27. Maintenance and repair costs. Costs incurred for necessary maintenance, repair, or upkeep of buildings and equipment (including Federal property unless otherwise provided for) which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are allowable. Costs incurred for improvements which add to the permanent value of the buildings and equipment or appreciably prolong their intended life shall be treated as capital expenditures (see paragraph 15 of this appendix).

28. Materials and supplies costs. a. Costs incurred for materials, supplies, and fabricated parts necessary to carry out a Federal award are allowable.

b. Purchased materials and supplies shall be charged at their actual prices, net of applicable credits. Withdrawals from general stores or stockrooms should be charged at their actual net cost under any recognized method of pricing inventory withdrawals, consistently applied. Incoming transportation charges are a proper part of materials and supplies costs.

c. Only materials and supplies actually used for the performance of a Federal award may be charged as direct costs.

d. Where federally-donated or furnished materials are used in performing the Federal award, such materials will be used without charge.

29. Meetings and conferences. Costs of meetings and conferences, the primary purpose of which is the dissemination of technical information, are allowable. This includes costs of meals, transportation, rental of facilities, speakers' fees, and other items incidental to such meetings or conferences. But see paragraphs 14., Entertainment costs, and 33., Participant support costs of this appendix.

30. Memberships, subscriptions, and professional activity costs. a. Costs of the non-profit organization's membership in business, technical, and professional organizations are allowable.

b. Costs of the non-profit organization's subscriptions to business, professional, and technical periodicals are allowable.

c. Costs of membership in any civic or community organization are allowable with prior approval by Federal cognizant agency.

d. Costs of membership in any country club or social or dining club or organization are unallowable.

31. Organization costs. Expenditures, such as incorporation fees, brokers' fees, fees to promoters, organizers or management consultants, attorneys, accountants, or investment counselors, whether or not employees of the organization, in connection with establishment or reorganization of an organization, are unallowable except with prior approval of the awarding agency.

32. Page charges in professional journals. Page charges for professional journal publications are allowable as a necessary part of research costs, where:

a. The research papers report work supported by the Federal Government; and

b. The charges are levied impartially on all research papers published by the journal, whether or not by federally-sponsored authors.

33. Participant support costs. Participant support costs are direct costs for items such as stipends or subsistence allowances, travel allowances, and registration fees paid to or on behalf of participants or trainees (but not employees) in connection with meetings, conferences, symposia, or training projects. These costs are allowable with the prior approval of the awarding agency.

34. Patent costs. a. The following costs relating to patent and copyright matters are allowable: cost of preparing disclosures, reports, and other documents required by the Federal award and of searching the art to the extent necessary to make such disclosures;

cost of preparing documents and any other patent costs in connection with the filing and prosecution of a United States patent application where title or royalty-free license is required by the Federal Government to be conveyed to the Federal Government; and general counseling services relating to patent and copyright matters, such as advice on patent and copyright laws, regulations, clauses, and employee agreements (but see paragraphs 37., Professional services costs, and 44., Royalties and other costs for use of patents and copyrights, of this appendix).

b. The following costs related to patent and copyright matter are unallowable:

(1) Cost of preparing disclosures, reports, and other documents and of searching the art to the extent necessary to make disclosures not required by the award.

(2) Costs in connection with filing and prosecuting any foreign patent application, or any United States patent application, where the Federal award does not require conveying title or a royalty-free license to the Federal Government (but see paragraph 45., Royalties and other costs for use of patents and copyrights, of this appendix).

35. Plant and homeland security costs. Necessary and reasonable expenses incurred for routine and homeland security to protect facilities, personnel, and work products are allowable. Such costs include, but are not limited to, wages and uniforms of personnel engaged in security activities; equipment; barriers; contractual security services; consultants; etc. Capital expenditures for homeland and plant security purposes are subject to paragraph 15., Equipment and other capital expenditures, of this appendix.

36. Pre-agreement costs. Pre-award costs are those incurred prior to the effective date of the award directly pursuant to the negotiation and in anticipation of the award where such costs are necessary to comply with the proposed delivery schedule or period of performance. Such costs are allowable only to the extent that they would have been allowable if incurred after the date of the award and only with the written approval of the awarding agency.

37. Professional services costs. a. Costs of professional and consultant services rendered by persons who are members of a particular profession or possess a special skill, and who are not officers or employees of the non-profit organization, are allowable, subject to subparagraphs b and c when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Federal Government. In addition, legal and related services are limited under paragraph 10 of this appendix.

b. In determining the allowability of costs in a particular case, no single factor or any special combination of factors is necessarily determinative. However, the following factors are relevant:

(1) The nature and scope of the service rendered in relation to the service required.

(2) The necessity of contracting for the service, considering the non-profit organization's capability in the particular area.

(3) The past pattern of such costs, particularly in the years prior to Federal awards.

(4) The impact of Federal awards on the non-profit organization's business (*i.e.*, what new problems have arisen).

(5) Whether the proportion of Federal work to the non-profit organization's total business is such as to influence the non-profit organization in favor of incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under Federal grants and contracts.

(6) Whether the service can be performed more economically by direct employment rather than contracting.

(7) The qualifications of the individual or concern rendering the service and the customary fees charged, especially on non-Federal awards.

(8) Adequacy of the contractual agreement for the service (*e.g.*, description of the service, estimate of time required, rate of compensation, and termination provisions).

c. In addition to the factors in subparagraph 37.b of this appendix, retainer fees to be allowable must be supported by evidence of bona fide services available or rendered

38. Publication and printing costs. a. Publication costs include the costs of printing (including the processes of composition, plate-making, press work, binding, and the end products produced by such processes), distribution, promotion, mailing, and general handling. Publication costs also include page charges in professional publications.

b. If these costs are not identifiable with a particular cost objective, they should be allocated as indirect costs to all benefiting activities of the non-profit organization.

c. Page charges for professional journal publications are allowable as a necessary part of research costs where:

(1) The research papers report work supported by the Federal Government: and

(2) The charges are levied impartially on all research papers published by the journal, whether or not by federally-sponsored authors.

39. Rearrangement and alteration costs. Costs incurred for ordinary or normal rearrangement and alteration of facilities are allowable. Special arrangement and alteration costs incurred specifically for the project are allowable with the prior approval of the awarding agency.

40. Reconversion costs. Costs incurred in the restoration or rehabilitation of the non-profit organization's facilities to approximately the same condition existing immediately prior to commencement of Federal awards, less costs related to normal wear and tear, are allowable.

41. Recruiting costs. a. Subject to subparagraphs 41.b, c, and d of this appendix, and provided that the size of the staff recruited and maintained is in keeping with workload requirements, costs of "help wanted" advertising, operating costs of an employment office necessary to secure and maintain an adequate staff, costs of operating an aptitude and educational testing program, travel costs of employees while engaged in recruiting personnel, travel costs of applicants for interviews for prospective employment, and relocation costs incurred incident to recruitment of new employees, are allowable to the extent that such costs are incurred pursuant to a well-managed recruitment program. Where the organization uses employment agencies, costs that are not in excess of standard commercial rates for such services are allowable.

b. In publications, costs of help wanted advertising that includes color, includes advertising material for other than recruitment purposes, or is excessive in size (taking into consideration recruitment purposes for which intended and normal organizational practices in this respect), are unallowable.

c. Costs of help wanted advertising, special emoluments, fringe benefits, and salary allowances incurred to attract professional personnel from other organizations that do not meet the test of reasonableness or do not conform with the established practices of the organization, are unallowable.

d. Where relocation costs incurred incident to recruitment of a new employee have been allowed either as an allocable direct or indirect cost, and the newly hired employee resigns for reasons within his control within twelve months after being hired, the organization will be required to refund or credit such relocation costs to the Federal Government.

42. Relocation costs. a. Relocation costs are costs incident to the permanent change of duty assignment (for an indefinite period or for a stated period of not less than 12 months) of an existing employee or upon recruitment of a new employee. Relocation costs are allowable, subject to the limitation described in subparagraphs 42.b, c, and d of this appendix, provided that:

(1) The move is for the benefit of the employer.

(2) Reimbursement to the employee is in accordance with an established written policy consistently followed by the employer.

(3) The reimbursement does not exceed the employee's actual (or reasonably estimated) expenses.

b. Allowable relocation costs for current employees are limited to the following:

(1) The costs of transportation of the employee, members of his immediate family and his household, and personal effects to the new location.

(2) The costs of finding a new home, such as advance trips by employees and spouses to locate living quarters and temporary lodging during the transition period, up to maximum period of 30 days, including advance trip time.

(3) Closing costs, such as brokerage, legal, and appraisal fees, incident to the disposition of the employee's former home. These costs, together with those described in subparagraph 42.b.(4) of this appendix, are limited to 8 percent of the sales price of the employee's former home.

(4) The continuing costs of ownership of the vacant former home after the settlement or lease date of the employee's new permanent home, such as maintenance of buildings and grounds (exclusive of fixing up expenses), utilities, taxes, and property insurance.

(5) Other necessary and reasonable expenses normally incident to relocation,

such as the costs of canceling an unexpired lease, disconnecting and reinstalling household appliances, and purchasing insurance against loss of or damages to personal property. The cost of canceling an unexpired lease is limited to three times the monthly rental.

c. Allowable relocation costs for new employees are limited to those described in subparagraph 42.b(1) and (2) of this appendix. When relocation costs incurred incident to the recruitment of new employees have been allowed either as a direct or indirect cost and the employee resigns for reasons within his control within 12 months after hire, the organization shall refund or credit the Federal Government for its share of the cost. However, the costs of travel to an overseas location shall be considered travel costs in accordance with paragraph 50 and not relocation costs for the purpose of this paragraph if dependents are not permitted at the location for any reason and the costs do not include costs of transporting household goods.

d. The following costs related to relocation are unallowable:

(1) Fees and other costs associated with acquiring a new home.

(2) A loss on the sale of a former home.

(3) Continuing mortgage principal and interest payments on a home being sold.

(4) Income taxes paid by an employee related to reimbursed relocation costs.

43. Rental costs of buildings and equipment. a. Subject to the limitations described in subparagraphs 43.b. through d. of this appendix, rental costs are allowable to the extent that the rates are reasonable in light of such factors as: Rental costs of comparable property, if any; market conditions in the area; alternatives available; and, the type, life expectancy, condition, and value of the property leased. Rental arrangements should be reviewed periodically to determine if circumstances have changed and other options are available.

b. Rental costs under "sale and lease back" arrangements are allowable only up to the amount that would be allowed had the non-profit organization continued to own the property. This amount would include expenses such as depreciation or use allowance, maintenance, taxes, and insurance.

c. Rental costs under "less-than-arms-length" leases are allowable only up to the amount (as explained in subparagraph 43.b. of this appendix) that would be allowed had title to the property vested in the non-profit organization. For this purpose, a less-than-arms-length lease is one under which one party to the lease agreement is able to control or substantially influence the actions of the other. Such leases include, but are not limited to those between divisions of a non-profit organization; non-profit organizations under common control through common officers, directors, or members; and a non-profit organization and a director, trustee, officer, or key employee of the non-profit organization or his immediate family, either directly or through corporations, trusts, or similar arrangements in which they hold a controlling interest. For example, a non-profit organization may establish a separate corporation for the sole purpose of owning property and leasing it back to the non-profit organization.

d. Rental costs under leases which are required to be treated as capital leases under GAAP are allowable only up to the amount (as explained in subparagraph b) that would be allowed had the non-profit organization purchased the property on the date the lease agreement was executed. The provisions of Financial Accounting Standards Board Statement 13, Accounting for Leases, shall be used to determine whether a lease is a capital lease. Interest costs related to capital leases are allowable to the extent they meet the criteria in paragraph 23 of this appendix. Unallowable costs include amounts paid for profit, management fees, and taxes that would not have been incurred had the non-profit organization purchased the facility.

44. Royalties and other costs for use of patents and copyrights. a. Royalties on a patent or copyright or amortization of the cost of acquiring by purchase a copyright, patent, or rights thereto, necessary for the proper performance of the award are allowable unless:

(1) The Federal Government has a license or the right to free use of the patent or copyright.

(2) The patent or copyright has been adjudicated to be invalid, or has been administratively determined to be invalid.

(3) The patent or copyright is considered to be unenforceable.

(4) The patent or copyright is expired.

b. Special care should be exercised in determining reasonableness where the royalties may have arrived at as a result of less-than-arm's-length bargaining, *e.g.:*

(1) Royalties paid to persons, including corporations, affiliated with the non-profit organization.

(2) Royalties paid to unaffiliated parties, including corporations, under an agreement entered into in contemplation that a Federal award would be made.

(3) Royalties paid under an agreement entered into after an award is made to a non-profit organization.

c. In any case involving a patent or copyright formerly owned by the non-profit organization, the amount of royalty allowed should not exceed the cost which would have been allowed had the non-profit organization retained title thereto.

45. Selling and marketing. Costs of selling and marketing any products or services of the non-profit organization are unallowable (unless allowed under paragraph 1. of this appendix as allowable public relations cost. However, these costs are allowable as direct costs, with prior approval by awarding agencies, when they are necessary for the performance of Federal programs.

46. Specialized service facilities. a. The costs of services provided by highly complex or specialized facilities operated by the non-profit organization, such as computers, wind tunnels, and reactors are allowable, provided the charges for the services meet the conditions of either paragraph 46 b. or c. of this appendix and, in addition, take into account any items of income or Federal financing that qualify as applicable credits under subparagraph A.5. of Appendix A to this part.

b. The costs of such services, when material, must be charged directly to applicable awards based on actual usage of the services on the basis of a schedule of rates or established methodology that does not discriminate against federally-supported activities of the non-profit organization, including usage by the non-profit organization for internal purposes, and is designed to recover only the aggregate costs of the services. The costs of each service shall consist normally of both its direct costs and its allocable share of all indirect costs. Rates shall be adjusted at least biennially, and shall take into consideration over/under applied costs of the previous period(s).

c. Where the costs incurred for a service are not material, they may be allocated as indirect costs.

d. Under some extraordinary circumstances, where it is in the best interest of the Federal Government and the institution to establish alternative costing arrangements, such arrangements may be worked out with the cognizant Federal agency.

47. Taxes. a. In general, taxes which the organization is required to pay and which are paid or accrued in accordance with GAAP, and payments made to local governments in lieu of taxes which are commensurate with the local government services received are allowable, except for taxes from which exemptions are available to the organization directly or which are available to the organization based on an exemption afforded the Federal Government and in the latter case when the awarding agency makes available the necessary exemption certificates, special assessments on land which represent capital improvements, and Federal income taxes.

b. Any refund of taxes, and any payment to the organization of interest thereon, which were allowed as award costs, will be credited either as a cost reduction or cash refund, as appropriate, to the Federal Government.

48. Termination costs applicable to sponsored agreements. Termination of awards generally gives rise to the incurrence of costs, or the need for special treatment of costs, which would not have arisen had the Federal award not been terminated. Cost principles covering these items are set forth below. They are to be used in conjunction with the other provisions of this appendix in termination situations.

a. The cost of items reasonably usable on the non-profit organization's other work shall not be allowable unless the non-profit organization submits evidence that it would not retain such items at cost without sustaining a loss. In deciding whether such items are reasonably usable on other work of the non-profit organization, the awarding agency should consider the non-profit organization's plans and orders for current and scheduled activity. Contemporaneous purchases of common items by the non-profit organization shall be regarded as evidence that such items are reasonably usable on the non-profit organization's other work. Any acceptance of common items as allocable to the terminated portion of the Federal award shall be limited to the extent that the quantities of such items on hand, in transit, and on order are in excess of the reasonable quantitative requirements of other work.

b. If in a particular case, despite all reasonable efforts by the non-profit organization, certain costs cannot be discontinued immediately after the effective date of termination, such costs are generally allowable within the limitations set forth in this appendix, except that any such costs continuing after termination due to the negligent or willful failure of the non-profit organization to discontinue such costs shall be unallowable.

c. Loss of useful value of special tooling, machinery, and is generally allowable if:

(1) Such special tooling, special machinery, or equipment is not reasonably capable of use in the other work of the non-profit organization,

(2) The interest of the Federal Government is protected by transfer of title or by other means deemed appropriate by the awarding agency, and

(3) The loss of useful value for any one terminated Federal award is limited to that portion of the acquisition cost which bears the same ratio to the total acquisition cost as the terminated portion of the Federal award bears to the entire terminated Federal award and other Federal awards for which the special tooling, special machinery, or equipment was acquired.

d. Rental costs under unexpired leases are generally allowable where clearly shown to have been reasonably necessary for the performance of the terminated Federal award less the residual value of such leases, if:

(1) The amount of such rental claimed does not exceed the reasonable use value of the property leased for the period of the Federal award and such further period as may be reasonable, and

(2) The non-profit organization makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of such lease. There also may be included the cost of alterations of such leased property, provided such alterations were necessary for the performance of the Federal award, and of reasonable restoration required by the provisions of the lease.

e. Settlement expenses including the following are generally allowable:

(1) Accounting, legal, clerical, and similar costs reasonably necessary for:

(a) The preparation and presentation to the awarding agency of settlement claims and supporting data with respect to the terminated portion of the Federal award, unless the termination is for default (see § 215.61 of 2 CFR part 215 (OMB Circular A–110)); and

(b) The termination and settlement of subawards.

(2) Reasonable costs for the storage, transportation, protection, and disposition of property provided by the Federal Government or acquired or produced for the Federal award, except when grantees or contractors are reimbursed for disposals at a predetermined amount in accordance with § 215.32 through 215.37 of 2 CFR part 215 (OMB Circular A–110).

