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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 04–103–2]

Brucellosis in Swine; Add Arkansas, Louisiana, and Michigan to List of Validated Brucellosis Free States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the brucellosis regulations concerning the interstate movement of swine by adding Arkansas, Louisiana, and Michigan to the list of validated brucellosis-free States. That action was necessary to relieve certain restrictions on the interstate movement of breeding swine from Arkansas and Louisiana and to confirm Michigan's status as a validated brucellosis-free State.

EFFECTIVE DATE: The interim rule became effective on November 18, 2004.

FOR FURTHER INFORMATION CONTACT: Dr. John Korslund, Staff Veterinarian (Swine Health), Eradication and Surveillance Team, National Center for Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231; (301) 734–5914.

SUPPLEMENTARY INFORMATION:

Background

Brucellosis is a contagious disease caused by bacteria of the genus *Brucella*. The disease mainly affects cattle, bison, and swine, but goats, sheep, horses, and even humans are susceptible. In its principal animal hosts, it causes loss of young through spontaneous abortion or birth of weak offspring, reduced milk production, and infertility. There is no economically feasible treatment for brucellosis in livestock. In humans, brucellosis initially causes flu-like symptoms, but the disease may develop into a variety of chronic conditions, including arthritis. Humans can be treated for brucellosis with antibiotics.

The brucellosis regulations in 9 CFR part 78 (referred to below as the regulations) contain specific provisions for cattle, bison, and swine. Under the regulations, States, herds, and individual animals are classified according to their brucellosis status. Interstate movement requirements for animals are based upon the disease status of the individual animals or the herd or State from which the animal originates.

In an interim rule effective and published in the **Federal Register** on November 18, 2004 (69 FR 67501–67503, Docket No. 04–103–1), we amended § 78.43 of the regulations by adding Arkansas, Louisiana, and Michigan to the list of validated brucellosis-free States.

Comments on the interim rule were required to be received on or before January 18, 2005. We received one comment by that date, from a private citizen. The commenter stated that all interstate movement of swine should be banned and that if living conditions for swine were raised, swine would be more resistant to diseases such as brucellosis. The commenter further objected to the use of taxpayer funds for the brucellosis program and to the use of the term "depopulated." As this comment has no bearing on the action taken in the interim rule (*i.e.*, the addition of Arkansas, Louisiana, and Michigan to the list of validated swine brucellosis-free States), no changes to the interim rule are indicated.

Therefore, for the reasons given in the interim rule and in this document, we are adopting the interim rule as a final rule without change.

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

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

List of Subjects in 9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 78—BRUCELLOSIS

■ Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR part 78 and that was published at 69 FR 67501–67503 on November 18, 2004.

Done in Washington, DC, this 10th day of February 2005.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 05–2967 Filed 2–15–05; 8:45 am]

BILLING CODE 3410–34–P

FEDERAL RESERVE SYSTEM

Federal Open Market Committee

12 CFR Parts 271, 272, 281

[Rules Regarding Availability of Information; Rules of Procedure; Statements of Policy; Docket No. R–1222]

Amendment to Rules Regarding Availability of Information; Rules of Procedure; Statements of Policy

AGENCY: Federal Open Market Committee.

ACTION: Final rule.

SUMMARY: The Federal Open Market Committee (the "Committee") has made a variety of technical and minor changes to its Rules Regarding Availability of Information, Rules of Procedure, and Statements of Policy. The amendments are designed to conform the rules and statements to the Committee's existing practices, facilitate the ability of Committee members to participate in a meeting in unusual circumstances, and remove obsolete provisions. The amendments also make the rules gender-neutral and authorize the Secretary of the Committee (with the concurrence of the Committee's General Counsel) to make technical changes to the Committee's rules, regulations, and other actions in the future.

DATES: The amendments are effective February 16, 2005.

FOR FURTHER INFORMATION CONTACT: Kieran J. Fallon, Assistant General Counsel (202–452–5270), April C. Snyder, Attorney (202–452–3099), Legal Division; Board of Governors of the

Federal Reserve System; or Deborah J. Danker, Deputy Secretary (202–452–3253), Federal Open Market Committee, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Users of Telecommunication Device for Deaf (TTD) *only*, call (202) 263–4869.

SUPPLEMENTARY INFORMATION:

A. Amendments to Rules of Procedure and Rules Regarding Availability of Information

The Committee has amended section 272.3(a) of its Rules of Procedure to allow members that cannot be present at a meeting in person to participate in the meeting by electronic means, such as by videoconference arrangements, as well as by telephone conference arrangements. The amendment should facilitate the ability of the Committee to act if unusual circumstances, such as a national emergency, prevent the Committee or any of its members from assembling in Washington, DC.

The Committee also has amended sections 272.3(d) and (e) of its Rules of Procedure to reflect the fact that (i) currently only a single Manager is selected to operate the System Open Market Account for the Committee; and (ii) under the Committee's new expedited procedure for the release of Committee minutes, the minutes of a Committee meeting typically will be approved prior to (rather than at) the Committee's next regularly scheduled meeting. In addition, the Committee has updated the references to its internet Web site and to the Federal Reserve Bulletin (which is now published on a quarterly basis) in its Rules Regarding Availability of Information.

Finally, the Committee has modified sections 272.3(b) and 272.4(c) of its Rules of Procedure and sections 271.8(a) and (b) of its Rules Regarding Availability of Information to make the rules gender-neutral. In addition, the Committee has authorized the Secretary of the Committee (with the concurrence of the Committee's General Counsel) to make other technical, non-substantive changes (such as correcting spelling errors or deleting obsolete provisions) to the Committee's rules, regulations and other actions in the future. This delegated authority, which is identical to the authority that the Secretary of the Board has to make technical changes to the Board's rules (12 CFR 265.5(a)(4)), is codified in a new section 272.4(d) of the Rules of Procedure.

B. Deletion of Outdated Statement of Policy

In 1947, the Committee directed the Federal Reserve Banks to terminate, effective July 10, 1947, the policy of purchasing all Treasury bills offered to them at a fixed rate of 3/8 percent per annum and to terminate the repurchase option privilege on Treasury bills. This statement, which currently is codified at 12 CFR 281.1, is no longer relevant to the Committee's policies or operations and has been deleted.

The amendments to the Committee's Rules of Procedure and Statements of Policy relate solely to the Committee's internal procedure and practices or constitute general statements of policy. Accordingly, the public notice, public comment and delayed effective date provisions of the Administrative Procedure Act do not apply to these amendments.[1] Because the amendments to the Rules Regarding Availability of Information are technical in nature, the Committee has determined that good cause exists for making these amendments effective immediately, and that public notice and comment on these amendments are impracticable, unnecessary or contrary to the public interest.[2]

List of Subjects

12 CFR Part 271

Freedom of information.

12 CFR Part 272

Administrative practice and procedure, Organization and functions (Government agencies).

12 CFR Part 281

Government securities, Sunshine Act.

Authority and Issuance

■ For the reasons set out in the preamble, the Federal Open Market Committee amends 12 CFR parts 271, 272, and 281 as follows:

PART 271—RULES REGARDING AVAILABILITY OF INFORMATION

■ 1. The authority citation for part 271 continues to read as follows:

Authority: 5 U.S.C. 552; 12 U.S.C. 263.

■ 2. The first sentence of § 271.3(c) is revised to read as follows:

§ 271.3 Published information.

* * * * *

(c) *Other published information.* From time to time, other information relating to open market operations of the Federal Reserve Banks is published in the *Federal Reserve Bulletin*, in the Board's annual report to Congress, and in announcements and statements released to the press. * * *

* * * * *

[1] *See* 5 U.S.C. 553(b) and (d).

[2] *See* 5 U.S.C. 553(b)(3)(B).

■ 3. Section 271.4(c) is revised to read as follows:

§ 271.4 Records available for public inspection and copying.

* * * * *

(c) *Electronic records.* Information available under this section that was created on or after November 1, 1996, shall also be available on the Board's Web site, found at *http://www.federalreserve.gov.*

* * * * *

■ 4. In § 271.8, paragraph (a) and the first sentence of paragraph (b) are revised to read as follows:

§ 271.8 Subpoenas.

(a) *Advice by person served.* If any person, whether or not an officer or employee of the Committee, of the Board of Governors of the Federal Reserve System, or of a Federal Reserve Bank, has information of the Committee that may not be disclosed by reason of § 271.7 and in connection therewith is served with a subpoena, order, or other process requiring the person's personal attendance as a witness or the production of documents or information upon any proceeding, the person should promptly inform the Secretary of the Committee of such service and of all relevant facts, including the documents and information requested and any facts that may be of assistance in determining whether such documents or information should be made available; and the person should take action at the appropriate time to inform the court or tribunal that issued the process, and the attorney for the party at whose instance the process was issued, if known, of the substance of this part.

(b) *Appearance by person served.* Except as disclosure of the relevant information is authorized pursuant to this part, any person who has information of the Committee and is required to respond to a subpoena or other legal process shall attend at the time and place therein mentioned and decline to disclose such information or give any testimony with respect thereto, basing such refusal upon this part.

* * *

PART 272—FEDERAL OPEN MARKET COMMITTEE—RULES OF PROCEDURE

■ 1. The authority citation for part 272 continues to read as follows:

Authority: 5 U.S.C. 552.

■ 2. In § 272.3, the last sentence of paragraph (a), paragraph (b), paragraph (d), and the last sentence of paragraph (e) are revised to read as follows:

§ 272.3 Meetings.

(a) *Place and frequency.* * * * If, in the judgment of the Chairman, circumstances require that a meeting be called at such short notice that one or more members cannot be present in person, such members may participate in the meeting by telephone conference arrangements or by electronic means.

(b) *Alternates.* Whenever any member of the Committee representing Federal Reserve banks shall find that the member will be unable to attend a meeting of the Committee, the member shall promptly notify the member's alternate and the Secretary of the Committee in writing, by telephone, or electronic means, and upon receipt of such notice such alternate shall advise the Secretary whether the alternate will attend such meeting.

* * * * *

(d) *Attendance at meetings.* Attendance at Committee meetings is restricted to members and alternate members of the Committee, the Presidents of Federal Reserve Banks who are not at the time members or alternates, staff officers of the Committee, the Manager, and such other advisers as the Committee may invite from time to time.

(e) *Meeting agendas.* * * * In general, the agendas include reports by the Manager on open market operations since the previous meeting, and ratification by the Committee of such operations; reports by Economists on, and Committee discussion of, the economic and financial situation and outlook; Committee discussion of monetary policy and action with respect thereto; and such other matters as may be considered necessary.

■ 3. In § 272.4, the second sentence of paragraph (c) is revised, paragraph (d) is redesignated as paragraph (e), and a new paragraph (d) is added. The revision and addition read as follows:

§ 272.4 Committee actions.

* * * * *

(c) *Delegations of authority.* * * * Such delegations of authority may be made to the Chairman; to a subcommittee consisting of the Chairman and the Vice Chairman of the Committee and the Vice Chairman of the Board (or in the absence of the Chairman or of the Vice Chairman of the Board the members of the Board designated by the Chairman as alternates, and in the absence of the Vice Chairman of the Committee the alternate for the Vice Chairman); or to any other member or members of the Committee. * * *

(d) *Technical changes to Committee rules.* The Secretary of the Committee (or the acting secretary) is authorized to make technical corrections, such as spelling, grammar, construction, and organization (including removal of obsolete provisions and references), to the Committee's rules, regulations, and orders and other records of Committee action but only with the concurrence of the Committee's General Counsel.

* * * * *

PART 281—STATEMENTS OF POLICY

■ 1. The authority citation for part 281 is revised to read as follows:

Authority: 12 U.S.C. 263; 5 U.S.C. 552.

■ 2. Section 281.1 (Purchase of Treasury bills) is removed and § 281.2 (Policy regarding the Government in the Sunshine Act) is redesignated as § 281.1.

By order of the Federal Open Market Committee, February 8, 2005.

Vincent R. Reinhart,

Secretary, Federal Open Market Committee.

[FR Doc. 05–2775 Filed 2–15–05; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–18759; Directorate Identifier 2003–NM–280–AD; Amendment 39–13973; AD 2005–04–01]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 707–100, –100B, –300, –300B (Including –320B Variant), –300C, and –E3A (Military) Series Airplanes; Model 720 and 720B Series Airplanes; Model 737–100, –200, –200C, –300, –400, and –500 Series Airplanes; and Model 747 Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Boeing transport category airplanes. This AD requires repetitive tests of the overwing fuel fill ports for certain wing tanks; an electrical bonding resistance test between the bulkhead fittings of the engine fuel feed tube and the front spar inside the fuel tank of the wings; other specified actions; and applicable corrective actions if necessary. This AD is prompted by our determination that this AD is necessary to reduce the potential for ignition sources inside fuel tanks. We are issuing this AD to prevent arcing or sparking at the interface between the bulkhead fittings of the engine fuel feed tube and the front spar inside the fuel tank of the wings and between the overwing fuel fill ports and the airplane structure during a lightning strike. Such arcing or sparking could provide a possible ignition source for the fuel vapor inside the fuel tank and cause consequent fuel tank explosions.

DATES: This AD becomes effective March 23, 2005.

The incorporation by reference of certain publications listed in the AD is approved by the Director of the Federal Register as of March 23, 2005.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. You can examine this information at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Docket: The AD docket contains the proposed AD, comments, and any final disposition. You can examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (Telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Washington, DC. This docket number is FAA–2004–18759; the directorate identifier for this docket is 2003–NM–280–AD.

FOR FURTHER INFORMATION CONTACT:

Technical information: Sulmo Mariano, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6501; fax (425) 917–6590.

Plain language information: Marcia Walters, *marcia.walters@faa.gov.*

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with an AD for certain Boeing Model 707–100, –100B, –300, –300B (including –320B variant), –300C, and –E3A (military) series airplanes; Model 720 and 720B series airplanes; Model 737–100, –200, –200C, –300, –400, and –500 series airplanes; and Model 747 airplanes. That action, published in the **Federal Register** on August 4, 2004 (69 FR 47031), proposed to require

repetitive tests of the overwing fuel fill ports for certain wing tanks; an electrical bonding resistance test between the bulkhead fittings of the engine fuel feed tube and the front spar inside the fuel tank of the wings; other specified actions; and applicable corrective actions if necessary.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments that have been submitted on the proposed AD.

Support for Proposed AD

Several commenters support the intent of the proposed AD.

Request To Remove Certain Airplane Models

One commenter has no objection to doing the one-time electrical bonding resistance test in paragraph (h) of the proposed AD within the proposed 5-year compliance time. However, the commenter believes there is little or no data to substantiate that the identified unsafe condition exists on Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, other than similar design. The commenter states that the notice of proposed rulemaking (NPRM) is driven by testing done in accordance with SFAR 88 requirements, and according to the NPRM, one Model 747 series airplane was used for the basis of the NPRM. In addition, the commenter states that there is no data to validate testing requirements, since no root-cause has been differentiated between installation problems during manufacture, bonding breakdown, or in-service degradation.

From this comment, we infer that the commenter is requesting that Model 737–100, –200, –200C, –300, –400, and –500 series airplanes be removed from the applicability of this AD. We do not agree. The commenter is correct that a lightning test on a 747 wing fuel tank penetration showed a higher than expected electrical current in the fuel feed tubes inside the fuel tank, and that no tests were conducted on a 737 wing fuel tank penetration. However, the design of the wing fuel tank is identical to that of some Model 707 series airplanes and all Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. Therefore, all these airplanes are subject to the identified unsafe condition. We do not find it necessary to change the final rule in this regard.

Requests To Extend Compliance Time

Several commenters request that the proposed AD be revised to extend the 5-year compliance time specified in paragraph (h) of the proposed AD. One commenter suggests extending the compliance time to 8 years. Three commenters suggest extending the compliance time to 6 years. One commenter notes that there have not been any reported cases of arcing occurring at the interface between the bulkhead fittings of the engine fuel feed tube and the front spar inside the fuel tank of the wings and between the overwing fuel fill ports and the airplane structure on any of the affected fleet. The same commenter also notes that some of the fleets have been in service over 30 years. Given those facts, that commenter believes an equivalent level of safety can be maintained over the 6-year compliance time. The commenters contend that extending the compliance time will allow affected operators to do the required test during a regularly scheduled maintenance interval while adoption of the proposed compliance time of within 5 years would require operators to schedule special times to do the test, at additional expense.

We do not agree with the request to extend the compliance time specified in paragraph (h) of the final rule. The commenters provide no technical justification for revising the compliance time. The manufacturer has done a risk assessment analysis related to lightning strikes on the Model 707, 737, and 747 fleets and determined that an acceptable level of safety would be provided by a compliance time of five years for accomplishing the actions in the service bulletins (specified as the appropriate source of service information for the final rule). We agree with the manufacturer's assessment. We have determined that the initial compliance time of within five years after the effective date of the AD, as specified in paragraph (h) of the final rule, is appropriate. We do not find it necessary to change the final rule in this regard. However, if anyone wishes to provide technical justification, they may request an approval of an alternative method of compliance (AMOC) from us, in accordance with paragraph (k) of the final rule.

Requests To Allow Operator Equivalent Procedures for Draining and Access to the Fuel Tanks

Two commenters request that operator equivalent procedures (OEP) be allowed for draining and gaining access to the fuel tanks. One commenter states that it has established procedures for draining and accessing the fuel tank in accordance with 29 Code of Federal Regulations (CFR) part 1910.146, "Permit Required Confined Space Entry," and has maintained personnel proficiency by using these procedures.

We agree that OEPs may be allowed for draining and gaining access to the fuel tanks provided those procedures are FAA-accepted procedures. The use of OEPs for draining and gaining access to the fuel tank does not directly affect the means of correcting the unsafe condition. The use of OEPs may also reduce the costs of implementing the AD. Therefore, we have added a new paragraph (j) to the final rule stating: "Operators may use their own FAA-accepted equivalent procedures for draining the fuel tanks and gaining access to the fuel tanks." We also revised paragraphs (h) and (i) of the final rule by adding "except as provided by paragraph (j) of this AD" and we revised the paragraph numbering following paragraph (j) of the final rule.

Request To Remove Identification of Rear Spar With Service Bulletin Number

One commenter requests to remove the requirement to identify the forward surface of the front spar with the service bulletin number or equivalent as specified in Figures 1 and 2, step 18, of Boeing Alert Service Bulletin 737–28A1174 (cited as an appropriate source of service information in the NPRM). The commenter believes there is no real benefit to this action and that it creates additional exterior markings that must be maintained. The commenter contends that tracking accomplishment of the service bulletin via aircraft records should be sufficient.

We agree with the request to remove the requirement to identify the front spar with the service bulletin number or equivalent. We have determined that it is not necessary to identify the front spar in order to show compliance with this AD, because operators are required to record compliance with ADs in their airplane records. Therefore, we have added a new paragraph (k) in the final rule to explain this difference from the service bulletin.

Requests To Allow Equivalent Consumable Parts

Two commenters request to revise the proposed AD to allow operators to use equivalent consumable parts instead of the parts specified in Boeing Alert Service Bulletin 737–28A1174. The commenters believe that this provision would reduce the number of AMOC requests.

We do not agree with the requests to allow the use of equivalent consumable parts. No technical justification was provided nor any specifics of what these "equivalent consumable parts" are. We

do not find it necessary to change the final rule in this regard. However, if anyone wishes to provide technical justification, they may request an approval of an AMOC from us, in accordance with paragraph (k) of the final rule.

Requests To Ensure That Parts are Available

Two commenters requests that we ensure that required parts are available within the 5-year compliance time. No justification was provided.

We do not agree. Most parts for doing the required actions are standard materials, like emery paper, coatings, paints, sealant, *etc.* The airplane maintenance facilities should have a ready supply of those materials. We have determined that the lead time for obtaining the required parts will not exceed the 5-year compliance time, and that operators should have enough time to coordinate the purchasing of any part or material not on the shelves when they schedule the work associated with the requirements of this AD. Therefore, we do not find it necessary to change the final rule in this regard.

Clarification of Affected Models

Boeing Alert Service Bulletin A3505, dated November 1, 2001, affects, among other airplane models, Model "707–320B" series airplanes, which are a variant of Model 707–300B series airplanes. This service bulletin does not affect other Model 707–300B series airplanes. Whereas, Boeing Service Bulletin 3513, dated November 6, 2003, affects, among other airplane models, Model "707–300B" series airplanes, including Model 707–320B variant. For clarification purposes, we have revised the final rule to refer to both models as Model "707–300B (–320 variant)" or "707–300B (including –320 variant)," as applicable.

Clarification of Cost Impact

We have revised the Cost Impact section of the final rule by adding the applicable service bulletin for the listed airplane models.

Conclusion

We have carefully reviewed the available data, including the comments that have been submitted, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

This AD will affect about 4,303 airplanes worldwide. The average labor rate per hour is $65. The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

For model—	Work hours	Cost per airplane	Number of U.S.-airplane registered airplanes	Fleet cost
707–E3A (military), –100, –100B, –300, –300B (–320B variant), and –300C series airplanes; and 720 series airplanes; as listed in Boeing Alert Service Bulletin A3505, dated November 1, 2001.	16	$1,040	41	$42,640.
707–100, –100B, –300, –300B (incluidng –320 variant), and –300C series airplanes; and 720 and 720B series airplanes; as listed in Boeing Service Bulletin 3513, dated November 6, 2003.	Between 4 and 6	Between $260 and $390.	73	Between $18,980 and $28,470.
737–100, –200, –200C, –300, –400, and –500 series airplanes; as listed in Boeing Service Bulletin 737–28A1174, Revision 1, dated July 18, 2002.	8	$520	1,095	$569,400.
747–100, –100B, –100B SUD, –200B, –200C, –200F, –300, –400, –400D, and –400F series airplanes; and 747SP and 747SR series airplanes; as listed in Boeing Alert Service Bulletin 747–28A2239, Revision 1, dated October 17, 2002.	70	$4,550	257	$1,169,350.
747–400 and –400F series airplanes, as listed in Boeing Alert Service Bulletin 747–28A2245, Revision 1, dated August 21, 2003.	18	$1,170	1	$1,170.

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart III, section 44701, "General requirements." Under that section, the FAA is charged with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this AD.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD 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.

For the reasons discussed above, I certify that this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866;

(2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2005–04–01 Boeing: Amendment 39–13973. Docket No. FAA–2004–18759; Directorate Identifier 2003–NM–280–AD.

Effective Date

(a) This AD becomes effective March 23, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the airplanes listed in Table 1 of this AD, certificated in any category.

TABLE 1.—APPLICABILITY

Model—	As listed in—
(1) 707–E3A (military), –100, –100B, –300, –300B (–320B variant), and –300C series airplanes; and 720 series airplanes.	Boeing Alert Service Bulletin A3505, dated November 1, 2001.
(2) 707–100, –100B, –300, –300B (including –320B variant), and –300C series airplanes; and 720 and 720B series airplanes.	Boeing Service Bulletin 3513, dated November 6, 2003.
(3) 737–100, –200, –200C, –300, –400, and –500 series airplanes.	Boeing Service Bulletin 737–28A1174, Revision 1, dated July 18, 2002.
(4) 747–100, –100B, –100B SUD, –200B, –200C, –200F, –300, –400, –400D, and –400F series airplanes; and 747SP and 747SR series airplanes.	Boeing Alert Service Bulletin 747–28A2239, Revision 1, dated October 17, 2002.
(5) 747–400 and –400F series airplanes.	Boeing Alert Service Bulletin 747–28A2245, Revision 1, dated August 21, 2003.

Unsafe Condition

(d) This AD was prompted by our determination that this AD is necessary to reduce the potential for ignition sources inside fuel tanks. We are issuing this AD to prevent arcing or sparking at the interface between the bulkhead fittings of the engine fuel feed tube and the front spar inside the fuel tank of the wings and between the overwing fuel fill ports and the airplane structure during a lightning strike. Such arcing or sparking could provide a possible ignition source for the fuel vapor inside the fuel tank and cause consequent fuel tank explosions.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Service Bulletins

(f) The term "service bulletin," as used in this AD, means the Work Instructions of the applicable service bulletins specified in the "As Listed In" column of Table 1 of this AD.

(g) Actions specified in paragraphs (h) through (i) of this AD that were done before the effective date of this AD in accordance with the applicable service information listed in Table 2 of this AD are acceptable for compliance with the applicable requirements of this AD.

TABLE 2.—ACCEPTABLE ORIGINAL ISSUES OF SERVICE BULLETINS

For model—	Boeing Alert Service Bulletin—
(1) 737–100, –200, –200C, –300, –400, and –500 series airplanes.	737–28A1174, dated December 20, 2001.
(2) 747–100, –100B, –100B SUD, –200B, –200C, –200F, –300, –400, –400D, and –400F series airplanes; and 747SP and 747SR series airplanes.	747–28A2239, dated November 29, 2001.
(3) 747–400 and –400F series airplanes.	747–28A2245, dated November 26, 2002.

Resistance Test, Other Specified Actions, and Corrective Actions

(h) For the airplanes identified in paragraphs (h)(1) through (h)(4) of this AD: Within 5 years after the effective date of this AD, do an electrical bonding resistance test between the bulkhead fittings of the engine fuel feed tube and the front spar inside the fuel tank of the wings to determine the resistance, and do other specified actions and applicable corrective actions, by accomplishing all the actions specified in paragraph 3.B. of the applicable service bulletin. Do the actions in accordance with the service bulletin, except as provided by paragraphs (j) and (k) of this AD. Do the applicable corrective actions before further flight.

(1) Model 707–E3A (military), –100, –100B, –300, –300B (–320B variant), and –300C series airplanes; and Model 720 series airplanes.

(2) Model 737–100, –200, –200C, –300, –400, and –500 series airplanes.

(3) Model 747–100, –100B, –100B SUD, –200B, –200C, –200F, –300, –400, –400D, and –400F series airplanes; and Model 747SP and 747SR series airplanes.

(4) Model 747–400 and –400F series airplanes.

(i) For Model 707–100, –100B, –300, –300B (including –320B variant), and –300C series airplanes; and Model 720 and 720B series airplanes: Within 5 years after the effective date of this AD, do an electrical bonding resistance test of the over-wing fuel fill ports for the wing tanks No. 1 and No. 4 and the center wing tank to determine the resistance, and do applicable corrective actions, by accomplishing all the actions specified in paragraph 3.B. of the applicable service bulletin. Do the actions in accordance with the service bulletin, except as provided by paragraphs (j) and (k) of this AD. Do the applicable corrective actions before further flight. Repeat the electrical bonding resistance test thereafter at intervals not to exceed 14,000 flight hours.

FAA-Accepted Equivalent Procedures

(j) Operators may use their own FAA-accepted equivalent procedures for draining the fuel tanks and gaining access to the fuel tanks.

No Identification of Front Spar

(k) Although the service bulletin referenced in this AD specifies to identify the front spar on the visible forward surface with the service bulletin number or equivalent, this AD does not include that requirement.

Alternative Methods of Compliance (AMOCs)

(l) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Material Incorporated by Reference

(m) You must use the service information that is specified in Table 3 of this AD to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approves the incorporation by reference of those documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. For copies of the service information, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. For information on the availability of this material at the National Archives and Records Administration (NARA), call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*. You may view the AD docket at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC.

TABLE 3.—MATERIAL INCORPORATED BY REFERENCE

Boeing—	Revision level	Date
(1) Alert Service Bulletin A3505	Original	November 1, 2001.
(2) Service Bulletin 3513	Original	November 6, 2003.
(3) Service Bulletin 737–28A1174	Revision 1	July 18, 2002.
(4) Alert Service Bulletin 747–28A2239	Revision 1	October 17, 2002.
(5) Alert Service Bulletin 747–28A2245	Revision 1	August 21, 2003.

Issued in Renton, Washington, on January 26, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–2831 Filed 2–15–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19763; Directorate Identifier 2004–NM–187–AD; Amendment 39–13969; AD 2005–03–13]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. This AD requires doing repetitive inspections for fractures and cracks of the links of the aileron power control unit (PCU); replacing any fractured/cracked link; and doing applicable related investigative and corrective actions, if necessary. This AD is prompted by reports indicating that the links of the aileron PCU have failed. We are issuing this AD to prevent failure of both links of the aileron PCU, which could result in reduced lateral control of the airplane.

DATES: This AD becomes effective March 23, 2005.

The incorporation by reference of a certain publication listed in the AD is approved by the Director of the Federal Register as of March 23, 2005.

ADDRESSES: For service information identified in this AD, contact Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centreville, Montreal, Quebec H3C 3G9, Canada. You can examine this information at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Docket: The AD docket contains the proposed AD, comments, and any final disposition. You can examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Washington, DC. This docket number is FAA–2004–19763; the directorate identifier for this docket is 2004–NM–187–AD.

FOR FURTHER INFORMATION CONTACT: Dan Parrillo, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Westbury, suite 410, New York 11590; telephone (516) 228–7305; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with an AD for certain Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. That action, published in the **Federal Register** on December 7, 2004 (69 FR 70571), proposed to require doing repetitive inspections for fractures and cracks of the links of the aileron power control unit (PCU); replacing any fractured/cracked link; and doing applicable related investigative and corrective actions, if necessary.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the one comment that was submitted on the proposed AD. The commenter supports the proposed AD.

Conclusion

We have carefully reviewed the available data, including the comment that has been submitted, and determined that air safety and the public interest require adopting the AD as proposed.

Interim Action

This is considered to be interim action until final action is identified, at which time we may consider further rulemaking.

Costs of Compliance

This AD will affect about 697 airplanes of U.S. registry. The required inspection will take about 1 work hour per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the AD for U.S. operators is $45,305, or $65 per airplane, per inspection cycle.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII,

Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD 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.

For the reasons discussed above, I certify that this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866;

(2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2005–03–13 Bombardier, Inc. (Formerly Canadair): Amendment 39–13969. Docket No. FAA–2004–19763; Directorate Identifier 2004–NM–187–AD.

Effective Date

(a) This AD becomes effective March 23, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, serial numbers 7003 and subsequent; certificated in any category.

Unsafe Condition

(d) This AD was prompted by reports indicating that the links of the aileron power control unit (PCU) have failed. We are issuing this AD to prevent failure of both links of the aileron PCU, which could result in reduced lateral control of the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Repetitive Inspections

(f) Before the accumulation of 2,000 total flight hours, or within 550 flight hours after the effective date of this AD, whichever occurs later, do a detailed inspection for fractures and cracks of the links of the aileron PCU, in accordance with Part A of the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–27–130, Revision "B," including Appendices A and B, dated May 11, 2004. Repeat the detailed inspection thereafter at intervals not to exceed 1,000 flight hours.

Note 1: For the purposes of this AD, a detailed inspection is "an intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirrors magnifying lenses, etc. may be necessary. Surface cleaning and elaborate procedures may be required."

Corrective Action

(g) If any fractured or cracked link is detected during any inspection required by paragraph (f) of this AD, before further flight, replace the fractured/cracked link and do the applicable related investigative and corrective actions by doing all the actions in accordance with Part B of the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–27–130, Revision "B," including Appendices A and B, dated May 11, 2004; except as required by paragraph (h) of this AD.

(h) If any crack is found on the aileron lugs during any related investigative action required by paragraph (g) of this AD, and the service bulletin recommends contacting Bombardier for disposition: Before further flight, disposition and replace the cracked aileron lug in accordance with a method approved by the Manager, New York Aircraft Certification Office (ACO), FAA, or Transport Canada Civil Aviation (TCCA) (or its delegated agent).

Acceptable Revisions of the Referenced Service Bulletin

(i) Actions specified in paragraphs (f) and (g) of this AD done before the effective date of this AD in accordance with Bombardier Alert Service Bulletin A601R–27–130, Revision "A," including Appendices A and B, dated December 22, 2003; are acceptable for compliance with the corresponding requirements of paragraphs (f) and (g) of this AD.

(j) Accomplishment of the initial inspection of the links of the aileron PCU, and replacement if necessary, before the effective date of this AD in accordance with Bombardier Alert Service Bulletin A601R–27–130, including Appendices A and B, dated November 13, 2003, is acceptable for compliance with the corresponding requirements of paragraphs (f) and (g) of this AD; except as provided by paragraph (k) of this AD.

(k) Airplanes on which a fractured or cracked link of the aileron PCU was found that were not subject to an NDT inspection of the aileron lugs (*i.e.*, related investigative action required by paragraph (h) of this AD) before the effective date of this AD must do an NDT inspection of the applicable lugs in accordance with paragraph (g) of this AD at the next repetitive detailed inspection of the link of the aileron PCU required by this AD.

Reporting

(l) Submit a report of the findings (both positive and negative) of the initial inspection required by paragraph (f) of this AD and any associated fractured or cracked link to Bombardier Aerospace Inc., c/o In-Service Engineering, 3rd floor, Dept. 508, 400 Cote Vertu Road West, Dorval, QC, Canada H4S 1Y9, at the applicable time specified in paragraph (l)(1) or (l)(2) of this AD. The report must be done in accordance with Appendices A and B of Bombardier Alert Service Bulletin A601R–27–130, Revision 'B,' dated May 11, 2004. Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD and has assigned OMB Control Number 2120–0056.