(3) Indirect costs related to salaries and wages incurred as settlement expenses in subparagraphs 48.e.(1) and (2) of this appendix. Normally, such indirect costs shall be limited to fringe benefits, occupancy cost, and immediate supervision.

f. Claims under sub awards, including the allocable portion of claims which are common to the Federal award, and to other work of the non-profit organization are generally allowable.

An appropriate share of the non-profit organization's indirect expense may be allocated to the amount of settlements with subcontractors and/or subgrantees, provided that the amount allocated is otherwise consistent with the basic guidelines contained in Appendix A. The indirect expense so allocated shall exclude the same and similar costs claimed directly or indirectly as settlement expenses.

49. Training costs. a. Costs of preparation and maintenance of a program of instruction including but not limited to on-the-job, classroom, and apprenticeship training, designed to increase the vocational effectiveness of employees, including training materials, textbooks, salaries or wages of trainees (excluding overtime compensation which might arise therefrom), and (i) salaries of the director of training and staff when the training program is conducted by the organization; or (ii) tuition and fees when the training is in an institution not operated by the organization, are allowable.

b. Costs of part-time education, at an undergraduate or post-graduate college level, including that provided at the organization's own facilities, are allowable only when the course or degree pursued is relative to the field in which the employee is now working or may reasonably be expected to work, and are limited to:

(1) Training materials.

(2) Textbooks.

(3) Fees charges by the educational institution.

(4) Tuition charged by the educational institution or, in lieu of tuition, instructors' salaries and the related share of indirect costs of the educational institution to the extent that the sum thereof is not in excess of the tuition which would have been paid to the participating educational institution.

(5) Salaries and related costs of instructors who are employees of the organization.

(6) Straight-time compensation of each employee for time spent attending classes during working hours not in excess of 156 hours per year and only to the extent that circumstances do not permit the operation of classes or attendance at classes after regular working hours; otherwise, such compensation is unallowable.

c. Costs of tuition, fees, training materials, and textbooks (but not subsistence, salary, or any other emoluments) in connection with full-time education, including that provided at the organization's own facilities, at a post-graduate (but not undergraduate) college level, are allowable only when the course or degree pursued is related to the field in which the employee is now working or may reasonably be expected to work, and only where the costs receive the prior approval of the awarding agency. Such costs are limited to the costs attributable to a total period not to exceed one school year for each employee so trained. In unusual cases the period may be extended.

d. Costs of attendance of up to 16 weeks per employee per year at specialized programs specifically designed to enhance the effectiveness of executives or managers or to prepare employees for such positions are allowable. Such costs include enrollment fees, training materials, textbooks and related charges, employees' salaries, subsistence, and travel. Costs allowable under this paragraph do not include those for courses that are part of a degree-oriented curriculum, which are allowable only to the extent set forth in subparagraphs b and c.

e. Maintenance expense, and normal depreciation or fair rental, on facilities owned or leased by the organization for training purposes are allowable to the extent set forth in paragraphs 11, 27, and 50 of this appendix.

f. Contributions or donations to educational or training institutions, including the donation of facilities or other properties, and scholarships or fellowships, are unallowable.

g. Training and education costs in excess of those otherwise allowable under subparagraphs 49.b and c of this appendix may be allowed with prior approval of the awarding agency. To be considered for approval, the organization must demonstrate that such costs are consistently incurred pursuant to an established training and education program, and that the course or degree pursued is relative to the field in which the employee is now working or may reasonably be expected to work.

50. Transportation costs. Transportation costs include freight, express, cartage, and postage charges relating either to goods purchased, in process, or delivered. These costs are allowable. When such costs can readily be identified with the items involved, they may be directly charged as transportation costs or added to the cost of such items (*see* paragraph 28 of this appendix). Where identification with the materials received cannot readily be made, transportation costs may be charged to the appropriate indirect cost accounts if the organization follows a consistent, equitable procedure in this respect.

51. Travel costs.

a. General. Travel costs are the expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business of the non-profit organization. Such costs may be charged on an actual cost basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used is applied to an entire trip and not to selected days of the trip, and results in charges consistent with those normally allowed in like circumstances in the non-profit organization's non-federally-sponsored activities.

b. Lodging and subsistence. Costs incurred by employees and officers for travel, including costs of lodging, other subsistence, and incidental expenses, shall be considered reasonable and allowable only to the extent such costs do not exceed charges normally allowed by the non-profit organization in its regular operations as the result of the non-profit organization's written travel policy. In the absence of an acceptable, written non-profit organization policy regarding travel costs, the rates and amounts established

under subchapter I of Chapter 57, Title 5, United States Code ("Travel and Subsistence Expenses; Mileage Allowances"), or by the Administrator of General Services, or by the President (or his or her designee) pursuant to any provisions of such subchapter shall apply to travel under Federal awards (48 CFR 31.205–46(a)).

c. Commercial air travel. (1) Airfare costs in excess of the customary standard commercial airfare (coach or equivalent), Federal Government contract airfare (where authorized and available), or the lowest commercial discount airfare are unallowable except when such accommodations would: require circuitous routing; require travel during unreasonable hours; excessively prolong travel; result in additional costs that would offset the transportation savings; or offer accommodations not reasonably adequate for the traveler's medical needs. The non-profit organization must justify and document these conditions on a case-by-case basis in order for the use of first-class airfare to be allowable in such cases.

(2) Unless a pattern of avoidance is detected, the Federal Government will generally not question a non-profit organization's determinations that customary standard airfare or other discount airfare is unavailable for specific trips if the non-profit organization can demonstrate either of the following: that such airfare was not available in the specific case; or that it is the non-profit organization's overall practice to make routine use of such airfare.

d. Air travel by other than commercial carrier. Costs of travel by non-profit organization-owned, -leased, or -chartered aircraft include the cost of lease, charter, operation (including personnel costs), maintenance, depreciation, insurance, and other related costs. The portion of such costs that exceeds the cost of allowable commercial air travel, as provided for in subparagraph] c., is unallowable.

e. Foreign travel. Direct charges for foreign travel costs are allowable only when the travel has received prior approval of the awarding agency. Each separate foreign trip must receive such approval. For purposes of this provision, "foreign travel" includes any travel outside Canada, Mexico, the United States, and any United States territories and possessions. However, the term "foreign travel" for a non-profit organization located in a foreign country means travel outside that country.

52. Trustees. Travel and subsistence costs of trustees (or directors) are allowable. The costs are subject to restrictions regarding lodging, subsistence and air travel costs provided in paragraph 51 of this appendix.

Appendix C to Part 230—Non-Profit Organizations Not Subject to This Part

1. Advance Technology Institute (ATI), Charleston, South Carolina
2. Aerospace Corporation, El Segundo, California
3. American Institutes of Research (AIR), Washington DC
4. Argonne National Laboratory, Chicago, Illinois
5. Atomic Casualty Commission, Washington, DC
6. Battelle Memorial Institute, Headquartered in Columbus, Ohio
7. Brookhaven National Laboratory, Upton, New York
8. Charles Stark Draper Laboratory, Incorporated, Cambridge, Massachusetts
9. CNA Corporation (CNAC), Alexandria, Virginia
10. Environmental Institute of Michigan, Ann Arbor, Michigan
11. Georgia Institute of Technology/Georgia Tech Applied Research Corporation/ Georgia Tech Research Institute, Atlanta, Georgia
12. Hanford Environmental Health Foundation, Richland, Washington
13. IIT Research Institute, Chicago, Illinois
14. Institute of Gas Technology, Chicago, Illinois
15. Institute for Defense Analysis, Alexandria, Virginia
16. LMI, McLean, Virginia
17. Mitre Corporation, Bedford, Massachusetts
18. Mitretek Systems, Inc., Falls Church, Virginia
19. National Radiological Astronomy Observatory, Green Bank, West Virginia
20. National Renewable Energy Laboratory, Golden, Colorado
21. Oak Ridge Associated Universities, Oak Ridge, Tennessee
22. Rand Corporation, Santa Monica, California
23. Research Triangle Institute, Research Triangle Park, North Carolina
24. Riverside Research Institute, New York, New York
25. South Carolina Research Authority (SCRA), Charleston, South Carolina
26. Southern Research Institute, Birmingham, Alabama
27. Southwest Research Institute, San Antonio, Texas
28. SRI International, Menlo Park, California
29. Syracuse Research Corporation, Syracuse, New York
30. Universities Research Association, Incorporated (National Acceleration Lab), Argonne, Illinois
31. Urban Institute, Washington DC
32. Non-profit insurance companies, such as Blue Cross and Blue Shield Organizations
33. Other non-profit organizations as negotiated with awarding agencies

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Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Early Seasons and Bag and Possession Limits for Certain Migratory Game Birds in the Contiguous United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AT76

Migratory Bird Hunting; Early Seasons and Bag and Possession Limits for Certain Migratory Game Birds in the Contiguous United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes the hunting seasons, hours, areas, and daily bag and possession limits of mourning, white-winged, and white-tipped doves; band-tailed pigeons; rails; moorhens and gallinules; woodcock; common snipe; sandhill cranes; sea ducks; early (September) waterfowl seasons; migratory game birds in Alaska, Hawaii, Puerto Rico, and the Virgin Islands; and some extended falconry seasons. Taking of migratory birds is prohibited unless specifically provided for by annual regulations. This rule permits taking of designated species during the 2005–06 season.

DATES: This rule is effective on September 1, 2005.

FOR FURTHER INFORMATION CONTACT: Brian Millsap, Chief, or Ron W. Kokel, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 2005

On April 6, 2005, we published in the **Federal Register** (70 FR 17574) a proposal to amend 50 CFR part 20. The proposal provided a background and overview of the migratory bird hunting regulations process, and dealt with the establishment of seasons, limits, the proposed regulatory alternatives for the 2005–06 duck hunting season, and other regulations for migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K. On June 24, 2005, we published in the **Federal Register** (70 FR 36794) a second document providing supplemental proposals for early- and late-season migratory bird hunting regulations frameworks and the regulatory alternatives for the 2005–06 duck hunting season. The June 24 supplement also provided detailed information on the 2005–06 regulatory schedule and announced the Service Migratory Bird Regulations Committee (SRC) and Flyway Council meetings.

On June 22 and 23, we held open meetings with the Flyway Council Consultants at which the participants reviewed information on the current status of migratory shore and upland game birds and developed recommendations for the 2005–06 regulations for these species plus regulations for migratory game birds in Alaska, Puerto Rico, and the Virgin Islands, special September waterfowl seasons in designated States, special sea duck seasons in the Atlantic Flyway, and extended falconry seasons. In addition, we reviewed and discussed preliminary information on the status of waterfowl as it relates to the development and selection of the regulatory packages for the 2005–06 regular waterfowl seasons. On August 1, we published in the **Federal Register** (70 FR 44200) a third document specifically dealing with the proposed frameworks for early-season regulations.

On July 27–28, 2005, we held open meetings with the Flyway Council Consultants at which the participants reviewed the status of waterfowl and developed recommendations for the 2005–06 regulations for these species. Proposed hunting regulations were discussed for late seasons. We published proposed frameworks for the 2005–06 late-season migratory bird hunting regulations on August 22, 2005, in the **Federal Register** (70 FR 49068). On August 30, 2005, we published a fifth document in the **Federal Register** which contained final frameworks for early migratory bird hunting seasons from which wildlife conservation agency officials from the States, Puerto Rico, and the Virgin Islands selected early-season hunting dates, hours, areas, and limits.

The final rule described here is the sixth in the series of proposed, supplemental, and final rulemaking documents for migratory game bird hunting regulations and deals specifically with amending subpart K of 50 CFR part 20. It sets hunting seasons, hours, areas, and limits for mourning, white-winged, and white-tipped doves; band-tailed pigeons; rails; moorhens and gallinules; woodcock; common snipe; sandhill cranes; sea ducks; early (September) waterfowl seasons; mourning doves in Hawaii; migratory game birds in Alaska, Puerto Rico, and the Virgin Islands; youth waterfowl hunting day; and some extended falconry seasons.

NEPA Consideration

NEPA considerations are covered by the programmatic document "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14)," filed with the Environmental Protection Agency on June 9, 1988. We published a Notice of Availability in the **Federal Register** on June 16, 1988 (53 FR 22582) and our Record of Decision on August 18, 1988 (53 FR 31341). Copies are available from the address indicated under **ADDRESSES.**

Additionally, in a proposed rule published in the April 30, 2001, **Federal Register** (66 FR 21298), we expressed our intent to begin the process of developing a new EIS for the migratory bird hunting program. We plan to begin the public scoping process this year.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act, as amended (16 U.S.C. 1531–1543; 87 Stat. 884), provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act" (and) shall "insure that any action authorized, funded or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat * * *". Consequently, we conducted formal consultations to ensure that actions resulting from these regulations would not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. Findings from these consultations are included in a biological opinion, which concluded that the regulations are not likely to adversely affect any endangered or threatened species. Additionally, these findings may have caused modification of some regulatory measures previously proposed, and the final frameworks reflect any such modifications. Our biological opinions resulting from this Section 7 consultation are public documents available for public inspection at the address indicated under **ADDRESSES.**

Executive Order 12866

The migratory bird hunting regulations are economically significant and were reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. As such, a cost/benefit analysis was initially prepared in 1981. This analysis was subsequently revised annually from 1990–96, updated in 1998 and updated again in 2004. It is further discussed below under the heading **Regulatory Flexibility Act.**

Results from the 2004 analysis indicate that the expected welfare benefit of the annual migratory bird hunting frameworks is on the order of $734 to $1,064 million, with a mid-point estimate of $899 million. Copies of the cost/benefit analysis are available upon request from the address indicated under **ADDRESSES** or from our Web site at *http://www.migratorybirds.gov.*

Regulatory Flexibility Act

These regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail as part of the 1981 cost-benefit analysis discussed under **Executive Order 12866**. This analysis was revised annually from 1990–95. In 1995, the Service issued a Small Entity Flexibility Analysis (Analysis), which was subsequently updated in 1996, 1998, and 2004. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The 2004 Analysis was based on the 2001 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend between $481 million and $1.2 billion at small businesses in 2004. Copies of the Analysis are available upon request from the address indicated under **ADDRESSES** or from our Web site at *http://www.migratorybirds.gov.*

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule has an annual effect on the economy of $100 million or more. However, because this rule establishes hunting seasons, we do not plan to defer the effective date required by 5 U.S.C. 801 under the exemption contained in 5 U.S.C. 808 (1).

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995. The various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, Subpart K, are utilized in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of the surveys associated with the Migratory Bird Harvest Information Program and assigned clearance number 1018–0015 (expires 2/29/2008). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations. OMB has also approved the information collection requirements of the Sandhill Crane Harvest Survey and assigned clearance number 1018–0023 (expires 11/30/2007). The information from this survey is used to estimate the magnitude and the geographical and temporal distribution of the harvest, and the portion it constitutes of the total population. A Federal agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities. Therefore, this rule is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this rule, has determined that it will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, this rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, these rules allow hunters to exercise otherwise unavailable privileges and, therefore, reduce restrictions on the use of private and public property.

Energy Effects—Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this rule is a significant regulatory action under Executive Order 12866, it is not expected to adversely affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections regarding the hunting of migratory birds, and we employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and tribes to determine which seasons meet their individual needs. Any State or tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulations Promulgation

The rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, we intend that the public be given the greatest possible opportunity to comment on the regulations. Thus, when the preliminary proposed rulemaking was published, we established what we believed were the longest periods possible for public comment. In doing this, we recognized that when the comment period closed, time would be of the essence. That is, if there was a delay in the effective date of these regulations after this final rulemaking, the States would have insufficient time to implement their selected season dates and limits and start their seasons in a timely manner. We therefore find that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and these regulations

will, therefore, take effect immediately upon publication. Accordingly, with each conservation agency having had an opportunity to participate in selecting the hunting seasons desired for its State or Territory on those species of migratory birds for which open seasons are now prescribed, and consideration having been given to all other relevant matters presented, certain sections of title 50, chapter I, subchapter B, part 20, subpart K, are hereby amended as set forth below.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Dated: August 12, 2005.

Julie MacDonald,

Acting Assistant Secretary for Fish and Wildlife and Parks.

■ For the reasons set out in the preamble, title 50, chapter I, subchapter B, part 20, subpart K of the Code of Federal Regulations is amended as follows:

PART 20—[AMENDED]

■ 1. The authority citation for part 20 continues to read as follows:

Authority: 16 U.S.C. 703–712 and 16 U.S.C. 742 a–j, Pub. L. 106–108.

BILLING CODE 4310–55–P

-Note - The following annual hunting regulations provided for by §§20.101 through 20.106 and 20.109 of 50 CFR 20 will not appear in the Code of Federal Regulations because of their seasonal nature.

2. Section 20.101 is revised to read as follows:

§20.101 Seasons, limits, and shooting hours for Puerto Rico and the Virgin Islands.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset.

CHECK COMMONWEALTH REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

(a) Puerto Rico

	Season Dates	Limits	
		Bag	Possession
Doves and Pigeons			
Zenaida, white-winged, and mourning doves	Sept. 3-Oct. 31	15	15
Scaly-naped pigeons	Sept. 3-Oct. 31	5	5
Ducks	Nov. 12-Dec. 19 &	6	12
	Jan. 14-Jan. 30	6	12
Common Moorhens	Nov. 12-Dec. 19 &	6	12
	Jan. 14-Jan. 30	6	12
Common Snipe	Nov. 12-Dec. 19 &	8	16
	Jan. 14-Jan. 30	8	16

Restrictions: In Puerto Rico, the season is closed on the ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, masked duck, purple gallinule, American coot, and Caribbean coot, white-crowned pigeon and plain pigeon. Hunting is closed in the area known as Caño Tiburones.

Closed Areas: Closed areas are described in the August 1, 2005, Federal Register (70 FR 44200).

(b) Virgin Islands

	Season Dates	Limits	
		Bag	Possession
Zenaida doves	Sept. 1-Sept. 30	10	10
Ducks	CLOSED		

Restrictions: In the Virgin Islands, the seasons are closed for ground or quail doves, pigeons, ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, masked duck, and purple gallinule.

Closed Areas: Ruth Cay, just south of St. Croix, is closed to the hunting of migratory game birds.

3. Section 20.102 is revised to read as follows:

§20.102 Seasons, limits, and shooting hours for Alaska.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset. Area descriptions were published in the August 1, 2005, Federal Register (70 FR 44200).

CHECK STATE REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

Area Seasons	Dates
North Zone	Sept. 1-Dec. 16
Gulf Coast Zone	Sept. 1-Dec. 16
Southeast Zone	Sept. 1-Dec. 16
Pribilof & Aleutian Islands Zone	Oct. 8-Jan. 22
Kodiak Zone	Oct. 8-Jan. 22

Daily Bag and Possession Limits

Area	Ducks (1)	Dark Geese (2)(3)	Light Geese (2)	Brant (4)	Common Snipe	Sandhill Cranes (5)
North Zone	10-30	4-8	3-6	2-4	8-16	3-6
Gulf Coast Zone	8-24	4-8	3-6	2-4	8-16	2-4
Southeast Zone	7-21	4-8	3-6	2-4	8-16	2-4
Pribilof and Aleutian Islands Zone	7-21	4-8	3-6	2-4	8-16	2-4
Kodiak Zone	7-21	4-8	3-6	2-4	8-16	2-4

(1) The basic duck bag limits may include no more than 1 canvasback daily, 3 in possession, and may not include sea ducks. In addition to the basic duck limits, sea duck limits of 10 daily, 20 in possession, singly or in the aggregate, including no more than 6 each of either harlequin or long-tailed ducks, are allowed. Special sea duck limits will be available to non-residents, but at lower daily limits than residents, and they may take no more than a possession limit of 20 per season , including no more than 4 each of harlequin and long-tailed ducks, black, surf, and white-winged scoters, and king and common eiders. Sea ducks include scoters, common and king eiders, harlequin ducks, long-tailed ducks, and common and red-breasted mergansers. The season for Steller's and spectacled eiders is closed statewide.

(2) Dark geese include Canada and white-fronted geese. Light geese include snow geese and Ross' geese. Separate limits apply to brant. The season for emperor geese is closed Statewide.

(3) In Units 5 and 6, the taking of Canada geese is only permitted from September 28 through December 16. In the Middleton Island portion of Unit 6, the taking of Canada geese is by special permit only, with a maximum of 10 permits and a daily bag and possession limit of 1. In Unit 9(D) and the Unimak Island portion of Unit 10, the limits for dark geese are 6 daily and 12 in possession In Units 9(E) and 18, the limit for dark geese is 4 daily, including no more than 2 Canada geese. Canada goose season will be closed in Unit 8 (Kodiak).

(4) In Unit 9, the season for brant is September 17 through October 16.

(5) In Unit 17, the daily bag limit for sandhill cranes is 2 and the possession limit is 4.

Falconry: The total combined bag and possession limit for migratory game birds taken with the use of a falcon under a falconry permit is 3 per day, 6 in possession, and may not exceed a more restrictive limit for any species listed in this subsection.

Special Tundra Swan Season: In Units 17, 18, 22, and 23, there will be a tundra swan season from September 1 through October 31 with a season limit of 3 tundra swans per hunter. This season is by registration permit only; hunters will be issued 1 permit allowing the take of up to 3 tundra swans. Hunters will be required to file a harvest report after the season is completed. Up to 500 permits may be issued in Unit 18, 300 permits each in Units 22 and 23, and 200 permits in Unit 17.

4. Section 20.103 is revised to read as follows:

§20.103 Seasons, limits, and shooting hours for doves and pigeons.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset except as otherwise noted. Area descriptions were published in the August 1, 2005, Federal Register (70 FR 44200).

CHECK STATE REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

(a) Doves

Note: Unless otherwise specified, the seasons listed below are for mourning doves only.

	Season Dates	Limits Bag	Limits Possession
EASTERN MANAGEMENT UNIT			
Alabama			
North Zone			
12 noon to sunset	Sept. 10 only	15	15
½ hour before sunrise to sunset	Sept. 11-Oct. 1 &	15	15
	Oct. 29-Nov. 19 &	15	15
	Dec. 17-Jan. 1	15	15
South Zone			
12 noon to sunset	Oct. 8 only	12	12
½ hour before sunrise to sunset	Oct. 9-Nov. 6 &	12	12
	Nov. 24-Nov. 27 &	12	12
	Dec. 10-Jan. 14	12	12
Delaware			
12 noon to sunset	Sept. 1-Sept. 30	12	24
½ hour before sunrise to sunset	Dec. 6-Jan. 14	12	24
Florida (1)			
12 noon to sunset	Oct. 1-Oct. 24	12	24
½ hour before sunrise to sunset	Nov. 12-Nov. 27 &	12	24
	Dec. 10-Jan. 8	12	24
Georgia			
12 noon to sunset	Sept. 3 & Oct. 1	12	24
½ hour before sunrise to sunset	Sept. 4-Sept. 17 &	12	24
	Oct. 2-Oct. 10 &	12	24
	Nov. 24-Jan. 7	12	24
Illinois			
sunrise to sunset	Sept. 1-Oct. 21 &	15	30
	Nov. 5-Nov. 13	15	30
Indiana	Sept. 1-Oct. 16 &	15	30
	Nov. 4-Nov. 17	15	30
Kentucky			
11 a.m. to sunset	Sept. 1 only	15	30
½ hour before sunrise to sunset	Sept. 2-Oct. 24 &	15	30
	Nov. 24-Nov. 29	15	30
Louisiana			
12 noon to sunset	Sept. 3-Sept. 4 &	12	24
	Oct. 8-Oct. 9 &	12	24
	Dec. 17-Dec. 18	12	24

	Season Dates	Limits Bag	Limits Possession
Louisiana (cont.)			
½ hour before sunrise to sunset	Sept. 5-Sept. 11 &	12	24
	Oct. 10-Nov. 13 &	12	24
	Dec. 19-Jan. 9	12	24
Maryland			
12 noon to sunset	Sept. 1-Oct. 15	12	24
½ hour before sunrise to sunset	Nov. 11-Nov. 19 &	12	24
	Dec. 24-Jan. 7	12	24
Michigan	CLOSED		
Mississippi			
North Zone	Sept. 3-Sept. 24 &	15	30
	Oct. 8-Oct. 29 &	15	30
	Dec. 31-Jan. 15	15	30
South Zone	Sept. 24-Oct. 15 &	15	30
	Nov. 12-Dec. 3 &	15	30
	Dec. 24-Jan. 8	15	30
North Carolina			
12 noon to sunset	Sept. 3-Sept. 10	12	24
½ hour before sunrise to sunset	Sept. 11-Oct. 8 &	12	24
	Nov. 21-Nov. 26 &	12	24
	Dec. 19-Jan. 14	12	24
Ohio	Sept. 1-Oct. 16 &	15	30
	Nov. 13-Nov. 26	15	30
Pennsylvania			
12 noon to sunset	Sept. 1-Oct. 1 &	12	24
	Oct. 29-Nov. 26 &	12	24
	Dec. 26-Jan. 4	12	24
Rhode Island			
12 noon to sunset	Sept. 24-Oct. 10	12	24
½ hour before sunrise to sunset	Oct. 15-Nov. 20 &	12	24
	Dec. 28-Jan. 12	12	24
South Carolina			
12 noon to sunset	Sept. 3-Sept. 5	12	24
½ hour before sunrise to sunset	Sept. 6-Oct.8 &	12	24
	Nov. 19-Nov. 26 &	12	24
	Dec. 21-Jan. 15	12	24

	Season Dates	Limits Bag	Limits Possession
Tennessee			
12 noon to sunset	Sept. 1 only	15	30
½ hour before sunrise to sunset	Sept. 2-Sept. 26 &	15	30
	Oct. 8-Oct. 23 &	15	30
	Dec. 17-Jan. 3	15	30
Virginia			
12 noon to sunset	Sept. 3-Sept. 24	12	24
½ hour before sunrise to sunset	Oct. 8-Nov. 5 &	12	24
	Dec. 27-Jan. 14	12	24
West Virginia			
12 noon to sunset	Sept. 1 only	12	24
½ hour before sunrise to sunset	Sept. 2-Oct. 8 &	12	24
	Oct. 24-Nov. 5 &	12	24
	Dec. 20-Jan. 7	12	24
Wisconsin	Sept. 1-Oct. 30	15	30
CENTRAL MANAGEMENT UNIT			
Arkansas	Sept. 3-Sept. 25 &	15	30
	Oct. 8-Oct. 23 &	15	30
	Dec. 19-Jan. 8	15	30
Colorado (2)	Sept. 1-Oct. 30	15	30
Kansas (2)	Sept. 1-Oct. 14	15	30
	Nov. 1-Nov. 16	15	30
Minnesota	Sept. 1-Oct. 30	15	30
Missouri (3)	Sept. 1-Nov. 9	12	24
Montana	Sept. 1-Oct. 30	15	30
Nebraska (2)	Sept. 1-Oct. 30	15	30
New Mexico (2)			
North Zone	Sept. 1-Oct. 30	15	30
South Zone	Sept. 1-Sept. 30 &	15	30
	Dec. 1-Dec. 30	15	30

	Season Dates	Limits Bag	Limits Possession
North Dakota	Sept. 1-Oct. 30	15	30
Oklahoma (2)	Sept. 1-Oct. 30	15	30
South Dakota	Sept. 1-Oct. 14	15	30
Texas (4)			
North Zone	Sept. 1-Oct. 30	15	30
Central Zone	Sept. 1-Oct. 30 &	12	24
	Dec. 26-Jan. 4	12	24
South Zone			
Special Area	Sept. 23-Nov. 10 &	12	24
	Dec. 26-Jan. 11	12	24
(Special Season)			
12 noon to sunset	Sept. 3-Sept. 4 &	10	20
	Sept. 10-Sept. 11	10	20
Remainder of the			
South Zone	Sept. 23-Nov. 10 &	12	24
	Dec. 26-Jan. 15	12	24
Wyoming	Sept. 1-Oct. 30	15	30
WESTERN MANAGEMENT UNIT			
Arizona (5)	Sept. 1-Sept. 15 &	10	20
	Nov. 12-Dec. 26	10	20
California (6)	Sept. 1-Sept. 15 &	10	20
	Nov. 13-Dec. 27	10	20
Idaho	Sept. 1-Sept. 30	10	20
Nevada (6)	Sept. 1-Sept. 30	10	20
Oregon	Sept. 1-Sept. 30	10	20
Utah (6)	Sept. 1-Sept. 30	10	20
Washington	Sept. 1-Sept. 15	10	20
OTHER POPULATIONS			
Hawaii (7)	Nov. 5-Nov. 27 &	10	10
	Dec. 1-Dec. 26 &	10	10
	Dec. 30-Jan. 16	10	10

(1) In Florida, the daily bag limit is 12 mourning and white-winged doves in the aggregate, of which not more than 4 may be white-winged doves. The possession limit is twice the daily bag limit.

(2) In Colorado, Kansas, Nebraska, New Mexico, Oklahoma the daily bag limit is 15 and the possession limit is 30 mourning and white-winged doves in the aggregate. See State regulations for additional information on daily bag and possession limits..

(3) In Missouri, the daily bag limit is 12 and the possession limit is 24 mourning and white-winged doves in the aggregate.

(4) In Texas, the daily bag limit is either 15 mourning, white-winged, and white-tipped doves in the aggregate, of which no more than 2 may be white-tipped doves with a maximum 60-day season or 12 mourning, white-winged, and white-tipped doves in the aggregate, of which no more than 2 may be white-tipped doves with a maximum 70-day season. Possession limits are twice the daily bag limit. During the special season in the Special White-winged Dove Area of the South Zone, the daily bag limit is 12 mourning, white-winged, and white-tipped doves in the aggregate, of which no more than 4 may be mourning doves and 2 may be white-tipped doves. Possession limits are twice the daily bag limit.

(5) In Arizona, during September 1 through 15, the daily bag limit is 10 mourning and white-winged doves in the aggregate, of which no more than 6 may be white-winged doves. During November 18 through January 1, the daily bag limit is 10 mourning doves. The possession limit is twice the daily bag limit. See State regulations for restrictive shooting hours in certain areas.

(6) In Utah, and the areas of California and Nevada open to white-winged dove hunting, the daily bag limit is 10 and the possession limit is 20 mourning and white-winged doves in the aggregate.

(7) In Hawaii, the season is only open on the island of Hawaii. The daily bag and possession limits are 10 mourning doves, spotted doves and chestnut-bellied sandgrouse in the aggregate. Shooting hours are from one-half hour before sunrise through one-half hour after sunset. Hunting is permitted only on weekends and State holidays.

(b) Band-tailed Pigeons

	Season Dates	Limits	
		Bag	Possession
Arizona			
Units 12A, 12B, 13A, & 13B	Sept. 9-Oct. 3	5	10
Rest of State	Sept. 23-Oct. 3	5	10
California			
North Zone	Sept. 17-Sept. 25	2	4
South Zone	Dec. 17-Dec. 25	2	4
Colorado	Sept. 1-Sept. 30	5	10

	Season Dates	Limits	
		Bag	Possession
New Mexico (1)			
North Zone	Sept. 1-Sept. 20	5	10
South Zone	Oct. 1-Oct. 20	5	10
Oregon	Sept. 15-Sept. 23	2	4
Utah (2)	Sept. 1-Sept. 30	5	10
Washington	Sept. 15-Sept. 23	2	4

(1) In New Mexico, each band-tailed pigeon hunter must have a band-tailed pigeon hunting permit issued by the State.

(2) In Utah, each band-tailed pigeon hunter must have either a band-tailed pigeon hunting permit or a special bird permit stamp issued by the respective State.

5. Section 20.104 is revised to read as follows:

§20.104 Seasons, limits, and shooting hours for rails, woodcock, and common snipe.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset except as otherwise noted. Area descriptions were published in the August 1, 2005, Federal Register (70 FR 44200).

CHECK STATE REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

Note: States with deferred seasons may select those seasons at the same time they select waterfowl seasons in August. Consult late-season regulations for further information.

	Sora and Virginia Rails	Clapper and King Rails	Woodcock	Common Snipe
Daily bag limit	25 (1)	15 (2)	3	8
Possession limit	25 (1)	30 (2)	6	16

ATLANTIC FLYWAY

Connecticut (3)	Sept. 1-Sept. 2 & Sept. 6-Nov. 5	Sept. 1-Sept. 2 & Sept. 6-Nov. 5	Oct. 22-Nov. 19	Oct. 22-Nov. 19
Delaware	Sept. 1-Nov. 9	Sept. 1-Nov. 9	Nov. 21-Dec. 10 & Dec. 22-Dec. 31	Nov. 21-Jan.31
Florida	Sept. 1-Nov. 9	Sept. 1-Nov. 9	Dec. 17-Jan. 15	Nov. 1-Feb. 15

	Sora and Virginia Rails	Clapper and King Rails	Woodcock	Common Snipe
Georgia	Sept. 17-Oct. 23 & Nov. 12-Dec. 14	Sept. 17-Oct. 23 & Nov. 12-Dec. 14	Dec. 17-Jan. 15	Nov. 15-Feb. 28
Maine	Sept. 1-Nov. 9	Closed	Deferred	Sept. 1-Dec. 16
Maryland	Sept. 1-Nov. 9	Sept. 1-Nov. 9	Nov. 4-Nov. 25 & Jan. 14-Jan. 21	Sept. 29-Nov. 25 & Dec. 12-Jan. 28
Massachusetts (4)	Sept. 1-Nov. 8	Closed	Deferred	Sept. 1-Dec. 15
New Hampshire	Closed	Closed	Oct. 1-Oct. 30	Sept. 15-Oct. 30
New Jersey (5)				
North Zone	Sept. 1-Nov. 8	Sept. 1-Nov. 8	Oct. 20-Nov. 12	Sept. 17-Dec. 31
South Zone	Sept. 1-Nov. 8	Sept. 1-Nov. 8	Nov. 12-Nov. 26 & Dec. 23-Dec. 31	Sept. 17-Dec. 31
New York (6)	Sept. 1-Nov. 9	Closed	Oct. 6-Nov. 4	Sept. 1-Nov. 9
North Carolina	Sept. 1-Sept. 3 & Sept. 5-Nov. 10	Sept. 1-Sept. 3 & Sept. 5- Nov. 10	Dec. 15-Dec. 24 & Dec. 26-Jan. 14	Nov. 14-Feb. 28
Pennsylvania	Sept. 1-Nov. 9	Closed	Oct. 15-Nov. 12	Oct. 15-Nov. 19
Rhode Island (7)	Sept. 3-Nov. 11	Sept. 3-Nov. 11	Oct. 27-Nov. 25	Sept. 3-Nov. 11
South Carolina	Sept. 17-Sept. 21 & Oct. 15-Dec. 18	Sept. 17-Sept. 21 & Oct. 15-Dec. 18	Jan. 2-Jan. 31	Nov. 14-Feb. 28
Vermont	Closed	Closed	Deferred	Deferred
Virginia	Sept. 12-Nov. 19	Sept. 12-Nov. 19	Nov. 12-Nov. 26 & Dec. 17-Dec. 31	Oct. 5-Oct. 10 & Oct. 24-Jan. 31
West Virginia	Sept. 1-Nov. 9	Closed	Oct. 21-Nov. 19	Sept. 1-Dec. 16
MISSISSIPPI FLYWAY				
Alabama (8)	Sept. 17-Sept. 25 & Nov. 21-Jan. 20	Sept. 17-Sept. 25 & Nov. 21-Jan. 20	Dec. 17-Jan. 30	Nov. 12-Feb. 26
Arkansas	Sept. 1-Nov. 9	Closed	Nov. 12-Dec. 26	Nov. 5-Feb. 19
Illinois (9)	Sept. 10-Nov. 18	Closed	Oct. 15-Nov. 28	Sept. 10-Dec. 25