(1) If the inspection was done after the effective date of this AD: Submit the report and any fractured/cracked link within 30 days after the inspection.

(2) If the inspection was accomplished prior to the effective date of this AD: Submit the report and any fractured/cracked link within 30 days after the effective date of this AD.

No Submission of Comment Sheets

(m) Although the service bulletin referenced in this AD specifies to submit comment and compliance sheets to the manufacturer, this AD does not include that requirement.

Alternative Methods of Compliance (AMOCs)

(n) The Manager, New York Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Related Information

(o) Canadian airworthiness directive CF–2004–13, dated July 20, 2004, also addresses the subject of this AD.

Material Incorporated by Reference

(p) You must use Bombardier Alert Service Bulletin A601R–27–130, Revision 'B,' including Appendices A and B, dated May 11, 2004, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approves the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. For copies of the service information, contact Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. For information on the availability of this material at the National Archives and Records Administration (NARA), call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*. You may view the AD docket at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC.

Issued in Renton, Washington, on January 31, 2005.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–2580 Filed 2–15–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20280; Directorate Identifier 2004–NM–254–AD; Amendment 39–13978; AD 2005–04–06]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Model GV–SP Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Gulfstream Model GV–SP series airplanes. This AD requires repetitive inspections of the avionics standard communication bus (ASCB) for any noise interference and repair of the ASCB if noise interference is found. This AD also requires revisions of the airplane flight manual (AFM) to prohibit dispatch of any flight with the integrated standby flight display (SFD) inoperative; to add procedures to facilitate recovery of the cockpit display units in the event that the cockpit displays go blank; and to add flightcrew briefings on the use of standby instruments in case the cockpit display units go blank and do not recover. This AD also requires installing an avionics software update and a hardware upgrade to the Honeywell Primus Epic system to correct a display blanking problem; installing the update will allow removal of certain AFM revisions and will end the repetitive inspections of the ASCB. This AD is prompted by a report indicating that all four cockpit flight panel displays went blank simultaneously. We are issuing this AD to prevent a software error from blanking the cockpit display units, which will result in a reduction of the flightcrew's situational awareness, and possible loss of control of the airplane. We are also issuing this AD to address noise interference in the ASCB, which can interfere with the display recovery after a blanking event and consequently extend the time that the displays remain blank. In addition, we are issuing this AD to ensure that the flightcrew is advised of the procedures necessary to address blank cockpit display units.

DATES: Effective February 23, 2005.

The incorporation by reference of certain publications listed in the AD is approved by the Director of the Federal Register as of February 23, 2005.

We must receive comments on this AD by April 18, 2005.

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

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

For service information identified in this AD, contact Gulfstream Aerospace Corporation, Technical Publications Dept., P.O. Box 2206, Savannah, Georgia 31402–2206. You can examine this information at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2005–20280; the directorate identifier for this docket is 2004–NM–254–AD.

Examining the Dockets

You can examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the DMS receives them.

FOR FURTHER INFORMATION CONTACT: Robert Chupka, Aerospace Engineer, Systems and Equipment Branch, ACE–119A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6070; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: We have received a report indicating that all four cockpit flight panel displays went blank simultaneously during flight, then recovered without any flightcrew action after approximately 74 seconds, on a Gulfstream Model GV-SP series airplane. Two similar incidents occurred on the ground. An engineering investigation revealed a software problem on the Honeywell Primus Epic system, which can cause a temporary loss of data from the cockpit display units. Loss of the cockpit display units will result in a reduction of the flightcrew's situational awareness, and possible loss of control of the airplane. The engineering investigation also revealed noise interference on the avionics standard communication bus (ASCB), which is a part of the Honeywell Primus Epic system. Noise interference, if not corrected, can possibly interfere with the display recovery after a blanking event, and

consequently extend the time that the cockpit displays remain blank.

Other Relevant Rulemaking

We determined that since the Honeywell Primus Epic system also is installed on Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model ERJ 170 series airplanes, those airplanes are subject to an unsafe condition similar to that addressed in this AD. In light of that determination, we issued AD 2004–26–12, amendment 39–13924 (69 FR 78300, December 30, 2004), to address that unsafe condition on that airplane model. We may consider additional rulemaking on other airplane models having the Honeywell Primus Epic system that also exhibit a similar unsafe condition.

Relevant Service Information

We have reviewed Gulfstream G500 Alert Customer Bulletin 2, dated October 27, 2004; and Gulfstream G550 Alert Customer Bulletin 2, dated October 27, 2004. The customer bulletins describe procedures for inspecting the ASCB for any noise interference and contacting the manufacturer if any noise interference indications are found during the inspection.

We have also reviewed Gulfstream G500 Airplane Flight Manual (AFM) GAC–AC–G500–OPS–0001, Revision 7, dated December 28, 2004; and Gulfstream G550 AFM GAC–AC–G550–OPS–0001, Revision 9, dated December 28, 2004. The AFM revisions describe procedures to recover the cockpit display units in the event that all four cockpit display units go blank during flight. Additionally, these AFM revisions describe procedures to ensure that the flightcrew is aware that dispatch of any flight with any of the following display units inoperative is prohibited: the integrated standby flight display (SFD), very high frequency (VHF) 1, very high frequency omnidirectional range (VOR) 1, or air traffic control (ATC) 1. The AFM revisions also describe procedures to advise the flightcrew that, during the use of Taxi/Before Takeoff, Descent, and Before Landing checklists, the briefings (takeoff and approach) should include the possibility of the loss of all cockpit display units and the subsequent transition to the use of the standby instruments.

In addition, we have reviewed Gulfstream G500 Aircraft Service Change 902; and Gulfstream G550 Aircraft Service Change 902; both dated December 30, 2004. The aircraft service changes describe procedures to install software updates to the Honeywell Primus Epic systems and for submitting the service reply card, and specify concurrent accomplishment of Gulfstream G500 Aircraft Service Change 043, dated December 30, 2004; and Gulfstream G550 Aircraft Service Change 043, dated December 30, 2004; as applicable. Gulfstream G500 Aircraft Service Change 043 and Gulfstream G550 Aircraft Service Change 043 describe procedures for installing hardware upgrades to the Honeywell Primus Epic systems. The hardware upgrades include upgrading and retrofitting display controllers, display units, a display driver unit, and a data management unit in addition to replacing an existing circuit breaker with a new circuit breaker. Installing the software update and the hardware upgrade will allow removal of certain AFM revisions and will end the repetitive inspections of the ASCB.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other airplanes of the same type design. Therefore, we are issuing this AD to prevent a software error from blanking the cockpit display units, which will result in a reduction of the flightcrew's situational awareness, and possibly loss of control of the airplane. We are also issuing this AD to address noise interference in the avionics standard communication bus (ASCB), which can interfere with the display recovery after a blanking event and consequently extend the time that the displays remain blank. In addition, we are issuing this AD to ensure that the flightcrew is advised of the procedures necessary to address blank cockpit display units, and to ensure that adequate standby instrument systems are available to safely complete the flight.

This AD requires doing the actions specified in the service information described previously, except as discussed under "Differences Between the AD and the Customer Bulletins."

Differences Between the AD and the Customer Bulletins

Operators should note that, although the Accomplishment Instructions of the referenced customer bulletins describe procedures for submitting a sheet recording compliance with the customer bulletin, this AD will not require those actions. The FAA does not need this information from operators.

Operators should note that, although the Modification Instructions of the referenced aircraft service changes describe procedures for submitting a service reply card, this AD will not require those actions. The FAA does not need this information from operators.

Although the customer bulletins specify that operators may contact the manufacturer for disposition if any noise interference indications are found during the inspection of the ASCB, this AD requires operators to repair the ASCB according to a method approved by the FAA.

The customer bulletins specify a one time inspection; however, they do note that a recurring inspection will be added to the applicable airplane maintenance manual (AMM). The recurring inspection interval in the applicable AMM is specified as 60 days, the same as this AD.

The customer bulletins state that a certain number of Gulfstream Model GV–SP series airplanes with specific serial numbers are affected. This AD also specifies certain additional airplanes with serial numbers that are not stated in the customer bulletin. These additional airplanes may also be subject to the unsafe condition.

Clarification of AFM Revisions

As indicated in Note 1 of this AD, operators may accomplish the AFM revisions required by this AD by inserting a copy of Gulfstream G500 AFM GAC–AC–G500–OPS–0001, Revision 7, dated December 28, 2004, or Gulfstream G550 AFM GAC–AC–G550–OPS–0001, Revision 9, dated December 28, 2004, into the applicable AFM. Future general revisions to the AFM must contain the identical procedures specified in the applicable sections of the AFM revisions required by this AD.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD; therefore, providing notice and opportunity for public comment before the AD is issued is impracticable, and good cause exists to make this AD effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any relevant written data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES.** Include "Docket No. FAA–2005–20280; Directorate Identifier

2004–NM–254–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD. We will consider all comments received by the closing date and may amend the AD in light of those comments.

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

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD 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.

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

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2005–04–06 Gulfstream Aerospace Corporation: Amendment 39–13978. Docket No. FAA–2005–20280; Directorate Identifier 2004–NM–254–AD.

Effective Date

(a) This AD becomes effective February 23, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Gulfstream Model GV–SP series airplanes, certificated in any category; with serial numbers 5001 through 5062 inclusive.

Unsafe Condition

(d) This AD was prompted by a report indicating that all four cockpit flight panel displays went blank simultaneously. There were also two reports of similar incidents occurring on the ground. The FAA is issuing this AD to prevent a software error from blanking the cockpit display units, which will result in a reduction of the flightcrew's situational awareness, and possible loss of control of the airplane. We are also issuing this AD to address noise interference in the avionics standard communication bus (ASCB), which can interfere with the display recovery after a blanking event and consequently extend the time that the displays remain blank. In addition, we are issuing this AD to ensure that the flightcrew is advised of the procedures necessary to address blank cockpit display units.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Initial and Repetitive Inspections

(f) Within 50 flight hours after the effective date of this AD, and thereafter at intervals not to exceed 60 days: Do an inspection of the ASCB for any noise interference indications in accordance with the Accomplishment Instructions of Gulfstream G500 Alert Customer Bulletin 2, dated October 27, 2004, including Appendix A; or Gulfstream G550 Alert Customer Bulletin 2, dated October 27, 2004, including Appendix A; as applicable. If any noise interference indication is found during any inspection required by this AD, before further flight, repair the ASCB according to a method approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA.

Airplane Flight Manual (AFM) Revisions

(g) Within 72 hours after the effective date of this AD, revise sections of the applicable AFM in accordance with the actions required in paragraphs (g)(1), (g)(2), (g)(3), and (g)(4) of this AD. Any further revisions to the AFM must contain the identical procedures in the applicable sections of the AFM revisions as required by this AD.

Note 1: This may be accomplished by inserting a copy of Gulfstream G500 AFM GAC–AC–G500–OPS–0001, Revision 7, dated December 28, 2004; or Gulfstream G550 AFM GAC–AC–G550–OPS–0001, Revision 9, dated December 28, 2004; as applicable; into the applicable AFM.

(1) Revise the Limitations section of the Gulfstream G500 AFM and the Gulfstream G550 AFM by inserting a copy of the procedures in Section 1–34–140, "3–in–1" Integrated Standby Instrument System (SFD), of Gulfstream G500 AFM GAC–AC–G500–OPS–0001, Revision 7, dated December 28, 2004; or Section 1–34–140, "3–in–1" Integrated Standby Instrument System (SFD), of Gulfstream G550 AFM GAC–AC–G550–OPS–0001, Revision 9, dated December 28, 2004; as applicable; in the applicable AFM.

(2) Revise the Limitations section of the Gulfstream G500 AFM and the Gulfstream G550 AFM by inserting a copy of the procedures in Section 1–101–10, Checklist Compliance, of Gulfstream G500 AFM GAC–AC–G500–OPS–0001, Revision 7, dated December 28, 2004; or Section 1–101–10, Checklist Compliance, of Gulfstream G550 AFM GAC–AC–G550–OPS–0001, Revision 9, dated December 28, 2004; as applicable; in the applicable AFM.

(3) Revise the Abnormal Procedures section of the Gulfstream G500 AFM and the Gulfstream G550 AFM by inserting a copy of the procedures in Section 3–16–150, Loss of All Display Units (DUs), of Gulfstream G500 AFM GAC–AC–G500–OPS–0001, Revision 7, dated December 28, 2004; or Section 3–16–150, Loss of All Display Units (DUs), of Gulfstream G550 AFM GAC–AC–G550–OPS–0001, Revision 9, dated December 28, 2004; as applicable; in the applicable AFM.

(4) Revise the Normal Procedures section of the Gulfstream G500 AFM and the

Gulfstream G550 AFM by inserting a copy of the procedures contained in the applicable "Section" listed in Table 1 of this AD.

TABLE 1.—AFM REVISIONS

Section	Applicable gulfstream AFM
Section 02–04–20, Taxi/Before Takeoff	G500 AFM GAC–AC–G500–OPS–0001, as specified in Revision 7, dated December 28, 2004.
Section 02–04–20, Taxi/Before Takeoff	G550 AFM GAC–AC–G550–OPS–0001, as specified in Revision 9, dated December 28, 2004.
Section 02–05–30, Descent	G500 AFM GAC–AC–G500–OPS–0001, as specified in Revision 7, dated December 28, 2004.
Section 02–05–30, Descent	G550 AFM GAC–AC–G550–OPS–0001, as specified in Revision 9, dated December 28, 2004.
Section 02–05–50, Before Landing	G500 AFM GAC–AC–G500–OPS–0001, as specified in Revision 7, dated December 28, 2004.
Section 02–05–50, Before Landing	G550 AFM GAC–AC–G550–OPS–0001, as specified in Revision 9, dated December 28, 2004.

Note 2: Instead of inserting the AFM procedures required by this AD into the AFM, use of the information contained in Gulfstream G550 AFM GAC–AC–JAA–550–OPS–0001, Revision 2, dated January 12, 2005, is considered acceptable for airplanes operated under/in accordance with Joint Aviation Authority/European Aviation Safety Agency (EASA) regulations/supervision/oversight.

Terminating Action

(h) Within 90 days or 300 flight hours after the effective date of this AD, whichever occurs first, do the actions required in paragraphs (h)(1) and (h)(2). Doing the actions in paragraphs (h)(1) and (h)(2) ends the requirements of paragraph (f) of this AD, and the AFM revisions required by paragraphs (g)(1), (g)(2), and (g)(4) of this AD may be removed from the AFMs.

(1) Install an avionics software update for the Honeywell Primus Epic system in accordance with the Modification Instructions of Gulfstream G500 Aircraft Service Change 902, dated December 30, 2004; or Gulfstream G550 aircraft Service Change 902, dated December 30, 2004; as applicable.

(2) Concurrent with the actions required in paragraph (h)(1) of this AD, install hardware upgrades for the Honeywell Primus Epic system in accordance with the Modification Instructions of Gulfstream G500 Aircraft Service Change 043, dated December 30, 2004; or Gulfstream G550 Aircraft Service Change 043, dated December 30, 2004; as applicable.

No Reporting

(i) Although the customer bulletins referenced in this AD specify to submit certain information to the manufacturer, this AD does not include that requirement.

Alternative Methods of Compliance (AMOCs)

(j) The Manager, Atlanta ACO, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Material Incorporated by Reference

(k) You must use the service information that is specified in Table 2 of this AD to perform the actions that are required by this AD, unless the AD specifies otherwise. (The appendices to the Gulfstream alert customer bulletins are not dated.) The Director of the Federal Register approves the incorporation by reference of those documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. For copies of the service information, contact Gulfstream Aerospace Corporation, Technical Publications Dept., P.O. Box 2206, Savannah, Georgia 31402–2206. You can review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Room PL–401, Nassif Building, Washington, DC; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

TABLE 2.—MATERIAL INCORPORATED BY REFERENCE

Gulfstream service information	Pages	Revision level	Date
G500 Airplane Flight Manual GAC–AC–G500–OPS–0001.	List of Effective Pages; Pages A through H	Revision 7	December 28, 2004.
G500 Alert Customer Bulletin 2, including Appendix A.	1–2; 1–4 (appendix)	Original	October 27, 2004.
G500 Aircraft Service Change 043	1–8	Original	December 30, 2004.
G500 Aircraft Service Change 902	1–6	Original	December 30, 2004.
G550 Airplane Flight Manual GAC–AC–G550–OPS–0001.	List of Effective Pages; Pages A through H	Revision 9	December 28, 2004.
G550 Alert Customer Bulletin 2, including Appendix A.	1–2; 1–4 (appendix)	Original	October 27, 2004.
G550 Aircraft Service Change 043	1–8	Original	December 30, 2004.
G550 Aircraft Service Change 902	1–6	Original	December 30, 2004.

Issued in Renton, Washington, on February 8, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–2761 Filed 2–15–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19447; Directorate Identifier 2004–NM–97–AD; Amendment 39–13976; AD 2005–04–04]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB SF340A and SAAB 340B Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Saab Model SAAB SF340A and SAAB 340B series airplanes. This AD requires a one-time inspection to determine the part and serial numbers of certain engine vibration isolators (mounts) and the cure dates of certain molded assemblies incorporated in those engine mounts; and related corrective actions if necessary. This AD is prompted by a report that disbonding of the elastomer from the inner metal core and shim of certain engine vibration mounts has occurred within a few hundred hours of operation, causing heavy chafing of the engine support system and chafing of the fire sensor loop. We are issuing this AD to prevent reduced integrity of the fire-shielding capacity of the nacelle structure and a possible fire detector fault.

DATES: This AD becomes effective March 23, 2005.

The incorporation by reference of a certain publication listed in the AD is approved by the Director of the Federal Register as of March 23, 2005.

ADDRESSES: For service information identified in this AD, contact Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linkping, Sweden.

You can examine this information at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Docket: The AD docket contains the proposed AD, comments, and any final disposition. You can examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Washington, DC. This docket number is FAA–2004–19447; the directorate identifier for this docket is 2004–NM–97–AD.

FOR FURTHER INFORMATION CONTACT: Mike Borfitz, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2677; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR Part 39 with an AD for all Saab Model SAAB SF340A and SAAB 340B series airplanes. That action, published in the **Federal Register** on October 27, 2004 (69 FR 62625), proposed to require a one-time inspection to determine the part and serial numbers of certain engine vibration isolators (mounts) and the cure dates of certain molded assemblies incorporated in those engine mounts; and related corrective actions if necessary.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comment that has been submitted on the proposed AD.

Request To Withdraw Proposed AD

The commenter requests that the proposed AD be withdrawn. The commenter states that delamination of a bonded canister (molded assembly) is readily apparent and would have been detected during the scheduled inspections recommended in the Saab maintenance program. The commenter also mentions that the molded assemblies have a life limit of 5,000 flight hours, at which point those assemblies are removed from the airplane. The commenter notes that by the time the proposed AD is issued, almost three years would have passed since the affected molded assemblies were put into service. The commenter remarks that it is unlikely that any affected molded assembly remaining in the field would not have already been identified and removed from service during the regularly scheduled maintenance inspection program. The commenter states that, for the reasons mentioned above, the FAA needs to consider the timing of the proposed AD. The commenter suggests that, at this late date, the unsafe condition regarding the removal of molded assemblies subject to delamination would have resolved itself.

We do not agree with the commenter's request to withdraw this AD. The procedures specified in a service bulletin are not mandatory. Therefore, we must issue an AD to ensure that the identified unsafe condition is properly addressed. Even if the current U.S.-registered fleet is in compliance with the requirements of this AD, the issuance of the rule is still necessary to ensure that any affected airplane that is imported and placed on the U.S. register in the future will be required to be in compliance as well. We also want to ensure that, if the subject molded assemblies are currently in an operator's spare parts inventory, the actions required by this AD are performed. In addition, as provided by paragraph (e) of this AD, operators who have already done all of the actions required by this AD are already in compliance with this AD, and no further action is required by them. Furthermore, the requirements of this AD include a general visual inspection for chafing of the nacelle structure and fire sensor loop. This inspection is necessary because chafing of the nacelle structure and fire sensor loop is part of the unsafe condition addressed by this AD. We must ensure that operators did this inspection and did not just replace the engine mounts. Also, the airworthiness authority for the state of design issued an airworthiness directive mandating the same actions required by this AD. No change has been made to this AD regarding this issue.

Changes to This AD

We have added a new paragraph (g), Parts Installation, in this AD to clarify that, prior to the installation of an engine vibration mount on an airplane, the part and serial number of the engine vibration mount, and the cure date of the molded assembly incorporated in the engine mount must be determined, and any applicable corrective action accomplished before further flight, in accordance with the requirements of paragraph (f) of this AD. Although this was our intent in the proposed AD, the Parts Installation paragraph was inadvertently omitted from the proposed AD. The subsequent paragraphs in this AD have been reidentified accordingly.

Also, for clarification purposes, certain terminology in the proposed AD has been changed in this AD. The phrase "molded assembly engine mounts (isolators)" has been changed to "engine vibration isolators (mounts)." The term "bonded canister assemblies"

has been changed to "molded assemblies."

Conclusion

We have carefully reviewed the available data, including the comment that has been submitted, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

This AD affects about 170 airplanes of U.S. registry. The required actions will take about 2 work hours per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of this AD for U.S. operators is $22,100 or $130 per airplane.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD 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.

For the reasons discussed above, I certify that this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866;

(2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2005–04–04 SAAB Aircraft AB: Amendment 39–13976. Docket No. FAA–2004–19447; Directorate Identifier 2004–NM–97–AD.

Effective Date

(a) This AD becomes effective March 23, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Model SAAB SF340A and SAAB 340B series airplanes, certificated in any category.

Unsafe Condition

(d) This AD was prompted by a report that disbonding of the elastomer from the inner metal core and shim of certain engine vibration isolators (mounts) has occurred within a few hundred hours of operation, causing heavy chafing of the engine support system and chafing of the fire sensor loop. We are issuing this AD to prevent reduced integrity of the fire-shielding capacity of the engine nacelle structure and a possible fire detector fault.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Inspection

(f) Within 500 flight hours after the effective date of this AD, perform a one-time inspection to determine the part and serial numbers of certain engine vibration mounts, and the cure dates of certain molded assemblies incorporated in those engine mounts; and a general visual inspection for chafing of the nacelle structure and fire sensor loop; and related corrective actions, as applicable; in accordance with the Accomplishment Instructions of Saab Service Bulletin 340–71–059, dated May 16, 2003. Corrective actions must be accomplished prior to further flight.

Note 1: Saab Service Bulletin 340–71–059 refers to Barry Controls Service Letter 93948–71–05, dated April 30, 2003, as an additional source of service information.

Note 2: For the purposes of this AD, a general visual inspection is "a visual examination of an interior or exterior area, installation or assembly to detect obvious damage, failure or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normal available lighting conditions such as daylight, hangar lighting, flashlight or droplight and may require removal or opening of access panels or doors. Stands, ladders or platforms may be required to gain proximity to the area being checked."

Parts Installation

(g) As of the effective date of this AD, no person may install on any airplane an engine vibration mount unless the part and serial number of the engine vibration mount, and the cure date of the molded assembly incorporated in the engine mount, have been determined and any applicable corrective action accomplished before further flight, in accordance with the requirements of paragraph (f) of this AD.

Alternative Methods of Compliance (AMOCs)

(h) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Related Information

(i) Swedish airworthiness directive SAD 1–192, dated May 16, 2003, also addresses the subject of this AD.

Material Incorporated by Reference

(j) You must use Saab Service Bulletin 340–71–059, dated May 16, 2003, including Attachment 1, dated April 30, 2003; to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approves the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. For copies of the service information, contact Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. For information on the availability of this material at the National Archives and Records Administration (NARA), call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

You may view the AD docket at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW.,

room PL–401, Nassif Building, Washington, DC.

Issued in Renton, Washington, on January 31, 2005.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–2832 Filed 2–15–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF STATE

22 CFR Part 41

[Public Notice 4992]

RIN 1400–AC03

Documentation of Nonimmigrants Under the Immigration and Nationality Act, as Amended—Student and Exchange Visitor Information System (SEVIS)

AGENCY: State Department.

ACTION: Final rule.

SUMMARY: This rule makes final the interim rule amending the Department's regulations pertaining to foreign students and exchange visitors who enter the United States in F, M, or J nonimmigrant visa categories. The new regulations will establish the verification and reporting procedures required by the Department of Homeland Security (DHS) foreign student monitoring system known as Student and Exchange Visitor Information System (SEVIS). As SEVIS was fully implemented on February 15, 2003, the Department's transitional foreign student database known as the Interim Student and Exchange Authentication System (ISEAS) is no longer available to the educational and exchange visitor communities. However, it remains available to consular sections in the field as a means of electronically verifying student and exchange visitor documentation issued prior to February 15, 2003.

EFFECTIVE DATES: The interim rule became effective on May 23, 2003. This final rule takes effect on the date of publication in the **Federal Register**.

ADDRESSES: You may view this final rule online at *http://www.regulations.gov/*.

FOR FURTHER INFORMATION CONTACT: Jill Nebel, Legislation and Regulations Division, Visa Services, Department of State, Washington, DC 20520–0106, 202–663–1260 or e-mail *nebelj@state.gov*

SUPPLEMENTARY INFORMATION: On May 23, 2003, the Department published an interim rule (68 FR 28129; Public Notice 4368) detailing the implementation of the SEVIS monitoring system. The Department published this interim rule with a request for comments. There were no comments received and the Department is now making final the interim rule.

How Is the Department Amending Its Regulations?

The Department is amending its regulations at 22 CFR 41.61 and 41.62 regarding students and exchange visitors by adding the requirement that authorized consular officials verify the provenance of SEVIS-generated forms I–20 or DS–2019 against SEVIS data in the Consular Consolidated Database CCD. It is also amending its regulations by adding the requirement that authorized consular officials verify the payment of any applicable SEVIS fee, and to make Border Commuter Students (F–3 and M–3) subject to SEVIS requirements. No F–1, F–2, F–3, M–1, M–2, M–3, J–1 or J–2 visas may be issued unless an authorized consular official has verified the provenance of the student or exchange visitor acceptance documentation against SEVIS data in the CCD, or via direct access to SEVIS.

Regulatory Findings

Administrative Procedure Act

The Department is publishing this rule as a final rule, after a 60-day provision for post-promulgation public comments and review, based on the "good cause" exceptions set forth at 5 U.S.C. 553(b)(3)(B) and 553(d)(3).

Regulatory Flexibility Act

The Department of State, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities.

The Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign based companies in domestic and import markets.

The Unfunded Mandates Reform Act of 1995

This rule will not result in an annual expenditure of $100 million or more by State, local, or tribal governments, or by the private sector and it will not significantly or uniquely affect small governments.

Executive Order 12866: Regulatory Review

The Department of State does not consider this rule to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. In addition, the Department is exempt from Executive Order 12866 except to the extent that it is promulgating regulations in conjunction with a domestic agency that are significant regulatory actions. The Department has nevertheless reviewed the regulation to ensure its consistency with the regulatory philosophy and principles set forth in that Executive Order.

Executive Order 13132: Federalism

This regulation 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. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement.

The Paperwork Reduction Act of 1995

The final rule does not impose information collection requirements under the provisions of the Paperwork Reduction Act, 44 U.S.C., chapter 35.

Final Rule

The interim rule amended the Departments' regulations at 22 CFR part 41. In view of the foregoing, the Department does not feel it necessary to amend the regulations as published in the interim rule, and the interim rule is being incorporated herein as a final rule.

Dated: November 8, 2004.

Maura Harty,

Assistant Secretary for Consular Affairs, Department of State.

[FR Doc. 05–2999 Filed 2–15–05; 8:45 am]

BILLING CODE 4710–06–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2004–0214; FRL–7697–8]

Acibenzolar-*S*-methyl; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for residues of acibenzolar-*S*-methyl in or on onion, dry bulb and onion, green. 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 onion, dry bulb and onion, green. This regulation establishes a maximum permissible level for residues of acibenzolar-*S*-methyl in these food commodities. These tolerances will expire and are revoked on June 30, 2007.

DATES: This regulation is effective February 16, 2005. Objections and requests for hearings must be received on or before April 18, 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–2004–0214. 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: Libby Pemberton, Registration Division (7505C), Office of Pesticide Programs, EnvironmentalProtection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number:703 308–9364; e-mail address:*pemberton.libby@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 at 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 acibenzolar-*S*-methyl, benzo(1,2,3)thiadiazole-7-carbothioic acid-*S*-methyl ester, in or on onion, dry bulb and onion, green at 0.05 parts per million (ppm). These tolerances will expire and are revoked on June 30, 2007. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

Section 408(l)(6) of the 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 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 Acibenzolar-*S*-methyl on Bulb Onions and Green Onions and FFDCA Tolerances

Iris yellow spot virus is a new and expanding pest problem. Onion thrips transmit the virus which cause leaf and flower stalk lesions, as well as smaller sized bulbs. Production seed can also be infected. Economic consequences can be significant due to yield losses. The virus also reduces bulb size causing reduction in grade. EPA has authorized under

FIFRA section 18 the use of acibenzolar-*S*-methyl on onion, dry bulb and onion, green, for control of iris yellow spot virus in Colorado. 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 acibenzolar-*S*-methyl in or on onion, dry bulb and onion, green. In doing so, EPA considered the safety standard in section 408(b)(2) of the FFDCA, and EPA decided that the necessary tolerance 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 this tolerance 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 June 30, 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 onion, dry bulb and onion, green 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 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 acibenzolar-*S*-methyl meets EPA's registration requirements for use on onion, dry bulb and onion, green or whether permanent tolerances for these uses would be appropriate. Under these circumstances, EPA does not believe that these tolerances serve as a basis for registration of acibenzolar-*S*-methyl 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 Colorado 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 acibenzolar-*S*-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 the FFDCA and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

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 acibenzolar-*S*-methyl and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for time-limited tolerances for residues of acibenzolar-*S*-methyl in or on onion, dry bulb and onion, green at 0.05 ppm. EPA's assessment of the dietary exposures and risks associated with establishing these tolerances follows.

A. Toxicological Endpoints

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. The toxicology database for acibenzolar-*S*-methyl is incomplete. Subchronic neurotoxicity, developmental neurotoxicity and an additional mutagenicity study (Ames study) are required. EPA has 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 acibenzolar-*S*- methyl are fully discussed in a final rule published in the **Federal Register** on August 18, 2000 (65 FR 50438)(FRL–6737–6) that established tolerances for residues of acibenzolar-*S*-methyl in or on bananas, Brassica (cole) leafy vegetables, fruiting vegetables, leafy vegetables and spinach. Please refer to that document for a complete discussion of the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies reviewed.

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 intraspecies differences. No NOAEL for developmental toxicity was observed in the rat developmental study for acibenzolar-*S*-methyl. Because no NOAEL was observed, an additional 3X uncertainty factor is being applied to the 100X uncertainty factor to account for intra- and inter-species variability, resulting in a 300X UF for toxicological endpoints derived from this study.

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 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 acibenzolar-*S*-methyl used for human risk assessment is shown in the following Table 1:

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR ACIBENZOLAR-*S*-METHYL 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)	NOAEL = 10 milligrams/kilogram/day (mg/kg/day). UF = 300 Acute RfD = 0.033 mg/kg/day	FQPA SF = 10 aPAD = acute RfD ÷ FQPA SF = .0033 mg/kg/day	Developmental toxicity LOAEL = 10 mg/kg/day based on increased incidence of rare malformations (umbilical hernias).
Acute Dietary (General population including infants and children)	None	None	No toxicological endpoint attributable to a single exposure was identified in the available toxicology studies on acibenzolar-*S*-methyl that would be applicable to the general population (including infants and children).
Chronic Dietary (Females 13–50 years of age)	NOAEL= 10 mg/kg/day UF = 300 Chronic RfD = .033 mg/kg/day	FQPA SF = 10 cPAD = chronic RfD ÷ FQPA SF = .0033 mg/kg/day	Developmental toxicity LOAEL = 10 mg/kg/day based on increased incidence of rare malformations (umbilical hernias).
Chronic Dietary (All other populations, including infants and children)	NOAEL= 10.8 mg/kg/day UF = 100 Chronic RfD = 0.11 mg/kg/day	FQPA SF = 3 cPAD = chronic RfD ÷ FQPA SF = 0.0367 mg/kg/day	Carcinogenicity study - mice; LOAEL (Females) = 234 mg/kg/day based on mild hemolytic anemia and hemosiderosis of the liver, spleen, and bone marrow, and extramedullary hematopoiesis of the spleen.
Cancer (oral, dermal, inhalation)	None	None	Acibenzolar-*S*-methyl has been classified as a "not likely" human carcinogen. This 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 unequivocal genotoxicity in an acceptable battery of mutagenicity studies performed on the current technical grade product.

* 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 180.561) for the residues of acibenzolar-*S*-methyl, in or on a variety of raw agricultural commodities including bananas, Brassica (cole) leafy vegetables, fruiting vegetables, leafy vegetables, spinach and tomato paste. Risk assessments were conducted by EPA to assess dietary exposures from acibenzolar-*S*-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. Probabilistic (i.e., Monte Carlo) acute dietary risk assessments were conducted for acibenzolar-*S*-methyl using the Dietary Exposure Evaluation Model (DEEM-FCID, Version 2.03), which uses food consumption data from the USDA's Continuing Surveys of Food Intakes by Individuals (CSFII) from 1994–1996 and 1998 and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: For onions, the recommended tolerance level of 0.05 ppm was used and the assumption of 100% crop treated was made. DEEM default processing factors were used for dried onion, dried banana, dried plantain, and dried tomato. Empirical processing factors were used for tomato paste (7.1), tomato puree (2.9), and tomato juice (1.0). Blended commodities were treated differently than nonblended and partially blended commodities. Foods were classified as blended, partially blended, or nonblended. For blended commodities, the mean field trial values were used as a point estimate for expected residues. A value of ½ the limit of quantitation(LOQ) was used for samples that contained less than LOQ residues. Maximum percent crop treated (PCT) estimates were used as residue adjustment factors. The blended commodities included dried bananas, dried plantains, dried bell peppers, dried nonbell peppers, dried tomatoes, tomato paste, and tomato puree. For nonblended and partially blended commodities, the distributions of the field trial data were used. Again, a value

of ½ LOQ was used for samples that contained less than LOQ residues. Maximum PCT estimates were used for brocolli, cabbage, cauliflower, celery, head lettuce, leaf lettuce, spinach, peppers, and tomatoes.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment the DEEM-FCID, Version 2.03, which uses food consumption data from the USDA's CSFII from 1994–1996 and 1998 and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: tolerance level residues for all crops and 100% crop treated were used.

iii. *Cancer.* Acibenzolar-*S*-methyl has been classified as not likely to be carcinogenic to humans. Therefore, a quantitative exposure assessment was not conducted to assess cancer risk.

iv. *Anticipated residue and PCT information.* Section 408(b)(2)(E) of the FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must pursuant to section 408(f)(1) require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. For the present action, EPA will issue such data call-ins for information relating to anticipated residues as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Such data call-ins will be required to be submitted no later than 5 years from the date of issuance of this tolerance.

Section 408(b)(2)(F) of the FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; Condition 2, that the exposure estimate does not underestimate exposure for any significant subpopulation group; and Condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by section 408(b)(2)(F) of the FFDCA, EPA may require registrants to submit data on PCT.

In assessing chronic risk, EPA did not use PCT data. In assessing acute risk, The Agency used PCT information as follows: for onions the assumption of 100% crop treated was made. The following maximum PCT estimates were used: 1% of broccoli, 1% of cabbage, 1% of cauliflower, 1% celery, 12% head lettuce, 12% leaf lettuce, 1% peppers, 15% spinach and 1% tomatoes. For all other commodities it was assumed 100% of the crop was treated.

EPA believes that the PCT information described above for acibenzolar-*S*-methyl on leafy vegetables, fruiting vegetables and brassica (cole) leafy vegetables is reliable and has a valid basis. The PCT information is based on reliable estimates of the potential market for acibenzolar-*S*-methyl and the petitioner's estimate of the market share it expects to capture. EPA believes the estimates do not underestimate the percent of these crops that may be treated.

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

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 (screening concentration in ground water), which predicts pesticide concentrations in groundwater. 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 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 acibenzolar-*S*-methyl they are further discussed in the aggregate risk sections below.

Based on the PRZM/EXAMS and SCI-GROW models the EECs of acibenzolar-*S*-methyl for acute exposures are estimated to be 7.9 parts per billion (ppb) for surface water and 0.02 ppb for ground water. The EECs for chronic exposures are estimated to be 0.49 ppb for surface water and 0.02 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). Acibenzolar-*S*-methyl is not registered for use on any sites that would result in residential exposure.

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

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 acibenzolar-*S*-methyl and any other substances and acibenzolar-*S*-methyl does not appear to produce a toxic

metabolite produced by other substances. EPA has also evaluated comments submitted that suggested there might be a common mechanism among acibenzolar-*S*-methyl and other named pesticides that cause brain effects. EPA concluded that the evidence did not support a finding of common mechanism for acibenzolar-*S*-methyl and the named pesticides. For the purposes of this tolerance action, therefore, EPA has not assumed that acibenzolar-*S*-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 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.* 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 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's risk assessments either directly through use of a margin of exposure (MOE) analysis or through using UFs (safety) in calculating a dose level that poses no appreciable risk to humans.

2. *Developmental toxicity studies.* In a prenatal developmental study in rats the maternal NOAEL is 200 mg/kg/day and the LOAEL is 400 mg/kg/day based on hemorrhagic perineal discharge. A developmental NOAEL was not identified. The LOAEL is 10 mg/kg/day (lowest dose tested) based on umbilical hernia.

In a prenatal developmental study in rabbits the maternal NOAEL is 50 mg/kg/day and the LOAEL is 300 mg/kg/day based on mortality, clinical signs of toxicity, decreased maternal body weight and food consumption. The developmental NOAEL is 300 mg/kg/day and the LOAEL is 600 mg/kg/day based on a marginal increase in vertebral anomalies.

3. *Reproductive toxicity study.* In a reproduction and fertility study, the parental/systemic NOAEL is 11 to 31 mg/kg/day and the LOAEL is 105 to 288 mg/kg/day based on increased weights and hemosiderosis of the spleen. The reproductive NOAEL is 223 to 604 mg/kg/day and the LOAEL is greater than 223 to 604 mg/kg/day based on no effects. The offspring NOAEL is 11 to 31 mg/kg/day and the LOAEL is 105 to 288 mg/kg/day based on reduced pup body weight gains and lower pup body weights during lactation.

4. *Prenatal and postnatal sensitivity.* The Agency concluded that there is concern for the increased susceptibility of infants and children to exposure to acibenzolar-*S*-methyl based on the developmental toxicity study in rats where treatment-related developmental malformations, anomalies and variations were observed at doses equal to or below the NOAEL for maternal toxicity.

5. *Conclusion.* The toxicology database for acibenzolar-*S*-methyl is incomplete. Subchronic neurotoxicity, developmental neurotoxicity and an additional mutagenicity study (Ames study) are required. When assessing acute and chronic dietary exposures, the Agency concluded that the FQPA safety factor should be retained at 10X for the female, 13 to 50 years old, population subgroup (the only population subgroup of concern for acute exposures). The Agency recognizes that the fetal effects occurring in the rat developmental study are of significant toxicological concern and that a developmental neurotoxicity study has been required to further define the neurotoxic potential observed in this study. However, the Agency concluded that a safety factor of 10X is adequate in this case since:

i. The Agency has accounted for the concern that these fetal effects occurred at the lowest dose tested (no developmental NOAEL established) by the requirement of an additional uncertainty factor of 3X when this endpoint is used for risk assessment.

ii. These fetal effects were only observed in one species (in the rat but not in the rabbit).

iii. These fetal effects were not observed in the 2-generation reproduction study.

iv. The exposure databases are well characterized and the exposure assessments will not likely underestimate the exposure resulting from the use of acibenzolar-*S*-methyl. Therefore, the Agency concluded that the FQPA Safety Factor be retained at 10X for females, 13 to 50 years old based on:

a. A quantitative increase in susceptibility of fetuses (compared to dams) in the rat developmental toxicity study (developmental malformations occurred at a dose level which was considerably below the NOAEL for maternal toxicity).

b. A concern that the treatment-related developmental malformations (umbilical hernia) observed in rat fetuses occurred at the lowest dose tested (NOAEL was not established) in the rat developmental toxicity study.

c. The requirement for a developmental neurotoxicity study in rats based on the occurrence of treatment-related effects in nervous system tissues in the rat developmental study.

The data provided no indication of increased susceptibility of rabbit fetuses following *in utero* exposure or of rat fetuses/pups following pre-/postnatal exposures. In these studies, developmental/offspring effects were observed only at or above treatment levels which produced maternal/parental toxicity. When assessing chronic dietary exposure, the Agency concluded that the safety factor can be reduced to 3X for the general population, including infants and children (with the exception of the aforementioned female 13 to 50 population subgroup) since the concern for increased susceptibility seen after *in utero* exposure in the developmental study has no bearing on chronic exposure scenarios for persons other than Females 13 to 50. However, since there still remains a data gap for a developmental neurotoxicity study in rats the safety factor was only reduced to 3X.

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 the USEPA Office of Water

are used to calculate DWLOCs: 2 liter (L)/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: Acute, short-term, intermediate-term, chronic, and cancer.

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

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure (at the 99.9th percentile of exposure), from food to acibenzolar-*S*-methyl will occupy 61% of the aPAD for females 13 to 49 years, the only population subgroup of concern for acute dietary exposure (i.e., no significant acute effects relevant to other subgroups were identified in acute toxicity studies for acibenzolar-*S*-methyl). In addition, despite the potential for acute dietary exposure to acibenzolar-*S*-methyl in drinking water, after calculating DWLOCs and comparing them to conservative model EECs of acibenzolar-*S*-methyl in surface water and ground water, 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 EXPOSURETO ACIBENZOLAR-*S*-METHYL

Population Subgroup/	aPAD (mg/kg)	% aPAD/(Food)	Surface Water EEC/(ppb)	Ground Water EEC/(ppb)	Acute DWLOC/(ppb)
Females 13-49 years	0.0033	61	7.9	0.02	39

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to acibenzolar-*S*-methyl from food will utilize 6% of the cPAD for the U.S. population, 3% of the cPAD for all infants less than 1 year old, 12% of the cPAD for children 1 to 2 years old, the children's subpopulation at greatest exposure and 49% of the cPAD for females 13 to 50 years, the subpopulation at greatest risk. There are no residential uses for acibenzolar-*S*-methyl that result in chronic residential exposure to acibenzolar-*S*-methyl. In addition, despite the potential for chronic dietary exposure to acibenzolar-*S*-methyl in drinking water, after calculating DWLOCs and comparing them to conservative model EECs of acibenzolar-*S*-methyl in surface water and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in Table 3 of this unit:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO ACIBENZOLAR-*S*-METHYL

Population/Subgroup	cPAD/mg/kg/day	%/cPAD/(Food)	Surface Water EEC/(ppb)	Ground/Water EEC/(ppb)	Chronic/DWLOC (ppb)
U.S. Population	0.0367	6	0.49	0.02	1,200
Infants (<1 year old)	0.0367	3	0.49	0.02	360
Children (1 to 2 years old)	0.0367	12	0.49	0.02	320
Females (13 to 49 years old	0.0033	49	0.49	0.02	50

3. *Short-term and Intermediate-term risks.* Short-term and intermediate-term aggregate exposure take into account non-dietary, and non-occupational plus chronic exposure to food and water (considered to be a background exposure level). Acibenzolar-*S*-methyl 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.* Acibenzolar-*S*-methyl has been classified as not likely to be carcinogenic to humans; therefore, acibenzolar-*S*-methyl is expected to pose at most a negligible cancer risk.

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 acibenzolar-*S*-methyl residues.

V. Other Considerations

A. Analytical Enforcement Methodology

An adequate enforcement methodology (AG-671A) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address:*residuemethods@epa.gov.*

B. International Residue Limits

There are no maximum residue limits for acibenzolar-*S*-methyl that have been established by Codex or in Canada or Mexico; therefore, no compatibility issues exist with Codex in regard to the proposed U.S. tolerances discussed in this review.

VI. Conclusion

Therefore, the tolerances are established for residues of acibenzolar-

S-methyl, benzo(1,2,3)thiadiazole-7-carbothioic acid-*S*-methyl ester, in or on onion, dry bulb and onion, green at 0.05 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–2004–0214 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 April 18, 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.1., 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–2004–0214, 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 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: February 7, 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 180.561 is amended by adding text to paragraph (b) to read as follows:

§ 180.561 Acibenzolar-*S*-methyl; tolerances for residues.

* * * * *

(b) *Section 18 emergency exemptions.* Time-limited tolerances are established for residues of acibenzolar-*S*-methyl, benzo(1,2,3)thiadiazole-7-carbothioic acid-*S*-methyl ester in connection with use of the pesticide under section 18 emergency exemptions granted by EPA. The time-limited tolerances will expire and are revoked on the date specified in the following table:

Commodity	Parts per million	Expiration/ revocation date
Onion, dry bulb	0.05	6/30/07
Onion, green	0.05	6/30/07

* * * * *

[FR Doc. 05–2897 Filed 2–15–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2005–0021; FRL–7697–7]

Glyphosate; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of glyphosate, N-(phosphonomethyl)glycine, resulting from the application of glyphosate, the isopropylamine salt of glyphosate, the ethanolamine salt of glyphosate, the ammonium salt of glyphosate, and the potassium salt of glyphosate in or on alfalfa, seed. Monsanto Company 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 February 16, 2005. Objections and requests for hearings must be received on or before April 18, 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–2005–0021. 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: James A. Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5697; e-mail address: *tompkins.jim@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

- Crop production (NAICS 111), 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 18, 2004 (69 FR 51301) (FRL–7364–5), 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 2F6487) by Monsanto Company, 600 13th Street, NW., Suite 600, Washington, DC 20005. The petition requested that 40 CFR 180.364 be amended by establishing a tolerance for residues of the herbicide glyphosate, N-phosphonomethyl glycine, in or on alfalfa, seed at 0.5 parts per million (ppm). That notice included a summary of the petition prepared by Monsanto Company, the registrant. There was one comment received in response to this notice of filing from B. Sachau, 15 Elm Street, Florham, NJ 07932. The commentor objected to allowing any tolerance, waiver, or exemption for glyphosate. The commentor also objected to animal testing and stated that a more reliable method of testing should be developed. This comment is further discussed and addressed in the Final Rule which published in the **Federal Register** of November 10, 2004 (69 FR 65081) (FRL–7683–9).

During the course of the review the Agency decided to correct the company address to read: Monsanto Company, 1300 I St., NW., Suite 450 East, Washington DC 20005.

The Agency is also correcting the proposed tolerance expression to agree with the current expression by including references to the salts. Therefore, the tolerance expression is corrected to read: A tolerance is established for residues of glyphosate, (N-(phosphonomethyl)glycine, resulting from the application of glyphosate, the isopropylamine salt of glyphosate, the ethanolamine salt of glyphosate, the ammonium salt of glyphosate, and the potassium salt of glyphosate in or on alfalfa, seed at 0.5 parts per million (ppm).

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 residues of glyphosate, (N-(phosphonomethyl)glycine, resulting from the application of glyphosate, the isopropylamine salt of glyphosate, the ethanolamine salt of glyphosate, the ammonium salt of glyphosate, and the potassium salt of glyphosate on alfalfa, seed at 0.5 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance were discussed in the Final Rule published in the **Federal Register** of November 10, 2004 (69 FR 65081) which established tolerances for residues of glyphosate in or on cotton, gin byproducts and cotton, undelinted seed. Based on the risk assessments discussed in the above notice, 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 glyphosate residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate analytical methods are available for the enforcement of tolerances for glyphosate in plant and livestock commodities. These methods include gas liquid chromatography (GLC) (Method I in Pesticides Analytical Manual (PAM II)) and high performance liquid chromatography (HPLC) with fluorometric detection. Use of GLC is discouraged due to the lengthliness of the experimental procedure. The HPLC procedure has undergone successful Agency validation and was recommended for inclusion into PAM II. A gas chromatography spectrometry (GC/MS) for glyphosate in crops has also been validated by EPA.

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

B. International Residue Limits

Codex and Mexican maximum residue levels (MRLS) are established for residues of glyphosate per se and Canadian MRLs are established for the combined residues of glyphosate and aminomethylphosphonic acid (AMPA) on a variety of raw agricultural commodities.

Currently no Codex, Mexican, or Canadian MRLs are established for alfalfa, seed.

There are no conditions of registration for the establishment of tolerances on alfalfa, seed.

V. Conclusion

Therefore, the tolerance is established for residues of glyphosate, N-(phosphonomethyl)glycine, resulting from the application of glyphosate, the isopropylamine salt of glyphosate, the ethanolamine salt of glyphosate, the ammonium salt of glyphosate, and the potassium salt of glyphosate, in or on alfalfa, seed at 0.5 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–2005–0021 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 April 18, 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–2005–0021 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: February 7, 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 180.364 is amended by alphabetically adding the commodity "Alfalfa, seed" to the table in paragraph (a) to read as follows:

§ 180.364 Glyphosate; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * *	* *
Alfalfa, seed	0.5
* * *	* *

* * * * *

[FR Doc. 05–2983 Filed 2–15–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2004–0324; FRL–7694–4]

Quizalofop-ethyl; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for combined residues of quizalofop (2-[4-(6-chloroquinoxalin-2-yl oxy)phenoxy]propanoic acid) and quizalofop ethyl (ethyl-2-[4-(6-chloroquinoxalin-2-yl oxy)phenoxy]propanoate, all expressed as quizalofop ethyl in or on bean, dry: bean, succulent; beet, sugar, roots; beet, sugar, tops; cowpea, forage; cowpea, hay; peas, dry; pea, field, hay; pea, field, vines; and pea, succulent. Also a tolerance for the combined residues of quizalofop-p-ethyl ester (ethyl (R)-(2-(4-((6-chloroquinoxalin-2-yl)oxy)phenoxy)propanoate) and its acid metabolite quizalofop-p (R-(2-(4-((6-chloroquinoxalin-2-yl)oxy)phenoxy)propanoic acid)), and the S enantiomers of both the ester and the acid, all expressed as quizalofop-p-ethyl ester is established for beet, sugar, molasses. E. I. DuPont de Nemours and Company 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 February 16, 2005. Objections and requests for hearings must be received on or before April 18, 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–2004–0324. 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: James A. Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5697; e-mail address:*tompkins.jim@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

- Crop production (NAICS 111), 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.gov/opptsfrs/home/guidelin.htm/*.

II. Background and Statutory Findings

In the **Federal Register** of August 25, 2004 (69 FR 52256) (FRL–7372–4), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 3F4268) by E. I. DuPont de Nemours and Company, Laurel Run, Wilmington, DE 19880–0038. The petition requested that 40 CFR 180.441(a)(1) be amended by establishing a tolerance for residues of the herbicide quizalofop (2-[4-(6-chloroquinoxalin-2-yl oxy)phenoxy]propanoic acid) and quizalofop ethyl (ethyl-2-[4-(6-chloroquinqaxalin-2-yl oxy)phenoxy]propanoate), all expressed as quizalofop ethyl (DuPont Assure II) in or on the raw agricultural commodities, dry beans at 0.4 parts per million (ppm); dry bean straw at 3.0 ppm; succulent beans at 0.25 ppm; succulent bean forage at 3.0 ppm; dry peas at 0.25; dry pea straw at 3.0 ppm; succulent peas at 0.3 ppm; succulent pea forage at 3.0 ppm; sugar beet root at 0.1 ppm; sugar beet top at 0.5 ppm; and § 180.441(a)(3) by establishing a permanent tolerance for sugar beet molasses at 0.2 ppm. These proposed tolerances replace the time-limited tolerances listed in § 180.441(a)(4). That notice included a summary of the petition prepared by E.I. Dupont de Nemours and Company, the registrant. There was one comment received in response to this notice of filing. The commenter objected to all approvals of this chemical. The commenter further opposed all exemptions, waivers, residues on food and in soil/water or any plant. The commenter also objected to testing on cows, rabbits, and dogs and to the residues in milk. This comment will be further discussed in Unit V. of this document.

During the course of the review it was determined that the commodity listing in the notice of filing was not consistent with current terminology. Therefore, these corrections are being made at this time. The proposed commodity language for 40 CFR 180.441(a)(1) is beans, dry at 0.4 ppm; bean, succulent at 0.25 ppm; beet, sugar, roots at 0.1 ppm; beet, sugar, tops at 0.5 ppm; cowpea, forage at 3.0 ppm; cowpea, hay at 3.0 ppm; pea, dry at 0.25 ppm; pea, field, hay at 3.0 ppm; pea, field vines at 3.0 ppm; and pea, succulent at 0.3 ppm. The commodities dry bean straw, succulent bean forage, dry pea straw, and succulent pea forage are replaced by the commodities cowpea, hay; cowpea, forage; pea. field, hay; and pea, field, vines; respectively. Similarly, the proposed commodity language for § 180.441(a)(3) is beet, sugar, molasses. These tolerances replace the time-limited tolerances listed in § 180.441(a)(4).

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 quizalofop (2-[4-(6-chloroquinoxalin-2-yl)oxy)phenoxy)propanoic acid) and quizalofop ethyl (ethyl-2-[4-(6-chloroquinoxalin-2-yl)oxy)phenoxy)propanoate), all expressed as quizalofop-ethyl in or on the agricultural commodities beans, dry at 0.4 ppm; bean, succulent at 0.25 ppm; beet, sugar, roots at 0.1 ppm; beet, sugar, tops at 0.5 ppm; cowpea, forage at 3.0 ppm; cowpea, hay at 3.0 ppm; pea, dry at 0.25 ppm; pea, field, hay at 3.0 ppm; pea, field vines at 3.0 ppm; and pea, succulent at 0.3 ppm and quizalofop-p-ethyl ester (ethyl (R)-(2-(4-((6-chloroquinoxalin-2--yl)oxy)phenoxy)propanoate) and its acid metabolite quizalofop-p (R-(2-(4-((6-chloroquinoxalin-2-yl)oxy)phenoxy)propanoic acid)), and the S enantiomers of both the ester and the acid, all expressed as quizalofop-p-ethyl ester in or on the commodity beet, sugar, molasses at 0.2 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by quizalofop-ethyl as well as the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies reviewed are discussed in the **Federal Register** of June 16, 1998 (63 FR 32753) (FRL–5793–5).

B. Toxicological Endpoints

The dose at which NOAEL from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the LOAEL is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An

uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intraspecies differences.

Three other types of safety or uncertainty factors 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 UFs used prior to FQPA passage to account for database deficiencies. These traditional UFs 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 UFs 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/ expcsures) is calculated.

A summary of the toxicological endpoints for quizalofop-ethyl used for human risk assessment is discussed in Unit III.B. of the final rule published in the **Federal Register** of June 16, 1998 (63 FR 32753) (FRL–5793–5).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.441) for the combined residues of quizalofop-ethyl, quizalofop-p-ethyl and associated metabolites, in or on a variety of raw agricultural commodities. Tolerances are established under § 180.441(a)(2) for quizalofop, quizalofop-ethyl, and quizalofop methyl (methyl 2-[4-(6-oxy)phenoxy]propanoate) all expressed as quizalofop-ethyl in or on meat, fat, and meat by products of cattle, goat, hog, horse, poultry, and sheep; milk and milk fat; and egg. Risk assessments were conducted by EPA to assess dietary exposures from quizalofop ethyl 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. There were no effects observed in the toxicology data base that could be attributable to a single dose (exposure). Therefore an acute dietary exposure analysis was not performed.

ii. *Chronic exposure.* In conducting the chronic dietary risk assessment EPA used the Dietary Exposure Evaluation Model (DEEM™) software with the Food Commodity Intake Database (FCID), which incorporates food consumption data as reported by respondents in the United States Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII), and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: Tolerance level residues, DEEM™ default factors, and 100% crop treated. Data on percent of the crop treated or anticipated residues were not used.

iii. *Cancer.* EPA concluded that the pesticidal use of quizalofop-ethyl is not classifiable as to human carcinogenicity. Therefore, a quantitative cancer exposure assessment was not performed. Refer to Unit II.B.4. in the **Federal Register** of June 16, 1998 (63 FR 32753) (FRL–5793–5) for a detailed discussion.

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

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 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 incorporates 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 PC coverage within a watershed or drainage basin.

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

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental

concentrations (EECs), which are the model estimates of a pesticide's concentration in water. EECs derived from these models are used to quantify drinking water exposure and risk as a %RfD or %PAD. Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to quizalofop-ethyl, they are further discussed in Unit III.E.

Based on the GENEEC and SCI-GROW models, the EECs of quizalofop-ethyl for chronic exposures are estimated to be 8.08 ppb for surface water and 0.15 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).

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

D. Safety Factor for Infants and Children

1. *In general.* Section 408 of 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 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.* The histopathology data for F2 weanlings in the 2-generation reproductive toxicity study suggested an increased sensitivity to the offspring. In that study, an increase in the incidence of eosinophilic changes in the liver were noted in the F2 weanlings, and the offspring no observed effect level (NOEL) was less than the parental systemic NOEL. However, the significance of these observations in the 2-generation reproductive toxicity study is rendered questionable due to: (i) The changes in the weanling liver were not well characterized; (ii) the biological significance of this endpoint was not known; (iii) the precise dose of test substance to 21-day old weanlings cannot be determined with any accuracy, but it is likely to exceed that of the adults; (iv) this endpoint (eosinophilic changes), in adults, would not be considered appropriate for use in regulation of a chemical because of the questionable biological significance of this effect; and, (v) previous toxicological studies show the liver as the target organ in rats. No particular significance to the offspring is attributed to the liver effects. Developmental toxicity studies showed no increased sensitivity in pups as compared to maternal animals following *in utero* exposures to rats and rabbits.

3. *Conclusion.* There is a complete toxicity data base for quizalofop-ethyl and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. The impact of quizalofop-ethyl on the nervous system has not been specifically evaluated in neurotoxicity studies. A developmental neurotoxicity study is not required for quizalofop-ethyl based on the following: (i) Quizalofop-ethyl does not appear to be a neurotoxic chemical; (ii) no-treatment-related effects on brain weight or histopathology (non-perfused) of the nervous system was observed in studies that measured these endpoints; (iii) no evidence of developmental anomalites of the fetal nervous system were observed in either rats or rabbits, at maternally toxic oral doses up to 300 and 600 mg/kg/day, respectively, and; (iv) no evidence of an effect on functional development was observed in a postnatal segment of the developmental toxicity study in rats. EPA determined that the 10X SF to protect infants and children should be removed. The FQPA factor is removed because the toxicology data base is complete; a developmental neurotoxicity study is not required; developmental toxicity studies showed no increased sensitivity in fetuses as compared to maternal animals following *in utero* exposures in rats and rabbits; and a 2-generation reproduction study showed no increased sensitivity in pups as compared to adults.

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 milligrams/kilogram/day (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 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.* Quizalofop-ethyl is not expected to pose an acute risk because no toxicological endpoints attributable to a single exposure (dose) were identified in the toxicology data base.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to quizalofop-ethyl from food will utilize 3.0% of the cPAD for the U.S. population, 3.4% of the cPAD for all infants (< 1 year old), and 9.6% of the cPAD for children 1–2 years old. There are no residential uses for quizalofop-ethyl that result in chronic residential exposure to quizalofop-ethyl. In addition, there is potential for chronic dietary exposure to quizalofop-ethyl 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 1.

TABLE 1.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO QUIZALOFOP-ETHYL

Population Subgroup	cPAD mg/kg/day	%cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. population	0.009	3.0	8.08	0.15	306
All infants (<1 year old)	0.009	3.4	8.08	0.15	87
Children (1–2 years old)	0.009	9.6	8.08	0.15	81
Females (13–49 years old)	0.009	2.2	8.08	0.15	264
Youth (13–19 years old)	0.009	2.8	8.08	0.15	262
Adults (20–49 year old)	0.009	1.9	8.08	0.15	308

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).

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

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

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

5. *Aggregate cancer risk for U.S. population.* Quizalofop-ethyl is classified as "not classifiable as to human cancer potential." The Agency believes that any cancer risk posed by quizalofop-ethyl is negligible and there is reasonable certainty that no harm will result form exposure to residue of quizalofop-ethyl. Refer to the **Federal Register** of June 16, 1998 (63 FR 32753) (FRL–5793–5) for a detailed discussion.

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 quizalofop-ethyl residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate analytical methodology (high pressure liquid chromatography (HPLC) using either an ultraviolet or fluorescence detector is available for enforcement purposes in Vol II of the Food and Drug Administration (FDA) Pesticide Analytical Method (PAM II, Method I).

B. International Residue Limits

Since there are no Mexican or Canadian Maximum Residue Levels, compatibility is not a problem at this time. Compatibility cannot be achieved with the Canadian negligible residue type limit of 0.1 ppm, since data supporting United States use patterns had findings of real residues above 0.1 ppm.

C. Conditions

There are no conditions of registration for establishment of tolerances on the commodities bean, dry; bean, succulent; cowpea, forage; cowpea, hay; beet, sugar, molasses; beet, sugar, roots; beet, sugar, tops; pea, dry; pea, field, hay; pea, field, vines; and pea, succulent.

V. Comment

One comment was received in response to the notice of filing. The commenter objected to all approvals of any kind for this pesticide and objected to all exemptions, waivers, residues on food, milk, or on soil/water or any plants. The commenter also objected to animal testing on cows, rabbits, or dogs, because animal testing constitutes animal abuse and stated that it should be stopped. The commenter also stated that more modern less abusive methods should be used.

The comment contained no scientific data or evidence to rebut the Agency's conclusion that there is a reasonable certainty that no harm will result from the aggregate exposure to quizalofop-ethyl, including all anticipated dietary exposure and all other exposures for which there is reliable information.

OPPTS Harmonized Guideline--Health Effects Guidelines (Series 870) recommend that dog or rabbit be used for various acute, subchronic, and longer term chronic, carcinogenic, developmental, and reproductive studies. Residue Chemistry Guidelines (Series 860) recommend that a cow be used for certain feeding studies. Information derived from these tests indicate the presence of possible hazards or residues from exposure to the test substance. Currently, there are no *in vitro* studies that can address the questions that these studies answer. The Agency is currently working with the Interagency Coordinating Committee on the Validation or Alternate Methods to investigate alternative *in vitro* methods.

VI. Conclusion

Therefore, permanent tolerances are established for combined residues of quizalofop (2-[4-(6-chloroquinoxalin-2-yl)oxy)phenoxy)-propanoic acid) and quizalofop ethyl (ethyl-2-[4-(6-chloroquinoxalin-2-yl)oxy)phenoxy)propanoate), all expressed as quizalofop ethyl in or on bean, dry at 0.4 ppm; bean, succulent at 0.25; beet, sugar, roots at 0.1 ppm; beet, sugar, tops at 0.5 ppm; cowpea, forage at 3.0 ppm; cowpea, hay at 3.0 ppm; pea, dry at 0.25 ppm; pea, field, hay at 3.0 ppm; pea, field, vines at 3.0 ppm; and pea, succulent at 0.3 ppm (40 CFR 180.441(a)(1)). Also, 40 CFR 180.441(a)(3) is amended by establishing a permanent tolerance for the combined residues of quizalofop-p-ethyl ester (ethyl (R)-(2-(4-((6-chloroquinoxalin-2-yl)oxy)phenoxy)propanoate)) and its acid metabolite quizalofop-p R-(2-(4-((6-chloroquinoxalin-2-yl)oxy)phenoxy)propanoic acid), and the S enantiomers of both the ester and the acid, all expressed as quizalofop-p-ethyl ester is established for beet, sugar, molasses at 0.2 ppm. These tolerances replace the ones listed in 40 CFR 180.441(a)(4).

VII. Objections and Hearing Requests

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

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2004–0324 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 April 18, 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–2004–0324, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

VIII. Statutory and Executive Order Reviews

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

Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

IX. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: February 7, 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 180.441 is amended by adding alphabetically the following commodities to the table in paragraph (a)(1) and (a)(3) to read as follows:

§ 180.441 Quizalofop-ethyl; tolerances for residues.

(a)(1) * * *

Commodity	Parts per million
Bean, dry	0.4
Bean, succulent	0.25
Beet, sugar, roots	0.1
Beet, sugar, tops	0.5
Cowpea, forage	3.0
Cowpea, hay	3.0
Pea, dry	0.25
Pea, field, hay	3.0
Pea, field, vines	3.0≤
Pea, succulent	0.3
* * * * *	

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(3) * * *

Commodity	Parts per million
Beet, sugar, molasses	0.2 ppm
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[FR Doc. 05–2982 Filed 2–15–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2005–0026; FRL–7697–9]

Syrups, Hydrolyzed Starch, Hydrogenated; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of syrups, hydrolyzed starch, hydrogenated (CAS Reg. No. 68425–17–2) when used as an inert ingredient in pesticide products. Grain Processing Corporation and SPI Polyols 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 syrups, hydrolyzed starch, hydrogenated.