	Sora and Virginia Rails	Clapper and King Rails	Woodcock	Common Snipe
Indiana (10)	Sept. 1-Nov. 9	Closed	Oct. 15-Nov. 28	Sept. 1-Dec. 16
Iowa (11)	Sept. 3-Nov. 11	Closed	Oct. 1-Nov. 14	Sept. 3-Nov. 27
Kentucky	Sept. 1-Nov. 9	Closed	Oct. 15-Nov. 28	Sept. 21-Nov. 6 & Nov. 24-Jan. 22
Louisiana (12)	Sept. 17-Sept. 25	Sept. 17-Sept. 25	Dec. 18-Jan. 31	Deferred
Michigan (13)	Sept. 15-Nov. 14	Closed	Sept. 24-Nov. 7	Sept. 15-Nov. 14
Minnesota	Sept. 1-Nov. 4	Closed	Sept. 24-Nov. 7	Sept. 1-Nov. 4
Mississippi	Oct. 8-Dec. 16	Oct. 8-Dec. 16	Dec. 17-Jan. 30	Nov. 12-Feb. 26
Missouri	Sept. 1-Nov. 9	Closed	Oct. 15-Nov. 28	Sept. 1-Dec. 16
Ohio	Sept. 1-Nov. 9	Closed	Oct. 14-Nov. 27	Sept. 1-Nov. 27 & Dec. 5-Dec. 23
Tennessee	Deferred	Closed	Oct. 29-Dec. 12	Nov. 15-Feb. 28
Wisconsin	Deferred	Closed	Sept. 24-Nov. 7	Deferred
CENTRAL FLYWAY				
Colorado	Sept. 1-Nov. 9	Closed	Closed	Sept. 1-Dec. 16
Kansas	Sept. 1-Nov. 9	Closed	Oct. 15-Nov. 28	Sept. 1-Dec. 16
Montana	Closed	Closed	Closed	Sept. 1-Dec. 16
Nebraska (14)	Sept. 1-Nov. 9	Closed	Sept. 24-Nov. 7	Sept. 1-Dec. 16
New Mexico	Sept. 17-Nov. 25	Closed	Closed	Oct. 8-Jan. 22
North Dakota	Closed	Closed	Sept. 24-Nov. 6	Sept. 17-Nov. 27
Oklahoma	Sept. 1-Nov. 9	Closed	Nov. 1-Dec. 15	Oct. 1-Jan. 15
South Dakota (15)	Closed	Closed	Closed	Sept. 1-Oct. 31
Texas	Sept. 10-Sept. 25 & Oct. 29-Dec. 21	Sept. 10-Sept. 25 & Oct. 29-Dec. 21	Dec. 18-Jan. 31	Oct. 29-Feb. 12
Wyoming	Sept. 1-Nov. 9	Closed	Closed	Sept. 1-Dec. 16

	Sora and Virginia Rails	Clapper and King Rails	Woodcock	Common Snipe
PACIFIC FLYWAY				
Arizona	Closed	Closed	Closed	Deferred
California	Closed	Closed	Closed	Oct. 15-Jan. 29
Colorado	Sept. 1-Nov. 9	Closed	Closed	Sept. 1-Dec. 16
Idaho:				
Area 1	Closed	Closed	Closed	Deferred
Area 2	Closed	Closed	Closed	Deferred
Montana	Closed	Closed	Closed	Sept. 1-Dec. 16
Nevada	Closed	Closed	Closed	Deferred
New Mexico	Sept. 17-Nov. 25	Closed	Closed	Oct. 8-Jan. 22
Oregon	Closed	Closed	Closed	Deferred
Utah	Closed	Closed	Closed	Oct. 1-Jan. 14
Washington	Closed	Closed	Closed	Deferred
Wyoming	Sept. 1-Nov. 9	Closed	Closed	Sept. 1-Dec. 16

(1) The bag and possession limits for sora and Virginia rails apply singly or in the aggregate of these species.

(2) All bag and possession limits for clapper and king rails apply singly or in the aggregate of the two species and, unless otherwise specified, the limits are in addition to the limits on sora and Virginia rails in all States. In Connecticut, Delaware, Maryland, and New Jersey, the limits for clapper and king rails are 10 daily and 20 in possession.

(3) In Connecticut, the daily bag and possession limits may not contain more than 1 king rail. The common snipe daily bag and possession limits are 3 and 6, respectively.

(4) In Massachusetts, the sora rail limits are 5 daily and 5 in possession; the Virginia rail limits are 10 daily and 10 in possession.

(5) In New Jersey, the season for king rails is closed by State regulation.

(6) In New York, the rail daily bag and possession limits are 8 and 16, respectively. Seasons for sora and Virginia rails and common snipe are closed on Long Island.

(7) In Rhode Island, the sora and Virginia rails limits are 5 daily and 10 in possession, singly or in the aggregate; the clapper and king rail limits are 5 daily and 10 in possession, singly or in the aggregate; the common snipe limits are 5 daily and 10 in possession.

(8) In Alabama, the rail limits are 15 daily and 15 in possession, singly or in the aggregate.

(9) In Illinois, shooting hours are from sunrise to sunset.

(10) In Indiana, the sora rail limits are 25 daily and 25 in possession. The season on Virginia rails is closed.

(11) In Iowa, the limits for sora and Virginia rails are 12 daily and 24 in possession.

(12) In Louisiana, additional days occurring after September 30 will be published with the late season selections.

(13) In Michigan, the aggregate limits for sora and Virginia rails are 8 daily and 16 in possession.

(14) In Nebraska, the rail limits are 10 daily and 20 in possession.

(15) In South Dakota, the snipe limits are 5 daily and 15 in possession.

6. Section 20.105 is amended by revising paragraphs (a) through (f) to read as follows:

§20.105 Seasons, limits, and shooting hours for waterfowl, coots, and gallinules.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset, except as otherwise noted. Area descriptions were published in the August 1, 2005, Federal Register (70 FR 44200).

CHECK STATE REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

Note: States with deferred seasons may select those seasons at the same time they select waterfowl seasons in August. Consult late-seasons regulations for further information.

(a) Common Moorhens and Purple Gallinules

	Season Dates	Limits	
		Bag	Possession
ATLANTIC FLYWAY			
Delaware	Sept. 1-Nov. 9	15	30
Florida (1)	Sept. 1-Nov.9	15	30
Georgia	Deferred	--	--
Maine	Closed	--	--
New Jersey	Sept. 1-Nov. 8	10	20

	Season Dates	Limits	
		Bag	Possession
New York			
Long Island	Closed	--	--
Remainder of State	Sept. 1-Nov. 9	8	16
North Carolina	Sept. 1-Sept. 3 &	15	30
	Sept. 5-Nov. 10	15	30
Pennsylvania	Sept. 1-Nov. 9	15	30
South Carolina	Sept. 17-Sept. 21 &	15	30
	Oct. 15-Dec. 18	15	30
Virginia	Deferred	--	--
West Virginia	Deferred	--	--
MISSISSIPPI FLYWAY			
Alabama	Sept. 17-Sept. 25 &	15	15
	Nov. 21-Jan. 20	15	15
Arkansas	Sept. 1-Nov. 9	15	30
Kentucky	Sept. 1-Nov. 9	15	30
Louisiana (2)	Sept. 17-Sept. 25	15	30
Michigan	Deferred	--	--
Minnesota	Deferred	--	--
Mississippi	Oct. 8-Dec. 16	15	30
Ohio	Sept. 1-Nov. 9	15	30
Tennessee	Deferred	--	--
Wisconsin	Deferred	--	--
CENTRAL FLYWAY			
New Mexico			
Zone 1	Oct. 8-Dec. 16	1	2
Zone 2	Oct. 8-Dec. 16	1	2

	Season Dates	Limits Bag	Possession
Oklahoma	Sept. 1-Nov. 9	15	30
Texas	Sept. 10-Sept. 25 &	15	30
	Oct. 29-Dec. 21	15	30
Wyoming	Deferred	--	--
PACIFIC FLYWAY			
All States	Deferred	--	--

(1) The season applies to common moorhens only.

(2) Additional days occurring after September 30 will be published with the late season selections.

(b) Sea Ducks (scoter, eider, and oldsquaw ducks in Atlantic Flyway).

Within the special sea duck areas, the daily bag limit is 7 scoter, eider, and oldsquaw ducks, singly or in the aggregate, of which no more than 4 may be scoters. Possession limits are twice the daily bag limit. These limits may be in addition to regular duck bag limits only during the regular duck season in the special sea duck hunting areas.

	Season Dates	Limits Bag	Possession
Connecticut (1)	Sept. 21-Jan. 21	5	10
Delaware	Sept. 17-Jan. 19	7	14
Georgia	Deferred	--	--
Maine	Deferred	--	--
Maryland	Deferred	--	--
Massachusetts	Deferred	--	--
New Hampshire (2)	Oct. 1-Jan. 15	7	14
New Jersey	Sept. 17-Jan. 17	7	14
New York	Oct. 15-Jan. 29	7	14
North Carolina	Deferred	--	--
Rhode Island	Oct. 8-Jan. 22	7	14

	Season Dates	Limits Bag	Limits Possession
South Carolina	Deferred	--	--
Virginia	Deferred	--	--

NOTE: Notwithstanding the provisions of this Part 20, the shooting of crippled waterfowl from a motorboat under power will be permitted in Maine, Massachusetts, New Hampshire, Rhode Island, Connecticut, New York, Delaware, Virginia and Maryland in those areas described, delineated, and designated in their respective hunting regulations as special sea duck hunting areas.

(1) In Connecticut, the daily bag limit may include no more than 4 scoters or 4 oldsquaws.

(2) In New Hampshire, the daily bag limit may include no more than 4 scoters, 4 eiders, or 4 oldsquaws.

(c) Early (September) Duck Seasons.

Note: Unless otherwise specified, the seasons listed below are for teal only.

	Season Dates	Limits Bag	Limits Possession
ATLANTIC FLYWAY			
Delaware (1)(2)	Sept. 17-Sept. 27	4	8
Florida (3)	Sept. 24-Sept. 28	4	8
Georgia	Sept. 17-Sept. 25	4	8
Maryland (1)	Sept. 15-Sept. 24	4	8
North Carolina (1)	Sept. 15-Sept. 24	4	8
South Carolina (4)	Sept. 16-Sept. 24	4	8
Virginia (1)	Sept. 15-Sept. 24	4	8
MISSISSIPPI FLYWAY			
Alabama	Sept. 17-Sept. 25	4	8
Arkansas (4)	Sept. 17-Sept. 25	4	8
Illinois (4)	Sept. 10-Sept. 18	4	8
Indiana (4)	Sept. 3-Sept. 11	4	8

	Season Dates	Limits	
		Bag	Possession
Iowa (5)			
North Zone	Sept. 17-Sept. 21	--	--
South Zone	Sept. 24-Sept. 28	--	--
Kentucky (3)	Sept. 21-Sept. 25	4	8
Louisiana	Sept. 17-Sept. 25	4	8
Mississippi	Sept. 17-Sept. 25	4	8
Missouri (4)	Sept. 10-Sept. 18	4	8
Ohio (4)	Sept. 3-Sept. 11	4	8
Tennessee (3)	Sept. 10-Sept. 14	4	8
CENTRAL FLYWAY			
Colorado (1)	Sept. 3-Sept. 11	4	8
Kansas			
Low Plains	Sept. 17-Sept. 25	4	8
High Plains	Sept. 17-Sept. 24	4	8
Nebraska (1)	Sept. 10-Sept. 18	4	8
New Mexico	Sept. 17-Sept. 25	4	8
Oklahoma			
Low Plains	Sept. 10-Sept. 18	4	8
High Plains	Sept. 10-Sept. 18	4	8
Texas	Sept. 17-Sept. 25	4	8

(1) Area restrictions. See State regulations.

(2) In Delaware, the shooting hours are from ½ hour before sunrise to 10:00 a.m.

(3) In Florida, Kentucky, and Tennessee, the daily bag limit is 4 wood ducks and teal in the aggregate, of which no more than 2 may be wood ducks. The possession limit is twice the daily bag limit.

(4) Shooting hours are from sunrise to sunset.

(5) In Iowa, the September season is part of the regular season, and limits will conform to those set for the regular season.

(d) Special Early Canada Goose Seasons.

	Season Dates	Limits	
		Bag	Possession
ATLANTIC FLYWAY			
Connecticut			
North Zone	Sept. 1-Sept. 2 &	8	16
	Sept. 6-Sept. 30	8	16
South Zone	Sept. 15-Sept. 30	8	16
Delaware	Sept. 1-Sept. 15	8	16
Florida (1)	Sept. 3-Sept. 28	5	10
Georgia	Sept. 3-Sept. 25	5	10
Maine	Sept. 6-Sept. 24	4	8
Maryland			
Eastern Unit	Sept. 1-Sept. 15	8	16
Western Unit	Sept. 1-Sept. 24	8	16
Massachusetts			
Central Zone	Sept. 6-Sept. 25	5	10
Coastal Zone	Sept. 6-Sept. 25	5	10
Western Zone	Sept. 6-Sept. 25	5	10
New Hampshire	Sept. 6-Sept. 25	5	10
New Jersey	Sept. 1-Sept. 30	8	16
New York			
Lake Champlain Zone	Sept. 6-Sept. 25	5	10
Northeastern Zone	Sept. 1-Sept. 25	8	16
Western Zone	Sept. 1-Sept. 25	8	16
Southeastern Zone	Sept. 1-Sept. 25	8	16
Long Island Zone (3)	Sept. 6-Sept. 30	8	16
North Carolina (4)	Sept. 1-Sept. 30	5	10
Pennsylvania			
Pymatuning Zone	Closed	--	--
Rest of State	Sept. 1-Sept. 24	8	16
Rhode Island	Sept. 1-Sept. 30	8	16
South Carolina			
Early-Season Hunt Unit	Sept. 9-Sept. 24	8	16

	Season Dates	Limits	
		Bag	Possession
Vermont			
Lake Champlain Zone (5)	Sept. 6-Sept. 25	5	10
Interior Vermont Zone (5)	Sept. 6-Sept. 25	5	10
Connecticut River Zone (6)	Sept. 6-Sept. 25	5	10
Virginia	Sept. 1-Sept. 24	5	10
West Virginia	Sept. 1-Sept. 17	5	10
MISSISSIPPI FLYWAY			
Alabama	Sept. 1-Sept. 15	5	10
Illinois			
Northeast Zone	Sept. 1-Sept. 15	5	10
North Zone	Sept. 1-Sept. 15	2	4
Central Zone	Sept. 1-Sept. 15	2	4
South Zone	Sept. 1-Sept. 15	2	4
Indiana	Sept. 1-Sept. 15	5	10
Iowa			
South Goose Zone			
Des Moines Goose Zone	Sept. 1-Sept. 15	3	6
Cedar Rapids/Iowa City Goose Zone	Sept. 1-Sept. 15	3	6
Remainder of South Zone	Sept. 10-Sept. 11	2	4
North Goose Zone	Sept. 10-Sept. 11	2	4
Kentucky (3)	Sept. 3-Sept. 11	2	4
Michigan			
Upper Peninsula	Sept. 1-Sept. 10	3	6
Lower Peninsula:			
Huron, Saginaw, and Tuscola Counties	Sept. 1-Sept. 10	3	6
Remainder	Sept. 1-Sept. 15	3	6
Minnesota			
Twin Cities Metro Zone	Sept. 3-Sept. 22	5	10
Southeast Goose Zone	Sept. 3-Sept. 22	2	4
Five Goose Zone	Sept. 3-Sept. 22	5	10
Northwest Goose Zone	Sept. 3-Sept. 15	5	10
Mississippi (7)	Sept. 1-Sept. 15	5	10
Ohio (3)	Sept. 1-Sept. 15	3	6

	Season Dates	Limits	
		Bag	Possession
Tennessee	Sept. 1-Sept. 15	5	10
Wisconsin	Sept. 1-Sept. 15	5	10
CENTRAL FLYWAY			
Kansas:			
Sept. Canada Goose Unit (3)	Sept. 3-Sept. 12	3	6
Nebraska (3)			
Sept. Canada Goose Unit	Sept. 10-Sept. 19	5	10
North Dakota	Sept. 1-Sept. 15	5	10
Oklahoma	Sept. 10-Sept. 19	3	6
South Dakota (3):			
Unit A	Sept. 3-Sept. 11	5	10
Unit B	Sept. 3-Sept. 23	5	10
Unit C	Sept. 10-Sept. 23	5	10
Unit D	Sept. 10-Sept. 15	5	10
PACIFIC FLYWAY			
Colorado:	Sept. 3-Sept. 11	3	6
Oregon:			
Northwest Zone	Sept. 10-Sept. 20	5	10
Southwest Zone	Sept. 10-Sept. 15	5	10
East Zone	Sept. 10-Sept. 15	5	10
Washington:			
Mgmt. Area 2B	Sept. 1-Sept. 15	5	10
Mgmt. Areas 1 & 3	Sept. 10-Sept. 15	5	10
Mgmt. Area 4 & 5	Sept. 10-Sept. 11	3	6
Mgmt. Area 2A	Sept. 10-Sept. 15	3	6
Wyoming	Sept. 1-Sept. 8	2	4

(1) In Florida, the September Canada goose season is only open in the Florida waters of Lake Seminole in Jackson County that are south of State Route 2, north of the Jim Woodruff Dam, and east of State Route 2.