DATES: This regulation is effective February 16, 2005. Objections and requests for hearings must be received on or before April 18, 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–2005–0026. 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: 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

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 October 23, 2002 (67 FR 65115) (FRL–7276–8), 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 2E6503) by Grain Processing Corporation, 1600 Oregon St, Muscatine, Iowa 52761 and SPI Polyols, 321 Cherry Lane, New Castle, Delaware 19720.

The petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of hydrogenated starch hydrolysate (CAS Reg. No. 68425–17–2). Hydrogenated starch hydrolysate is intended to be used as an inert ingredient in pesticide products. That notice included a summary of the petition prepared by the petitioner. One comment was submitted. The Agency's response to this comment is in Unit X.

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 the pesticide chemical. 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. Description of Syrups, Hydrolyzed Starch, Hydrogenated

Syrups, hydrolyzed starch, hydrogenated (also known as hydrogenated starch hydrolyzate or HSH) is a generic term for various hydrogenated syrups. These are also known by the terms sugar alcohols, polyhydric alcohols, or polyols. According to the Food and Drug Administration (FDA), sugar alcohols are "not technically considered artificial sweeteners, . . . are slightly lower in calories than sugar and do not promote tooth decay or cause a sudden increase in blood glucose. They include sorbitol, xylitol, lactitol, mannitol, and maltitol and are used mainly to sweeten sugar-free candies, cookies, and chewing gums."

Syrups, hydrolyzed starch, hydrogenated (CAS Reg. No. 68425–17–2) are typically prepared by hydrolyzing a starch (such as corn starch) and then hydrogenating the hydrolysis product. Starch is a polymer composed of repeating glucose units that are linked by glucosidic bonds. Hydrolysis is the process by which these bonds are broken. Given that starch is a complex polysaccharide, hydrolysis of a starch yields a complex mixture of various chemicals, that retain the basic configuration of saccharides, but can have different functional groups. This complex mixture is then hydrogenated. Both the starting material (the type of starch), and the method of hydrolysis (heat, acid and/or enzymatic) can impact the hydrolyzed starch product that would then be hydrogenated.

Syrups, hydrolyzed starch, hydrogenated contain various amounts

of maltitol, sorbitol and higher order polyols or polysaccharides. Higher-order polyols can be considered to be somewhat polymerized. Syrups, hydrolyzed starch, hydrogenated do not contribute nutrition to the human diet, are often used in reduced-calorie products, and by many are considered useful in the diets of persons with diabetes.

V. 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 syrups, hydrolyzed starch, hydrogenated are discussed in this unit.

A. Review by JECFA

The Joint Expert Committee on Food Additives (JECFA) is an international expert scientific committee that is administered jointly by the Food and Agriculture Organization of the United Nations (FAO) and the World Health Organization (WHO). In Food Additive Series 20, JECFA conducted a review of hydrogenated glucose syrups (see *http://www.inchem.org/documents/jecfa/jecmono/v020je13.htm).* JECFA defined these syrups as follows: "Hydrogenated glucose syrups (HGS) are a mixture of polymers of glucose obtained from starch by hydrolysis which, upon hydrogenation, results in chemical reduction of the end-group glucose molecule to sorbitol. HGS consists primarily of maltitol and sorbitol, with lower portions of hydrogenated oligo- and polysaccharides." The toxicity data base included metabolism studies; several mutagenicity studies; a multigeneration reproduction toxicity study; a developmental study; and various acute, short-term, and long-term toxicity studies. JECFA's conclusions are extracted directly from that document:

- HGS or its major component maltitol produced significantly lower blood-glucose levels and more stable insulin levels than glucose or sucrose due to slow metabolism of maltitol.
- The results from the *in vitro* assays, with and without metabolic activation, suggest that HGS does not induce a mutagenic, clastogenic, genotoxic, or neoplastic transformation response. No *in vivo* clastogenic effects were observed.
- Acute and short-term animal studies indicate that HGS is not toxic after single or repeated oral administration of large doses. In rats, no evidence of toxic effects of prolonged feeding of up to 15–20% of the diet was observed. A 90–day study in dogs showed no evidence of adverse effects, except for diarrhea, at a level of 4.95 grams/kilogram body weight per day (g/kg bwt day).
- A multigeneration reproduction study in rats, in which HGS was administered in drinking water as an 18% aqueous solution, did not reveal any toxicologically significant effects.

In humans, an effect of concern for all polyols is a laxative effect. Available information indicates that a laxative effect can occur at intake levels of 30–50 g/day.

WHO/JECFA also reviewed an oral long-term toxicity/carcinogenic study in the rat conducted with a test substance that was approximately 87% maltitol. No adverse effects were observed in the toxicity study. A slightly increased incidence of mammary gland adenocarcinomas was observed in female rats at the two highest dose levels. However, based on historical control data, these increases were not considered to be related to treatment (see *http://www.inchem.org/documents/jecfa/jecmono/v32je08.htm).*

In 1998, JECFA conducted another review of Maltitol Syrup (see *http://www.inchem.org/documents/jecfa/jecmono/v040je07.htm).* This evaluation examined the metabolic fate of maltitol and higher-order polyols using both *in vitro* and *in vivo* studies. The results indicated that the higher-order polyols were readily hydrolyzed to glucose and maltitol. Glucose would be readily absorbed by the mammalian body; however, the rate of absorption is slower than that of directly ingested glucose. Maltitol would be further degraded through fermentation by intestinal flora. The amounts of maltitol that are absorbed are quickly excreted in the urine with little evidence of metabolism.

JECFA's review of several animal toxicity studies indicated that no treatment-related toxicity was seen in rats or dogs fed a typical syrups, hydrolyzed starch, hydrogenated product at dose levels of 18 and 43 g/kg bwt day, respectively, for 90 days.

In 1999, JECFA conducted a review of the food additive polyglycitol syrup (see *http://www.inchem.org/documents/jecfa/jecmono/v042je13.htm).* In this review, JECFA stated that their previous evaluation of maltitol syrup was applicable to polyglycitol syrup. Maltitol syrup differs from polyglycitol syrup only in the relative proportions of sorbitol, maltitol and higher-order polyols. For this 1999 review, a short-term toxicity study in rats given material with a high-order polyol content of 78% was reviewed.

Doses of a polyglycitol syrup, equal to 13 g/kg bwt per day, in the diets of rats for 13 weeks, "was not associated with adverse effects. The only effects observed--increased weight of the empty caecum and increased urinary calcium excretion in the absence of elevated serum calcium--were considered to be the consequence of the accumulation of poorly absorbed material in the caecum and to be of no toxicological significance."

On the basis of the information reviewed at both the 1998 and the 1999 meetings, JECFA allocated a group acceptable daily intake (ADI) of "not specified" to materials conforming to the specifications for polyglycitol syrup and maltitol syrup. Thus, based on its review of the available data, polyglycitol syrups do not, in the opinion of JECFA, represent a hazard to health and the establishment of an acceptable daily intake (a specific limit on the average daily intake) expressed in numerical form is not needed.

B. Information Supplied by the Petitioner

In an acute oral toxicity study, using a test substance described only as an hydrogenated starch hydrolyzate, the lethal dose $(LD)_{50}$ was >2,500 mg/kg (Toxicity Category III).

C. Conclusion

Syrups, hydrolyzed starch, hydrogenated is a generic term for a range of chemical substances that contain various sugar alcohols (sorbitol, maltitiol, and higher-order polyols) in varying proportions. WHO/JECFA has over a period of some years reviewed an extensive toxicity data base. The studies were conducted using similar mixtures of sugar alcohols. Generally, the studies did not reveal any toxicologically significant effects even at dose levels in the grams per kilogram body weight per day range. The human body has a demonstrated ability to metabolize this type of substance. The most noted effect in humans is a potential laxative effect.

VI. 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.* To the best of the Agency's knowledge, products similar to syrups, hydrolyzed starch, hydrogenated have been used in food manufacture for approximately 20 years. In the food processing industry, these syrups are used as sweetening (flavoring) agents, humectants, texturizers, stabilizers, bulking agents and surface-finishing agents. According to information on the internet, various syrups, hydrolyzed starch, hydrogenated products are used in the manufacture of sugar-free soft and hard candies, and chewing gum. The SPI Polyol website advocates for use of its products in hard candies at levels up to 40%.

Given the widespread occurrence of all the various hydrogenated syrups or sugar alcohols in the existing food supply, the amount of syrups, hydrolyzed starch, hydrogenate in the food supply that could result from use in a pesticide product would not be expected to significantly increase the existing amounts in the food supply. The EPA-regulated uses as an inert ingredient in a pesticide product would be considerably less than all of the existing food additive non-nutritive sweetener uses.

2. *Drinking water exposure.* According to information on the internet, various syrups, hydrolyzed starch, hydrogenated products are soluble in water. It is expected that dissolving these chemicals in water would result in a thick syrupy solution depending on the percent of the syrups, hydrolyzed starch, hydrogenated in solution.

The Agency has used a surrogate chemical, sorbitol, to model the behavior of syrups, hydrolyzed starch, hydrogenated in the environment. Degradation via chemical reactions without the participation of organisms, or abiotic degradation of these chemicals would not be expected to be an important fate process. Chemicals such as syrups, hydrolyzed starch, hydrogenated will tend to have very low sorption coefficients; thus, migration to ground water and surface water via dissolution in water is highly likely. Volatilization from water would be minimal. Biodegradation is expected to be rapid. Degradation will proceed to mineralization, the formation of carbon dioxide and water, in a matter of hours to days thus mitigating the likelihood of leaching and runoff in substantial quantities to sources of drinking water.

B. Other Non-Occupational Exposure

Syrups, hydrolyzed starch, hydrogenated are also used in dental products since they do not contribute to tooth decay.

VII. 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 syrups, hydrolyzed starch, hydrogenated and any other substances, and syrups, hydrolyzed starch, hydrogenated 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 syrups, hydrolyzed starch, hydrogenated 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/.*

VIII. 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 data base unless EPA concludes that a different margin of safety will be safe for infants and children. The JEFCA committee has evaluated a multigeneration reproductive toxicity study in rats in which HGS (hydrogenated glucose syrup), a substance very similar to syrups, hydrolyzed starch, hydrogenated was administered in drinking water as an 18% aqueous solution. JECFA's review and evaluation did not reveal any toxicologically significant effects, and found no indication of increased susceptibility. Based on the reviews and evaluations conducted by WHO/JECFA, EPA has not used a safety factor analysis to assess the risk of syrups, hydrolyzed starch, hydrogenated. For the same reasons the additional tenfold safety factor is unnecessary.

IX. Determination of Safety for U.S. Population and Infants and Children

The JECFA Committee reviewed and evaluated over a period of some years toxicity studies performed on various sugar alcohol chemicals. As a result of their review and evaluation, JECFA determined an ADI (Acceptable Daily Intake) of "not specified." The only concern was for the potential laxative effect at high intakes. Based on the available information, EPA finds that exempting syrups, hydrolyzed starch, hydrogenated (CAS Reg. No. 68425–17–2) from the requirement of a tolerance will be safe for the general population including infants and children.

X. 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 syrups, hydrolyzed starch,

hydrogenated for endocrine effects may be required.

B. Analytical Method(s)

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 for syrups, hydrolyzed starch, hydrogenated.

D. International Tolerances

Various syrups, hydrolyzed starch, hydrogenated are used as food additives in several countries. The Agency is not aware of any country requiring a tolerance for syrups, hydrolyzed starch, hydrogenated nor have any CODEX Maximum Residue Levels (MRLs) been established for any food crops at this time.

E. List 4A (Minimal Risk) Classification

The Agency established 40 CFR 180.950 (see the rationale in the proposed rule published January 15, 2002 (67 FR 1925) (FRL–6807–8)) to collect the tolerance exemptions for those substances classified as List 4A, i.e., minimal risk substances. As part of evaluating an inert ingredient and establishing the tolerance exemption, the Agency determines the chemical's list classification. The results of the reviews and evaluations performed by WHO/JECFA indicate a substance of lower toxicity. Therefore, syrups, hydrolyzed starch, hydrogenated (CAS Reg. No. 68425–17–2) is to be classified as a List 4A inert ingredient.

F. Public Comment

One comment was received from the Corn Allergy Support Group requesting that the Agency not grant the tolerance exemption for syrups, hydrolyzed starch, hydrogenated. The commenter believes that syrups, hydrolyzed starch, hydrogenated can cause severe allergic reactions in those individuals who are allergic to corn. It is certainly possible for an individual to be allergic to any food. However, most food allergy experts agree that the most common food allergens are: Peanuts, tree nuts, milk, soybeans, eggs, fish, crustacea, and wheat. According to the Food Allergy and Anaphylaxis Network (see *http://www.foodallergy.org/allergens.html*) these eight allergens account for 90% of all food-allergic reactions.

Generally, an allergic response occurs as a result of the body's reaction to protein. In 2001, the Agency evaluated in a White Paper the presence of protein in several of the processed foods derived from corn (see *http://www.epa.gov/oscpmont/sap/2001/july/wetmilling.pdf*). Corn can be milled by a dry milling or a wet milling process. The dry milling process produces flour, cornmeal, grits, corn bran and feed mixtures. The wet milling process uses a series of chemical reactions to produce corn syrup, corn oil and cornstarch. The steps that occur in the wet milling process are: Steeping, germ separation, fine grinding, starch separation, syrup conversion, and fermentation.

Given that corn starch can be used as the starting material for syrups, hydrolyzed starch, hydrogenated, the following parts of the discussion of the starch separation process as extracted from the White Paper are relevant here: "Mill starch is passed through a centrifuge which allows for the gluten to be spun out. . . . At this point, the starch has only approximately one to two percent of protein remaining. The starch is diluted 8 to 14 times, rediluted and washed again. . . to remove the last trace of protein and produce high quality starch (usually greater than 99.5% pure)." The starch is then converted to corn syrup via various refinement steps that are similar to the heat, acid and/or enzymatic processes using in producing syrups, hydrolyzed starch, hydrogenated.

Data in the White Paper demonstrate that while some very low levels of protein are present in the cornstarch, no detectable levels are present in corn syrup.

Fraction Derived from Corn Wet-Milling Process	Percent Protein
Corn starch	0.3–0.35% (high amylose corn - up to 1%)
Corn syrup (made from corn starch)	Not detectable

Given the similarities of the starting materials and the processes used, the Agency believes that the above data can be used to demonstrate the absence of protein in syrups, hydrolyzed starch, hydrogenated.

In response to the comment received, Grain Processing Corporation, the petitioner, submitted an opinion paper prepared by Dr. Steve L. Taylor of the Food Allergy Research & Resource Program at the University of Nebraska. The opinion paper dated February 9, 2000. is titled, *Allergenicity of Corn-Derived Maltodextrin and Corn Starch.* The abstract of Dr. Taylor's opinion is as follows:

No convincing evidence exists to support the existence of allergic reactions to corn-derived maltodextrin and corn starch. Corn, the primary source from which maltodextrins are derived, is rarely allergenic. The allergenicity of corn is likely due to specific protein allergens in corn, although these allergens have not been identified. Corn-derived maltodextrins and corn starch contain little, if any, protein. Reports of allergic reactions to corn-derived maltodextrins and corn starch in the medical literature are based upon controversial diagnostic approaches and/or anecdote. These reports have not been confirmed through double-blind, placebo-controlled challenge trials. The few clinical studies that have been conducted on corn-allergic individuals using more rigorous clinical approaches have failed to document allergic reactions to corn starch, corn syrup, or corn-derived maltodextrins.

Given the above data and an analysis of the information provided, EPA believes that there is a reasonable certainty that the tolerance exemption for syrups, hydrolyzed starch, hydrogenated would not contribute to allergic individuals' exposure to allergens. The protein that would provoke the allergic reaction is no longer present.

X. Conclusions

Based on the reviews and evaluations performed by JECFA which included the establishment of an acceptable daily intake (ADI) of "not specified" for polyglycitol syrups, EPA concludes that there is a reasonable certainty of no harm from aggregate exposure to residues of syrups, hydrolyzed starch, hydrogenated. Accordingly, EPA finds that exempting syrups, hydrolyzed starch, hydrogenated (CAS Reg. No. 68425–17–2) from the requirement of a tolerance will be safe.

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–2005–0026 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 April 18, 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 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–2005–0026, 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).

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: February 7, 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 § 180.950, the table in paragraph (e) is amended by adding alphabetically the following entry to read as follows:

§ 180.950 Tolerance exemptions for minimal risk active and inert ingredients.

* * * * *

(e) * * *

Chemical Name	CAS No.
* * *	* *
Syrups, hydrolyzed starch, hydrogenated	CAS Reg. No. 68425–17–2
* * *	* *

[FR Doc. 05–2981 Filed 2–15–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2004–0400; FRL–7695–7]

Avermectin B_1 and its delta-8,9-isomer; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for the combined residues of the insecticide/miticide avermectin B_1 (a mixture of avermectins containing greater than or equal to 80% avermectin B_{1a} (5-O-demethyl avermectin A_1) and less than or equal to 20% avermectin B_{1b} (5-O-demethyl-25-de (1-methylpropyl)-25-(1-methylethyl) avermectin A_1)), and its delta-8,9-isomer, in or on avocado at 0.020 ppm; food products in food handling establishments (other than those already covered by higher tolerances as a result of use on growing crops, and other than those already covered by tolerances on milk, meat, and meat byproducts) at 0.01 ppm; herbs, subgroup 19A (except chives) at 0.030 ppm; meat and meat byproducts of goat, hog, horse, poultry, and sheep at 0.02 ppm; mint at 0.010 ppm; plum at 0.010 ppm; plum, prune, dried at 0.025 ppm; vegetable, fruiting, group 8 at 0.020 ppm; and vegetable, leafy, except Brassica, group 4 at 0.10 ppm. These tolerances were requested under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA) in petitions filed by Syngenta Crop Protection, Inc. (formerly Novartis Crop Protection, Inc.), Interregional Research Project Number 4, and Whitmire Micro-Gen Research Laboratories, Inc.

DATES: This regulation is effective February 16, 2005. Objections and requests for hearings must be received on or before April 18, 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–2004–0400. 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: Thomas C. Harris, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460–0001; telephone number: (703) 308–9423; e-mail address: *harris.thomas@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.gov/opptsfrs/home/guidelin.htm/*.

II. Background and Statutory Findings

As listed below, EPA published notices pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of pesticide petitions in the **Federal Register** requesting that 40 CFR 180.449 be amended by establishing a tolerance for combined residues of the insecticide/miticide avermectin B_1 (a mixture of avermectins containing greater than or equal to 80% avermectin B_{1a} (5-O-demethyl avermectin A_1) and less than or equal to 20% avermectin B_{1b} (5-O-demethyl-25-de (1-methylpropyl)-25-(1-methylethyl) avermectin A_1)), and its delta-8,9-isomer, as listed below. Note: Avermectin B_1 is also referred to as abamectin. Each notice included a summary of the petition prepared by the registrant listed. There were no substantive comments received in response to these notices of filing.

- April 7, 2000, 65 FR 18328, FRL–6499–4, PP 9F5047: This petition was filed by Novartis Crop Protection, Inc. (now Syngenta Crop Protection, Inc.), P.O. Box 18300, Greensboro, NC 27419–8300 for tolerances in or on vegetable, leafy, except Brassica, group 4 at 0.10 ppm; vegetable, fruiting, group 8 at 0.02 ppm (subsequently revised to 0.020 ppm); and plum at 0.01 ppm (subsequently revised to 0.010 ppm). The petition was also subsequently revised to add a tolerance for plum, prune, dried at 0.025 ppm.
- September 27, 2000, 65 FR 58080, FRL–6746–4, PP 0F6146: This petition was filed by Novartis Crop Protection, Inc. (now Syngenta Crop Protection, Inc.), P.O. Box 18300, Greensboro, NC 27419–8300 for tolerances in or on avocado at 0.02 ppm (subsequently revised to 0.020 ppm) and mint tops at 0.01 ppm (subsequently revised to simply mint at 0.010 ppm). Requests for tolerances for additional crops submitted in that petition will be decided at a later date.
- July 28, 2004, 69 FR 45039, FRL–7366–3, PP 2H5642: This petition was filed by Whitmire Micro-Gen Research Laboratories, Inc., 3568 Tree Court Industrial Blvd, St. Louis, MO 63122 for tolerances in or on food products in food handling establishments at 0.001 ppm (subsequently revised to 0.01 ppm). In addition, the petition was subsequently revised to request tolerances for meat and meat byproducts for goat, hog, horse, poultry, and sheep at 0.02 ppm.
- July 28, 2004, 69 FR 45039, FRL–7366–3, PP 3E6557: This petition was filed by Interregional Research Project Number 4, 681 U.S. Hwy 1 South, North Brunswick, NJ 08902–3390 for tolerances in or on herb crop subgroup 19A (except chives) at 0.03 ppm (subsequently revised to 0.030 ppm).

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 the combined residues of avermectin B_1 (a mixture of avermectins containing greater than or equal to 80% avermectin B_{1a} (5-O-demethyl avermectin A_1) and less than or equal to 20% avermectin B_{1b} (5-O-demethyl-25-de (1-methylpropyl)-25-(1-methylethyl) avermectin A_1)), and its delta-8,9-isomer, in or on avocado at 0.020 ppm; food products in food handling establishments (other than those already covered by higher tolerances as a result of use on growing crops, and other than those already covered by tolerances on milk, meat, and meat byproducts) at 0.01 ppm; herbs, subgroup 19A (except chives) at 0.030 ppm; meat and meat byproducts of goat, hog, horse, poultry, and sheep at 0.02 ppm; mint at 0.010 ppm; plum at 0.010 ppm; plum, prune, dried at 0.025 ppm; vegetable, fruiting, group 8 at 0.020 ppm; and vegetable, leafy, except Brassica, group 4 at 0.10 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by avermectin B_1 and its delta-8,9-isomer are discussed in Table 1 of this unit as well as the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies reviewed.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY

Guideline No.	Study Type	Results
870.3100	Subchronic feeding study - rats	NOAEL > 0.40 mg/kg/day LOAEL = not established

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

Guideline No.	Study Type	Results
870.3150	Subchronic toxicity - dogs	NOAEL = 0.25 mg/kg/day LOAEL = 0.50 mg/kg/day based on body tremors, one death, liver pathology, decreased body weight
870.3200	21/28–Day dermal toxicity	Study not available
870.3700	Prenatal developmental in rodents - rats	Maternal NOAEL > 1.6 mg/kg/day Maternal LOAEL = not established Developmental NOAEL > 1.6 mg/lg/day Developmental LOAEL = not established
870.3700	Prenatal developmental in rodents - CD-1 mouse	Maternal NOAEL = 1.5 mg/kg/day Maternal LOAEL = 3.0 mg/kg/day based on hind limb splay Developmental NOAEL < 0.75 mg/kg/day Developmental LOAEL = 0.75 mg/kg/day based on cleft palate and hindlimb extension
870.3700	Prenatal developmental in nonrodents - rabbits	Maternal NOAEL = 1.0 mg/kg/day Maternal LOAEL = 2.0 mg/kg/day based on decreased body weight, food consumption and water consumption Developmental NOAEL = 1.0 mg/kg/day Developmental LOAEL = 2.0 mg/kg/day based on cleft palate, clubbed foot, delayed ossification of sternebrae, metacarpals, phalanges
870.3800	2–Generation reproduction and fertility effects - rat	Parental/Systemic NOAEL = 0.40 mg/kg/day LOAEL =not established Reproductive NOAEL = 0.40 mg/kg/day LOAEL = not established Offspring NOAEL = 0.12 mg/kg/day LOAEL = 0.40 mg/kg/day based on increased retinal folds, increased dead pups at birth, decreased viability and lactation indices, decreased pup body weight
870.3800	1–Generation reproduction and fertility effects - rat	Parental/Systemic NOAEL = 1.0 mg/kg/day. LOAEL = 1.5/2.0 based on whole body tremors, ataxia, ptyalis, ocular/nasal discharges and mortality Reproductive NOAEL = 3.0 mg/kg/day Offspring NOAEL < 0.5 mg/kg/day LOAEL = 0.5 mg/kg/day based on decreased pup survival and body weight between days 1–21 and delay in opening of eyes
870.3800	1–Generation reproduction and fertility effects - rat	Parental/Systemic NOAEL = 0.4 mg/kg/day LOAEL = not established Reproductive NOAEL = 0.4 mg/kg/day Offspring NOAEL =0.1 mg/kg/day LOAEL = 0.2 mg/kg/day based on reduced pup weight, spastic movements, delayed incisor eruption
870.3800	1–Generation reproduction and fertility effects - rat	Parental/Systemic NOAEL = 0.4 mg/kg/day LOAEL = not established Reproductive NOAEL = 0.4 mg/kg/day Offspring NOAEL = 0.4 mg/kg/day LOAEL = not established
870.4100	Chronic toxicity - dogs	NOAEL = 0.25 mg/kg/day LOAEL = 0.5 mg/kg/day based on mydriasis, death at 1.0 mg/kg/day
870.4300	Combined chronic toxicity/carcinogenicity - rats	NOAEL = 1.5 mg/kg/day LOAEL = 2.0 mg/kg/day based on tremors No evidence of carcinogenicity
870.4300	Combined chronic toxicity/carcinogenicity - mice	NOAEL = 4.0 mg/kg/day LOAEL = 8.0 mg/kg/day based on increased mortality in males, tremors, body weight decreases in females, dermatitis in males, extramedullary hematopoiesis in spleen of males No evidence of carcinogenicity
870.5100	Gene mutation Ames/*Salmonella E. coli*/mammalian gene mutation assay	Negative both with and without S-9

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

Guideline No.	Study Type	Results
870.5100	Gene mutation Ames/*Salmonella E. coli*/mammalian gene mutation assay	Negative both with and without S-9 up to 3,000 µg/plate
870.5100	Gene mutation Ames/*Salmonella E. coli*/mammalian gene mutation assay	Negative both with and without S-9
870.5300	Gene mutation CHO/HGPRTforward mutation assay	Negative
870.5300	Gene mutation Mammalian cells in culture in V79 cells	Not mutagenic for V79 cells in absence of S-9, but in the presence of S-9 appeared to have a mutagenic potential, provided the test cells had an appropriate level of sensitivity
870.5395	Cytogenetics *in vivo* micronucleus assay - male mice	No chromosomal aberrations in male mice, but females not tested
870.5550	Other effects	Single strand DNA breaks at 0.3 and 0.6 mM in rat hepatocytes *in vitro*, but negative when hepatocytes from rat at LD_{50} dose level was used
non-guideline	Metabolism	69–82% of label is excreted in feces by day 7; $T_{\frac{1}{2}}$ =1.2 days. The reliability of these data is questionable
non-guideline	Metabolism	Avermectin B_{1a} did not bioaccumulate in rat tissues. Half-life slightly longer in females than in males for several tissues
non-guideline	Metabolism	The metabolism of avermectin B_1 in rats results in the formation of 24-OH-Me-B_{1a} and accounts for most of the radiolabeled residues. Avermectin B_{1a} does not bioaccumulate
870.7600	Dermal penetration	Dermal penetration is 1%

Additional data, from studies conducted in CF-1 mice, are also available and were included in a developmental toxicity review conducted by the Agency. However, additional data were submitted by the registrant documenting that the extreme sensitivity of CF-1 mice to abamectin, resulting in developmental toxicity, was due to a genetic lack of p-glycoprotein (a genetic finding specific to the CF-1 mouse strain). EPA has concluded that the CF-1 mouse data are inappropriate for use in risk assessment for abamectin.

B. Toxicological Endpoints

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

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

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

For non-dietary risk assessments (other than cancer) the UF is used to determine the 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). 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 avermectin B_1 and its delta-8,9-isomer used for human risk assessment is shown in Table 2 of this unit:

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR AVERMECTIN B_1 AND ITS DELTA-8,9-ISOMER FOR USE IN HUMAN RISK ASSESSMENT

Exposure/Scenario	Dose Used in Risk Assessment, Interspecies and Intraspecies and any Traditional UF	Special FQPA SF and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute dietary (general population, including infants and children and females 13–50)	NOAEL = 0.25 mg/kg/day UF = 1,000[1] Acute RfD = 0.00025 mg/kg/day	Special FQPA SF= 1 aPAD = acute RfD ÷ FQPA SF= 0.00025 mg/kg/day	1–Year Oral Study in the Dog LOAEL = 0.50 mg/kg/day based on mydriasis seen at week 1 of dosing.
Chronic dietary(all populations)	NOAEL = 0.12 mg/kg/day UF = 1,000[1] Chronic RfD = 0.00012 mg/kg/day	Special FQPA SF = 1 cPAD = chronic RfD ÷ FQPA SF= 0.00012 mg/kg/day	2–Generation reproduction in the rat LOAEL = 0.40 mg/kg/day based on decreased pup body weight and viability during lactation, and increased incidence of retinal rosettes in F_{2b} weanlings
Short-term and intermediate-term incidental oral (1 day–6 months)	NOAEL = 0.12 mg/kg/day	Residential LOC for MOE = 1,000[1] Occupational = NA	2–Generation reproduction in the rat LOAEL = 0.40 mg/kg/day based on decreased pup body weight and viability during lactation, and increased incidence of retinal rosettes in F_{2b} weanlings
Dermal (all durations)	Oral study NOAEL = 0.12 mg/kg/day (dermal absorption rate = 1%)	Residential LOC for MOE = 1,000[1] Occupational LOC for MOE = 100	2–Generation reproduction in the rat LOAEL = 0.40 mg/kg/day based on decreased pup body weight and viability during lactation, and increased incidence of retinal rosettes in F_{2b} weanlings
Inhalation (all durations)	Oral study NOAEL = 0.12 mg/kg/day (inhalation absorption rate = 100%)	Residential LOC for MOE = 1,000[1] Occupational LOC for MOE = 100	2–Generation reproduction in the rat LOAEL = 0.40 mg/kg/day based on decreased pup body weight and viability during lactation, and increased incidence of retinal rosettes in F_{2b} weanlings
Cancer (oral, dermal, inhalation)	EPA classified Avermectin B_1 as "not likely to be carcinogenic to humans" based on the absence of significant tumor increases in two adequate rodent carcinogenicity studies.		

NA = Not Applicable

[1]Includes a 10X FQPA Safety Factor to account for the lack of a DNT study, the steepness of the dose/response curve in several studies, and the severity of effects (death, neurotoxicity, and developmental toxicity) seen at the LOAELs.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.449) for the combined residues of avermectin B_1 and its delta-8,9-isomer, in or on a variety of raw agricultural commodities. Permanent tolerances were previously established for almond; almond, hulls; apple; apple, wet pomace; cattle, fat; cattle, meat byproducts; cattle, meat; celeriac, roots; celeriac, tops; celery; citrus, dried pulp; citrus, oil; citrus; cotton gin byproducts; cotton seed; cucurbits; grape; hop, dried cone; lettuce, head; milk; pear; pepper; potato; strawberry; tomato; walnut. Temporary tolerances were established for avocado, basil, spinach. Risk assessments were conducted by EPA to assess dietary exposures from avermectin B_1 and its delta-8,9-isomer 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 Dietary Exposure Evaluation Model (DEEM™) software with the Food Commodity Intake Database (FCID) and the Lifeline™ model version 2.0), which incorporate food consumption data as reported by respondents in the U.S. Department of Agricultural (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII), and accumulated exposure to the chemical for each commodity. Percent crop treated and anticipated residues were used.

A highly refined Tier 3 acute dietary exposure assessment was conducted for the general U.S. population and various population subgroups. This was a probabilistic assessment using anticipated residues from the current and previously submitted field trial and market basket data, USDA Pesticide Data Program (PDP) monitoring data, percent crop treated (%CT) estimates for most of the commodities, and default DEEM™ version 7.76 processing factors when monitoring data were not available.

The acute dietary exposure estimates are below EPA's level of concern

(<100% aPAD) at the 99.9th exposure percentile for the general U.S. population (35% aPAD using Lifeline™ and 34% aPAD using DEEM™ software with the FCID and all other population subgroups. The most highly exposed population subgroup is children 1– 2 years old, at 64% aPAD using Lifeline™ and 65% aPAD using DEEM™/FCID. The acute assessment was highly refined; however, inclusion of additional %CT data and modified concentration/processing factors could aid in further refining the acute dietary assessment.

ii. *Chronic exposure.* In conducting the chronic dietary risk assessment EPA used the DEEM™/FCID and the Lifeline™ model version 2.0, which incorporate food consumption data as reported by respondents in the USDA 1994–1996 and 1998 Nationwide CSFII, and accumulated exposure to the chemical for each commodity. Percent crop treated and anticipated residues were used.

A Tier 2 chronic dietary exposure assessment was conducted for the general U.S. population and various population subgroups. The assumptions of the assessment were anticipated residue estimates, %CT estimates for most of the commodities, and default DEEM™ (version 7.76) processing factors when necessary.

The chronic dietary exposure estimates are below EPA's level of concern (<100% cPAD) for the general U.S. population (4% of the cPAD using both models) and all population subgroups. The most highly exposed population subgroup is children 1–2 years old, at 13% cPAD using Lifeline™ and 14 %cPAD using DEEM™/FCID. The chronic assessment was somewhat refined; inclusion of additional anticipated residues, more %CT information, and modified concentration/processing factors would further refine the chronic dietary assessment.

iii. *Cancer.* A cancer aggregate exposure assessment was not performed because avermectin B_1 is classified as "not likely to be carcinogenic to humans."

iv. *Anticipated residue and percent crop treated (PCT) information.* The Agency used the anticipated residues from field trial data, market basket data, PDP monitoring data, and percent crop treated data to conduct a dietary exposure analysis.

Section 408(b)(2)(E) of the FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must pursuant to section 408(f)(1) require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. For the present action, EPA will issue such Data Call-Ins for information relating to anticipated residues as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Such Data Call-Ins will be required to be submitted no later than 5 years from the date of issuance of this tolerance.

Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; Condition 2, that the exposure estimate does not underestimate exposure for any significant subpopulation group; and Condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by section 408(b)(2)(F) of FFDCA, EPA may require registrants to submit data on PCT.

The Agency believes that the three conditions have been met. With respect to condition 1, EPA finds that the PCT information is reliable and has a valid basis. The Agency has utilized statistical data from a number of public and proprietary sources including USDA/ National Agricultural Statistics Service, Doane, Maritz, Kline, and National Center for Food and Agricultural Policy. The following PCT information was used in this analysis: Almonds 21%; apples 9%; avocado 20%; basil 100%; casabas 1%; celeriac 100%; celery 51%; citrus (except orange) 49%; cotton 3%; cress (garden, upland) 1%; eggplant 6%; endive 9%; grape 6%; hops 82%; lettuce 17%; melons (except casabas) 7%; mint 100%; orange 26%; pear 62%; peppers 8%; plum 1%; potato 1%; squash and cucumber 1%; spinach 9%; strawberry 44%; tomato 6%; walnut 2%.

With respect to conditions 2 and 3, the regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the consumption of food bearing avermectin B_1 and its delta-8,9-isomer in a particular area.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for avermectin B_1 and its major soil degradates (a mixture of an 8-α-hydroxy and a ring opened aldehyde derivative) 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 avermectin B_1 and its major soil degradates (a mixture of an 8-α-hydroxy and a ring opened aldehyde derivative).

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

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a

screen for sorting out pesticides for which it is unlikely that drinking water concentrations would exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs), which are the model estimates of a pesticide's concentration in water, 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 avermectin B_1 and its degradates they are further discussed in the aggregate risk sections in Unit E.

Based on the PRZM and EXAMS models/index reservoir scenario and SCI-GROW models, the EECs of avermectin B_1 and its major soil degradates (a mixture of an 8-α-hydroxy and a ring opened aldehyde derivative) for acute exposures are estimated to be 0.34 parts per billion (ppb) for surface water and 0.0017 ppb for ground water. The EECs for chronic exposures are estimated to be 0.14 ppb for surface water and 0.0017 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).

Avermectin B_1 is currently registered for use on the following residential non-dietary sites: Residential lawn application for fire ant control and residential indoor crack and crevice application for cockroaches and ants. Because the FQPA requires consideration of aggregate exposure to all likely non-occupational uses, this assessment includes contact with Avermectin B_1 from residential crack and crevice and lawn treatments as the most common and worst-case contributors to such exposures. The MOEs for applicable residential scenarios were calculated using limited exposure monitoring data and the Standard Operating Procedures for Residential Exposure Assessments (Draft, December 18, 1997), along with interim changes presented in Science Advisory Council for Exposure SOP No.11 (February 22, 2001). For the indoor crack and crevice treatment, measured airborne and surface residue data were available to perform an assessment of postapplication inhalation, dermal and incidental oral risks. Combined residential exposures/risks were estimated for adults and for children.

Children's exposure from incidental ingestion of granules on treated lawns was compared to the acute dietary NOAEL of 0.25 mg/kg/day. The exposure/risk from this latter scenario was not combined with other scenarios, nor was it included in the aggregate assessment, because it is considered to be a one-time, episodic event, rather than occurring for several days (or several months).

The MOEs for all residential scenarios are greater than the LOC of 1,000, and therefore, are not of concern.

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 avermectin B_1 and any other substances and avermectin B_1 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 avermectin B_1 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 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 database 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.

For avermectin B_1 EPA retained the default 10X factor based on the following combination of factors:

- There is residual uncertainty due to a data gap for a developmental neurotoxicity study (DNT), as well as data gaps for acute and subchronic neurotoxicity studies. These studies are required because avermectin B_1 has been shown to be neurotoxic, with multiple neurotoxic clinical signs (including head and body tremors and limb splay) seen in multiple studies with multiple species.
- For several species, the dose-response curve appears to be steep.
- Severe effects were seen at the LOAELs in several studies (death, neurotoxicity, and developmental toxicity).

Although increased susceptibility of the young was observed in several studies, the degree of concern with that susceptibility was judged to be low. Increased susceptibility (qualitative and/or quantitative) was seen in prenatal developmental toxicity studies in CD-1 mice and rabbits following in utero exposure to avermectin B_1. There was also an increase in quantitative and qualitative susceptibility in the rat reproductive toxicity study. The concern for susceptibility seen in the developmental study with rabbits and in the reproductive toxicity study in the rat is low because the lowest NOAEL obtained (0.12 mg/kg/day) was used as the basis for the chronic RfD and other non-dietary risk assessment scenarios, which is protective of all of the developmental/offspring effects seen in those studies. Similarly, the concern for susceptibility seen at the LOAEL in the CD-1 mouse developmental toxicity study is low, since the NOAEL in the rat reproductive toxicity study is lower than the dose at which effects were seen in the CD-1 mouse.

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 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.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to avermectin B_1 and its delta-8,9-isomer will occupy 35% of the aPAD for the U.S. population, 32% of the aPAD for females 13 years and older, 62% of the aPAD for all infants (< 1 year old), and 65% of the aPAD for children (1–2 years old). In addition, there is potential for acute dietary exposure to avermectin B_1 and its major soil degradates (a mixture of an 8-α-hydroxy and a ring opened aldehyde derivative) 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 Table 4 of this unit:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO AVERMECTIN B_1 AND ITS DEGRADATES

Population Subgroup	aPAD (mg/kg)	% aPAD/(Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Acute DWLOC (ppb)
U.S. population	0.00025	35	0.34	0.0017	5.7
All infants (<1 year old)	0.00025	62	0.34	0.0017	0.94
Children (1–2 years old)	0.00025	65	0.34	0.0017	0.88
Children (3–5 years old)	0.00025	62	0.34	0.0017	0.94
Children (6–12 years old)	0.00025	36	0.34	0.0017	1.6
Youth (13–19 years old)	0.00025	29	0.34	0.0017	5.3
Females (13–49 years old)	0.00025	32	0.34	0.0017	5.1
Adults (20–49 years old)	0.00025	27	0.34	0.0017	6.3

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to avermectin B_1 and its delta-8,9-isomer from food will utilize 4.3% of the cPAD for the U.S. population, 5.8% of the cPAD for all infants (< 1 year old), and 14% of the cPAD for children (1 –2 years old). Based upon the use pattern, chronic residential exposure to residues of avermectin B_1 and its delta-8,9-isomer is not expected. In addition, there is potential for chronic dietary exposure to avermectin B_1 and its major soil degradates (a mixture of an 8-α-hydroxy and a ring opened aldehyde derivative) in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in Table 4 of this unit:

TABLE 4.—AGGREGATE RISK ASSESSMENT FORCHRONIC (NON-CANCER) EXPOSURE TO AVERMECTIN B_1 AND ITS DEGRADATES

Population Subgroup	cPAD (mg/kg)	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. population	0.00012	4.3	0.14	0.0017	4.0
All infants (<1 year old)	0.00012	5.8	0.14	0.0017	1.1
Children (1–2 years old)	0.00012	14	0.14	0.0017	1.0

TABLE 4.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO AVERMECTIN B_1 AND ITS DEGRADATES—Continued

Population Subgroup	cPAD (mg/kg)	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
Children (3–5 years old)	0.00012	11	0.14	0.0017	1.1
Children (6–12 years old)	0.00012	6.7	0.14	0.0017	1.4
Youth (13–19 years old)	0.00012	4.2	0.14	0.0017	3.5
Females (13–49 years old)	0.00012	4.1	0.14	0.0017	3.5
Adults (20–49 years old)	0.00012	3.7	0.14	0.0017	4.0

3. *Short-term Intermediate- term risk.* Short-term/intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Avermectin B_1 is currently registered for use that could result in short-term/intermediate-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term/intermediate-term exposures for avermectin B_1.

Using the exposure assumptions described in this unit for short-term/intermediate-term exposures, EPA has concluded that food and residential exposures aggregated result in aggregate MOEs of 4,000 for adults and 2,600 for children 1–2 years old. These aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food and residential uses. In addition, short-term/intermediate-term DWLOCs were calculated and compared to the EECs for chronic exposure of avermectin B_1 and its major soil degradates (a mixture of an 8-α-hydroxy and a ring opened aldehyde derivative) 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/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 SHORT-TERM/INTERMEDIATE-TERM EXPOSURE TO AVERMECTIN B_1 AND ITS DEGRADATES

Population Subgroup	Aggregate MOE (Food + Residential)	Aggregate Level of Concern (LOC)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Short-Term/Intermediate-Term DWLOC (ppb)
Adults	4,000	1,000	0.14	0.0017	3.0
Children (1–2 years old)	2,600	1.000	0.14	0.0017	0.56

5. *Aggregate cancer risk for U.S.* population. A cancer aggregate risk assessment was not performed because avermectin B_1 is classified as "not likely to be carcinogenic to humans."

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to residues of avermectin B_1 and its degradates.

IV. Other Considerations

A. Analytical Enforcement Methodology

1. *Residue analytical method.* Analytical methodologies for enforcement of residues from the use of Avermectin B_1 are available in PAM II for citrus and processed fractions (Method I), ginned cottonseed (Method IA), and bovine tissues and milk (Method II). These methods are adequate for enforcement of the proposed tolerances.

2. *Multiresidue methods testing.* The 1990 Pestrak data base indicates that Avermectin B_1 and its delta 8,9-isomer are not recovered or not likely to be recovered by Food and Drug Administration multiresidue methods.

B. International Residue Limits

Codex has recommended several Maximum Residue Levels (MRLs) for plant and cattle commodities (Pesticide Residues in Food-1997, Part 1). The Codex residue definition (step 8/CXL) is "sum of avermectin B_{1a}, avermectin B_{1b}, 8,9-Z-avermectin B_{1a} and 8,9-Z-avermectin B_{1b} for plants, and the sum of avermectin B_{1a} and 8,9-Z-avermectin B_{1a} for cattle commodities. The Codex limits of determination (equivalent to EPA's limits of quantitation, (LOQ's)) for plant and livestock commodities are ≤0.01 ppm. (For plants, the LOQ ranges from 0.002 to 0.005 ppm for each of two peaks, one peak representing avermectin B_{1a} and its 8,9-Z-isomer and the other peak representing avermectin B_{1b} and its 8,9-Z-isomer. For cattle meat, the Codex LOQ is 0.01 ppm.) The tolerance expression in Canada for plants is "avermectin B_{1a}, avermectin B_{1b}, and the 8,9-Z-isomers." The tolerance expression in Mexico for plants is avermectina. The Codex and the USA residue definitions are the same for plants. The Codex definition does not include avermectin B_{1b} and 8,9-Z-avermectin B_{1b} for livestock commodities whereas the U.S. does include avermectin B_{1b} and 8,9-Z-avermectin B_{1b} in livestock commodities.

C. Conditions

The following data are required. The product registrations for the above new uses will be conditional and may be

rescinded if this information is not provided.

1. Storage stability data to support the storage interval of prunes and to provide the storage information for prunes. The tolerance is conservatively established using the maximum theoretical concentration factor of 3.5x for plum, prunes, dried. This value will be reevaluated once the required information is supplied.

2. A summary of the procedures for the processing of mint to mint oil.

3. A developmental neurotoxicity study in the rat.

4. Acute and subchronic neurotoxicity studies in the rat.

5. A 28–day inhalation study (following the 90–day inhalation toxicity study protocol). Thorough histopathological evaluation is recommended to assess potential pulmonary toxicity resulting from long-term or repeated exposure.

V. Conclusion

The following current temporary tolerances due to expire on December 31, 2006 are hereby deleted: Avocado at 0.02 ppm, basil at 0.05 ppm, and spinach at 0.05. The following permanent tolerances are also deleted: Celery at 0.05 ppm, head lettuce at 0.05 ppm, pepper at 0.02 ppm, and tomato at 0.01 ppm. In their place, new tolerances without a time limitation are established for the combined residues of the insecticide/miticide avermectin B_1 (a mixture of avermectins containing greater than or equal to 80% avermectin B_{1a} (5-O-demethyl avermectin A_1) and less than or equal to 20% avermectin B_{1b} (5-O-demethyl-25-de (1-methylpropyl)-25-(1-methylethyl) avermectin A_1)), and its delta-8,9-isomer, in or on avocado at 0.020 ppm; food products in food handling establishments (other than those already covered by higher tolerances as a result of use on growing crops, and other than those already covered by tolerances on milk, meat, and meat byproducts) at 0.01 ppm; herbs, subgroup 19A (except chives) at 0.030 ppm; meat and meat byproducts of goat, hog, horse, poultry, and sheep at 0.02 ppm; mint at 0.010 ppm; plum at 0.010 ppm; plum, prune, dried at 0.025 ppm; vegetable, fruiting, group 8 at 0.020 ppm; and vegetable, leafy, except Brassica, group 4 at 0.10 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–2004–0400 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 April 18, 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–2004–0400, 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: February 7, 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 180.449 is amended as follows.

■ i. By alphabetically adding the following commodities to the table in paragraph (a) to read as follows

■ ii. By removing the entries for the commodities "Celery"; "Lettuce, head"; "Pepper"; and "Tomato"; in the table in paragraph (a).

■ iii. The text of paragraph (b) is removed and reserved.

§ 180.449 Avermectin B_1 and its delta-8,9-isomer; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * *	*
Avocado	0.020
* * * *	*
Food products in food handling establishments (other than those already covered by higher tolerances as a result of use on growing crops, and other than those already covered by tolerances on milk, meat, and meat byproducts)	0.01
Goat, meat	0.02
Goat, meat byproducts	0.02
* * * *	*
Herbs, crop subgroup 19A (except chives)	0.030
Hog, meat	0.02
Hog, meat byproducts	0.02
* * * *	*
Horse, meat	0.02
Horse, meat byproducts	0.02
* * * *	*
Mint	0.010
* * * *	*
Plum	0.010
Plum, prune, dried	0.025
* * * *	*
Poultry, meat	0.02
Poultry, meat byproducts	0.02
Sheep, meat	0.02
Sheep, meat byproducts	0.02
* * * *	*
Vegetable, fruiting, crop group 8	0.020
Vegetable, leafy, except Brassica, crop group 4	0.10
* * * *	*

(b) *Section 18 emergency exemptions.* [Reserved]

* * * * *

[FR Doc. 05–2985 Filed 2–15–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2004–0406; FRL–7690–2]

Clothianidin; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of clothianidin in or on pome fruit. Arvesta Corporation requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective February 16, 2005. Objections and requests for hearings must be received on or before April 18, 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–2004–0406. 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: Daniel Kenny, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7546; e-mail address:*kenny.dan@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

- Crop production (NAICS 111), 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 on 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 December 31, 2003 (68 FR 75504) (FRL–7334–2), 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 1F6342) by Arvesta Corporation, 100 First St., Suite 1700, San Francisco, CA 94105. The petition requested that 40 CFR 180.586 be amended by establishing a tolerance for residues of the insecticide clothianidin, (E)-1-(2-chloro-1,3-thiazol-5-ylmethyl)-3-methyl-2-nitroguanidine, in or on pome fruit at 1.0 parts per million (ppm). That notice included a summary of the petition prepared by Arvesta Corporation, 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 (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 residues of clothianidin on pome fruit at 1.0 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by clothianidin as well as the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies reviewed are discussed in the **Federal Register** of May 30, 2003 (68 FR 32390) (FRL–7306–8).

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

is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intraspecies differences.

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

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

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

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk). An example of how such a probability risk is expressed would be to describe the risk as one in one hundred thousand (1×10^{-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 clothianidin used for human risk assessment is shown in Table 1 of this unit:

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

Exposure/Scenario	Dose Used in Risk Assessment, Interspecies and Intraspecies and any Traditional UF	Special FQPA SF and LOC for Risk Assessment	Study and Toxicological Effects
Acute dietary (Females 13–50 years of age)	Developmental NOAEL = 25 mg/kg/day UF = 1000 Acute RfD = 0.025 mg/kg	FQPA SF = 1 aPAD = acute RfD ÷ FQPA SF = 0.025 mg/kg	Developmental rabbit study Developmental LOAEL = 75 mg/kg/day based on an increased litter incidence of a missing lobe of the lung.
Acute dietary (General population)	NOAEL = 25 mg/kg/day UF = 1000 Acute RfD = 0.025 mg/kg	FQPA SF = 1 aPAD = acute RfD ÷ FQPA SF = 0.025 mg/kg	Special Neurotoxicity/Pharmacology Study in Mice and Rats LOAEL = 50 mg/kg based on transient signs of decreased spontaneous motor activity, tremors and deep respirations.
Chronic dietary (All populations)	Offspring NOAEL = 9.8 mg/kg/day UF = 1000 Chronic RfD = 0.0098 mg/kg/day	FQPA SF = 1 cPAD = chronic RfD ÷ FQPA SF = 0.0098 mg/kg/day	2–Generation reproduction study Offspring LOAEL = 31.2 mg/kg/day based on decreased mean body weight gain and delayed sexual maturation, decreased absolute thymus weights in F_1 pups and an increase in stillbirths in both generations.
Incidental Oral (All Durations)	NOAEL = 9.8 mg/kg/day	Residential LOC for MOE = 1000	2–Generation Reproduction Study Offspring LOAEL = 31.2 mg/kg/day based on decreased mean body weight gain and delayed sexual maturation, decreased absolute thymus weights in F_1 pups and an increase in stillbirths in both generations.

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

Exposure/Scenario	Dose Used in Risk Assessment, Interspecies and Intraspecies and any Traditional UF	Special FQPA SF and LOC for Risk Assessment	Study and Toxicological Effects
Dermal (All Durations)	Oral study NOAEL= 9.8 mg/kg/day (dermal absorption rate = 1%)	Residential LOC for MOE = 1000	2–Generation Reproduction Study Offspring LOAEL = 31.2 mg/kg/day based on decreased mean body weight gain and delayed sexual maturation, decreased absolute thymus weights in F_1 pups and an increase in stillbirths in both generations.
Inhalation (All durations)	Oral study NOAEL = 9.8 mg/kg/day (inhalation absorption rate = 100%)	Residential LOC for MOE = 1000	2–Generation Reproduction Study Offspring LOAEL = 31.2 mg/kg/day based on decreased mean body weight gain and delayed sexual maturation, decreased absolute thymus weights in F_1 pups and an increase in stillbirths in both generations.
Cancer (oral, dermal, inhalation)	Classification: Not likely to be carcinogenic to humans		

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.586) for the residues of clothianidin, in or on a variety of raw agricultural commodities. Tolerances for clothianidin are established on canola, field corn, pop corn, sweet corn, and milk. Since clothianidin is a major metabolite of thiamethoxam, which has many registered uses and several pending uses, residues of clothianidin that would theoretically result from the metabolism of thiamethoxam are included in the analysis. Risk assessments were conducted by EPA to assess dietary exposures from clothianidin 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 Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM-FCID™), which incorporates food consumption data as reported by respondents in the United States Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII), and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: The acute analysis is a conservative assessment that was based on tolerance level residues and the assumption of 100% crop treated (PCT) for established and proposed clothianidin uses. For the commodities that have both thiamethoxam tolerances and established or proposed clothianidin tolerances (i.e., sweet corn, field corn, pop corn, canola, milk, and pome fruit), the proposed clothianidin tolerances are added to the residues that could result from use of thiamethoxam. The assumptions made for the acute exposure assessments for thiamethoxam are discussed in the **Federal Register** of January 5, 2005 (70 FR 708) (FRL–7689–7). The general U.S. population and all population subgroups have exposure and risk estimates which are below EPA's LOC (i.e., the aPADs are all below 100%). The most highly exposed population subgroup is infants less than 1 year old, which utilizes 80% of the aPAD.

ii. *Chronic exposure.* In conducting the chronic dietary risk assessment EPA used the DEEM-FCID™, which incorporates food consumption data as reported by respondents in the USDA 1994–1996 and 1998 Nationwide CSFII, and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: The chronic analysis is a relatively conservative assessment that was based on tolerance level residues and the assumption of 100% CT for established and proposed clothianidin uses, with the exception of anticipated residues (AR) for apples and pears. For the commodities that have both thiamethoxam tolerances and established or proposed clothianidin tolerances (i.e., sweet corn, field corn, pop corn, canola, and milk), the proposed clothianidin tolerances are added to the residues that could result from use of thiamethoxam. For apples and pears, the highest average field trial (HAFT) levels from the residue field trials were added to the residues that could result from use of thiamethoxam. The assumptions made for the chronic exposure assessments for thiamethoxam are discussed in the **Federal Register** of January 5, 2005 (70 FR 708) (FRL–7689–7). The general U.S. population and all population subgroups have exposure and risk estimates which are below EPA's LOC (i.e., the cPADs are all below 100%). The most highly exposed population subgroup is children 1 to 2 years of age, which utilizes 15% of the cPAD.

iii. *Cancer.* EPA has determined that clothianidin is not likely to be a human carcinogen. As a result, a quantitative cancer dietary exposure analysis was not performed.

iv. *Anticipated residue and PCT information.* Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. As required by section 408(b)(2)(E) of FFDCA, EPA will issue a data call-in for information relating to anticipated residues to be submitted no later than 5 years from the date of issuance of this tolerance.

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

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

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

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

Based on the FIRST and SCI-GROW models, the EECs of clothianidin for acute exposures are estimated to be 7.29 parts per billion (ppb) for surface water and 5.84 ppb for ground water. The EECs for chronic exposures are estimated to be 1.35 ppb for surface water and 5.84 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). Clothianidin is currently registered for use on the following residential non-dietary sites: *Turfgrasses.* The risk assessment was conducted using the following residential exposure assumptions: Due to the use patterns on turfgrasses, a number of residential or recreational post-application exposures are possible. In a residential setting, a "homeowner" may be exposed during application of the material to his or her lawn. Further, the "homeowner" may also experience post-application dermal exposure. Toddlers may be exposed via "hand-to-mouth" oral exposures and/or dermal exposures. "Aggregated" exposures are presented for toddlers (i.e., hand-to-mouth turf plus hand-to-mouth soil plus dermal post-application). EPA considers hand-to-mouth ingestion of granules to be episodic in nature, that is, a "one-time" event. Therefore the exposure from ingestion of granules is not combined with believed multiple exposures from "mouthing" of turf or soil or from post-application dermal exposure. The estimated exposures and risks are presented below in Table 2 of this unit:

TABLE 2.—SUMMARY OF RESIDENTIAL POST-APPLICATION EXPOSURES AND RISKS TO CLOTHIANIDIN

Activity	Exposure (Dose)/mg a.i./kg bw/day	MOE
Toddler oral hand to mouth from contacting treated turf	0.0059	1,700
Toddler incidental oral ingestion of treated soil	0.00002	490,000
Adult dermal post-application turf contact	0.00108	9,100
Adult combined dermal exposure = application + post-application	0.000026 + 0.00108	8,900
Toddler dermal post-application turf contact	0.00155	6,300
Toddler combined oral (except granules) and dermal exposures (treated turf + treated soil + dermal)	0.00747	1,300
Adult golfer post-application turf contact	0.000075	130,000
Child golfer post-application turf contact	0.000128	77,000

A MOE of 1,000 is adequate to protect adults and children from residential non-dietary post-application exposures to clothianidin. The estimated MOE's are based upon conservative assumptions and are greater than 1,000. Therefore, the estimated risks from residential non-dietary post-application exposures do not exceed EPA's LOC.

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 does not have, at this time, available data to determine whether clothianidin has a common mechanism of toxicity with other substances. Unlike

other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to clothianidin and any other substances and clothianidin 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 clothianidin has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's OPP concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's web site at *http://www.epa.gov/pesticides/cumulative/*.

D. Safety Factor for Infants and Children

1. *In general.* Section 408 of 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.* No quantitative or qualitative susceptibility was observed in either of the developmental rat or rabbit studies. Quantitative susceptibility was observed in both the reproduction and developmental neurotoxicity studies; however, the degree of concern for these studies is low because the observed effects are well characterized and there are clear NOAELs/LOAELs in each case. In addition, the endpoint of concern is the one that is being used for short-, intermediate- and long-term dietary and non-dietary exposure risk assessments. There are no residual uncertainties. Therefore, there are no to low concerns with regard to prenatal and/or postnatal toxicity.

3. *Conclusion.* The toxicology database for clothianidin is not complete for FQPA purposes. A complete complement of acceptable developmental, reproduction, developmental neurotoxicity, mammalian neurotoxicity and special neurotoxicity studies are available; however, due to evidence of decreased absolute and adjusted organ weights of the thymus and spleen in multiple studies in the clothianidin data base, and since juvenile rats in the 2-generation reproduction study appear to be more susceptible to these effects, EPA has determined that testing should be conducted to assess immune system function in adults and in young animals following developmental exposures (i.e., a developmental immunitoxicity study).

In the absence of the developmental immunotoxicity study, EPA determined that there is insufficient data to justify selection of an additional safety factor for the protection of infants and children lower than the default value of 10X for both single and repeated dose exposure scenarios. Therefore, an additional FQPA safety factor of 10X, in the form of a data base uncertainty factor (UFDB), will be applied to both single and repeated dose exposure scenarios (i.e., acute and chronic RfDs, short- and intermediate-term incidental oral exposures, and short-, intermediate-, and long-term dermal and inhalation exposure resulting from residential uses of clothianidin) to account for the lack of the developmental immunotoxicity study with clothianidin.

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.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to clothianidin will occupy 18% of the aPAD for the U.S. population, 12% of the aPAD for females 13 years and older, 80% of the aPAD for infants less than one year old, and 60% of the aPAD for children 1 to 2 years old. In addition, there is potential for acute dietary exposure to clothianidin in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in Table 3 of this unit:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO CLOTHIANIDIN

Population/Subgroup	aPAD(mg/kg)	%/aPAD/(Food)	Surface Water EEC/(ppb)	Ground Water EEC/(ppb)	Acute DWLOC (ppb)
General U.S. Population	0.025	18	7.29	5.84	710
All infants (less than one year old)	0.025	80	7.29	5.84	48
Children 1–2 years old	0.025	60	7.29	5.84	92
Females 13–49 years old	0.025	12	7.29	5.84	640
Adults 50+ years old	0.025	14	7.29	5.84	1,500

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to clothianidin from food will utilize 6% of the cPAD for the U.S. population, 13% of the cPAD for infants less than one year old, and 15% of the cPAD for children 1–2 years old. There are also registered uses on turfgrasses for clothianidin that may result in chronic residential exposure. Combined residential exposure estimates range from an MOE of 1,300 for combined oral and dermal exposure to toddlers (treated turf + treated soil + dermal) to 8,900 for dermal exposure to adults (application + post-application) adults. In addition, there is potential for chronic dietary exposure to clothianidin in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in Table 4 of this unit:

TABLE 4.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO CLOTHIANIDIN

Population/Subgroup	cPAD/mg/kg/day	%/cPAD (Food)	Surface Water EEC/(ppb)	Ground Water EEC/(ppb)	Chronic DWLOC (ppb)
U.S. Population	0.0098	6	1.35	5.84	320
All infants (less than one year old)	0.0098	13	1.35	5.84	85
Children 1–2 years old	0.0098	15	1.35	5.84	83
Females 13–49 years old	0.0098	5	1.35	5.84	280
Adults 50+ years old	0.0098	5	1.35	5.84	330

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).

Clothianidin is currently registered for use that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term exposures for clothianidin.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded that food and residential exposures aggregated result in aggregate MOEs of 5,900 for the general U.S. population; 1,100 for children 1–2 years old; and 6,200 for females 13 to 49 years old. These aggregate MOEs do not exceed the Agency's LOC for aggregate exposure to food and residential uses. In addition, short-term DWLOCs were calculated and compared to the EECs for chronic exposure of clothianidin in ground and surface water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect short-term aggregate exposure to exceed the Agency's LOC, as shown in Table 5 of this unit:

TABLE 5.—AGGREGATE RISK ASSESSMENT FOR SHORT-TERM EXPOSURE TO CLOTHIANIDIN

Population/Subgroup	Aggregate/MOE/(Food + Residential)	Aggregate/LOC	Surface Water EEC/(ppb)	Ground/Water EEC/(ppb)	Short-Term DWLOC (ppb)
General U.S. Population	5,900	1,000	1.35	5.84	280
Children 1–2 years old	1,100	1,000	1.35	5.84	8.7
Females 13–49 years old	6,200	1,000	1.35	5.84	250

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

Clothianidin 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 clothianidin.

Using the exposure assumptions described in this unit for intermediate-term exposures, EPA has concluded that food and residential exposures aggregated result in aggregate MOEs of 5,900 for the general U.S. population: 1,100 for children 1–2 years old; and 6,200 for females 13 to 49 years old. These aggregate MOEs do not exceed the Agency's LOC for aggregate exposure to food and residential uses. In addition, intermediate-term DWLOCs were calculated and compared to the EECs for chronic exposure of clothianidin 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 intermediate-term aggregate exposure to exceed the Agency's LOC, as shown in Table 6 of this unit:

TABLE 6.—AGGREGATE RISK ASSESSMENT FOR INTERMEDIATE-TERM EXPOSURE TO CLOTHIANIDIN

Population/Subgroup	Aggregate/ MOE/(Food + Residential)	Aggregate/ LOC	Surface Water EEC/ (ppb)	Ground/ Water EEC/ (ppb)	Intermediate-Term DWLOC (ppb)
General U.S. Population	5,900	1000	1.35	5.84	280
Children 1–2 years old	1,100	1,000	1.35	5.84	8.7
Females 13–49 years old	6,200	1,000	1.35	5.84	250

5. *Aggregate cancer risk for U.S. population.* Clothianidin has been classified as a "not likely human carcinogen." Therefore, it is not expected to pose a cancer risk.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (liquid chromatography/mass spectroscopy/mass spectroscopy LC/MS/MS analysis) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov.*

B. International Residue Limits

No Codex, Canadian, or Mexican maximum residue levels (MRLs) have been established for residues of clothianidin.

V. Conclusion

Therefore, the tolerance is established for residues of clothianidin, (E)-1-(2-chloro-1,3-thiazol-5-ylmethyl)-3-methyl-2-nitroguanidine, in or on pome fruit 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–2004–0406 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 April 18, 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–2004–0406, 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: February 7, 2005.

Losi 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 180.586 is amended by alphabetically adding the commodity "Pome fruit" to the table in paragraph (a) to read as follows:

§ 180.586 Clothianidin; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * *	* *
Pome fruit	1.0

* * * * *

[FR Doc. 05–2984 Filed 2–15–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2005–0031; FRL–7698–3]

Octanamide, N,N-dimethyl and Decanamide, N,N-dimethyl; Exemptions from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes exemptions from the requirement of a tolerance for residues of N,N-dimethyloctanamide or octanamide, N,N-dimethyl (CAS Reg. No. 1118–92–9), and N,N-dimethyldecanamide or decanamide, N,N-dimethyl (CAS Reg. No. 14433–76–2) when used as inert ingredients (emulsifier, solvent, and cosolvent) in pesticide formulations applied only to growing crops. The C.P. Hall Company, now doing business as CPH Services, 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 N,N-dimethyloctanamide and N,N-dimethyldecanamide.

DATES: This regulation is effective February 16, 2005. Objections and requests for hearings must be received on or before April 18, 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–2005–0031. 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: Princess Campbell, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8033; e-mail address: *campbell.princess@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 November 15, 2001 (66 FR 57450) (FRL–6808–6), 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 1E6257) by The C.P. Hall Company, 311 S. Wacker, Suite 4700, Chicago, IL 60606, now doing business as CPH Services. The petition requested that 40 CFR part 180 be amended by establishing exemptions from the requirement of a tolerance for residues of N,N-dimethyloctanamide (CAS Reg. No. 1118–92–9) and N,N-dimethyldecanamide (CAS Reg. No. 14433–76–2) when used as inert ingredients as an emulsifier, solvent, and cosolvent in pesticide formulations applied only to growing crops at less than 15% of the total formulation by weight. That notice included a summary of the petition prepared by the petitioner.