(2) State permit required.

(3) See State regulations for additional information.

(4) In North Carolina, in the area of Dare County that included Roanoke Island, 1,000 yards around Roanoke Island, and 1,000 yards both north and south of Highway 64 causeway between Roanoke Island and Bodie Island, the daily bag and possession limits are 2 and 4, respectively.

(5) In Vermont, in Addison County, the daily bag and possession limit is 2 and 4, respectively.

(6) In Vermont, the Connecticut River Zone set by New Hampshire, is the same as the New Hampshire Inland Zone.

(7) In Mississippi, the season is closed on Roebuck Lake in Leflore County.

(e) Regular Goose Seasons.

Note: Bag and possession limits will conform to those set for the regular season.

	Season Dates
MISSISSIPPI FLYWAY	
Michigan (1)	
Canada:	
MVP Zone	Deferred
SJBP Zone	Deferred
White-fronted and Brant	Deferred
Light geese	Deferred
Wisconsin	
Horicon Zone	Sept. 16-Sept. 30
Collins Zone	Sept. 16-Sept. 30
Exterior Zone	Sept. 17-Sept. 30

(1) In Michigan, season dates for the Muskegon Wastewater, Saginaw County, Allegan County, and Tuscola/Huron Goose Management Units in the South Zone will be established in the late-season regulatory process.

(f) Youth Waterfowl Hunting Days

The following seasons are open only to youth hunters. Youth hunters must be accompanied into the field by an adult at least 18 years of age. This adult cannot duck hunt but may participate in other open seasons.

Definitions

Youth Hunters: Includes youths 15 years of age or younger.

The Atlantic Flyway: Includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

The Mississippi Flyway: Includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

The Central Flyway: Includes Colorado (east of the Continental Divide), Kansas, Montana (Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except that the Jicarilla Apache Indian Reservation is in the Pacific Flyway), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

The Pacific Flyway: Includes Arizona, California, Colorado (west of the Continental Divide), Idaho, Montana (including and to the west of Hill, Chouteau, Cascade, Meagher, and Park Counties), Nevada, New Mexico (the Jicarilla Apache Indian Reservation and west of the Continental Divide), Oregon, Utah, Washington, and Wyoming (west of the Continental Divide including the Great Divide Basin).

Note: Bag and possession limits will conform to those set for the regular season.

	Season Dates
ATLANTIC FLYWAY	
Connecticut	Deferred
Delaware	
Ducks, geese, and coots	Oct. 22
Florida	Deferred
Georgia	
Ducks, geese, mergansers, coots, moorhens, and gallinules	Nov. 12 & 13
Maine	
Ducks, mergansers, and coots	Sept. 24
Maryland (1)	
Ducks, mergansers, coots, and Canada geese	Deferred
Massachusetts	Deferred
New Hampshire	
Ducks, geese, mergansers, and coots	Sept. 24 & 25
New Jersey	
Ducks, geese, mergansers, coots, moorhens, and gallinules	
North Zone	Sept. 24
South Zone	Deferred
Coastal Zone	Deferred
New York	
Ducks, mergansers, coots, brant, and Canada geese (2)	
Long Island Zone	Nov. 12 & 13
Lake Champlain Zone	Sept. 24 & 25
Northeastern Zone	Sept. 24 & 25
Southeastern Zone	Sept. 24 & 25
Western Zone	Oct. 8 & 9
North Carolina	Deferred
Pennsylvania	
Ducks, mergansers, Canada geese, coots, and moorhens	Sept. 24

	Season Dates
Rhode Island	
Ducks, mergansers and coots	Oct. 29 & 30
South Carolina	Deferred
Vermont	
Ducks, mergansers and coots	Sept. 24 & 25
Virginia	
Deferred	
West Virginia (3)	
Ducks, geese, mergansers, coots, moorhens, and gallinules	Sept. 24
MISSISSIPPI FLYWAY	
Alabama	
Ducks, mergansers, coots, geese, moorhens, and gallinules	Feb. 11 & 12
Arkansas	Deferred
Illinois	Deferred
Indiana	Deferred
Iowa	
Ducks, geese, mergansers, and coots	
North Zone	Oct. 8 & 9
South Zone	Oct. 8 & 9
Kentucky	Deferred
Ducks, geese, mergansers, coots, moorhens, and gallinules	
East Zone	Nov. 5 & 6
West Zone	Feb. 4 & 5
Louisiana	Deferred
Michigan	
Ducks, geese, mergansers, coots, moorhens, and gallinules	Sept. 17 & 18
Minnesota (4)	
Ducks, geese, mergansers, coots, moorhens, and gallinules	Sept. 17
Mississippi	Deferred
Missouri	Deferred

	Season Dates
Ohio	Deferred
Tennessee	Deferred
Wisconsin	
Ducks, geese, mergansers, coots, moorhens, and gallinules	Sept. 17 & 18
CENTRAL FLYWAY	
Colorado	
Ducks, dark geese, mergansers, and coots	Sept. 24 & 25
Kansas (5)	Deferred
Montana	
Ducks, geese, mergansers, and coots	Sept. 24 & 25
Nebraska (6)	
Ducks, geese, mergansers, and coots	Sept. 24 & 25
New Mexico	
Ducks, geese, mergansers, coots, and gallinules	
North Zone	Oct. 1 & 2
South Zone	Oct. 15 & 16
North Dakota	
Ducks, geese, mergansers, and coots	Sept. 17 & 18
Oklahoma	Deferred
South Dakota (7)	
Ducks, Canada geese, mergansers, and coots	Sept. 17 & 18
Texas	Deferred
Wyoming	
Ducks, geese, mergansers, coots, and gallinules	
Zone 1	Sept. 24
Zone 2	Sept. 24
PACIFIC FLYWAY	
Arizona	
Ducks, geese, mergansers, coots, moorhens, and gallinules	
North Zone	Oct. 1
South Zone	Feb. 4

	Season Dates
California	
Ducks, geese, mergansers, coots, moorhens, and gallinules	
Northeastern Zone	Sept. 24 & 25
Colorado River Zone	Deferred
Southern Zone	Deferred
Southern San Joaquin Valley Zone	Deferred
Balance-of-State Zone	Deferred
Colorado	
Ducks, geese, mergansers, and coots	Sept. 24 & 25
Idaho	
Ducks, Canada geese, mergansers, and coots	Sept. 24 & 25
Montana	
Ducks, geese, mergansers, coots, moorhens, and gallinules	Sept. 24 & 25
Nevada	Deferred
New Mexico	
Ducks, mergansers, and coots	Oct. 8-Oct. 9
Oregon (8)	
Ducks, Canada geese, mergansers, coots, moorhens, and gallinules	Sept. 24 & 25
Utah	
Ducks, geese, mergansers, coots, moorhens, and gallinules	Sept. 24
Washington	
Ducks, Canada geese, mergansers, and coots	Sept. 17 & 18
Wyoming	
Ducks, dark geese, mergansers, coots, and moorhens	Sept. 17

(1) In Maryland, the accompanying adult must be at least 21 years of age and possess a valid Maryland hunting license (or be exempt from the license requirement). This accompanying adult may not shoot or possess a firearm.

(2) In New York, the daily bag limit for Canada geese is 2.

(3) In West Virginia, the accompanying adult must be at least 21 years of age.

(4) In Minnesota, the Canada goose limit is 5, except that in the Twin Cities, Southeast, and Northwest Goose Zones, Swan Lake Area, and Carlos Avery Wildlife Management Area the limit is 1.

(5) In Kansas, the adult accompanying the youth must possess any licenses and/or stamps required by law for that individual to hunt waterfowl.

(6) In Nebraska, see State regulations for additional information on the daily bag limit.

(7) In South Dakota, the limit for Canada geese is 3, except in areas where the Special Early Canada goose season is open. In those areas, the limit is the same as for that special season.

(8) In Oregon, the Canada goose season is closed for the youth hunt in the Northwest Special Permit Goose Zone and the Northwest General Zone.

7. Section 20.106 is revised to read as follows:

§20.106 Seasons, limits, and shooting hours for sandhill cranes.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits on the species designated in this section are as follows:

Shooting and Hawking hours are one-half hour before sunrise until sunset, except as otherwise noted. Area descriptions were published in the August 1, 2005, Federal Register (70 FR 44200).

CHECK STATE REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

Note: States with deferred seasons may select those seasons at the same time they select waterfowl seasons in August. Consult late-season regulations for further information.

	Season Dates	Limits	
		Bag	Possession
CENTRAL FLYWAY			
Colorado (1)	Oct. 1-Nov. 27	3	6
Kansas (2)	Deferred	--	--
Montana			
Regular Season Area (1)	Sept. 24-Nov. 20	3	6
Special Season Area (3)	Sept. 10-Sept. 18		1 per season
New Mexico			
Regular Season Area (1)	Oct. 31-Jan. 31	3	6
Middle Rio Grande Valley Area (3)(4)(5)	Nov. 5-Nov. 6 &	1	2
	Nov. 19-Nov. 20 &	1	2
	Dec. 10-Dec. 11 &	1	2
	Jan. 14-Jan. 15	1	2
Southwest Area (3)(4)(5)	Nov. 12-Nov. 13 &	2	4
	Jan. 7-Jan. 8	2	4
Estancia Valley (4)(5)	Nov. 5-Nov. 6	2	4
North Dakota (2)			
Area 1	Sept. 17-Nov. 13	3	6
Area 2	Sept. 17-Oct. 23	2	4

	Season Dates	Limits Bag	Limits Possession
Oklahoma (1)	Deferred	--	–
South Dakota (1)	Sept. 24-Nov. 20	3	6
Texas (1)	Deferred	--	–
Wyoming			
Regular Season Area (1)(5)	Sept. 17-Nov. 13	3	6
Riverton-Boysen Unit (Area 4) (3)(5)	Sept. 17-Oct. 7		1 per season
Big Horn and Park Counties (Area 6) (3)(5)	Sept. 17-Oct. 2		1 per season
PACIFIC FLYWAY			
Arizona (3)	Nov. 1-Nov. 3 &		2 per season
	Nov. 5-Nov. 7 &		2 per season
	Nov. 9-Nov. 11 &		2 per season
	Nov. 13-Nov. 15 &		2 per season
	Nov. 25-Nov. 27		2 per season
Idaho (3)	Sept. 1-Sept. 15	2	9 per season
Montana			
Special Season Area (3)	Sept. 10-Sept. 18		1 per season
Utah (3)			
Rich County	Sept. 3-Sept. 11		1 per season
Cache County	Sept. 3-Sept. 11		1 per season
Eastern Box Elder County	Sept. 3-Sept. 11		1 per season
Uintah County	Sept. 24-Oct. 2		1 per season
Wyoming (3)(5)			
Bear River Area (Area 1)	Sept. 1-Sept. 8		1 per season
Salt River Area (Area 2)	Sept. 1-Sept. 8		1 per season
Eden-Farson Area (Area 3)	Sept. 1-Sept. 8		1 per season

(1) Each hunter participating in a regular sandhill crane hunting season must obtain and carry in his or her possession while hunting sandhill cranes a valid Federal sandhill crane hunting permit available without cost from conservation agencies in the States where crane hunting seasons are allowed. The permit must be displayed to any authorized law enforcement official upon request.

(2) In Kansas and North Dakota, each hunter participating in a regular sandhill crane hunting season must obtain and carry in his or her possession while hunting sandhill cranes a valid Federal sandhill crane hunting permit issued and validated by the State. The permit must be displayed to any authorized law enforcement official upon request.

(3) Hunting is by State permit only.

(4) In New Mexico, the seasonal bag limit is 2 in the Middle Rio Grande Valley Area, 4 in the Estancia Valley, and 8 in the Southwest Area.

(5) Shooting hours are one-half hour before sunrise to sunset.

8. Section 20.109 is revised to read as follows:

§20.109 Extended seasons, limits, and hours for taking migratory game birds by falconry.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Hawking hours are one-half hour before sunrise until sunset except as otherwise noted. Area descriptions were published in the August 1, 2005, Federal Register (70 FR 44200). For those extended seasons for ducks, mergansers, and coots, area descriptions were published in the August 22, 2005, Federal Register (70 FR 49068) and will be published again in a September 2005 Federal Register.

CHECK STATE REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

Daily bag limit . . . . . 3 migratory birds, singly or in the aggregate.

Possession limit . . . . . 6 migratory birds, singly or in the aggregate.

These limits apply to falconry during both regular hunting seasons and extended falconry seasons -- unless further restricted by State regulations. The falconry bag and possession limits are not in addition to regular season limits. Unless otherwise specified, extended falconry for ducks does not include sea ducks within the special sea duck areas. Only extended falconry seasons are shown below. Many States permit falconry during the gun seasons. Please consult State regulations for details.

For ducks, mergansers, coots, geese, and some moorhen seasons; additional season days occurring after September 30 will be published with the late-season selections. Some States have deferred selections. Consult late-season regulations for further information.

	Extended Falconry Dates
ATLANTIC FLYWAY	
Delaware	
Mourning doves	Oct. 1-Oct. 31 & Jan. 16-Jan. 21
Rail	Nov. 10-Dec. 16
Woodcock	Oct. 1-Oct. 4 & Feb. 1-Mar. 4
Snipe	Feb. 1-Mar. 7

	Extended Falconry Dates
Florida	
Mourning and white-winged doves	Oct. 25-Nov. 11 & Nov. 28-Dec. 9 & Jan. 9-Jan. 15
Rails	Nov. 10-Dec. 16
Woodcock	Nov. 24-Dec. 16 & Jan. 16-Mar. 10
Common moorhens	Nov. 10-Dec. 14
Georgia	
Moorhens, gallinules, and sea ducks	Nov. 12-Nov. 18 & Nov. 28-Dec. 9 & Jan. 30-Feb. 3
Maryland	
Mourning doves	Oct. 16-Nov. 10 & Dec. 11-Dec. 16 & Jan. 2- Jan. 6
Rails	Nov. 10-Dec. 16
Woodcock	Oct. 1-Nov. 3 & Jan. 27-Mar. 10
Pennsylvania	
Mourning doves	Oct. 3-Oct. 28 & Nov. 28-Dec. 8
Rails	Nov. 10-Dec. 16
Woodcock	Sept. 1-Oct. 14 & Nov. 14-Dec. 16
Snipe	Sept. 1-Oct. 14 & Nov. 21-Dec. 17
Moorhens and gallinules	Nov. 10-Dec. 15
Virginia	
Mourning doves	Sept. 25-Oct. 7 & Dec. 3-Dec. 26

	Extended Falconry Dates
Virginia (cont.)	
Woodcock	Oct. 22-Nov. 11 & Nov. 27-Dec. 16 & Jan. 1-Jan. 31
MISSISSIPPI FLYWAY	
Illinois	
Mourning doves	Oct. 22-Nov. 4 & Nov. 14-Dec. 16
Rails	Sept. 1-Sept. 9 & Nov. 19-Dec. 16
Woodcock	Sept. 1-Oct. 14 & Nov. 29-Dec. 16
Indiana	
Mourning doves	Oct. 17-Nov. 3 & Jan. 1-Jan. 29
Woodcock	Sept. 24-Oct. 14 & Nov. 29-Jan. 8
Ducks, mergansers, and coots (1) North Zone	Sept. 27-Sept. 30
Louisiana	
Mourning doves	Sept. 12-Oct. 7 & Nov. 14-Nov. 24
Woodcock	Oct. 29-Dec. 17 & Feb. 1-Feb. 12
Minnesota	
Woodcock	Sept. 1-Sept. 23 & Nov. 8-Dec. 16
Rails and snipe	Nov. 5-Dec. 16
Missouri	
Mourning and white-winged doves	Nov. 10-Dec. 16

	Extended Falconry Dates
Missouri (cont.)	
Ducks, mergansers, and coots	Sept. 10-Sept. 18
Tennessee	
Mourning doves	Sept. 27-Oct. 7 & Oct. 24-Nov. 28
Ducks (1)	Sept. 15-Sept. 29
Wisconsin	
Rails, snipe, moorhens, and gallinules (1)	Sept. 1-Sept. 23
Woodcock	Sept. 1-Sept. 23
Ducks, mergansers, and coots	Sept. 17-Sept. 18
CENTRAL FLYWAY	
Montana (2)	
Ducks, mergansers, and coots (1)	Sept. 21-Sept. 30
Nebraska	
Ducks, mergansers, and coots	
High Plains	Sept. 10-Sept. 18 & Sept. 24-Sept. 25
Low Plains	Sept. 3-Sept. 25
New Mexico	
Doves	
North Zone	Oct. 31-Nov. 12 & Nov. 27-Dec. 30
South Zone	Oct. 1-Nov. 12 & Nov. 27-Nov. 30
Band-tailed pigeons	
North Zone	Sept. 21-Dec. 16
South Zone	Oct. 21-Jan. 15
Ducks and coots	Sept. 17-Sept. 25
Sandhill cranes	
Regular Season Area	Oct. 17-Oct. 30

	Extended Falconry Dates
New Mexico (cont.)	
Common moorhens	Dec. 17-Jan. 22
Sora and Virginia rails	Nov. 26-Jan. 1
North Dakota	
Ducks, mergansers, and coots	Sept. 5-Sept. 9 & Sept. 12-Sept. 16
Snipe	Sept. 1-Sept. 17
South Dakota	
Ducks, mergansers, and coots (1)	
High Plains	Sept. 4-Sept. 11
Low Plains	
North Zone	Sept. 4-Sept. 16 & Sept. 19-Sept. 23
Middle Zone	Sept. 4-Sept. 16 & Sept. 19-Sept. 23
South Zone	Sept. 4-Sept. 16 & Sept. 19-Sept. 30
Texas	
Mourning and white-winged doves	Nov. 19-Dec. 25
Rails and gallinules	Dec. 22-Jan. 27
Woodcock	Nov. 24-Dec. 17 & Feb. 1-Mar. 10
Wyoming	
Rails	Nov. 10-Dec. 16
Ducks, mergansers, and coots (1)	
Zone 1	Sept. 21-Sept. 30
Zone 2	Sept. 21-Sept. 30
PACIFIC FLYWAY	
Arizona	
Doves	Sept. 12-Oct. 29

	Extended Falconry Dates
Idaho	
Mourning doves	Nov. 1-Jan. 16
New Mexico	
Doves	
North Zone	Oct. 31-Nov. 12 & Nov. 27-Dec. 30
South Zone	Oct. 1-Nov. 12 & Nov. 27-Nov. 30
Band-tailed pigeons	
North Zone	Sept. 21-Dec. 16
South Zone	Oct. 21-Jan. 15
Oregon (3)	
Mourning doves	Oct. 1-Dec. 16
Band-tailed pigeons	Sept. 1-Sept. 14 & Sept. 24-Dec. 16
Utah	
Mourning doves and band-tailed pigeons	Oct. 1-Dec. 16
Washington	
Mourning doves	Oct. 1-Dec. 31
Wyoming	
Rails	Nov. 10-Dec. 16
Ducks, mergansers, and coots (1)	Sept. 17

(1) Additional days occurring after September 30 will be published with the late-season selections.

(2) In Montana, the bag limit is 2 and the possession limit is 6.

(3) In Oregon, no more than 1 pigeon daily in bag or possession.

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Federal Register

Wednesday,
August 31, 2005

Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 2005–06 Early Season; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AT76

Migratory Bird Hunting; Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 2005–06 Early Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes special early season migratory bird hunting regulations for certain tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands. This responds to tribal requests for U.S. Fish and Wildlife Service (hereinafter Service or we) recognition of their authority to regulate hunting under established guidelines. This rule allows the establishment of season bag limits and, thus, harvest at levels compatible with populations and habitat conditions.

DATES: This rule takes effect on September 1, 2005.

ADDRESSES: You may inspect comments received on the proposed special hunting regulations and tribal proposals during normal business hours in room 4107, Arlington Square Building, 4501 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Ron W. Kokel, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358–1967.

SUPPLEMENTARY INFORMATION: The Migratory Bird Treaty Act (MBTA) of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 *et seq.*), authorizes and directs the Secretary of the Department of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds, to determine when, to what extent, and by what means such birds or any part, nest, or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported, or transported.

In the August 5, 2005, **Federal Register** (70 FR 45336), we proposed special migratory bird hunting regulations for the 2005–06 hunting season for certain Indian tribes, under the guidelines described in the June 4, 1985, **Federal Register** (50 FR 23467). The guidelines respond to tribal requests for Service recognition of their reserved hunting rights, and for some tribes, recognition of their authority to regulate hunting by both tribal members and nonmembers on their reservations. The guidelines include possibilities for:

(1) On-reservation hunting by both tribal members and nonmembers, with hunting by nontribal members on some reservations to take place within Federal frameworks but on dates different from those selected by the surrounding State(s);

(2) On-reservation hunting by tribal members only, outside of usual Federal frameworks for season dates and length, and for daily bag and possession limits; and

(3) Off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits.

In all cases, the regulations established under the guidelines must be consistent with the March 10–September 1 closed season mandated by the 1916 Migratory Bird Treaty with Canada.

In the April 6, 2005, **Federal Register** (70 FR 17574), we requested that tribes desiring special hunting regulations in the 2005–06 hunting season submit a proposal including details on:

(a) Harvest anticipated under the requested regulations;

(b) Methods that would be employed to measure or monitor harvest (such as bag checks, mail questionnaires, etc.);

(c) Steps that would be taken to limit level of harvest, where it could be shown that failure to limit such harvest would adversely impact the migratory bird resource; and

(d) Tribal capabilities to establish and enforce migratory bird hunting regulations.

No action is required if a tribe wishes to observe the hunting regulations established by the State(s) in which an Indian reservation is located. We have successfully used the guidelines since the 1985–86 hunting season. We finalized the guidelines beginning with the 1988–89 hunting season (August 18, 1988, **Federal Register** (53 FR 31612)).

Although the proposed rule included generalized regulations for both early- and late-season hunting, this rulemaking addresses only the early-season proposals. Late-season hunting will be addressed in late-September. As a general rule, early seasons begin during September each year and have a primary emphasis on such species as mourning and white-winged dove. Late seasons begin about October 1 or later each year and have a primary emphasis on waterfowl.

Population Status and Harvest

The following paragraphs provide a brief summary of information on the status and harvest of waterfowl excerpted from various reports. For more detailed information on methodologies and results, you may obtain complete copies of the various reports at the address indicated under **ADDRESSES** or from our Web site at *http://migratorybirds.fws.gov.*

Status of Ducks

Federal, provincial, and State agencies conduct surveys each spring to estimate the size of breeding populations and to evaluate the conditions of the habitats. These surveys are conducted using fixed-wing aircraft and helicopters and encompass principal breeding areas of North America, and more than 2.0 million square miles. The Traditional survey area comprises Alaska, Canada, and the northcentral United States, and includes approximately 1.3 million square miles. The Eastern survey area includes parts of Ontario, Quebec, Labrador, Newfoundland, Nova Scotia, Prince Edward Island, New Brunswick, New York, and Maine, an area of approximately 0.7 million square miles.

Breeding Ground Conditions

Habitat conditions at the time of the survey in May 2005 were variable, with some areas improved relative to last year and others remaining or becoming increasingly dry. The total May pond estimate (Prairie and Parkland Canada and the northcentral U.S. combined) was 5.4 ± 0.2 million ponds. This was 37 percent greater than last year's estimate of 3.9 ± 0.2 million ponds and 12 percent higher than the long-term average of 4.8 ± 0.1 million ponds.

Habitat in the surveyed portion of the U.S. prairies was in fair to poor condition due to a dry fall, winter, and early spring and warm winter temperatures. Nesting habitat was particularly poor in South Dakota because of below average precipitation resulting in degraded wetland conditions and increased tilling and grazing of wetland margins. Birds may have overflown the State for wetter conditions to the north. Water levels and upland nesting cover were relatively better in North Dakota and eastern Montana, and wetland conditions in these regions improved markedly during June following the survey, with the onset of well-above average precipitation. The 2005 pond estimate for north-central U.S. (1.5 ± 0.1 million) was similar to last year's estimate.

The prairies of southern Alberta and southwestern Saskatchewan were also quite dry in early May. The U.S. and Canadian prairies received substantial rain in late May and during the entire month of June that recharged wetlands and encouraged growth of vegetation. While this rain improved habitat quality on the Prairies, it probably came too late to benefit early-nesting species or prevent overflight. This heavy rain likely benefited late-nesting species and improved renesting. Record high rains flooded the lower elevation prairie areas of central Manitoba during April, producing fair or poor nesting conditions for breeding waterfowl. In contrast, the Canadian Parklands were much improved compared to last year, due to several years of improving nesting cover and above-normal precipitation last fall and winter. These areas were in good-to-excellent condition at the start of the survey and remained so into July. Overall, the May pond estimate in Prairie and Parkland Canada was 3.9 ± 0.2 million. This was a 56 percent increase over last year's estimate of 2.5 ± 0.1 million ponds and 17 percent higher than the long-term average of 3.3 ± 0.3 million ponds. Portions of northern Manitoba and northern Saskatchewan also experienced flooding, resulting in only fair conditions for breeding waterfowl.

In contrast, most of the Northwest Territories was in good condition due to adequate water and a timely spring break-up that made habitat available to early-nesting species. However, dry conditions in eastern parts of the Northwest Territories and northern Alberta resulted in low water levels in lakes and ponds and the complete drying of some wetlands. Therefore, habitat was also classified as fair in these areas.

For the most part, habitats in Alaska were in excellent condition, with an early spring and good water levels, except for a few flooded river areas and on the North Slope, where spring was late.

In the Eastern Survey Area (strata 51–72), habitat conditions were generally good due to adequate water and relatively mild spring temperatures. Exceptions were the coast of Maine and the Atlantic Provinces, where May temperatures were cool and some flooding occurred along the coast and major rivers. Also, below-normal precipitation left some habitat in fair to poor condition in southern Ontario. However, precipitation in southern Ontario after survey completion improved habitat conditions in that region.

Breeding Population Status

In the Waterfowl Breeding Population and Habitat Survey traditional survey area (strata 1–18, 20–50, and 75–77), the total duck population estimate was 31.7 ± 0.6 [SE] million birds, similar to last year's estimate of 32.2 ± 0.6 million birds but 5 percent below the 1955–2004 long-term average. Mallard (*Anas platyrhynchos*) abundance was 6.8 ± 0.3 million birds, which was 9 percent below last year's estimate of 7.4 ± 0.3 million birds and 10 percent below the long-term average. Blue-winged teal (*A. discors*) abundance was 4.6 ± 0.2 million birds, similar to last year's estimate of 4.1 ± 0.2 million birds, and the long-term average. Of the other duck species, the gadwall estimate (*A. strepera;* 2.2 ± 0.1 million) was 16 percent below that of 2004, while estimates of northern pintails (*A. acuta;* 2.6 ± 0.1 million; +17 percent) and northern shovelers (*A. clypeata;* 3.6 ± 0.2 million; +28 percent) were significantly above 2004 estimates. The estimate for northern shovelers was 67 percent above the long-term average for this species, as were estimates of gadwall (+30 percent) and green-winged teal (*A. crecca;* 2.2 ± 0.1 million; +16 percent). Northern pintails remained 38 percent below their long-term average despite this year's increase in abundance. Estimates of American wigeon (*A. americana;* 2.2 ± 0.1 million; −15 percent) and scaup (*Aythya affinis* and *A. marila* combined; 3.4 ± 0.2; −35 percent) also were below their respective long-term averages; the estimate for scaup was a record low. Abundances of redheads (*A. americana*) and canvasbacks (*A. valisineria*) were similar to last year's counts and long-term averages.

The eastern survey area was restratified, and is now composed of strata 51–72. Mergansers (red-breasted [*Mergus serrator*], common [*M. merganser*], and hooded [*Lophodytes cucullatus;*]; −25 percent), mallards (−36 percent), American black ducks (*A. rubripes,* −24 percent), and green-winged teal (−46 percent) were all below their 2004 estimates. Ring-necked ducks (*Aythya collaris*) and goldeneyes (common [*Bucephala clangula*] and Barrow's [*B. islandica*]) were similar to their 2004 estimates. No species in the eastern survey area differed from their long-term averages.

Fall Flight Estimate

The mid-continent mallard population is composed of mallards from the traditional survey area, Michigan, Minnesota, and Wisconsin, and is 7.5 ± 0.3 million, which is 10 percent lower than the 2004 estimate of 8.3 ± 0.3 million. The 2005 mid-continent mallard fall-flight index is 9.3 ± 0.1 million, similar to the 2004 estimate of 9.4 ± 0.1 million birds. These indices were based on revised mid-continent mallard population models and, therefore, differ from those previously published.

Status of Geese and Swans

We provide information on the population status and productivity of North American Canada geese (*Branta canadensis*), brant (*B. bernicla*), snow geese (*Chen caerulescens*), Ross' geese (*C. rossii*), emperor geese (*C. canagica*), white-fronted geese (*Anser albifrons*), and tundra swans (*Cygnus columbianus*). The timing of spring snowmelt in important goose and swan nesting areas in most of the Arctic and subarctic was near average, or earlier than average in 2005. Delayed nesting phenology or reduced nesting effort was indicated for only Alaska's North Slope and areas of the eastern Canadian High Arctic. Primary abundance indices in 2005 increased from 2004 levels for 12 goose populations and decreased for 13 goose populations. Primary indices in 2005 increased for western tundra swans and decreased for eastern tundra swans. Of these 27 populations, the Atlantic, Eastern Prairie, Mississippi Flyway Giant, and Aleutian Canada goose populations, and the Western Arctic/Wrangel Island snow goose population displayed significant positive trends during the most recent 10-year period. Only Short Grass Prairie Population Canada geese and Pacific brant displayed significant negative 10-year trends. The forecast for the production of geese and swans in North America in 2005 is generally favorable and improved from that of 2004.

Waterfowl Harvest and Hunter Activity

During the 2004–05 hunting season, both duck and goose harvest decreased from the previous year. U.S. hunters harvested 12,312,200 ducks in 2004–05 compared to 13,165,500 in 2003–04, and they harvested 3,189,700 geese, compared to 3,828,200 geese taken in 2003–04. The five most commonly harvested duck species were mallard (4,531,600), green-winged teal (1,373,600), gadwall (1,364,000), wood duck (1,105,500), and wigeon (750,600).

Comments and Issues Concerning Tribal Proposals

For the 2005–06 migratory bird hunting season, we proposed regulations for 28 tribes and/or Indian groups that followed the 1985 guidelines and were considered

appropriate for final rulemaking. Some of the proposals submitted by the tribes had both early- and late-season elements. However, as noted earlier, only those with early-season proposals are included in this final rulemaking; 19 tribes have proposals with early seasons. The comment period for the proposed rule, published on August 5, 2005, closed on August 15, 2005. Because of the necessary brief comment period, we will respond to any comments on the proposed rule and/or these regulations postmarked by August 15, but not received prior to final action by us, in the September late-season final rule.

We received one comment regarding the notice of intent published on April 6, 2005, which announced rulemaking on regulations for migratory bird hunting by American Indian tribal members. The Michigan Department of Natural Resources commented on the establishment of tribal regulations on 1836 Treaty areas. Michigan believed it was premature of the Service to establish waterfowl regulations in areas covered by the 1836 Treaty until such time as the issue of 1836 Treaty hunting rights is affirmed by a court of competent jurisdiction.

Service Response: We have addressed this issue several times in the last few years. Our position is that the Federal Government does recognize the Treaty of 1836 as reserving to the affected tribes or bands hunting rights in the ceded territory. Further, the Federal courts have already confirmed the retention of reserved fishing rights in the territory ceded by the Treaty of 1836 in *United States* v. *Michigan,* 471 F.Supp. 192 (W.D. Mich. 1979), *remanded,* 623 F.2d 448 (6th Cir. 1980), *order modified,* 653 F.2d 277 (6th Cir. 1981), *cert. denied,* 454 U.S. 1124 (1981). That case and cases dealing with other treaty cessions, such as *Lac Courte Oreilles* v. *Wisconsin* (*i.e.*, both the 1837 and the 1842 Treaties), provide persuasive precedent for the belief that hunting as well as fishing rights were reserved by the tribes in the Treaty of 1836. We have not altered our position on this matter.

NEPA Consideration

NEPA considerations are covered by the programmatic document, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14)," filed with the Environmental Protection Agency on June 9, 1988. We published Notice of Availability in the **Federal Register** on June 16, 1988 (53 FR 22582) and our Record of Decision on August 18, 1988 (53 FR 31341).

In addition, in a proposed rule published in the April 30, 2001, **Federal Register** (66 FR 21298), we expressed our intent to begin the process of developing a new EIS for the migratory bird hunting program. We plan to begin the public scoping process this year.

Endangered Species Act Considerations

Section 7 of the Endangered Species Act, as amended (16 U.S.C. 1531–1543; 87 Stat. 884), provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act" (and) shall "insure that any action authorized, funded or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat * * *" Consequently, we conducted consultations to ensure that actions resulting from these regulations would not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. Findings from these consultations are included in a biological opinion and may have caused modification of some regulatory measures previously proposed. The final frameworks reflect any modifications. Our biological opinions resulting from this Section 7 consultation are public documents available for public inspection in the Service's Division of Endangered Species and MBM, at the address indicated under **ADDRESSES**.

Executive Order 12866

The migratory bird hunting regulations are economically significant and were reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. As such, a cost/benefit analysis was initially prepared in 1981. This analysis was subsequently revised annually from 1990–96, updated in 1998 and updated again in 2004. It is further discussed below under the heading Regulatory Flexibility Act. Results from the 2004 analysis indicate that the expected welfare benefit of the annual migratory bird hunting frameworks is on the order of $734 to $1,064 million, with a mid-point estimate of $899 million. Copies of the cost/benefit analysis are available upon request from the address indicated under **ADDRESSES** or from our Web site at *http://www.migratorybirds.gov.*

Regulatory Flexibility Act

These regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail as part of the 1981 cost-benefit analysis discussed under Executive Order 12866. This analysis was revised annually from 1990–95. In 1995, the Service issued a Small Entity Flexibility Analysis (Analysis), which was subsequently updated in 1996, 1998, and 2004. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The 2004 Analysis was based on the 2001 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend between $481 million and $1.2 billion at small businesses in 2004. Copies of the Analysis are available upon request from the address indicated under **ADDRESSES** or from our Web site at *http://www.migratorybirds.gov.*

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule has an annual effect on the economy of $100 million or more. However, because this rule establishes hunting seasons, we do not plan to defer the effective date under the exemption contained in 5 U.S.C. 808(1).

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995. The various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, subpart K, are utilized in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of the surveys associated with the Migratory Bird Harvest Information Program and assigned clearance number 1018–0015 (expires 2/29/2008). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations.

A Federal agency may not conduct or sponsor and a person is not required to

respond to a collection of information unless it displays a currently valid OMB control number.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities. Therefore, this rule is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this proposed rule, has determined that this proposed rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, this proposed rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, these rules allow hunters to exercise otherwise unavailable privileges and, therefore, reduce restrictions on the use of private and public property.