In 2003, EPA received an amendment to the pending PP 1E6257. Subsequent to the publication of that notice of filing, the petitioner requested to amend the pending pesticide petition to remove the 15% limitation on the percentage of N,N-dimethyloctanamide and N,N-dimethyldecanamide used in formulated products. There were no other changes to the information presented by the petitioner in the 2001 notice. The amended notice was published in the **Federal Register** of November 19, 2003 (68 FR 65279) (FRL–7332–6). There were no comments received in response to either of the notices of filing.

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 N,N-dimethyloctanamide and N,N-dimethyldecanamide are discussed in this unit.

A. Submitted Studies

The petitioner has also submitted information to the Agency as part of the High Production Volume Challenge Program. According to that information, N,N-dimethyldecanamide (CAS No. 14433–76–2) is produced commercially in a purified form (98%) as Hallcomid M–10. N,N-dimethyloctanamide (CAS No. 1118–92–9) and N,N-dimethyldecanamide are produced as a commercial mixture, Hallcomid M–8–10, containing 50–65% N,N-dimethyloctanamide, 37–50% of N,N-dimethyldecanamide, 0–5% N,N-dimethylhexanamide, and 0–2% N,N-dimethyldodecanamide.

The test substance for all of the studies reviewed by the Agency was identified as Hallcomid M–8–10. Thus, both the N,N-dimethyloctanamide and N,N-dimethyldecanamide were present in the test substance. Given that the octanamide and decanamide differ only in the carbon length (C8 versus C10) of the alkyl chain, the two chemicals can be considered as surrogates for each other.

The acute toxicity profile is presented in Table 1. below:

TABLE 1.—ACUTE TOXICITY PROFILE OF N,N-DIMETHYLOCTANAMIDE AND N,N-DIMETHYLDECANAMIDE

Study	Result	Category
Acute oral	LD_{50} = 1.77 g/kg (confidence limits is 95% for a range of 1.02 to 3.08 g/kg)	III
Acute dermal	Female LD_{50} > 400 and < 2,000 mg/kg Male LD_{50} > 2,000 mg/kg	II
Acute inhalation	LC_{50} > 3.55 mg/L	IV
Eye irritation	Corrosive	I
Dermal irritation	Moderate to severe erythema at 48 hours	II
Dermal sensitization	Not a sensitizer	N/A

The petitioner submitted oral subchronic studies in the rat and dog, a rat inhalation study, and developmental toxicity studies in the rat and rabbit. The results of the Agency's review of these studies are in Table 2. below:

TABLE 2.—TOXICITY STUDIES USING N,N-DIMETHYLOCTANAMIDE AND N,N-DIMETHYLDECANAMIDE

Type of Study/Route/Species	Doses	Results
6–week oral gavage dog	0, 20, 100, or 500 mg/kg/day Note that 500 mg/kg/day was increased to 1,000 mg/kg/day at 2 weeks	No observed adverse effect level (NOAEL) = 100 mg/kg/day Lowest observed adverse effect level (LOAEL) = 500/1,000 mg/kg/day based on clinical signs
90–day in the diet rat	0, 400, 2,000, or 10,000 parts per million (ppm) equivalent to 0, 27.4/35.2, 136.8/178.5, 787.5/894.6 (M/F) mg/kg/day	NOAEL = 136.8 (M) and 894.6 (F) mg/kg/day LOAEL = 787.6 (M) based on kidney effects. A LOAEL was not determined for females but would be greater than 894.6 mg/kg/day, the highest dose tested
5–day inhalation rat	0, 24.6, 111.2, or 521.2 mg/m^3	NOAEL = 111.2 mg/m^3 LOAEL = 521.2 mg/m^3 based on clinical signs, decreased body temperature, decreased body weight and weight gain, and histopathological findings in the respiratory tract

TABLE 2.—TOXICITY STUDIES USING N,N-DIMETHYLOCTANAMIDE AND N,N-DIMETHYLDECANAMIDE—Continued

Type of Study/Route/Species	Doses	Results
Developmental gavage rat gestation days 6–15	0, 50, 150, or 450 mg/kg/day	Maternal NOAEL = 150 mg/kg/day Maternal LOAEL = 450 mg/kg/day based on clinical signs, decreased weight gain, and food consumption Developmental NOAEL = 150 mg/kg/day Developmental LOAEL = 450 mg/kg/day based on increased post-implantation loss, decreased fetal body weight, increased incidence of skeletal malformations/variations
Developmental gavage rabbit gestation days 6–18	0, 100, 300, or 1,000 mg/kg/day	Maternal NOAEL = 300 mg/kg/day Maternal LOAEL = 1,000 mg/kg/day based on decreases in body weight gain and food consumption Developmental NOAEL was not determined but would be equal to or greater than 1,000 mg/kg/day Developmental LOAEL was not determined, but would be greater than 1,000 mg/kg/day

The petitioner also submitted the following mutagenicity assays, as described in Table 3. below:

TABLE 3.—MUTAGENICITY ASSAYS CONDUCTED USING N,N-DIMETHYLOCTANAMIDE AND N,N-DIMETHYLDECANAMIDE

Type of Assay	Test Culture	Results
In vitro (bacterial reverse gene mutation)	TA 98, 100, 1535, 1537 *S. typhimurium*	No evidence of induced mutant colonies over background
In vitro mutagenicity (mammalian forward gene mutation)	Chinese hamster V79 cells	No evidence of induced mutant colonies over background
In vitro cytogenetics (chromosomal aberrations)	Chinese hamster ovary (CHO) cells	No evidence of chromosome aberrations over background
UDS (unscheduled DNA synthesis)	Primary rat hepatocyte cultures	No evidence UDS was induced

B. Structure Activity Relationship (SAR) Assessment

Toxicity for N,N-dimethyloctanamide and several structurally-related analogs was assessed, in part, by a process called SAR. In this process, the chemical's structural similarity to other chemicals (for which data are available) is used to determine toxicity. For human health, this process, can be used to assess absorption and metabolism, mutagenicity, carcinogenicity, developmental and reproductive effects, neurotoxicity, systemic effects, immunotoxicity, and sensitization and irritation. This is a qualitative assessment using terms such as good, not likely, poor, moderate, or high. Since N,N-dimethyldecanamide is of a chain length intermediate between N,N-dimethyloctanamide and the analogs assessed, the SAR conclusions also apply to N,N-dimethyloctanamide.

The SAR conclusions were as follows: Absorption would be poor via all routes of exposure. Thus, no significant effects are expected. The SAR did indicate concerns that one of the analogs might be an irritant. These concerns can be appropriately addressed through labeling and the use of protective equipment.

C. Conclusions

The acute toxicity data indicated that N,N-dimethyloctanamide and N,N-dimethyldecanamide are eye and dermal irritants.

Subchronic toxicity studies revealed no significant treatment related effects for N,N-dimethyloctanamide and N,N-dimethyldecanamide. In the 6-week oral gavage study in dogs, there were no significant differences between treated and control groups. During a 90-day oral toxicity study in rats, N,N-dimethyloctanamide and N,N-dimethyldecanamide did not produce any significant effects on mortality, clinical signs, food consumption, hematology, or gross pathology. In the 5-day inhalation study, test animals exhibited signs of respiratory tract irritation. However, this respiratory irritant effect occurred only at high inhalation doses.

N,N-dimethyloctanamide and N,N-dimethyldecanamide showed no evidence of mutagenicity, or chromosome aberration, and did not show any signs of developmental toxicity in the study in rabbits at dose levels up to 1,000 mg/kg/day. In a rat developmental toxicity study there was a decrease in weight gain in the high dose group, which could possibly be explained by a decrease in food consumption. It is noted that the SAR did not identify any developmental or reproductive concerns.

There is a consistent pattern of NOAELs of 100 mg/kg/day or greater in both subchronic toxicity studies and the maternal NOAELs in the developmental toxicity studies. But, the effects noted were not clinically or toxicologically relevant especially when compared to the control groups. These effects were mainly decreased weight gain in all species tested, but this occurred in such a small number of animals that it was not even statistically significant. Also, there was a corresponding decrease in food consumption. Additionally, it is noted that the spacing between the NOAELs and LOAELs is large.

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 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.

Both N,N-dimethyloctanamide and N,N-dimethyldecanamide are sponsored under the High Production Volume Challenge Program. This is indicative of over 1 million pounds of N,N-dimethyloctanamide and N,N-dimethyldecanamide either produced or imported per year. Information indicates that N,N-dimethyloctanamide and N,N-dimethyldecanamide are used in personal care products and in paints.

The Agency has used various screening-level models to estimate some of the existing levels of exposure and those that could occur as a result of establishing this tolerance exemption. To assure protectiveness, the estimates in Table 4. below are deliberately intended to over-estimate exposure.

TABLE 4.—EXPOSURE ESTIMATES FOR N,N-DIMETHYLOCTANAMIDE AND N,N-DIMETHYLDECANAMIDE

Type of Exposure	Exposure Level
Dietary - Food (as a result of application to crops)	Acute exposure: All population subgroups less than 1 mg/kg/day at 95th percentile Chronic exposure: All population subgroups less than 1 mg/kg/day
Dietary - Drinking Water	Acute exposure: 0.0038 (child) and 0.0011 (adult) mg/kg/day Chronic exposure: 0.00062 (child) and 0.00018 (adult) mg/kg/day
Residential (as a result of using a spray paint product)	Acute inhalation exposure: 0.054 to 0.424 mg/kg/day
Residential (as a result of using a personal care product)	Chronic dermal exposure: 0.00032 mg/kg/day

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 N,N-dimethyloctanamide and N,N-dimethyldecanamide and any other substances. N,N-dimethyloctanamide and N,N-dimethyldecanamide do not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that N,N-dimethyloctanamide and N,N-dimethyldecanamide 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 (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/*.

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 data unless EPA concludes that a different margin of safety will be safe for infants and children. The Agency has reviewed the results of two developmental toxicity studies conducted using N,N-dimethyloctanamide and N,N-dimethyldecanamide. Based on the observed insignificant clinical toxic effects such as decreased weight gain due to decreased food intake, and the fact that developmental signs were observed only at very high doses, EPA has not used a safety factor analysis to assess the risk. For the same reasons a tenfold safety factor is unnecessary.

VIII. Determination of Safety for U.S. Population, Infants, and Children

The Agency has reviewed and evaluated a toxicity database of 15 studies conducted using N,N-dimethyloctanamide and N,N-dimethyldecanamide. Studies indicate that N,N-dimethyloctanamide and N,N-dimethyldecanamide have a low systemic toxicity via oral exposure and are not mutagenic. Developmental effects were observed only at very high doses. The SAR assessments did not indicate any concerns for carcinogenicity, developmental, or reproductive effects. Based on the available information on toxicity and exposure, EPA finds that exempting N,N-dimethyloctanamide and N,N-dimethyldecanamide from the requirement of a tolerance 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 N,N-dimethyloctanamide and N,N-dimethyldecanamide for endocrine effects may be required.

B. Analytical Method(s)

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 for N,N-dimethyloctanamide and N,N-dimethyldecanamide.

D. International Tolerances

The Agency is not aware of any country requiring a tolerance for N,N-dimethyloctanamide and N,N-dimethyldecanamide nor have any CODEX Maximum Residue Levels (MRLs) been established for any food crops at this time.

X. Conclusions

Based on the information in this preamble, EPA concludes that there is a reasonable certainty of no harm from aggregate exposure to residues of N,N-dimethyloctanamide or octanamide, N,N-dimethyl (CAS Reg. No. 1118–92–9), and N,N-dimethyldecanamide or decanamide, N,N-dimethyl (CAS Reg. No. 14433–76–2). Accordingly, EPA finds that exempting octanamide, N,N-dimethyl (CAS Reg. No. 1118–92–9) and decanamide, N,N-dimethyl (CAS Reg. No. 14433–76–2) from the requirement of a tolerance will be safe.

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–2005–0031 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 April 18, 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 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–2005–0031, 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).

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: February 7, 2005.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. In § 180.920, the table is amended by adding alphabetically the following inert ingredients to read as follows:

§ 180.920 Inert ingredients used pre-harvest; exemptions from the requirement of a tolerance.

* * * * *

Inert ingredients	Limits	Uses
* * *	*	* *
Decanamide, N,N-dimethyl (CAS Reg. No. 14433–76–2).	.....	Emulsifier, solvent, cosolvent
* *	*	* *
Octanamide, N,N-dimethyl (CAS Reg. No. 1118–92–9).	.....	Emulsifier, solvent, cosolvent
* *	*	* *

[FR Doc. 05–2975 Filed 2–15–05; 8:45 am]
BILLING CODE 6560–50–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 041202338–4338–01; I.D. 021105A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels 60 Feet (18.3 Meters) Length Overall and Using Pot Gear in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher vessels 60 feet (18.3 meters (m)) length overall (LOA) and longer using pot gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2005 Pacific cod interim total allowable catch (TAC) of Pacific cod specified for catcher vessels using pot gear in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 13, 2005, until superseded by the notice of 2005 and 2006 final harvest specifications of groundfish for the BSAI, which will be published in the **Federal Register**.

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

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI 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 Pacific cod interim TAC allocated to catcher vessels 60 feet (18.3 m) LOA and longer using pot gear in the BSAI is 8,380 metric tons as established by the 2005 interim harvest specifications for groundfish in the BSAI (69 FR 76870, December 23, 2004). See § 679.20(c)(2)(ii)(A), § 679.20(c)(5), and § 679.20(a)(7)(i)(A) and (C)(1)(iv).

In accordance with § 679.20(d)(1)(iii), the Administrator, Alaska Region, NMFS, has determined that the 2005 Pacific cod interim TAC allocated to catcher vessels using pot gear in the BSAI will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher vessels 60 feet (18.3 m) LOA and longer using pot gear in the BSAI. Vessels less than 60 feet (18.3 m) LOA using pot gear in the BSAI may continue to participate in the directed fishery for Pacific cod under a separate Pacific cod allocation to catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear.

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

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of the fisheries under the 2005 Pacific cod interim TAC specified for catcher vessels using pot gear in the BSAI.

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

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

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

Dated: February 11, 2005.

Alan D. Risenhoover,

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

[FR Doc. 05–2990 Filed 2–11–05; 3:08 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 041202339–4339–01; I.D. 021105B]

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

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

ACTION: Closure.

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

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 14, 2005, until superseded by the notice of 2005 and 2006 final harvest specifications of groundfish for the GOA, which will be published in the **Federal Register**.

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

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

The pollock interim TAC for Statistical Area 630 of the GOA is 3,091 metric tons (mt) as established by the interim harvest specifications for groundfish of the GOA (69 FR 74455, December 14, 2004).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the pollock interim TAC in Statistical Area 630 will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 2,891 mt, and is setting aside the remaining 200 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 630 of the GOA.

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

Classification

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

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

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

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

Dated: February 11, 2005.

Alan D. Risenhoover,

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

[FR Doc. 05–2991 Filed 2–11–05; 3:08 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 70, No. 31
Wednesday, February 16, 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 COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

Florida Keys National Marine Sanctuary Draft Revised Management Plan

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of public availability of draft management plan.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) is proposing a draft revised management plan for the Florida Keys National Marine Sanctuary (FKNMS or Sanctuary). NOAA is issuing this notice to the public to invite advice, recommendations, information, and other comments from interested parties on the proposed Draft Management Plan. Public hearings will be held as detailed below:

(1) Monday, March 28, 2005, 4 p.m.–8 p.m., in Marathon, FL.

(2) Tuesday, March 29, 2005, 4 p.m.–8 p.m., in Key Largo, FL.

(3) Wednesday, March 30, 2005, 4 p.m.–8 p.m., in Key West, FL.

DATES: Comments will be considered if received by April 15, 2005.

ADDRESSES: Written comments should be sent by mail to Billy Causey, Superintendent, Florida Keys National Marine Sanctuary, P.O. Box 500368, Marathon, FL 33050, by e-mail to *fknms5yearreview@noaa.gov*, or by fax to (305) 743–2357. Copies of the revised management plan are available on the Sanctuary Web site: *http://floridakeys.noaa.gov*. They are also available from the three Sanctuary offices:

(A) FKNMS Headquarters—Main House, 5550 Overseas Hwy, Marathon, FL 33050

(B) Upper Region Office—95230 Overseas Hwy, Key Largo, FL 33037

(C) Lower Region Office—216 Ann Street, Key West, FL 33040

Public hearings will be held at:

(1) Monroe County Government Center—BOCC Meeting Room, 2798 Overseas Highway, Mile Marker 50, Marathon, FL.

(2) Key Largo Library Meeting Room, 10100 Overseas Hwy. Tradewinds Plaza, Key Largo, FL.

(3) Harvey Government Center—BOCC Meeting Room, 1200 Truman Ave., Key West, FL.

FOR FURTHER INFORMATION CONTACT: FKNMS Headquarters at (305) 743–2437 extension 0 or *fknms5yearreview@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Introduction

Pursuant to both Federal and State requirements, the National Marine Sanctuary Program has completed its review of the management plan for the Florida Keys National Marine Sanctuary (FKNMS or Sanctuary). In 1992, when Congress reauthorized the National Marine Sanctuaries Act, it required all National Marine Sanctuaries to review their management plans every five years. The Florida Governor and Cabinet, as trustees for the State, also mandated a five-year review of the Florida Keys National Marine Sanctuary (FKNMS) Management Plan in their January 28, 1997 resolution.

The FKNMS draft revised management plan is a report on the results of NOAA's five-year review of the strategies and activities detailed in the 1997 Final Management Plan and Environmental Impact Statement for the Florida Keys National Marine Sanctuary. It serves two primary purposes: (1) To update readers on the accomplishments of successfully implemented strategies; and, (2) to disseminate useful information about the Sanctuary and its management strategies, activities and products. The intent is that this information, which charts the next 5 years of sanctuary management, will enhance the communication and cooperation toward enhancing protecting important national resources.

The 1997 Final Management Plan

After the initial six-year FKNMS planning process, a comprehensive management plan for the Sanctuary was implemented in July 1997. The management plan focused on ten action plans which were largely non-regulatory in nature and involved educating citizens and visitors, using volunteers to build stewardship for local marine resources, appropriately marking channels and waterways, installing and maintaining mooring buoys for vessel use, surveying maritime heritage resources, and protecting water quality. In addition to action plans, the 1997 management plan designated five types of marine zones to reduce pressures in heavily used areas, protect critical habitats and species, and reduce user conflicts. The efficacy of the marine zones is monitored Sanctuary-wide under the Research and Monitoring Action Plan.

The implementing regulations for the FKNMS became effective July 1, 1997. The 1997 management plan was published in three volumes: Volume I is the Sanctuary management plan itself (which this document updates); Volume II describes the process used to develop the draft management alternatives, including environmental and socioeconomic impact analyses of the alternatives, and the environmental impact statement; Volume III contains appendices, including the texts of Federal and State legislation that designate and implement the Sanctuary. All three volumes of the 1997 management plan are available on the Sanctuary Web site (*http://floridakeys.noaa.gov/*) and from the Sanctuary's Marathon office. Volume II is not being revised as part of the review. After public input, government review and final adoption of this five-year review and revised Management Plan, this document will replace Volumes I and III.

Sanctuary Characteristics

The Florida Keys National Marine Sanctuary extends approximately 220 nautical miles southwest from the southern tip of the Florida peninsula. The Sanctuary's marine ecosystem supports over 6,000 species of plants, fishes, and invertebrates, including the nation's only living coral reef that lies adjacent to the continent. The area includes one of the largest seagrass communities in this hemisphere. Attracted by this tropical diversity, tourists spend more than thirteen

million visitor days in the Florida Keys each year. In addition, the region's natural and man-made resources provide livelihoods for approximately 80,000 residents.

The Sanctuary is 2,900 square nautical miles of coastal waters, including the recent addition of the Tortugas Ecological Reserve. The Sanctuary overlaps six state parks and three state aquatic preserves. Three national parks have separate jurisdictions, and share a boundary with the Sanctuary. In addition, the region has some of the most significant maritime heritage and historical resources of any coastal community in the nation.

The Sanctuary faces specific threats, including direct human impacts such as ship groundings, pollution, and overfishing. Threats to the Sanctuary also include indirect human impacts, which are harder to identify but seem to be reflected in coral declines and increases in macroalgae and turbidity. More information about the Sanctuary can be found in this document and at the Sanctuary's Web site: *http://floridakeys.noaa.gov*.

How the Plan Was Revised

Review began in early 2001 with a meeting in Tallahassee, Florida, among Federal and State partners responsible for Sanctuary management. A scoping process to identify issues and changes was conducted from June 8 through July 20, 2001. During this time, the FKNMS staff, working closely with the Sanctuary Advisory Council (SAC), held public meetings in Marathon, Key Largo, and Key West.

Issues identified during the scoping meetings were integrated into the revised management plan through working groups. The working groups that developed the 1997 management plan were reconstituted. More than three-dozen working groups meetings were held between June and September 2001 to discuss, evaluate and update the document's action plans.

SAC members and FKNMS staff who had served on the working groups presented the proposed revisions to the SAC at three meetings in October 2001. The full advisory council recommended minor changes and approved each action plan in the draft revised management plan.

Management Changes Resulting From the Review

• *New Organization.* Like the 1997 management plan, this document is arranged around a series of action plans, which articulate the programs and projects used to address identified management issues. Each action plan is composed of strategies sharing common objectives and activities, which are the specific actions the Sanctuary and its partners will implement. In this revised management plan, the action plans have been grouped into five management divisions to improve organization of the document and to further emphasize the ultimate goals for each action plan. The five management divisions are: (1) Sanctuary Science; (2) Education, Outreach and Stewardship; (3) Enforcement and Resource Protection; (4) Resource Threat Reduction; and, (5) Administration, Community Relations and Policy Coordination.

• *New Action Plans.* Four new action plans have been added:

(a) *Science Management and Administration Action Plan*—Identifies activities necessary to manage, administer, and coordinate a complex science program to help inform resource managers.

(b) *Damage Assessment and Restoration Action Plan*—Responds to the 500–600 vessel grounding reported in the Sanctuary annually. This action plan aims to minimize and document groundings, as well as restore damaged resources.

(c) *Operations Action Plan*—Describes the day-to-day administrative functions required to effectively operate the sanctuary related to human resources, community outreach, and policy coordination.

(d) *Evaluation Action Plan*—Outlines the steps taken by the Sanctuary staff and its partners on a regular basis to assess the implementation and effectiveness of its management plan.

• *Changes to Previous Action Plans.* Ten Action Plans were revised and re-organized. Notable changes to management, include:

(a) *Research and Monitoring Action Plan*—Increased emphasis is given to socioeconomic research and engagement in regional efforts, such as the Everglades restoration. The revised plan also consolidates the Marine Zone Monitoring Program, a key element of determining the effectiveness of marine zoning.

(b) *Education and Outreach Action Plan*—Revisions emphasize the ability to integrate the latest technology into education and outreach as it becomes available, as well as expanded use of partnerships to better facilitate implementation and build community support.

(c) *Volunteer Action Plan*—Transfers coordination of the Sanctuary's volunteer programs from The Nature Conservancy to Sanctuary staff and more fully incorporates successful programs administered by Sanctuary partners.

(d) *Regulatory Action Plan*—A new strategy summarizes issues identified in the scoping process (e.g. fish feeding, pollution discharges, artificial reefs, etc.) that warrant regulatory analysis and possible future regulatory amendments.

(e) *Enforcement Action Plan*—Increasing both the number of enforcement officers and the level of cross-deputization between officers from various agencies are the most important strategies for enhancing protection and enforcement efforts.

(f) *Maritime Heritage Resources Action Plan*—No major changes were recommended for this action plan, formerly called the Submerged Cultural Resources Action Plan.

(g) *Marine Zoning Action Plan*—Changes move beyond the 1997 focus on communicating marine zone rules and locations by focusing on long-term zone management and assessment. This focus includes evaluating boundaries and allowable uses, and making changes, as needed, based on current information. Identifying and evaluating areas for additional marine zoning, and establishing and implementing zones, where appropriate, are significant components of the 2004 revised plan.

(h) *Mooring Buoy Resources Action Plan*—Larger mooring buoys will be installed in deeper water to accommodate larger vessels. Additionally, a monitoring program is being established at three sites in the Tortugas Ecological Reserve to identify the impacts of moorings in areas that have little diving or boating. Mooring buoys will be removed from areas found to be detrimentally impacted by the presence of these buoys.

(i) *Waterway Management Action Plan*—Formerly called the Reef/Channel Marking Action Plan, a new activity aims to streamline the permitting process for Idle-Speed/No Wake Shoreline Markers.

(j) *Water Quality Action Plan*—Building on research and pilot projects that have been completed since the original plan, future work focuses on high priority infrastructure projects for storm and wastewater management.

Selected Accomplishments Since Sanctuary Designation

• *Reduced Major Ship Groundings.* The Florida Keys National Marine Sanctuary now has dual designations as "An Area to Be Avoided" (ATBA) and a "Particularly Sensitive Sea Area" (PSSA). The ATBA designation has resulted in a significant reduction of major ship groundings (vessels longer

than 50 m) since its inception in 1990. The PSSA designation ensures that ATBA boundaries appear on international as well as U.S. nautical charts.

• *Improved Water Quality Protection.* Both the city of Key West and the State of Florida have declared Florida Keys waters under their jurisdictions as "no-discharge" zones. These regulatory protections have been complemented with enhanced pump-out facilities along with mooring buoy deployments that concentrate boater use in areas with pump-out capabilities.

• *Improved Water Quality Management Strategies.* Over the last decade a series of pilot projects, targeted research initiatives, and planning efforts, cumulatively totaling over $3.5 million, have resulted in considerable progress toward developing water quality management strategies in the FKNMS. This significant experience—described in a 1996 Report to Congress entitled, "Water Quality Concerns in the Florida Keys: Sources, Effects, and Solutions"—has determined that an infrastructure, rather than a standards-based, approach is the most effective way to achieve desired water quality goals. The next steps are described in the Water Quality Action Plan and focus on infrastructure projects for storm and wastewater management.

• *Leveraging Volunteer Stewardship.* A Keys-wide volunteer program has provided over 170,000 volunteer hours, a $2.8 million dollar value, over the past twelve years.

• *Monitoring Key's Resources.* Research and monitoring efforts have provided a series of tools to enable science-based management in the FKNMS. Some examples, include: (1) A 10-volume site characterization detailing living and non-living resources; (2) A benthic habitat map; (3) 10 years of comprehensive monitoring related to water quality, seagrasses, and coral reef/hard bottom communities, at a cost of $10 million; (4) 6–10 years of monitoring changes associated with the Sanctuary's 24 fully protected marine zones with emphasis on reef fish and spiny lobster populations, benthic community structure, and human uses and perceptions; and, (5) over 15 years seawater temperatures monitoring.

• *Restoring and Responding to Vessel Groundings.* Sanctuary staff have conducted 121 biological assessments of vessel groundings that damaged areas greater than 10 square feet of coral or 10 square yards of seagrass from 1995 to 2001. Staff also conducted or managed structural restoration of coral reef areas at large-vessel damage sites at four reef areas in the Sanctuary. Other efforts have focused on grounding prevention and use of volunteer "Reef Medics" for response to smaller grounding sites.

• *Protecting Maritime Heritage Resources.* Activities to enhance permitting, research and education of maritime heritage resources in the keys have significantly enhanced protection of these unique resources. Nearly 175 heritage assets have been professionally conserved and are our display at the FKNMS Upper Management Office. A Maritime Heritage Resources Inventory Team, staffed by volunteers, has documented 550 sites in the five-volume set, Underwater Resources of the Florida Keys National Marine Sanctuary Northeast Region. The educational program, A Shipwreck Trail, provides public access and interpretation to cultural resources at nine sites.

• *Strengthening Management and Resource Protection with Mooring Buoys.* The Sanctuary uses mooring buoys as a direct way to eliminate anchor damage to resources as well as to increase enforcement with marine zone regulations by clearly marking zone boundaries. The Sanctuary has increased the number of mooring buoys within its boundaries from 175 to 400. It has also installed 118 boundary buoys for marine zones, 120 Wildlife Management Area Buoys, and informational buoys along the Shipwreck Trail.

• *Improving Waterway Management.* The Monroe County's Channel Marking Master Plan has been implemented in Florida waters and reef markings have been improved at the Sambos Complex.

Authority: 16 U.S.C. Section 1431, *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program.)

Dated: February 4, 2005.

Daniel J. Basta,

Director, National Marine Sanctuary Program, National Ocean Services, National Oceanic and Atmospheric Administration.

[FR Doc. 05–2949 Filed 2–15–05; 8:45 am]

BILLING CODE 3510–NK–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[RME No. R03–OAR–2004–DC–0009; FRL–7874–2]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia, Maryland, Virginia; Post 1996 and Post 1999 Rate-of-Progress Plans, Contingency Measures, Transportation Control Measures, VMT Offset, and 1990 Base Year Inventory

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; reopening of the comment period.

SUMMARY: EPA is reopening the comment period for a document published on January 12, 2005 (70 FR 2085). In the January 12, 2005 notice of proposed rulemaking, EPA proposed to approve State Implementation Plan (SIP) revisions submitted by the State of Maryland, Commonwealth of Virginia and the District of Columbia for the Metropolitan Washington, DC severe 1-hour ozone nonattainment area (the Washington area). These revisions include the post 1996–1999 and post 1999–2005 rate-of-progress (ROP) plans, changes to the 1990 base year inventory, a contingency measures plan, certain transportation control measures (TCMs), and a demonstration that each SIP contains sufficient transportation control measures to offset growth in vehicle miles traveled (VMT) as necessary to demonstrate ROP and attainment of the 1-hour national ambient air quality standard (NAAQS) for ozone. EPA is reopening the comment period through February 25, 2005. All comments received on or before February 25, 2005 will be entered into the public record and considered by EPA before taking final action on the proposed rule.

DATES: Comments must be received on or before February 25, 2005.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R03–OAR–2004–DC–0009 by one of the following methods:

A. Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. Agency Web site: *http://www.docket.epa.gov/rmepub/* RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

C. E-mail: *morris.makeba@epa.gov.*

D. Mail: R03–OAR–2004–DC–0009, Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

E. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to RME ID No. R03–OAR–2004–DC–0009. 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.docket.epa.gov/rmepub/*, 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 RME, regulations.gov or e-mail. The EPA RME and the Federal regulations.gov websites are an "anonymous access" system, 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 RME 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 RME index at *http://www.docket.epa.gov/rmepub/*. 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 RME or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the District of Columbia Department of Public Health, Air Quality Division, 51 N Street, NE., Washington, DC 20002; Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland, 21230, Baltimore, Maryland 21224; and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Christopher Cripps, (215) 814–2179, or by e-mail at *cripps.christopher@epa.gov.* Please note that while questions may be posed via telephone and e-mail, formal comments must be submitted as indicated in the **ADDRESSES** section of this document.

Dated: February 10, 2005.

Thomas Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 05–2987 Filed 2–15–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 70 and 71

[OAR–2003–0180; FRL–7873–9]

RIN 2060–AM63

Request for Comment on Potentially Inadequate Monitoring in Clean Air Act Applicable Requirements and on Methods To Improve Such Monitoring

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance notice of proposed rulemaking (ANPR).

SUMMARY: Today's ANPR asks for public comment to help us identify monitoring in applicable requirements under the Clean Air Act (Act) that is potentially inadequate with respect to the statutory monitoring requirements for operating permits issued under title V of the Act. Today's ANPR also asks for public comment on ways to improve such monitoring. The EPA believes that it will be more effective, more equitable, and more efficient to improve inadequate monitoring in applicable requirements, where necessary, through rulemakings to revise the applicable requirements themselves or through other programmatic approaches, rather than by addressing inadequate monitoring on a case-by-case basis in the issuance and renewal of title V operating permits. To inform EPA's consideration of improvements to existing monitoring, today's ANPR seeks stakeholder input to identify inadequate monitoring in certain Federal standards and State implementation plan (SIP) rules and to suggest specific ways to improve such monitoring. Comments received in response to today's ANPR will enable EPA to better evaluate whether and where inadequate monitoring exists and to determine how to craft any necessary improvements.

DATES: *Comments.* We must receive written comments on or before April 18, 2005.

ADDRESSES: Submit your comments, identified by Docket ID No. OAR–2003–0180, 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@epamail.epa.gov.*
- Fax: Send faxes to EPA Docket Center at (202) 566–1741.
- Air and Radiation Docket, U.S. Environmental Protection Agency, Mail code: 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.
- Hand Delivery: 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 deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. OAR–2003–0180. 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 Web sites are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly

to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102).