Energy Effects—Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this proposed rule is a significant regulatory action under Executive Order 12866, it is not expected to adversely affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections regarding the hunting of migratory birds, and we employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and tribes to determine which seasons meet their individual needs. Any State or Indian tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Government-to-Government Relationship With Tribes

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. Thus, in accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on federally recognized Indian tribes and have determined that there are no effects on Indian trust resources. However, by virtue of the tribal proposals contained in this proposed rule, we have consulted with all the tribes affected by this rule.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

■ Accordingly, part 20, subchapter B, chapter I of title 50 of the Code of Federal Regulations is amended as follows:

PART 20—[AMENDED]

■ 1. The authority citation for part 20 continues to read as follows:

Authority: 16 U.S.C. 703–712 and 16 U.S.C. 742 a–j, Pub L. 106–108.

Note: The following hunting regulations provided for by 50 CFR 20.110 will not appear in the Code of Federal Regulations because of their seasonal nature.

■ 2. Section 20.110 is revised to read as follows:

§ 20.110 Seasons, limits, and other regulations for certain Federal Indian reservations, Indian Territory, and ceded lands.

(a) Colorado River Indian Tribes, Parker, Arizona (Tribal Members and Nontribal Hunters)

Doves

Season Dates: Open September 1, through September 15, 2005; then open November 12, through December 26, 2005.

Daily Bag and Possession Limits: For the early season, daily bag limit is 10 mourning or 10 white-winged doves, singly, or in the aggregate. For the late season, the daily bag limit is 10 mourning doves. Possession limits are twice the daily bag limits.

General Conditions: All persons 14 years and older must be in possession of a valid Colorado River Indian Reservation hunting permit before taking any wildlife on tribal lands. Any person transporting game birds off the Colorado River Indian Reservation must have a valid transport declaration form. Other tribal regulations apply, and may be obtained at the Fish and Game Office in Parker, Arizona.

(b) Confederated Salish and Kootenai Tribes, Flathead Indian Reservation, Pablo, Montana (Tribal Hunters)

Tribal Members Only

Ducks (Including Mergansers)

Season Dates: Open September 1, 2005, through March 9, 2006.

Daily Bag and Possession Limits: The Tribe does not have specific bag and possession restrictions for Tribal members. The season on harlequin duck is closed.

Coots

Season Dates: Same as ducks.

Daily Bag and Possession Limits: Same as ducks.

Geese

Season Dates: Same as ducks.

Daily Bag and Possession Limits: Same as ducks.

General Conditions: Tribal and Nontribal hunters must comply with all basic Federal migratory bird hunting regulations contained in 50 CFR part 20 regarding manner of taking. In addition, shooting hours are sunrise to sunset, and each waterfowl hunter 16 years of age or older must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the stamp face. Special regulations established by the Confederated Salish and Kootenai Tribes also apply on the reservation.

(c) Crow Creek Sioux Tribe, Crow Creek Indian Reservation, Fort Thompson, South Dakota (Tribal Members and Nontribal Hunters)

Sandhill Cranes

Season Dates: Open September 10, through October 16, 2005.

Daily Bag Limit: Three sandhill cranes.

Permits: Each person participating in the sandhill crane season must have a valid Federal sandhill crane hunting permit in his or her possession while hunting.

Doves

Season Dates: Open September 1, through October 30, 2005.

Daily Bag Limit: 15 mourning doves.

General Conditions: The possession limit is twice the daily bag limit. Tribal and nontribal hunters must comply with basic Federal migratory bird hunting regulations in 50 CFR part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the stamp face. Special regulations established by the Crow Creek Sioux Tribe also apply on the reservation.

(d) Fond du Lac Band of Lake Superior Chippewa Indians, Cloquet, Minnesota (Tribal Members Only)

All seasons in Minnesota, 1854 and 1837 Treaty Zones:

Doves

Season Dates: Open September 1, through October 30, 2005.

Daily Bag Limit: 12 doves.

Ducks and Mergansers

Season Dates: Open September 15, through December 1, 2005.

Daily Bag Limit for Ducks: 18 ducks, including no more than 12 mallards (only 6 of which may be hens), 3 black ducks, 6 scaup, 4 wood ducks; 6 redheads, 3 pintails and 3 canvasbacks.

Daily Bag Limit for Mergansers: 15 mergansers, including no more than 3 hooded mergansers.

Canada Geese

Season Dates: Open September 1, through December 1, 2005.

Daily Bag Limit: 12 geese.

Coots and Common Moorhens (Gallinule)

Season Dates: Open September 15, through December 1, 2005.

Daily Bag Limit: 20 coots and common moorhens, singly or in the aggregate.

Sora and Virginia Rails

Season Dates: Open September 1, through December 1, 2005.

Daily Bag Limit: 25 sora and Virginia rails, singly or in the aggregate. There is no possession limit.

Common Snipe and Woodcock

Season Dates: Open September 1, through December 1, 2005.

Daily Bag Limit: Eight snipe and three woodcock.

General Conditions:

1. While hunting waterfowl, a tribal member must carry on his/her person a valid tribal waterfowl hunting permit.

2. Except as otherwise noted, tribal members will be required to comply with tribal codes that will be no less restrictive than the provisions of Chapter 10 of the Model Off-Reservation Code. Except as modified by the Service rules adopted in response to this proposal, these amended regulations parallel Federal requirements in 50 CFR part 20 as to hunting methods, transportation, sale, exportation, and other conditions generally applicable to migratory bird hunting.

3. Band members in each zone will comply with State regulations providing for closed and restricted waterfowl hunting areas.

4. There are no possession limits on any species, unless otherwise noted above. For purposes of enforcing bag and possession limits, all migratory birds in the possession or custody of band members on ceded lands will be considered to have been taken on those lands unless tagged by a tribal or State conservation warden as having been taken on-reservation. All migratory birds that fall on reservation lands will not count as part of any off-reservation daily bag or possession limit.

(e) Grand Traverse Band of Ottawa and Chippewa Indians, Suttons Bay, Michigan (Tribal Members Only)

All seasons in Michigan, 1836 Treaty Zone:

Ducks

Season Dates: Open September 15, 2005, through January 15, 2006.

Daily Bag Limit: 12 ducks, which may include no more than 2 pintail, 2 canvasback, 3 black ducks, 1 hooded merganser, 3 wood ducks, 3 redheads, and 6 mallards (only 3 of which may be hens).

Canada Geese

Season Dates: Open September 1, through November 30, and open January 1, 2006, through February 8, 2006.

Daily Bag Limit: Five geese.

Other Geese (White-Fronted Geese, Snow Geese, and Brant)

Season Dates: Open September 20, through November 30, 2005.

Daily Bag Limit: Five geese.

Sora Rails, Common Snipe, and Woodcock

Season Dates: Open September 1, through November 14, 2005.

Daily Bag Limit: Ten rails, ten snipe, and five woodcock.

Mourning Doves

Season Dates: Open September 1, through November 14, 2005.

Daily Bag Limit: Ten mourning doves.

General Conditions: A valid Grand Traverse Band Tribal license is required and must be in possession before taking any wildlife. All other basic regulations contained in 50 CFR part 20 are valid. Other tribal regulations apply, and may be obtained at the tribal office in Suttons Bay, Michigan.

(f) Great Lakes Indian Fish and Wildlife Commission, Odanah, Wisconsin (Tribal Members Only)

Ducks

A. Wisconsin and Minnesota 1837 and 1842 Zones:

Season Dates: Open September 15, through December 1, 2005.

Daily Bag Limit: 20 ducks, including no more than 10 mallards (only 5 of which may be hens), 4 black ducks, 4 redheads, 4 pintails, and 2 canvasbacks.

B. Michigan 1836 and 1842 Treaty Zones:

Season Dates: Open September 15, through December 1, 2005.

Daily Bag Limit: 10 ducks, including no more than 5 mallards (only 2 of which may be hens), 2 black ducks, 2 redheads, 2 pintails, and 1 canvasback.

Mergansers: All Ceded Areas

Season Dates: Open September 15, through December 1, 2005.

Daily Bag Limit: Five mergansers.

Geese: All Ceded Areas

Season Dates: Open September 1, through December 1, 2005. In addition, any portion of the ceded territory that is open to State-licensed hunters for goose hunting after December 1 shall also be open concurrently for tribal members.

Daily Bag Limit: 10 geese in the aggregate.

Other Migratory Birds: All Ceded Areas except where noted below.

A. Coots and Common Moorhens (Common Gallinules)

Season Dates: Open September 15, through December 1, 2005.

Daily Bag Limit: 20 coots and common moorhens (common gallinules), singly or in the aggregate.

B. Sora and Virginia Rails

Season Dates: Open September 15, through December 1, 2005.

Daily Bag Limit: 25 sora and Virginia rails singly, or in the aggregate.

Possession Limit: 25.

C. Common Snipe

Season Dates: Open September 15, through December 1, 2005.

Daily Bag Limit: Eight common snipe.

D. Woodcock

Season Dates: Open September 6, through December 1, 2005.

Daily Bag Limit: Five woodcock.

E. Mourning Doves: 1837 and 1842 Ceded Territories

Season Dates: Open September 1, through October 30, 2005.

Daily Bag Limit: 15 mourning doves.

General Conditions:

A. All tribal members will be required to obtain a valid tribal waterfowl hunting permit.

B. Except as otherwise noted, tribal members will be required to comply with tribal codes that will be no less restrictive than the model ceded territory conservation codes approved by Federal courts in the *Lac Courte Oreilles* v. *State of Wisconsin (Voigt)* and *Mille Lacs Band* v. *State of Minnesota* cases. The respective Chapters 10 of these model codes regulate ceded territory migratory bird hunting. They parallel Federal requirements as to hunting methods, transportation, sale, exportation, and other conditions generally applicable to migratory bird hunting. They also automatically incorporate by reference the Federal migratory bird regulations adopted in response to this proposal.

C. Particular regulations of note include:

1. Nontoxic shot will be required for all off-reservation waterfowl hunting by tribal members.

2. Tribal members in each zone will comply with tribal regulations providing for closed and restricted waterfowl hunting areas. These regulations generally incorporate the same restrictions contained in parallel State regulations.

3. Possession limits for each species are double the daily bag limit, except on the opening day of the season, when the possession limit equals the daily bag limit, unless otherwise noted above. Possession limits are applicable only to transportation and do not include birds that are cleaned, dressed, and at a member's primary residence. For purposes of enforcing bag and possession limits, all migratory birds in the possession and custody of tribal members on ceded lands will be considered to have been taken on those lands unless tagged by a tribal or State conservation warden as taken on reservation lands. All migratory birds that fall on reservation lands will not count as part of any off-reservation daily bag or possession limit.

4. The baiting restrictions can be obtained at the Tribal office in the model ceded territory conservation codes. These codes will be amended to include language that parallels that in place for nontribal members as published by the Service in the June 3, 1999, **Federal Register** (64 FR 29804).

5. The shell limit restrictions of the model ceded territory conservation codes will be removed.

D. Michigan—Duck Blinds and Decoys.

Tribal members hunting in Michigan will comply with tribal codes that contain provisions parallel to Michigan law regarding duck blinds and decoys.

(g) Kalispel Tribe, Kalispel Reservation, Usk, Washington (Tribal Members and Nontribal Hunters)

Nontribal Hunters on Reservation

Geese

Season Dates: Open September 3, 2005, through September 18, for the early-season, and open October 1, through January 31, 2006, for the late-season. During this period, days to be hunted are specified by the Kalispel Tribe. Nontribal hunters should contact the Tribe for more detail on hunting days.

Daily Bag and Possession Limits: 5 Canada geese for the early season, and 3 light geese and 4 dark geese, for the late season. The daily bag limit is 2 brant and is in addition to dark goose limits for the late-season. The possession limit is twice the daily bag limit.

Tribal Hunters Within Kalispel Ceded Lands

Ducks

Season Dates: Open September 1, 2005, through January 31, 2006.

Daily Bag and Possession Limits: 7 ducks, including no more than 2 female mallards, 4 scaup, and 2 redheads. The seasons on canvasbacks and pintail are closed. The possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 1, 2005, through January 31, 2006.

Daily Bag Limit: 3 light geese and 4 dark geese. The daily bag limit is 2 brant and is in addition to dark goose limits.

General: Tribal members must possess a validated Migratory Bird Hunting and Conservation Stamp and a tribal ceded lands permit.

(h) Leech Lake Band of Ojibwe, Cass Lake, Minnesota (Tribal Members Only)

Ducks

Season Dates: Open September 17, through December 31, 2005.

Daily Bag Limits: 10 ducks.

Geese

Season Dates: Open September 1, through December 31, 2005.

Daily Bag Limits: 10 geese.

General: Possession limits are twice the daily bag limits. Shooting hours are one-half hour before sunrise to one-half hour after sunset. Nontoxic shot is required. Use of live decoys, bait, and commercial use of migratory birds are prohibited. Waterfowl may not be pursued or taken while using motorized craft.

(i) Little River Band of Ottawa Indians, Manistee, Michigan (Tribal Members Only)

Ducks

Season Dates: Open September 15, 2005, through January 20, 2006.

Daily Bag and Possession Limits: 12 ducks, including no more than 2 pintail, 2 canvasback, 1 hooded merganser, 3 black ducks, 3 wood ducks, 3 redheads, and 6 mallards (only 3 of which may be hens). The possession limit is twice the daily bag limit.

Canada Geese

Season Dates: Open September 1, through February 8, 2006.

Daily Bag and Possession Limits: Five Canada geese and possession limit is twice the daily bag limit.

White-Fronted Geese, Snow Geese, Ross Geese, and Brant

Season Dates: Open September 20, through November 30, 2005.

Daily Bag and Possession Limits: Five birds and the possession limit is twice the daily bag limit.

Mourning Doves, Rails, Snipe, and Woodcock

Season Dates: Open September 1, through November 14, 2005.

Daily Bag and Possession Limits: 10 doves, 10 rails, 10 snipe, and 5 woodcock. The possession limit is twice the daily bag limit.

General:

A. All tribal members are required to obtain a valid tribal resource card and 2005–06 hunting license.

B. Except as modified by the Service rules adopted in response to this proposal, these amended regulations parallel all Federal regulations contained in 50 CFR part 20.

C. Particular regulations of note include:

(1) Nontoxic shot will be required for all waterfowl hunting by tribal members.

(2) Tribal members in each zone will comply with tribal regulations providing for closed and restricted waterfowl hunting areas. These regulations generally incorporate the same restrictions contained in parallel State regulations.

(3) Possession limits for each species are double the daily bag limit, except on the opening day of the season, when the possession limit equals the daily bag limit, unless otherwise noted above.

D. Tribal members hunting in Michigan will comply with tribal codes that contain provisions parallel to Michigan law regarding duck blinds and decoys.

(j) The Little Traverse Bay Bands of Odawa Indians, Petoskey, Michigan (Tribal Members Only)

Ducks

Season Dates: Open September 15, 2005, through January 20, 2006.

Daily Bag Limits: 12 ducks, including no more than 6 mallards (only 3 of which may be hens), 3 black ducks, 3 redheads, 3 wood ducks, 2 pintail, 1 hooded merganser, and 2 canvasback.

Canada Geese

Season Dates: Open September 1, 2005, through February 8, 2006.

Daily Bag Limit: Five geese.

White-Fronted Geese, Snow Geese, and Brant

Season Dates: Open September 1, through November 30, 2005.

Daily Bag Limit: 10 of each species.

Sora Rails, Snipe, and Mourning Doves

Season Dates: Open September 1, through November 14, 2005.

Daily Bag Limit: 10 of each species.

Woodcock

Season Dates: Open September 1, through November 14, 2005.

Daily Bag Limit: Five woodcock.

General: Possession limits are twice the daily bag limits.

(k) Lower Elwha Klallam Tribe, Port Angeles, Washington (Tribal Members Only)

Ducks and Mergansers

Season Dates: Open September 15, through December 30, 2005.

Daily Bag and Possession Limits: Seven ducks, including no more than two hen mallards, one pintail, one canvasback, and two redheads. Bag and possession limits on harlequin duck are one per season. Possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 15, through December 30, 2005.

Daily Bag and Possession Limits: Four geese, and may include no more than three light geese. The season on Aleutian Canada geese is closed. The possession limit is twice the daily bag limit.

Brant

Season Dates: Open November 1, 2005, through February 15, 2006.

Daily Bag and Possession Limits: Two brant. The possession limit is twice the daily bag limit.

Coots

Season Dates: Open September 15, through December 30, 2005.

Daily Bag Limits: 25 coots.

Mourning Doves

Season Dates: Open September 15, through December 30, 2005.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

Snipe

Season Dates: Open September 15, through December 30, 2005.

Daily Bag and Possession Limits: 10 and 20 snipe, respectively.

Band-Tailed Pigeon

Season Dates: Open September 15, through December 30, 2005.

Daily Bag and Possession Limits: 2 and 4 pigeons, respectively.

General Conditions: All hunters authorized to hunt migratory birds on the reservation must obtain a tribal hunting permit from the Tribe. Hunters are also required to adhere to a number of special regulations available at the tribal office.

(l) Makah Indian Tribe, Neah Bay, Washington (Tribal Members)

Band-Tailed Pigeons

Season Dates: Open September 1, through October 31, 2005.

Daily Bag Limit: Two band-tailed pigeons.

Ducks and Coots

Season Dates: Open September 25, 2005, through January 19, 2006.

Daily Bag Limit: Seven ducks including no more than one redhead, one pintail, and one canvasback. The seasons on wood duck and harlequin are closed.