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Air and Radiation Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Herring, Information Transfer and Program Implementation Division, Office and Air Quality Planning and Standards, Mail Code C304–04, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–3195; fax number: (919) 541–5509; and e-mail address: *herring.jeff@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

Categories and entities potentially affected by this action include facilities currently required to obtain title V permits under State, local, tribal, or Federal operating permits programs, and State, local, and tribal governments that issue such permits pursuant to EPA-approved programs.

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

1. *Submitting CBI.* Do not submit CBI to EPA through EDOCKET, regulations.gov or e-mail. Instead, mail CBI to the following address: Mr. Roberto Morales, OAQPS Document Control Officer (C404–02), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, Attention E-Docket ID No. OAR–2003–0180. Alternatively, such information may be hand delivered to the following address: Mr. Roberto Morales, OAQPS Document Control Officer (C404–02), U.S. Environmental Protection Agency, 109 T.W. Alexander Drive, Research Triangle Park, NC 27709, Attention E-Docket ID No. OAR–2003–0180. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to Mr. Morales, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI.

In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted to EPA's electronic public docket. If you submit a CD ROM or disc that does not contain CBI, 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 identified in the **FOR FURTHER INFORMATION CONTACT** section. Information marked as CBI will not be disclosed except in accordance with procedures set forth in title 40 of the Code of Federal Regulations (CFR), part 2.

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

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

C. Where Can I Obtain Additional Information?

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

D. How Is This Preamble Organized?

The information presented in this preamble is organized as follows:

II. Background

Two provisions of EPA's State and Federal operating permits program regulations require that title V permits contain monitoring requirements. The "periodic monitoring" rules, 40 CFR 70.6(a)(3)(i)(B) and 71.6(a)(3)(i)(B), require that:

> [w]here the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), [each title V permit must contain] periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to [§§ 70.6(a)(3)(iii) or 71.6(a)(3)(iii)]. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable

requirement. Recordkeeping provisions may be sufficient to meet the requirements of [§§ 70.6(a)(3)(i)(B) and 71.6(a)(3)(i)(B)].

The so-called "umbrella monitoring" rules, §§ 70.6(c)(1) and 71.6(c)(1), require that each title V permit contain, "[c]onsistent with paragraph (a)(3) of this section, compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit."

In a final rule entitled "Revisions to Clarify the Scope of Certain Monitoring Requirements for Federal and State Operating Permits Programs" (69 FR 3202, January 22, 2004), also known as the "umbrella monitoring" rule, EPA announced a four-step strategy for improving existing monitoring that is designed to minimize reliance on case-by-case monitoring reviews and so-called "gap-filling" in title V operating permits over time. Today's ANPR is part of that strategy.

In the first step, the umbrella monitoring rule (69 FR 3202, January 22, 2004), EPA decided not to adopt proposed revisions to the regulatory text of §§ 70.6(c)(1) and 71.6(c)(1) (67 FR 58561, September 17, 2002) and instead ratified the regulatory text of those rules without making any changes. The EPA also announced that it has determined that the correct interpretation of these provisions is that they do not establish a separate regulatory standard or basis for requiring or authorizing review and enhancement of existing monitoring independent of any review and enhancement as may be required under §§ 70.6(a)(3) and 71.6(a)(3). The EPA explained that §§ 70.6(c)(1) and 71.6(c)(1) require that title V permits contain: (1) Monitoring required by "applicable requirements" under the Act, as that term is defined in 40 CFR 70.2 and 71.2; and (2) such monitoring as may be required under §§ 70.6(a)(3)(i)(B) and 71.6(a)(3)(i)(B). *See Appalachian Power Co.* v. *EPA*, 208 F.3d 1015 (D.C. Cir. 2000). The term "applicable requirements" includes, but is not limited to: Monitoring required under the compliance assurance monitoring (CAM) rule, 40 CFR part 64, where it applies; monitoring required under Federal rules such as new source performance standards (NSPS) in 40 CFR part 60, national emissions standards for hazardous air pollutants (NESHAP) in 40 CFR part 61, maximum achievable control technology (MACT) standards in 40 CFR part 63, the acid rain program rules in 40 CFR parts 72 through 75; and monitoring required in SIP, tribal implementation plan and Federal implementation plan rules. Thus, for monitoring, EPA explained, §§ 70.6(c)(1) and 71.6(c)(1) constitute "umbrella provisions" that direct permitting authorities to include monitoring required under existing statutory or regulatory authorities in title V permits. Based on EPA's interpretation of the Act, the plain language and structure of §§ 70.6(c)(1) and 71.6(c)(1), and the policy reasons described in the preamble to the umbrella monitoring rule (see 69 FR at 3204), EPA concluded that §§ 70.6(c)(1) and 71.6(c)(1) do not require or authorize a new and independent type of monitoring in permits beyond what is required by section §§ 70.6(a)(3)(i) and 71.6(a)(3)(i).

In the umbrella monitoring rule, EPA also announced plans to address monitoring in three related rulemaking actions. First, EPA announced plans to encourage States to improve potentially inadequate monitoring in certain SIP rules. The EPA intends to address such monitoring in guidance to be developed in connection with an upcoming rulemaking concerning the implementation of the national ambient air quality standards (NAAQS) for fine particulate matter (particulate matter with an aerodynamic diameter of less than 2.5 micrometers, or PM 2.5), also referred to as the proposed PM 2.5 implementation rule. The primary purpose of the proposed PM 2.5 implementation rule will be to describe the requirements that States and Tribes have to meet in order to implement the PM 2.5 NAAQS. Because opacity and particulate monitoring are related to compliance with particulate matter standards, one part of this proposal will address EPA's plans to develop separate guidance on how States can reduce PM 2.5 emissions by improving source monitoring related to particulate matter emission limits. This may include increasing the frequency of existing opacity monitoring, adding monitoring for parameters of a control device, installing continuous particulate emissions monitoring, or a combination of the above. *See* 69 FR at 3204.

In addition, EPA announced plans to publish a separate proposed rule to address what monitoring constitutes "periodic" monitoring under §§ 70.6(a)(3)(i)(B) and 71.6(a)(3)(i)(B) and what types of monitoring should be created under §§ 70.6(a)(3)(i)(B) and 71.6(a)(3)(i)(B). Finally, EPA announced plans for today's ANPR. See 69 FR at 3204–3205. Together with the umbrella monitoring rule, these three related rulemaking actions comprise EPA's four-step strategy for improving existing monitoring where necessary on a programmatic basis.

In the umbrella monitoring rule, EPA stated that the strategy will ensure that the Act's monitoring requirements will be met. *See* 69 FR at 3207. For instance, EPA explained that "section 504(c)'s command that each title V permit 'set forth * * * monitoring * * * to assure compliance with the permit terms and conditions' will be satisfied through the combination of EPA and, as necessary, State rulemakings to address monitoring, and the addition to permits of such monitoring as may be required under §§ 70.6(a)(3)(i)(B) and 71.6(a)(3)(i)(B). *See* 42 U.S.C. 7661c(c)." *Id.* The EPA also explained that "[s]atisfying the specific monitoring requirements of section 504(c) will assure that the more general requirements of section 504(a) are satisfied as to monitoring." *See* 42 U.S.C. 7661c(a) ("Each [title V] permit * * * shall include * * * conditions as are necessary to assure compliance with applicable requirements of this chapter, including the requirements of the applicable implementation plan"). *Id.* Further, the EPA noted that the Act grants the Agency broad discretion to implement the monitoring requirements of section 504 of the Act as well as the "enhanced monitoring" requirement of section 114(a)(3) of the Act. 69 FR at 3207; *see* 42 U.S.C. 74 14(a)(3) ("[the Administrator shall in the case of any person which is the owner or operator of a major stationary source * * * require enhanced monitoring* * *").

III. What Is the Purpose of Today's ANPR?

The purpose of today's ANPR is to request public comments to identify potentially inadequate monitoring contained in certain applicable requirements and on ways to improve such monitoring. In particular, EPA is requesting comments on existing monitoring requirements in NSPS under 40 CFR part 60 and NESHAP under 40 CFR part 61 that were promulgated prior to the 1990 Amendments to the Act. *See* Section IV of this preamble for identification of categories of monitoring in which individual rules may have inadequate monitoring. We believe these categories, listed below, are a good starting point to frame public comments on potential monitoring inadequacies in Federal standards. However, we are not limiting comment to the categories which we specifically list for comment. In addition, as explained below, in this ANPR, EPA is asking for comments identifying specific SIP rules which contain inadequate monitoring. Although we believe some SIP's are likely to contain some of the potential monitoring inadequacies listed

below, we do not identify specific SIP rules where such inadequacies may exist. In this notice, EPA is not making any determinations that the categories of potentially inadequate monitoring listed below represent inadequate monitoring in any specific Federal rules and SIP rules, and thus, an important purpose of this notice is to seek public comments to help us to identify specific Federal rules and SIP rules where such monitoring categories actually result in monitoring that is inadequate. Further, we note that the Agency has met any obligation it had to promulgate regulations for the "enhanced monitoring" requirement in section 114(a)(3) of the Act. Nevertheless, EPA will consider any comments in response to this ANPR regarding whether any of the monitoring requirements in the pre-1990 NSPS and NESHAP and if any specific SIP rules fail to meet "enhanced monitoring" requirements and the monitoring requirements in title V of the Act. If we conclude that any such inadequacies exist, we will take appropriate action to ensure that these statutory requirements are fully satisfied.

By contrast, we are not seeking comments on or otherwise reopening standards promulgated after the 1990 Amendments to the Act, for example, many NESHAP standards under part 63, and acid rain requirements, because we believe these more recent standards are unlikely to contain inadequate monitoring. This is so because such rules are already required to meet and were promulgated to meet Act requirements for monitoring that were enacted in 1990. Therefore to the extent the categories listed below exist in Federal rules promulgated since 1990, EPA believes they are unlikely to contain inadequate monitoring. For example, in the final NESHAP for lime manufacturing plants published on January 5, 2004 (69 FR 394), we allowed use of a continuous opacity monitoring systems (COMS) to serve as a surrogate for HAP metals instead of requiring continuous particulate mass monitoring. This is an example of a category of potentially inadequate monitoring in which limits on both PM mass and opacity are specified, but only monitoring of opacity is required, not PM mass. A commenter asserted that a COMS as a surrogate for HAP metals emitted from kilns, coolers, or processed stone operations was inappropriate because COMS does not correlate to particulate matter (PM) mass, and that a better alternative was to use PM continuous monitoring that measures PM mass in units directly related to the mass emissions limit (see 69 FR 407). In its response, EPA agreed that COMS cannot directly measure PM emissions, but argued, for this standard, that a properly calibrated and maintained COMS is sufficient to demonstrate long term PM control device performance, since the purpose of the monitoring is to demonstrate with reasonable certainty that the PM control device is operating as well as it did during the PM emission test used to demonstrate compliance. For this standard, EPA also justified the use of a COMS because PM continuous emission monitoring systems (CEMS) and PM detectors (bag leak detectors) are significantly more expensive to purchase and maintain than a COMS, and because PM CEMS measure concentration, while the basis of the standard is mass per unit of feed input.

We are also not seeking comment on or otherwise reopening the CAM rule because we believe the CAM rule is currently structured such that, when it applies, it already requires adequate monitoring in permits. (The next paragraph discusses in more detail how this ANPR relates to the CAM rule.)

An important purpose of this notice is to solicit comments that could inform rulemaking actions that potentially would reduce the resource burdens associated with case-by-case review under the periodic monitoring and CAM rules. Because periodic monitoring rules apply when existing monitoring is not "periodic" and our strategy for improving existing monitoring through rulemaking may result in more existing monitoring that is "periodic," our strategy for improving monitoring will likely result in fewer instances where periodic monitoring rules apply. Also, for two reasons, our strategy for improving monitoring through rulemaking may result in less need for case-by-case review and enhancement under the CAM rule. First, as provided in § 64.2(b)(1)(i), any rulemakings to revise emission limitations and standards established pursuant to section 111 or 112 of the Act will result in exemptions from CAM for those emission limitations and standards. The CAM rule provides for this because any such rulemakings must satisfy certain Act requirements for monitoring, and thus, EPA believes further enhancements to monitoring through CAM would be unnecessary. Second, § 64.4(b)(1) allows States to provide SIP rules designed to satisfy certain CAM requirements (the requirements to document the appropriateness of monitoring within the CAM plan) for particular types of emission units. To the extent that our strategy for improving monitoring through rulemaking results in SIP rules designed for this purpose, it follows that this strategy may potentially reduce some of the burdens associated with implementation of the CAM rule.

IV. What Are We Specifically Seeking Comment On?

To focus analysis and comment on potential monitoring inadequacies in existing Federal and State rules, we provide the following categories of potential monitoring inadequacies based on our preliminary review of certain NSPS and NESHAP rules:

- No monitoring of any kind is required.
- Monitoring is specified for certain units, but no monitoring is required for other units.
- Limits on both PM mass and opacity are specified, but only monitoring of opacity is required (and not of PM mass).
- Monitoring is specified for certain control devices (*e.g.*, monitoring of pressure drop), but no monitoring is specified for other control devices.
- Monitoring method is specified, but no monitoring frequency is specified, or monitoring is required only when directed by permitting authority.
- Infrequent periodic testing required, but no monitoring of the control device is specified between required tests.
- Monitoring of parameters may be insufficient to assure proper operation of control device.
- Monitoring of parameters required, but no parameter range is specified, nor is a procedure for setting the range specified.
- No monitoring or recordkeeping (to serve as monitoring) is specified for work practices (such as keeping covers closed at all time except during transfer of materials).

To help us gather useful information to decide if Federal or State rules may need to be revised, we ask the following questions:

Question: Identify specific pre-1990 Federal rules, including rules in the categories listed above, where you believe that the monitoring is inadequate. Explain why you believe the existing monitoring is inadequate and what types of monitoring you believe would be adequate for the specific example provided.

Question: Are there other categories of potential monitoring inadequacies in Federal rules? Please specify what you believe to be monitoring inadequacies, including citation to specific rules of concern. Are there other ways to identify inadequate monitoring by source category, industry, pollutant,

emission limitation, and/or pollution control device that would be more useful?

Question: What kinds of revisions or improvements would you suggest be made to improve inadequate monitoring in underlying Federal rules? Types of revisions or improvements that could be made through rulemaking include, but are not limited to: (1) Establishing periodic testing or monitoring for each emission limitation, (2) more frequent monitoring using existing monitoring methods, (3) the collection of data that is more representative of control device operation or of the industrial process, (4) switching from monitoring methods that provide an indication of compliance to those that measure the pollutant of interest more directly, and (5) a combination of the above. In your comments, please provide any available information about cost, accuracy, feasability, or any other factors that you consider relevant to the revised or improved monitoring.

Question: What kinds of programmatic or other changes would you suggest be used to make changes to improve inadequate monitoring? Options include conducting rulemaking to revise emissions standards, issuing guidance or policy, or other approaches. Please be specific on which option(s) you prefer and provide reasons for your preference(s).

Question: Do the categories of potential monitoring inadequacies identified above also appear in SIP rules such that you believe the monitoring to be inadequate? If so, identify such SIP rules. Do you believe there to be other categories of inadequate monitoring in SIP's, and if so, what are they? How would you suggest we go about identifying the specific standards or rules in specific implementation plans that contain potential monitoring inadequacies? Please specify what you believe to be the standards, the inadequate monitoring, and the type(s) of improvements necessary to correct any potential inadequacies you identify. In your comments, please provide any available information about cost, accuracy, feasability, or any other factors that you consider relevant to the revised or improved monitoring. What programmatic changes would be best to effect these changes (*e.g.*, EPA or State rulemaking, SIP calls, voluntary programs, issuing guidance or policy, or other means)?

Question: Is opacity an effective means of determining compliance with PM limits in pre-1990 applicable requirements such as NSPS and NESHAP? Are other monitoring technologies more effective in assuring compliance with PM limits? Please specify situations where other monitoring approaches would be more appropriate and effective as indicators of compliance with PM limits. What new technologies may serve as cost-effective and reliable means of determining compliance with those PM limits (*e.g.*, bag leak detectors which detect problems that may lead to a deviation or continuous emissions monitoring systems that directly monitor PM emissions)? Please specify when such new technologies may be warranted, including the standards, the current monitoring, and the more appropriate monitoring technology.

In this ANPR we are only seeking comments to identify potential monitoring inadequacies in the Federal rules identified in section III of this ANPR (*i.e.*, NSPS under 40 CFR part 60 and NESHAP under 40 CFR part 61 promulgated prior to 1990) and SIP rules, and to suggest ways to correct any such inadequacies we may later determine to exist with respect to section 114(a)(3) of the Act and the monitoring requirements in title V of the Act. We have not opened for comment any provisions of the operating permits program rules in 40 CFR parts 70 and 71, the CAM rule in 40 CFR part 64, any post-1990 NESHAP or any other post-1990 Federal rules or any issues related to State, local, tribal, or EPA implementation of permitting programs approved under or based on those rules.

V. What Additional Steps Are Expected After EPA Reviews Comments Received?

Once EPA receives comments on our preliminary analysis of potential monitoring inadequacies and suggestions on methods to correct such inadequacies, we will determine the appropriate next steps. The EPA believes, at this time, the next steps will likely include rulemakings to improve monitoring requirements in some Federal rules. We are open to comments and have made no decisions as to which Federal rules, have inadequate monitoring, nor on how to proceed to correct any such monitoring. Any rulemakings we may decide to undertake in the future will be conducted using notice and comment procedures. In addition, prior to finalizing any changes to Federal rules, we will consider all specific facts associated with the upgrades we propose for each standard and conduct any required analyses of burdens, including economic impacts, necessary to satisfy statutory and other requirements.

Dated: February 9, 2005.

Stephen L. Johnson,

Acting Administrator.

[FR Doc. 05–2995 Filed 2–15–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 136 and 141

[Docket Number OW–2003–0070; FRL–7873–3]

[RIN 2040–AD71]

Guidelines Establishing Test Procedures for the Analysis of Pollutants Under the Clean Water Act; National Primary Drinking Water Regulations; Notice of Data Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability.

SUMMARY: On April 6, 2004, EPA proposed to approve a number of new analytical methods for measuring pollutants in wastewater and drinking water, and proposed to withdraw approval of Syngenta Method AG–625 for determination of atrazine by immunoassay. Today's action announces the availability of new data regarding these changes, and updates to three proposed methods. EPA is soliciting comment only on the data and methods updates cited in today's notice.

DATES: Comments must be postmarked, delivered by hand, or electronically mailed on or before March 18, 2005. Comments provided electronically will be considered timely if they are submitted electronically by 11:59 p.m. Eastern Standard Time on March 18, 2005.

ADDRESSES: Comments may be submitted by mail to Water Docket, U.S. Environmental Protection Agency (4101T), 1200 Pennsylvania Avenue, NW., Washington DC 20460, or electronically through EPA Dockets at *http://www.epa.gov/edocket/*, Attention Docket ID No. OW–2003–0070. *See* Subsection C of the **SUPPLEMENTARY INFORMATION** section for additional ways to submit comments and more detailed instructions.

FOR FURTHER INFORMATION CONTACT: For information regarding the proposed changes to wastewater methods, contact Marion Kelly, Engineering and Analysis Division (4303T), USEPA Office of Science and Technology, 1200 Pennsylvania Ave., NW., Washington, DC 20460, (202) 566–1045 (e-mail: *Kelly.Marion@epa.gov*). For information regarding the proposed changes to

drinking water methods, contact Herbert J. Brass, Technical Support Center (MC 140), USEPA, Office of Ground Water and Drinking Water, 26 West Martin Luther King Drive, Cincinnati, OH 45268, (513) 569–7936 (e-mail: *Brass.Herb@epa.gov*).

I. General Information

A. 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 No. OW–2003–0070. 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 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 Water Docket in the EPA Docket Center, EPA West Building, 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 Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426. For access to docket materials, please call ahead to schedule an appointment. Every user is entitled to copy 93 pages per day before incurring a charge. The Docket may charge 15 cents per page for each page over the page limit plus an administrative fee of $14.00.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the 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, or to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

Certain types of information will not be placed in 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. 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 section B.1.

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 for which 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.

B. 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 identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit 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 No. OW–2003–0070. 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 electronic mail (e-mail) to: *OW-docket@epamail.epa.gov,* Attention Docket ID No. OW–2003–0070. 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 section B.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 an original and three copies of your comments to Water Docket, U.S. Environmental Protection Agency (4101T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. OW–2003–0070.

3. *By Hand Delivery or Courier.* Deliver your comments to the Water Docket in the EPA Water Center, EPA West Building, Room B102, 1301

Constitution Avenue, NW., Washington, DC, Attention Docket ID No. OW–2003–0070. Such deliveries are only accepted during the Docket's normal hours of operation as identified in section A.1.

C. 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 on 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 identified in the **FOR FURTHER INFORMATION CONTACT** section.

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

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

1. Explain your views as clearly as possible.

2. Describe any assumptions that you made.

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.

8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Summary of New Information

On April 6, 2004, EPA proposed the approval of new methods for National Pollutant Discharge Elimination System (NPDES) monitoring, and National Primary Drinking Water Regulations (NPDWR) compliance monitoring, at 40 CFR parts 136 and 141, respectively (69 FR 18166). In this same proposal, EPA proposed to withdraw approval of Syngenta Method AG–625 for determination of atrazine by immunoassay in drinking water at 40 CFR part 141. Today, EPA is providing notice of additional information and data regarding the proposal. EPA is also announcing recent additions to the Docket regarding EPA evaluations of atrazine immunoassay kits. Lastly, today's notice includes revised versions of three methods that were proposed for approval. These versions are similar to the proposed versions, but contain some changes to quality control and procedural requirements.

EPA is soliciting comment only on the additional information and data cited in this notice and the updated revisions of the proposed methods described below. EPA is not requesting comment on other methods or on other aspects of the April 6, 2004, proposal.

A. Available Data

EPA received additional analytical and cost data, references to journal articles, and study reports regarding a number of the proposed changes to analytical methods. EPA has placed this data and information and other relevant information in the docket for this rule. Today's notice solicits comment on these data and information.

1. NPDES Data

EPA received data and information on cyanide methods in comments OW–2003–0070–234, 237, 272, 314, 315, and 319. After the close of the comment period, EPA received additional data regarding the use of the proposed MICRO DIST cyanide method in recovering particulate cyanide. EPA has added these data to the docket as document numbers OW–2003–0070–0351, 0352, 0353, and will consider them together with the data received during the comment period.

EPA also received data and information regarding total Kjeldahl nitrogen (TKN) analyses (OW–2003–0070–272, 327); mercury methods (OW–2003–0070–246, 284, and 320); total suspended solids methods (OW–2003–0070–226); Microtox (OW–2003–0070–260, 263, 265, 280, 292, 294, 297, 307, 311, 329); EPA Method 624 (OW–2003–0070–274); Waters Method D6508, Rev. 2 (OW–2003–0070–300); updated versions of currently-approved EPA Methods (OW–2003–0070–272, 288); and metals sampling methods (OW–2003–0070–295).

2. NPDWR Data

Some of the data and information listed above regarding cyanide methods (OW–2003–0070–234, 237, 272) and Waters Method D6508, Rev. 2 (OW–2003–0070–300) are also applicable to proposed NPDWR methods. EPA also received data and information in comments regarding the withdrawal of Syngenta Method AG–625 (OW–2003–0070–291, 317). After the close of the comment period, EPA also received a pre-publication version of an American Water Works Association (AWWA) journal article that evaluated the performance of Syngenta AG–625 (OW–2003–0070–0355), correspondence from AWWA and Syngenta (OW–2003–0070–0354, 357); data generated by Dr. Craig Adams (under a project sponsored by AWWA) using atrazine test kits, (OW–2003–0070–0347); and a final report from Syngenta regarding Method AG–625 that contains data generated by using a modified atrazine test kit, for the method, distributed by Beacon Analytical (OW–2003–0070–356). An interim version of this final report was submitted during the comment period for the April 2004 proposed rule.

In addition, EPA added a series of reports and summaries regarding the evaluation of atrazine immunoassay test kits by EPA's Environmental Technology Verification (ETV) Program. Kits that EPA evaluated include the Abraxis, LLC Atrazine ELISA Kit (OW–2003–0070–0339,0343); Beacon Analytical Systems, Inc. Atrazine Tube Kit (OW–2003–0070–0340, 0344); Silver Lake Research, Corp. Watersafe® Pesticide Kit (OW–2003–0070–0342, 0346); and, Strategic Diagnostics RaPID Assay® Kit (OW–2003–0070–0341, 0345).

EPA will evaluate the above information relative to the Agency's proposed withdrawal of Syngenta Method AG–625 and will assess the effectiveness of the modified test kit (*i.e.*, the effectiveness of that kit in eliminating the method interference that prompted the proposed withdrawal of Method AG–625). Based upon that evaluation, and based on its review of comments pursuant to this notice, EPA may approve the use of the alternative kit via the final rule. EPA invites comments on the extent to which the new information supports the withdrawal of Method AG–625 or the

approval of a modified method using the alternative kit.

B. Revised Methods

In the April 6, 2004, proposal, EPA proposed changes to approved analytical methods for use in Clean Water Act and Safe Drinking Water Act programs. The proposed changes included methods that employ new technologies and updated versions of previously approved methods. Among these changes, EPA proposed to approve a number of ASTM International methods, including ASTM Method D6888–03 for determining available cyanide in wastewater and drinking water, ASTM Method D5673–02 for determining various metals in wastewater, and ASTM Method D4658–92 for determining sulfide in wastewater. Since publication of the proposal, EPA has received revised versions of these three methods and has added them to the docket for public comment: (1) D6888–04 Standard Test Method for Available Cyanide with Ligand Displacement and Flow Injection Analysis (FIA) Utilizing Gas Diffusion Separation and Amperometric Detection (an update of proposed version: D6888–03); (2) D5673–03 Standard Test Method for Elements in Water by Inductively Coupled Plasma—Mass Spectrometry (an update of proposed version: D5673–02); and (3) D4658–03 Standard Test Method for Sulfide Ion in Water (and update of proposed version: D4658–92(1996)). Method D6888–04 contains a new on-line sulfide removal procedure, and Methods D5673–03 and D4658–03 have added standardized quality control requirements and criteria. The methods added to the Docket represent refinements to the proposed versions, and are not significant variations of those versions. EPA may promulgate some or all of these revised versions in a final rule, and requests comment on each. These methods are included in the docket at OW–2003–0070–0348, 0349, 0350), respectively, and may be ordered from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959, United States, or at *http://www.astm.org*.

In the April 6, 2004 proposal, EPA proposed a method for the measurement of Radium-226 and Radium-228 by Gamma Spectroscopy in drinking water. This method has been modified in several ways and EPA seeks comment on these modifications. The changes to the method include the following: correction of minor typographical errors, minor editorial changes such as the addition of chemical abstract numbers for Radium-226 and Radium-228; the addition of a description of the dangers regarding the use of diethyl ether; minor changes to the equations for activity, detection limit, and uncertainty made as a result of public comment; minor changes to the QC section of the method; the addition of a description of "mixed wastes" (*i.e.*, waste that contains both hazardous waste and radioactive waste); and the addition of a reference to ASTM added to describe Type 2 Reagent Water.

In the April 6, 2004 proposal, EPA concluded that the proposed rule would not have a significant economic impact on a substantial number of small entities (69 FR 18188). Adoption of the refinement to the three methods for which EPA is requesting comment today would not change the Agency's decision to certify the proposal under the Regulatory Flexibility Act. In addition, as explained above, Methods D6888–04, D5673–03 and D4658–03, like the earlier proposed versions of these methods, represent methods from voluntary consensus standards bodies. Section 12(d) of the National Technology Transfer and Advancement Act of 1995 directs EPA to use voluntary standards in its regulatory activities as discussed in more detail in the proposal at 69 FR 18189–18190.

Dated: February 9, 2005.

Benjamin H. Grumbles,

Assistant Administrator, Office of Water.

[FR Doc. 05–2988 Filed 2–15–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2004–0413; FRL–7691–9]

Lignosulfonates; Exemptions from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Agency is proposing to establish 44 exemptions from the requirement of a tolerance for residues of various lignosulfonate chemicals in or on raw agricultural commodities when used as inert ingredients in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest, or to animals under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). This regulation eliminates the need to establish a maximum permissible level for residues of these lignosulfonate chemicals.

DATES: Comments, identified by docket identification (ID) number OPP–2004–0413, must be received on or before April 18, 2005.

ADDRESSES: Submit your comments, identified by docket ID number OPP–2004–0413, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov/*. Follow the on-line instructions for submitting comments.
- *Agency Website*: *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*: Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2004–0413.
- *Mail*: 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–2004–0413.
- *Hand delivery*: 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–2004–0413. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number OPP–2004–0413. 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 regulations.gov websites are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is

placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102) (FRL–7181–7).

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket/*. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the 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: Princess Campbell, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8033; e-mail address: *campbell.princess@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/*.

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

1. *Submitting CBI.* Do not submit this information to EPA through EDOCKET, regulations.gov, or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the rulemaking by docket ID number and other identifying information (subject heading, **Federal Register** date, and page number).

ii. Follow directions. The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns, and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What Action is the Agency Taking?

The Agency is proposing to establish 44 tolerance exemptions for various lignosulfonate chemicals. Currently, there are seven tolerance exemptions for lignosulfonate chemicals. In 40 CFR 180.910 and 180.930, the exemption reads: Lignosulfonate, ammonium, calcium, magnesium, potassium, sodium, and zinc salts. The Agency intends to remove this single exemption, and split the exemption into separate chemical entries. There are also in 40 CFR 180.910 and 930, exemptions for oxidized pine lignin, sodium salt with a limitation of 2% in the formulation. As part of the proposed actions, the limitation will be removed. The exemptions for pine lignin in 40 CFR 180.910 and 180.930 will be revised to include the Chemical Abstracts Service Registry Number (CAS No.) and a different naming convention. In 40 CFR 180.910 the exemption for ethoxylated lignosulfonic acid, sodium salt will be revised in a similar manner.

In part, this action is based on two pesticide petitions (PP 6E4673 and 6E4674) from LignoTech USA Inc., 100 Hwy. 51 South, Rothschild, WI 54474. LignoTech requested exemptions from the requirement of a tolerance for sulfite liquors and cooking liquors, spent, oxidized; and lignosulfonic acid, sodium salt, oxidized, when used as inert ingredients in pesticide formulations. The petitioner requested that 40 CFR 180.1001(c) and (e) (newly redesignated as 180.910 and 180.930) be amended by establishing these exemptions from the requirement of a tolerance.

EPA on its own initiative, under section 408(e) of FFDCA, 21 U.S.C. 346a(e), is proposing to amend several existing tolerance exemptions and to establish several new tolerance exemptions for various lignosulfonate chemicals on raw agricultural commodities when used in pesticide formulations as inert ingredients (surfactants or related adjuvants to surfactants) applied to growing crops, or to raw agricultural commodities after harvest and when applied to animals.

The 22 lignosulfonate chemicals, (a total of 44 exemptions), that the Agency is proposing to exempt from the requirement of a tolerance are listed in the Table 1 of this unit.

TABLE 1.—LIGNIN AND LIGNOSULFONATE CHEMICALS PROPOSED FOR TOLERANCE EXEMPTION

Chemical	Chemical formula	CAS No.
Lignosulfonic acid	$C_{213}H_{246}O_{88}S_{64}$	8062–15–5
Lignosulfonic acid, ammonium salt	$C_{213}H_{258}N_4O_{88}S_4$	8061–53–8
Lignosulfonic acid, calcium salt	$C_{213}H_{242}Ca_2O_{88}S_4$	8061–52–7
Lignosulfonic acid, magnesium salt	$C_{213}H_{242}Mg_2O_{88}S_4$	8061–54–9
Lignosulfonic acid, sodium salt	$C_{214}H_{243}Na_4O_{88}S_4$	8061–51–6
Lignosulfonic acid, potassium salt	$C_{213}H_{242}K_4O_{88}S_4$	37314–65–1
Lignosulfonic acid, zinc salt	$C_{213}H_{242}O_{88}S_4Zn_2$	57866–49–6
Lignosulfonic acid, ammonium sodium salt		166798–73–8
Lignosulfonic acid, ammonium magnesium salt		123175–37–1
Lignosulfonic acid, ammonium calcium salt		12710–04–2
Lignosulfonic acid, calcium magnesium salt		55598–86–2
Lignosulfonic acid, calcium sodium salt		37325–33–0
Lignosulfonic acid, sodium salt sulfomethylated	$C_{214}H_{242}Na_6O_{94}S_6$	68512–34–5
Lignin alkali reaction products with disodium sulfite and formaldehyde	$C_{213}H_{248}Na_2O_{83}S_2$	105859–97–0
Lignin alkali reaction products with formaldehyde and sodium bisulfite	$C_{213}H_{248}Na_2O_{83}S_2$	68512–35–6
Ethoxylated lignosulfonic acid, sodium salt	$C_{217}H_{250}Na_4O_{90}S_4$	68611–14–3
Lignin, alkali, oxidized, sodium salt	$C_{213}H_{237}Na_8O_{81}$	68201–23–0
Lignin		9005–53–2
Lignin, alkali	$C_{213}H_{245}Na_6O_{76}$	8068–05–1
Lignosulfonic acid, sodium salt, polymer with HCHO and phenol	$C_{229}H_{256}Na_8O_{90}S_4$	37207–89–9
Sulfite liquors and cooking liquid, spent, oxidized	$C_{225}H_{253.6}NaO_{113.8}S_7$	68514–09–0
Lignosulfonic acid, sodium salt oxidized	$C_{212}H_{230}Na_4O_{88}S_4$	68855–41–4

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

This proposed rule is issued under section 408 of FFDCA, 21 U.S.C. 346a, as amended by FQPA (Public Law 104–170). Section 408(e) of FFDCA authorizes EPA to establish, modify, or revoke tolerances, or exemptions from the requirement of a tolerance for residues of pesticide chemicals in or on raw agricultural commodities and processed foods.