Geese

Season Dates: Open September 25, 2005, through January 19, 2006.

Daily Bag Limit: Four. The seasons on Aleutian and dusky Canada geese are closed.

General: All other Federal regulations contained in 50 CFR part 20 would apply. The following restrictions are also proposed by the Tribe:

(1) As per Makah Ordinance 44, only shotguns may be used to hunt any species of waterfowl. Additionally, shotguns must not be discharged within 0.25 miles of an occupied area;

(2) Hunters must be eligible, enrolled Makah tribal members and must carry their Indian Treaty Fishing and Hunting Identification Card while hunting. No tags or permits are required to hunt waterfowl;

(3) The Cape Flattery area is open to waterfowl hunting, except in designated wilderness areas, or within 1 mile of Cape Flattery Trail, or in any area that is closed to hunting by another ordinance or regulation;

(4) The use of live decoys and/or baiting to pursue any species of waterfowl is prohibited;

(5) Steel or bismuth shot only for waterfowl is allowed; the use of lead shot is prohibited;

(6) The use of dogs is permitted to hunt waterfowl.

(m) Navajo Indian Reservation, Window Rock, Arizona (Tribal Members and Nonmembers)

Band-Tailed Pigeons

Season Dates: Open September 1, through September 30, 2005.

Daily Bag and Possession Limits: 5 and 10 pigeons, respectively.

Mourning Doves

Season Dates: Open September 1, through September 30, 2005.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

General Conditions: Tribal and nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20, regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck

Stamp) signed in ink across the face. Special regulations established by the Navajo Nation also apply on the reservation.

(n) Oneida Tribe of Indians of Wisconsin, Oneida, Wisconsin (Tribal Members Only)

Geese

Season Dates: Open September 1, through November 18, and open November 28, through December 31, 2005.

Daily Bag and Possession Limits: Three and six Canada geese, respectively. Hunters will be issued three tribal tags for geese in order to monitor goose harvest. An additional three tags will be issued each time birds are registered. A seasonal quota of 150 birds is adopted. If the quota is reached before the season concludes, the season will be closed at that time.

Woodcock

Season Dates: Open September 10, through November 13, 2005.

Daily Bag and Possession Limits: 5 and 10 woodcock, respectively.

Dove

Season Dates: Open September 1, through November 13, 2005.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

General Conditions: Tribal member shooting hours are one-half hour before sunrise to one-half hour after sunset. Nontribal members hunting on the Reservation or on lands under the jurisdiction of the Tribe must comply with all State of Wisconsin regulations, including season dates, shooting hours, and bag limits, that differ from tribal member seasons. Tribal members and nontribal members hunting on the Reservation or on lands under the jurisdiction of the Tribe will observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20, with the following exceptions: tribal members are exempt from the purchase of the Migratory Waterfowl Hunting and Conservation Stamp (Duck Stamp); and shotgun capacity is not limited to three shells.

(o) Skokomish Tribe, Shelton, Washington (Tribal Members Only)

Ducks and Mergansers

Season Dates: Open September 16, through December 31, 2005.

Daily Bag and Possession Limits: Seven ducks, including no more than two hen mallards, one pintail, one canvasback, one harlequin, and two redheads. Possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 16, through December 31, 2005.

Daily Bag and Possession Limits: Four geese, and may include no more than three light geese. The season on Aleutian Canada geese is closed. The possession limit is twice the daily bag limit.

Coots

Season Dates: Open September 16, through December 31, 2005.

Daily Bag Limits: 25 coots.

Mourning Doves

Season Dates: Open September 16, through December 31, 2005.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

Snipe

Season Dates: Open September 16, through December 31, 2005.

Daily Bag and Possession Limits: 8 and 16 snipe, respectively.

Band-Tailed Pigeon

Season Dates: Open September 16, through December 31, 2005.

Daily Bag and Possession Limits: 2 and 4 pigeons, respectively.

General Conditions: All hunters authorized to hunt migratory birds on the reservation must obtain a tribal hunting permit from the respective Tribe. Hunters are also required to adhere to a number of special regulations available at the tribal office.

(p) Squaxin Island Tribe, Squaxin Island Reservation, Shelton, Washington (Tribal Members Only)

Ducks

Season Dates: Open September 1, 2005, through January 15, 2006.

Daily Bag and Possession Limits: Five ducks, which may include only one canvasback. The season on harlequin ducks is closed. Possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 15, 2005, through January 15, 2006.

Daily Bag and Possession Limits: Four geese, and may include no more than two snow geese. The season on Aleutian and cackling Canada geese is closed. Possession limit is twice the daily bag limit.

Brant

Season Dates: Open September 1, through December 31, 2005.

Daily Bag and Possession Limits: Two and four brant, respectively.

Coots

Season Dates: Open September 1, 2005, through January 15, 2006.

Daily Bag Limits: 25 coots.

Snipe

Season Dates: Open September 15, 2005, and through January 15, 2006.

Daily Bag and Possession Limits: 8 and 16 snipe, respectively.

Band-Tailed Pigeons

Season Dates: Open September 1, through December 31, 2005.

Daily Bag and Possession Limits: 5 and 10 pigeons, respectively.

General Conditions: All tribal hunters must obtain a Tribal Hunting Tag and Permit from the Tribe's Natural Resources Department and must have the permit, along with the member's treaty enrollment card, on his or her person while hunting. Shooting hours are one-half hour before sunrise to one-half hour after sunset, and steel shot is required for all migratory bird hunting. Other special regulations are available at the tribal office in Shelton, Washington.

(q) Tulalip Tribes of Washington, Tulalip Indian Reservation, Marysville, Washington (Tribal Members and Nontribal Hunters)

Tribal Members

Ducks (Including Coots and Mergansers)

Season Dates: Open September 15, 2005, and through February 28, 2006.

Daily Bag and Possession Limits: 8 and 16 ducks, respectively, except that bag and possession limits may include no more than 2 female mallards, 1 pintail, 4 scaup, and 2 redheads.

Geese

Season Dates: Open September 15, 2005, and through February 28, 2006.

Daily Bag and Possession Limits: 7 and 14 geese, respectively; except that the bag limits may not include more than 2 brant and 1 cackling Canada goose. For those tribal members who engage in subsistence hunting, the Tribes set a maximum annual bag limit of 365 ducks and 365 geese.

Snipe

Season Dates: Open September 15, 2005, through February 28, 2006.

Daily Bag and Possession Limits: 8 and 16, respectively.

General Conditions: All hunters on Tulalip Tribal lands are required to adhere to shooting hour regulations set at one-half hour before sunrise to sunset, special tribal permit requirements, and a number of other tribal regulations enforced by the Tribe. Nontribal hunters 16 years of age and

older, hunting pursuant to Tulalip Tribes' Ordinance No. 67, must possess a valid Federal Migratory Bird Hunting and Conservation Stamp (Duck Stamp) and a valid State of Washington Migratory Waterfowl Stamp. Both stamps must be validated by signing across the face of the stamp. Other tribal regulations apply, and may be obtained at the tribal office in Marysville, Washington.

(r) Upper Skagit Indian Tribe, Sedro Woolley, Washington (Tribal Members Only)

Mourning Dove

Season Dates: Open September 1, through December 31, 2005.

Daily Bag and Possession Limits: 12 and 15 mourning doves, respectively.

Tribal members must have the tribal identification and harvest report card on their person to hunt. Tribal members hunting on the Reservation will observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20, except shooting hours would be one-half hour before official sunrise to one-half hour after official sunset.

(s) Wampanoag Tribe of Gay Head, Aquinnah, Massachusetts (Tribal Members Only)

Canada Geese

Season Dates: Open September 11, and through September 25, and open November 1, through February 28, 2006.

Daily Bag Limits: 5 Canada geese during the first period, 3 during the second.

Snow Geese

Season Dates: Open September 11, 2005, and through September 25, 2005.

Daily Bag Limits: 15 snow geese.

General Conditions: Shooting hours are one-half hour before sunrise to sunset. Nontoxic shot is required. All basic Federal migratory bird hunting regulations contained in 50 CFR part 20 will be observed.

(t) White Earth Band of Ojibwe, White Earth, Minnesota (Tribal Members Only)

Ducks and Mergansers

Season Dates: Open September 17, through December 18, 2005.

Daily Bag Limit for Ducks: 10 ducks, including no more than 2 mallards and 1 canvasback.

Daily Bag Limit for Mergansers: Five mergansers, including no more than two hooded mergansers.

Geese

Season Dates: Open September 1, through September 30, 2005, and open October 1, through December 18, 2005.

Daily Bag Limit: Eight geese through September 30 and five thereafter.

Coots

Season Dates: Open September 3, through November 30, 2005.

Daily Bag Limit: 20 coots.

Sora and Virginia Rails

Season Dates: Open September 3, through November 30, 2005.

Daily Bag Limit: 25 sora and Virginia rails, singly or in the aggregate.

Common Snipe and Woodcock

Season Dates: Open September 3, through November 30, 2005.

Daily Bag Limit: 10 snipe and 10 woodcock.

Mourning Dove

Season Dates: Open September 3, through November 30, 2005.

Daily Bag Limit: 25 doves.

General Conditions: Shooting hours are one-half hour before sunrise to one-half hour after sunset. Nontoxic shot is required.

(u) White Mountain Apache Tribe, Fort Apache Indian Reservation, Whiteriver, Arizona (Tribal Members and Nontribal Hunters)

Band-Tailed Pigeons (Wildlife Management Unit 10 and Areas South of Y–70 in Wildlife Management Unit 7, Only)

Season Dates: Open September 1, through September 15, 2005.

Daily Bag and Possession Limits: Three and six pigeons, respectively.

Mourning Doves (Wildlife Management Unit 10 and Areas South of Y–70 in Wildlife Management Unit 7, Only)

Season Dates: Open September 1, through September 15, 2005.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

General Conditions: All nontribal hunters hunting band-tailed pigeons and mourning doves on Reservation lands shall have in their possession a valid White Mountain Apache Daily or Yearly Small Game Permit. In addition to a small game permit, all nontribal hunters hunting band-tailed pigeons must have in their possession a White Mountain Special Band-tailed Pigeon Permit. Other special regulations established by the White Mountain Apache Tribe apply on the reservation. Tribal and nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR Part 20 regarding shooting hours and manner of taking.

Dated: August 25, 2005.

Paul Hoffman,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 05–17332 Filed 8–30–05; 8:45 am]

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Federal Register

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Part V

The President

Federal Register
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Presidential Documents

Title 3—

The President

Proclamation 7919 of August 29, 2005

National Ovarian Cancer Awareness Month, 2005

By the President of the United States of America

A Proclamation

Ovarian cancer is one of the leading causes of cancer deaths among women in the United States. Each year, thousands of women are diagnosed with ovarian cancer, and thousands die from the disease. During National Ovarian Cancer Awareness Month, we strive to raise awareness of ovarian cancer and promote early detection and treatment of this disease.

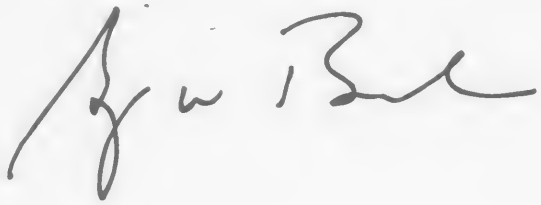
Early detection is essential to the successful treatment of ovarian cancer. The 5-year survival rate is higher than 90 percent for ovarian cancer patients whose disease is caught during the first stage of development. Most ovarian cancer cases are diagnosed at an advanced stage, however, because no reliable screening test exists for the disease. Because the early signs of ovarian cancer are easy to miss and often resemble the signs of other conditions, it is important for women to talk with their doctors about detection and be aware of the risk factors and symptoms of this cancer.

There is more we need to learn about how best to prevent, detect, and treat ovarian cancer. The National Cancer Institute (NCI) is currently sponsoring a study on genetic and environmental factors that may increase the risk of ovarian cancer. In addition, the NCI is sponsoring clinical trials to explore new ways to screen for and detect ovarian cancer. Researchers are studying new treatment options, including biological therapies, anticancer drugs, vaccines, and other therapies to treat resistant forms of ovarian cancer. The Centers for Disease Control and Prevention will spend almost $4.6 million, and the Department of Defense's Ovarian Cancer Research Program will invest an estimated $10 million.

As we observe National Ovarian Cancer Awareness Month, we recognize the courage and strength of women battling ovarian cancer, and of their families and friends who love and support them. Our Nation is grateful for the hard work and commitment of our dedicated researchers and medical professionals. With continued effort, we can raise awareness of ovarian cancer and find new ways to prevent and treat this deadly disease.

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 September 2005 as National Ovarian Cancer Awareness Month. I call upon government officials, businesses, communities, health care professionals, educators, volunteers, and all people of the United States to continue our Nation's strong commitment to preventing and treating ovarian cancer.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of August, in the year of our Lord two thousand five, and of the Independence of the United States of America the two hundred and thirtieth.



[FR Doc. 05–17497
Filed 8–30–05; 10:36 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7920 of August 29, 2005

National Prostate Cancer Awareness Month, 2005

By the President of the United States of America

A Proclamation

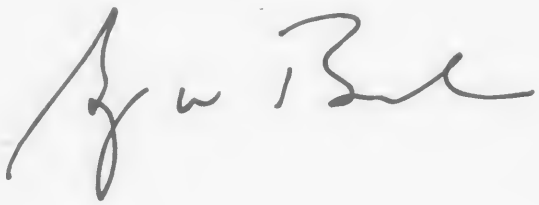
Prostate cancer is the second leading cause of cancer-related deaths among American men. This year, thousands of men will be diagnosed with prostate cancer, and thousands will die from the disease. While great strides have been made in the battle against prostate cancer, we have more work to do. During National Prostate Cancer Awareness Month, we renew our commitment to fight prostate cancer by finding better ways to prevent, detect, and treat this deadly disease.

My Administration is committed to funding research for prevention and better treatments for prostate cancer. This year, the National Institutes of Health will invest an estimated $381 million in prostate cancer research, including $310 million at the National Cancer Institute. The Department of Defense's Prostate Cancer Research Program will spend an estimated $85 million, and the Centers for Disease Control and Prevention will devote an estimated $14 million toward prostate cancer research. Scientists are examining risk factors to identify ways to prevent prostate cancer, and they are finding ways to detect this disease earlier, when it is easier to treat. In addition, newer treatments are helping to slow or stop the spread of prostate cancer in men with advanced stages of the disease. This progress offers hope to men who are living with prostate cancer and those who are at risk.

As we observe National Prostate Cancer Awareness Month, I encourage all men, especially those over the age of 50, to talk with their doctors about the risk of prostate cancer and the appropriate screenings. I commend those who fight this disease, and I applaud the dedication of researchers, health care providers, and all who are working to increase our knowledge of prostate cancer. By raising awareness and supporting research, we can save lives.

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 September 2005 as National Prostate Cancer Awareness Month. I call upon government officials, businesses, communities, health care professionals, educators, volunteers, and all people of the United States to reaffirm our Nation's strong and continuing commitment to treat and prevent prostate cancer.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of August, in the year of our Lord two thousand five, and of the Independence of the United States of America the two hundred and thirtieth.



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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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Normal business practices; natural or man-made disruption; date of receipt definition; exception; published 8-31-05

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "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.*

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H.R. 3423/P.L. 109–43
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H.R. 481/P.L. 109–45
Sand Creek Massacre National Historic Site Trust Act of 2005 (Aug. 2, 2005; 119 Stat. 445)

H.R. 541/P.L. 109–46
To direct the Secretary of Agriculture to convey certain land to Lander County, Nevada, and the Secretary of the Interior to convey certain land to Eureka County, Nevada, for continued use as cemeteries. (Aug. 2, 2005; 119 Stat. 448)

H.R. 794/P.L. 109–47
Colorado River Indian Reservation Boundary Correction Act (Aug. 2, 2005; 119 Stat. 451)

H.R. 1046/P.L. 109–48
To authorize the Secretary of the Interior to contract with the city of Cheyenne, Wyoming, for the storage of the city's water in the Kendrick Project, Wyoming. (Aug. 2, 2005; 119 Stat. 455)

H.J. Res. 59/P.L. 109–49
Expressing the sense of Congress with respect to the women suffragists who fought for and won the right of women to vote in the United States. (Aug. 2, 2005; 119 Stat. 457)

S. 571/P.L. 109–50
To designate the facility of the United States Postal Service located at 1915 Fulton Street in Brooklyn, New York, as the "Congresswoman Shirley A. Chisholm Post Office Building". (Aug. 2, 2005; 119 Stat. 459)

S. 775/P.L. 109–51
To designate the facility of the United States Postal Service located at 123 W. 7th Street in Holdenville, Oklahoma, as the "Boone Pickens Post Office". (Aug. 2, 2005; 119 Stat. 460)

S. 904/P.L. 109–52
To designate the facility of the United States Postal Service located at 1560 Union Valley Road in West Milford, New Jersey, as the "Brian P. Parrello Post Office Building". (Aug. 2, 2005; 119 Stat. 461)

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Department of the Interior, Environment, and Related Agencies Appropriations Act, 2006 (Aug. 2, 2005; 119 Stat. 499)

H.R. 2985/P.L. 109–55
Legislative Branch Appropriations Act, 2006 (Aug. 2, 2005; 119 Stat. 565)

S. 45/P.L. 109–56
To amend the Controlled Substances Act to lift the patient limitation on prescribing drug addiction treatments by medical practitioners in group practices, and for other purposes. (Aug. 2, 2005; 119 Stat. 591)

S. 1395/P.L. 109–57
Controlled Substances Export Reform Act of 2005 (Aug. 2, 2005; 119 Stat. 592)

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109th Congress

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