III. Human Health Assessment

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 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 lignosulfonate chemicals are discussed in this unit.

A. Description of Lignosulfonate Materials

Lignin is an extremely complex naturally occurring phenolic polymer that is primarily made of three phenolic alcohols: Coniferyl, p-coumaryl, and synapyl alcohols. These alcohols are cross-linked to each other via a variety of different chemical bonds. The structure of lignin is somewhat undefined. However, it is lignin that supplies the strength and rigidity to the cell wall of plants. Lignin is the glue-like substance that binds the cellulose fibers together. The lignin group of compounds makes up the second most abundant class of chemicals found in plants. Cellulose is the most abundant. According to information available on the internet (*http://www.chem.vt.edu/chem-dept/helm/3434WOOD/notes1/lignin.html*), the ratio of the alcohols determines the rigidity or flexibility of the plant's cell wall. "p-Coumaryl alcohol is a minor component of grass and forage type lignins. Coniferyl alcohol is the predominant lignin monomer found in softwoods.....Both coniferyl and sinapyl alcohols are the building blocks of hardwood lignin." The lignin content of softwoods are on

the order of 26–32% and of hardwoods 20–28%.

To make pulp and paper, various processes are used to release the cellulose, by removing the lignin from plant cells, by destroying the chemical bonds within the lignin. These processes produce by-products which are different in composition from the original lignin polymer. In one such process lignin reacts with sulfur dioxide to form lignosulfonic acid. Lignosulfonates can also be produced as the sodium, potassium, calcium, magnesium, zinc, or ammonium salts. Using other chemical processes lignosulfonate chemicals that have been oxidized or ethoxylated can be manufactured.

B. Previous Agency Action

On March 27, 1996, EPA's OPP published in the **Federal Register** (61 FR 13476) (FRL–5355–6) a proposed rule to establish tolerance exemptions for oxidized pine lignin, sodium salt (CAS No. 68201–23–0). In that proposed rule the Agency described its review and evaluation of various toxicity data as follows: "The toxicological data show that pine lignin, sulfonated pine lignin as well as oxidized pine lignin or lignosulfonates are of very low acute toxicity (LD_{50} > 2 to > 5 g/kg in rats.....Pine lignin is classified as toxicity category IV in a skin irritation and eye irritation studies." The final rule establishing the tolerance exemption for oxidized pine lignin published in the **Federal Register** of June 19, 1996 (61 FR 31037) (FRL–3575–9).

C. Internet Search for Publicly Available Information

The Agency through its Interagency Agreement with the Department of Energy's Oakridge National Laboratory conducted an extensive literature search. Over 20 publicly available websites, such as International Programme on Chemical Safety (IPCS), National Toxicological Program (NTP), National Library of Medicine's TOXNET, Agency for Toxic Substances and Disease Registry (ATSDR), and Organization for Economic Co-operation and Development (OECD), were searched using both names and CAS Nos. as search terms. It should be noted that these are reliable compilations of toxicity data. The search revealed little information for these compounds in the public literature. Table 2 of this unit summarizes the information that was retrieved. All of the following studies were conducted using lignosulfonic acid, sodium salt.

TABLE 2.—TOXICITY DATA FOR LIGNOSULFONIC ACID, SODIUM SALT (CAS NO. 8061–51–6)

Species	Study type	Results
Rat/Wistar	16-Week oral toxicity	NOAEL = 2.83 male (M) 2.42 female (F) gram/kilogram/day (g/kg/day) LOAEL = 10.02 (M) 9.99 (F) g/kg/day based on statistically significant decreases in body weight, RBC (erythrocytes), Hb (hemoglobin), and hematocrit; significantly significant increases in total leucocyte count; absolute and relative liver, spleen, and kidney weights in males
Rat/Wistar	Acute oral toxicity in male and female rats	LD_{50} > 40 g/kg
Rabbit	21/28-Day dermal toxicity	non irritating to skin in rabbits
Guinea pig (albino)	Repeated dose toxicity (1–5 weeks)	NOAEL was not determined LOAEL = 1.740 g/kg/day based on ulceration of the colon in 50% of test animals
Salmonella typhimurium strains TA98, TA100, TA1535, TA1537	Gene mutation	Non-mutagenic—Ames with and without activation

D. Information from the Petitioner

The information submitted in the two petitions (6E4673 and 6E4674) by LignoTech consisted of the following:

TABLE 3.—TOXICITY INFORMATION

Chemical description	Study
Pine lignin, sodium salt	Acute oral rat; LD_{50} is greater than 2 g/kg
Sulfonated pine lignin, sodium salt	Acute oral rat; LD_{50} is greater than 2 g/kg
Oxidized pine lignin, sodium salt	Acute oral rat; LD_{50} is greater than 5 g/kg

TABLE 3.—TOXICITY INFORMATION—Continued

Chemical description	Study
Carboxylated lignosulfonate, calcium salt	Acute oral rat; LD_{50} is greater than 5 g/kg
Oxidized lignosulfonate, sodium salt	Acute oral rat; LD_{50} is greater than 5 g/kg
Oxidized lignosulfonate, sodium salt	Skin irritation; not irritating
Oxidized lignosulfonate, sodium salt	Eye irritation; not irritating

The petitioner supplied only the information in this unit, not the studies or source from which the information was extracted. Therefore, the Agency cannot review and evaluate any of this information. According to the petitioner, lignosulfonates are generally recognized as having low aquatic, avian, and mammalian toxicities. Sulfite liquors and cooking liquors are the raw materials obtained from the sulfite pulping of wood chips, with the main component of these liquors being sodium lignosulfonate, a derivative of the natural-occurring polymer, lignin.

E. Structure Activity Relationship (SAR) Assessment

The Agency traditionally begins its evaluation process for inert ingredients by searching publicly available

databases. However, the Agency believes that for certain chemicals it is possible to assess the chemical's toxicity with other evaluation tools which can include expert scientific judgement. Even if literature searches do not yield much toxicity data, given these other tools, the Agency believes that it is still possible to determine a "reasonable certainty of no harm."

SAR analysis is a useful tool for predicting toxicity and thus identifying chemicals which may present specific risk concerns and/or for which the value of generating additional data would be low. This analysis utilizes the chemical's structural similarity to other chemicals for which data are available. A discussion on the SAT process in the Office of Pollution Prevention and Toxics (OPPT) follows.

SAR assessments have been performed by OPPT for over 25 years. Under section 5 of the Toxic Substances Control Act (TSCA), the Agency must make a determination to restrict the manufacture or importation of the chemical within 90 days of the submission of a pre-manufacturing notice (PMN). The Agency must make either a "...may present an unreasonable risk to human health or the environment..." finding or show that the chemical "....is or will be produced in substantial quantities, and such substance either enters or may reasonably be anticipated to enter the environment in substantial quantities or there is or may be significant or substantial human exposure to the substance...". However, section 5 of TSCA does not require any toxicity testing as a prerequisite for submission of PMNs. Thus, toxicological data are usually not available for review by the Agency. In response to the lack of toxicity data, and the mandated time frames, the Agency has relied on expert assessments to predict a chemical's toxicity.

For human health, the SAR process can be used to assess absorption and metabolism, mutagenicity, carcinogenicity, developmental and reproductive effects, neurotoxicity, system effects, immunotoxicity, sensitization, and irritation. This is a qualitative assessment using terms such as good, not likely, poor, moderate, or high. To judge the validity of these assessments, EPA examined the method in the Project on the Evaluation of (Quantitative) Structure Activity Relationships (EPA 743–R–94–001). Given only chemical structure information, the Structure Activity Team (SAT) in OPPT assessed 140 chemicals using their SAR assessment process. The results of their assessments were then compared to the "base set" data that the European Union (EU) had received on each chemical. The results indicated that the SAR assessments were "on target" 90% of the time for aquatic toxicity, and roughly 80% of the time for human health effects. For human health, the approximately 20% that were not "on target" were overestimates.

The SAT consists of expert scientists who evaluate the potential environmental fate, human health, and environmental hazards of these new chemicals. The scientific disciplines represented on the SAT are: Chemistry, environmental fate, ecotoxicity, absorption/metabolism, mutagenicity, carcinogenicity, developmental/reproductive toxicity, neurotoxicity, acute toxicity, and subchronic/chronic toxicity.

Thus, after an in-depth literature search revealed that there was not extensive information available on the lignosulfonates, OPP decided to utilize the SAT's expertise to evaluate/identify the potential risks to human health posed by the lignosulfonates, and the environmental fate, health, and environmental hazards of the lignosulfonates, while considering the information on lignosulfonic acid, sodium salt. The SAT process begins by verifying the chemical identity and structures of the requested chemicals and then estimating (modeling) the physical/chemical properties of the chemicals, if measured data are not available.

Table 4 of this unit contains an excerpt of the information on the physical/chemical properties which were used by the SAT to make the determination. (Information on all of the physical/chemical properties considered by the SAT is contained in paper format only in EDOCKET OPP–2004–0413).

TABLE 4.—COMPARISON OF CHEMICAL/PHYSICAL PROPERTIES FOR LIGNOSULFONIC ACID SODIUM SALT AND SODIUM SALT OXIDIZED (OBTAINED FROM THE SAT)

Chemical	Physical state	Boiling point	Water solubility (g/Liter (L))	Vapor pressure	Molecular weight
Lignosulfonic acid, sodium salt	Solid	>500	>500	<0.000001	10,000
Lignosulfonic acid, sodium salt, oxidized	Solid	>500	>500	<0.000001	10,000

The information used by the SAT indicate that these are high molecular weight, polymeric-type materials. After determining the physical /chemical properties, the SAT divided the 16 chemicals into 3 groups. Group 1 consisted of: Lignosulfonic acid, ammonium salt; lignosulfonic acid, calcium salt; lignosulfonic acid, magnesium salt; lignosulfonic acid, sodium salt; and lignosulfonic acid, potassium salt.

The SAR conclusions for Group 1 are as follows:

Absorption is nil for all routes based on the physical/chemical properties. There is concern for irritation and possible corrosion to the GI (gastorintestinal) tract based on data provided for sodium lignosulfonate (guinea pig 14–28 day oral drinking water LOEL = 1.7 g/kg/day with colonic ulceration. No pH values were provided for the lignosulfonic acid or its salts; therefore, SAT members made the assumption that the free acid would have a very low pH value and that the salts could have high pH values depending on the amount of and the manner in which the counter-ion reacted or complexed with the acid. Based on this assumption there is a concern for irritation to skin, eyes, and lungs. There is also concern for lung toxicity if inhaled based on potential lung overload for high molecular weight polymers. The SAT determined that Group 1 lignosulfonates are of low-moderate concern for human health effects.

Group 2 consisted of lignosulfonic acid, zinc salt. The SAT's human health assessment for lignosulfonic acid, zinc salt are identical to Group 1's with the following addition. The inclusion of zinc in the lignosulfonate polymer results in concerns for developmental toxicity and immunotoxicity at high

doses, as well as concerns for asthma and mutagenicity. However, the SAT determined that lignosulfonic acid, zinc salt is also of low-moderate concern for human health effects.

Group 3 consisted of: Lignin, alkali reaction products with disodium sulfite and formaldehyde; lignin, alkali reaction products with formaldehyde and sodium bisulfite;ethoxylated lignosulfonic acid, sodium salt; lignin, alkali oxidized, sodium salt; lignin, alkali; lignosulfonic acid, sodium salt, polymer with formaldehyde and phenol; sulfite liquors and cooking liquors, spent, oxidized; lignosulfonic acid, sodium salt, oxidized; andlignosulfonic acid. The SAT's human health assessment for this group of lignosulfonate chemicals was identical to the SAT determinations for Group 1.

F. Data obtained via the High Production Volume (HPV) Challenge Program

The test plan for spent pulping liquor (CAS No. 66071–92–9) was submitted to OPPT on January 29, 2001 by the American Forest & Paper Association (AF&PA). (See *http://www.epa.gov/chemrtk/afpa/c12936.pdf/*) On February 21, 2003, the final data summary was submitted. (See *http://www.epa.gov/chemrtk/afpa/c12936fds.pdf/*) While spent pulping liquor is not proposed for tolerance exemption in this document, it is noted that one of the chemicals proposed for tolerance exemption is spent liquors and cooking liquid, spent, oxidized. AF&PA noted in their data summary, that spent pulping liquor is very alkaline in nature, with a pH ranging from 11.5 to 13.5. The composition varies, but includes pulping chemicals, cellulose, hemicellulose, and lignin. Given the high pH, testing could be performed on only very dilute solutions, so the only toxicity testing described in the submission are two mutagenicity tests. The results of the bacterial reverse mutation test indicated that spent pulping liquor is non-mutagenic in that test. In a chromosomal aberration assay with Chinese hamster ovary cells (*in vitro*), spent pulping liquor was clastogenic with and without activation. Concentrations of 2,500 ug/mL with activation and 5,000 µg/mL without activation were judged overtly toxic to the cultures.

G. Conclusions

The toxicity data available to the Agency indicate that the lignosulfonates are of very low toxicity. The oral acute LD_{50}s supplied by the petitioner are all greater than 2 g/kg. The toxicological data located in the public literature is for sodium lignosulfonate. Repeated dose studies retrieved from open literature indicate NOAELs and LOAELs expressed as g/kg/day instead of the usual unit in most toxicity studies reviewed by the Agency of milligram (mg)/kg/day. There is some very unsubstantiated information that lignosufonate materials given to rats before, during, and after mating at doses as high as 1,500 mg/kg/day did not cause adverse effects on reproduction or offspring. But at a dose level of 500 mg/kg/day there were histopathological changes in the lymph nodes of the mothers. Given the quality and quantity of information available, OPP needed additional information to complete its assessment of the lignosulfonate chemicals.

As a group, the SAR assessments did not identify any concerns for mutagenicity or carcinogenicity for the lignosulfonate chemicals. Based on the physical/chemical properties, and particularly on the large molecular weights of the lignosulfonate chemicals, the SAT believes that when considered as a group, the lignosulfonates are not absorbed via any route. This is due to the fact, that generally, polymer-type materials such as lignosulfonates of these higher molecular weights would be poorly absorbed through the intact gastrointestinal tract or through intact human skin.

As a group, one of the health concerns for lignosulfonate chemicals is for inhalation to the deep lung (a lung overload effect), which could occur if lignosulfonate chemicals were to be used either as a powder or as an aerosol. Other concerns identified by the SAT are for irritation to skin, eyes, and lungs, which was based on the assumption that some of these chemicals could have a low pH and therefore display effects consistent with those of an acid. The lung and irritation effects are adequately handled through acute end-product testing to determine any needed personal protective equipment.

The lignosulfonic acid, zinc salt was judged to be of more concern than any of the other lignosulfonate salts. According to the SAT, the inclusion of zinc can result in concerns for developmental toxicity and immunotoxicity at high doses, as well as concerns for asthma and mutagenicity. However, zinc is also a needed nutrient.

Counter-ions such as calcium, potassium, sodium, magnesium, and zinc are required for proper functioning of human biological systems. Thus, the human body does have an effective means of processing them. Zinc is an essential element in the nutrition of man. It functions as an integral part of numerous enzymes. The daily intake for an adult ranges from 14 to 20 mg/day. The recommended dietary allowance (RDA) for adult men and women is 15 mg/day; however, the amount of zinc needed by the body changes throughout life. The Food and Nutrition Board of the United States evaluated zinc dietary allowances and recommended zinc as follows: 2 mg for infants 0.5 years, 5 mg for 0.5–1.0 years, 10 mg for children 1–10 years, 15 mg for men and women 11–51+ years, 20 mg for pregnant women, and 25 mg for lactating women. Deficiencies of zinc can cause illness. Given the incorporation of zinc into a polymeric-type high molecular weight chemical, which is then not well-absorbed by the human body, it is unlikely that the high doses of zinc at which adverse effects are possible would be reached. Without the concerns for the zinc counter-ion, as a group the SAT judged that there were no structural similarities of lignosulfonate chemicals to any known developmental toxicants.

IV. Aggregate Exposures

In examining aggregate exposure, section 408 of 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).

A. Dietary Exposure

Several of the lignosulfonates have applications in food and animal feed products. Monographs describing purity requirements and analytical procedures for both lignosulfonic acid, calcium salt and lignosulfonic acid, sodium salt are published in the *Fourth Edition of the Food Chemicals Codex*. Various salts of lignosulfonic acid have been approved by FDA as secondary direct food additives, components of adhesives, components of paper and paperboard, and adjuvants for glue. Lignosulfonate chemicals can also be used as a pelletizing agent or binder in processed animal feed items. Therefore, animals can consume lignosulfonates as part of their feed mix, and then these animals are consumed by humans. Thus, there is on-going human dietary exposure.

B. Drinking Water

To assess the presence of the lignosulfonate chemicals in drinking water, two reviews are available. A review performed by OPP determined that the various salts of lignosulfonic

acid are soluble to very highly water soluble depending on the cation. Once in water dissociation of the cation is expected depending on pH. These lignosulfonates are not expected to be mobile in terrestrial environments, moving equally with the water and sediment phase to surface water. Ground water migration is not likely. Once in water, the dissociated cation and anion are likely to remain in dissolution. The available information suggest that lignosulfonates may be persistent in aquatic environment of low microbial activity and much less persistent in environments with ample microbial activity.

The SAR assessment performed by OPPT determined that as a group the lignosulfonates were of low concern for exposure via drinking water. Though the time for complete aerobic degradation is predicted to be months, the lignosulfonates are strongly adsorbed to soils and sediments due to their high-molecular weights. This strong binding minimizes the availability of these chemicals for migration to ground water supplies and thus reduces the potential for residues of lignosulfonates to be present in drinking water.

C. Other Non-Occupational

Lignosulfonates have many uses in industrial applications. According to the Lignin Institute website, lignosulfonates can be used as an adhesive (a binder), a dispersant to prevent the clumping and settling of undissolved particles in suspensions, an emulsion stabilizer, and as a sequestrant for water treatments for boilers and cooling systems. Lignosulfonates are used for dust control and surface stabilization on roads.

V. Cumulative Effects

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 for any of the lignosulfonate chemicals. As a group, the lignosulfonates do not appear to produce any toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that any of the lignosulfonate chemicals 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 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/*.

VI. Determination of Safety

The available data from the open literature describes chemicals which exhibit effects at doses that are in the grams per kilogram per day. Additionally, the Agency's understanding of the polymeric nature of these chemicals indicates nil absorption, and there is a finding of low-moderate concern for human health from the SAR assessments. Based on all of the available information, EPA concludes that these lignosulfonate chemicals do not pose an appreciable risk under reasonably foreseeable circumstances. Accordingly, EPA finds that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to these lignosulfonate chemicals.

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 database unless EPA concluded that a different margin of safety will be safe for infants and children. The SAR assessments did not indicate any concerns for developmental toxicity for the lignosulfonate chemicals, other than for the zinc counter-ion. Given the incorporation of zinc into a polymeric-type high molecular weight chemical, which is then not well-absorbed by the human body, it is unlikely that the high doses of zinc at which adverse effects can occur would be reached. Due to the expected low oral toxicity due to the nil absorption of the lignosulfonates, a safety factor analysis has not been used to assess the risk. For the same reasons, the additional tenfold safety factor for the protection of infants and children is unnecessary.

VII. 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 lignosulfonate chemicals for endocrine effects may be required.

B. Analytical Method

An analytical method is not required for enforcement purposes since the Agency is proposing exemptions from the requirement of a tolerance without any numerical limitation.

C. Existing Tolerances

Currently, there are seven tolerance exemptions for lignosulfonate chemicals. In 40 CFR 180.910: Ethoxylated lignosulfonic acid, sodium salt; lignosulfonate, ammonium, calcium, magnesium, potassium, sodium, and zinc salts; oxidized pine lignin, sodium salt; pine lignin . There are also in 40 CFR 180.930: Lignosulfonate, ammonium, calcium, magnesium, potassium, sodium, and zinc salts; oxidized pine lignin, sodium salt; and pine lignin. The Agency is proposing to revise these tolerances.

D. International Tolerances

The Agency is not aware of any country requiring a tolerance for any of the lignosulfonate chemicals nor have any CODEX Maximum Residue Levels (MRLs) been established for any food crops at this time.

VIII. Conclusions

Based on the Agency's review and evaluation of the available information on the toxicity of lignosulfonate chemicals and considering the SAR assessments, EPA concludes that there is a reasonable certainty of no harm from aggregate exposure to residues of these 22 lignosulfonate chemicals. The Agency finds that exempting these 22 lignosulfonate chemicals from the requirement of a tolerance will be safe.

IX. Statutory and Executive Order Reviews

This proposed rule establishes 32 exemptions from the requirement for a tolerance under section 408(d) 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 proposed

rule has been exempted from review under Executive Order 12866 due to its lack of significance, this proposed rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This proposed 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). The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental organizations. After considering the economic impacts of this proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. Establishing an exemption from the requirement of a pesticide tolerance (or, expanding and consolidating a tolerance exemption, as is proposed), is in effect, the removal of a regulatory restriction on pesticide residues in food and thus such an action will not have any negative economic impact on any entities, including small entities. 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 proposed 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 proposed 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 proposed 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 proposed rule.

List of Subjects in 40 CFR Part 180

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

Dated: February 5, 2005.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 would continue to read as follows:

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

§ 180.910 [Amended]

2. Section 180.910 is proposed to be amended by removing the following entries from the table: Ethoxylated lignosulfonic acid, sodium salt; lignosulfonate, ammonium, calcium, magnesium, potassium, sodium, and zinc salts; oxidized pine lignin, sodium salt; and pine lignin.

3. Section 180.910 is proposed to be amended by adding alphabetically the following entries to the table to read as follows:

§ 180.910 Inert ingredients used pre- and post-harvest; exemptions from the requirement of a tolerance.

* * * * *

Inert ingredients	Limits	Uses
* * *	* *	* *
Lignin (CAS No.9005–53–2)		surfactant, related adjuvants of surfactants
Lignin, alkali (CAS No. 8068–05–1)		Surfactant, related adjuvants of surfactants
Lignin, alkali, oxidized, sodium salt (CAS No. 68201–23–0)		Surfactant, related adjuvants of surfactants
Lignin alkali, reaction products with disodium sulfite and formaldehyde (CAS No. 105859–97–0).		Surfactant, related adjuvants of surfactants
Lignin alkali, reaction products with formaldehyde and sodium bisulfite (CAS No. 68512–35–6).		Surfactant, related adjuvants of surfactants
Lignosulfonic acid (CAS . No. 8062–15–5)		Surfactant, related adjuvants of surfactants
Lignosulfonic acid, ammonium calcium salt (CAS No. 12710–04–2).		Surfactant, related adjuvants of surfactants

Inert ingredients	Limits	Uses
Lignosulfonic acid, ammonium magnesium salt (CAS No. 123175–37–1).		Surfactant, related adjuvants of surfactants
Lignosulfonic acid, ammonium salt (CAS No. 8061–53–8)		Surfactant, related adjuvants of surfactants
Lignosulfonic acid, ammonium sodium salt (CAS No. 166798–73–8).		Surfactant, related adjuvants of surfactants
Lignosulfonic acid, calcium magnesium salt (CAS No. 55598–86–2).		Surfactant, related adjuvants of surfactants
Lignosulfonic acid, calcium salt (CAS No. 8061–52–7)		Surfactant, related adjuvants of surfactants
Lignosulfonic acid, calcium sodium salt (CAS No. 37325–33–0).		Surfactant, related adjuvants of surfactants
Lignosulfonic acid, ethoxylated, sodium salt (CAS No. 68611–14–3).		Surfactant, related adjuvants of surfactants
Lignosulfonic acid, magnesium salt (CAS No. 8061–54–9)		Surfactant, related adjuvants of surfactants
Lignosulfonic acid, potassium salt (CAS No. 37314–65–1)		Surfactant, related adjuvants of surfactants
Lignosulfonic acid, sodium salt (CAS No. 8061–51–6)		Surfactant, related adjuvants of surfactants
Lignosulfonic acid, sodium salt, oxidized (CAS No. 68855–41–4).		Surfactant, related adjuvants of surfactants
Lignosulfonic acid, sodium salt, polymer with HCHO and phenol (CAS No. 37207–89–9).		Surfactant, related adjuvants of surfactants
Lignosulfonic acid, sodium salt, sulfomethylated (CAS No. 68512–34–5).		Surfactant, related adjuvants of surfactants
Lignosulfonic acid, zinc salt (CAS No. 57866–49–6)		Surfactant, related adjuvants of surfactants
* * * * * * *		
Sulfite liquors and cooking liquid, spent, oxidized (CAS No. 68514–09–0).		Surfactant, related adjuvants of surfactants
* * * * * * *		

* * * * *

§ 180.930 [Amended]

4. Section 180.930 is proposed to be amended by removing the following entries from the table: Lignosulfonate, ammonium, calcium, magnesium, potassium, sodium, and zinc salts; oxidized pine lignin, sodium salt; and pine lignin.

5. Section 180.930 is proposed to be amended by adding alphabetically the following entries to the table to read as follows:

§ 180.930 Inert ingredients applied to animals; exemptions from the requirement of a tolerance.

* * * * *

Inert ingredients	Limits	Uses
* * * * * * *		
Lignin (CAS No. 9005–53–2)		Surfactant, related adjuvants of surfactants
Lignin, alkali (CAS No. 8068–05–1)		Surfactant, related adjuvants of surfactants
Lignin, alkali, oxidized, sodium salt (CAS No. 68201–23–0)		Surfactant, related adjuvants of surfactants
Lignin alkali, reaction products with disodium sulfite and formaldehyde (CAS No. 105859–97–0).		Surfactant, related adjuvants of surfactants
Lignin alkali, reaction products with formaldehyde and sodium bisulfite (CAS No. 68512–35–6).		Surfactant, related adjuvants of surfactants
Lignosulfonic acid (CAS No. 8062–15–5)		Surfactant, related adjuvants of surfactants
Lignosulfonic acid, ammonium calcium salt (CAS No. 12710–04–2).		Surfactant, related adjuvants of surfactants
Lignosulfonic acid, ammonium magnesium salt (CAS No. 123175–37–1).		Surfactant, related adjuvants of surfactants
Lignosulfonic acid, ammonium salt (CAS No. 8061–53–8)		Surfactant, related adjuvants of surfactants
Lignosulfonic acid, ammonium sodium salt (CAS No. 166798–73–8).		Surfactant, related adjuvants of surfactants
Lignosulfonic acid, calcium magnesium salt (CAS No. 55598–86–2).		Surfactant, related adjuvants of surfactants
Lignosulfonic acid, calcium salt (CAS No. 8061–52–7)		Surfactant, related adjuvants of surfactants
Lignosulfonic acid, calcium sodium salt (CAS No. 37325–33–0).		Surfactant, related adjuvants of surfactants
Lignosulfonic acid, ethoxylated, sodium salt (CAS No. 68611–14–3).		Surfactant, related adjuvants of surfactants
Lignosulfonic acid, magnesium salt (CAS No. 8061–54–9)		Surfactant, related adjuvants of surfactants
Lignosulfonic acid, potassium salt (CAS No. 37314–65–1)		Surfactant, related adjuvants of surfactants
Lignosulfonic acid, sodium salt (CAS No. 8061–51–6)		Surfactant, related adjuvants of surfactants
Lignosulfonic acid, sodium salt, oxidized (CAS No. 68855–41–4).		Surfactant, related adjuvants of surfactants
Lignosulfonic acid, sodium salt, polymer with HCHO and phenol (CAS No. 37207–89–9).		Surfactant, related adjuvants of surfactants
Lignosulfonic acid, sodium salt, sulfomethylated (CAS No. 68512–34–5).		Surfactant, related adjuvants of surfactants
Lignosulfonic acid, zinc salt (CAS No. 57866–49–6)		Surfactant, related adjuvants of surfactants

Inert ingredients	Limits	Uses
* * *	* *	* *
Sulfite liquors and cooking liquid, spent, oxidized (CAS No. 68514–09–0).	.....	Surfactant, related adjuvants of surfactants
* * *	* *	* *

* * * * *

[FR Doc. 05–2986 Filed 2–15–05; 8:45 am]
BILLING CODE 6560–50–S

Notices

Federal Register
Vol. 70, No. 31
Wednesday, February 16, 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

February 11, 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 104–3. 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.

Animal Plant and Health Inspection Service

Title: Pine Shoot Beetle Host Material from Canada.

OMB Control Number: 0579–0257.

Summary of Collection: Under the Plant Protection Act (7 U.S.C. 7701–7772), the Secretary of Agriculture is authorized to prohibit or restrict the importation, entry, or movement of plants and plant pests to prevent the introduction of plant pests into the United States or their dissemination within the United States. The Animal Plant and Health Inspection Service (APHIS) is establishing restriction on the importation of pine shoot beetle host material into the United States from Canada. Pine shoot beetle (PSB) is a pest of pine trees. It can cause damage in weak and dying trees where reproductive and immature stages of PSB occur, and in the new growth of healthy trees. PSB can damage urban ornamental trees and can cause economic losses to the timber, Christmas trees, and nursery industries.

Need and Use of the Information: APHIS will collect the information using Compliance Agreements, Written Statements, and Canadian Phytosanitary Certificates to protect the United States from the introduction of pine shoot beetle and other plant diseases.

Description of Respondents: Farms; Business or other for profit; Individuals or household.

Number of Respondents: 2,340.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 79.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 05–2968 Filed 2–15–05; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

February 11, 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 appropriation 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* for 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 persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: WIC Local Agency Directory.

OMB Control Number: 0584–0431.

Summary of Collection: The Supplemental Nutrition Program for Women, Infants, and Children (WIC) is authorized by section 17 of the Child Nutrition Act (CNA) of 1966 (42 U.S.C. 1786), as amended. The Food and Nutrition Service (FNS) of USDA administers the WIC Program by awarding cash grants to State agencies (generally State health departments). The State agencies award subgrants to local agencies (generally local health departments and nonprofit organizations) to deliver program benefits and services to eligible participants. Local agencies authorized to furnish WIC participants with supplemental foods, nutrition education, breastfeeding promotion and support activities and referral to related

health services are subject to change. New local agencies may be selected to operate the WIC Program and local agencies already in operation may be disqualified for continued operation. FNS will collect information using form FNS–648 to report additions and deletions of local agencies operating the WIC program and local agency address changes, when such changes occur.

Need and Use of the Information: The FNS will collect information to maintain a local agency directory that lists the names and addresses of all WIC local agencies. The WIC local agency directory services as the primary source of data on the number and location of local agencie4s and is published annually. It is used to refer individuals to the nearest source of WIC Program services and to maintain continuity of program services to migrant and other transient participants.

Description of Respondents: State, local, or tribal government.

Number of Respondents: 88.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 15.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 05–2969 Filed 2–15–05; 8:45 am]

BILLING CODE 3410–30–M

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

February 11, 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.

Grain Inspection, Packers and Stockyards Administration

Title: Guidelines for Preparation of Research Proposal.

OMB Control Number: 0580–0014.

Summary of Collection: The Grain Inspection, Packers and Stockyards Administration (GIPSA) is responsible for establishment of grain standards which accurately describe the quality of grain being traded and for the uniform application of these standards in a nationwide inspection system. GIPSA maintains an external research program under which research scientists are invited to submit research grant proposals which include the objectives of the proposed work; application of the proposed work to the grain inspection system; the procedures, equipment, personnel, *etc.*, that will be used to reach the project objectives; the costs of the project, a schedule for completion; qualifications of the investigator and the grantee organization; and a listing of all other sources of financial support for the project.

Need and Use of the Information: The information collected is used by GIPSA to determine the projects that would address the highest priority problems. The information is also critical for ensuring that the proposed projects are technically feasible and that the sponsoring organizations have the resources to support the project including personnel with the appropriate technical capabilities.

Description of Respondents: State, local or tribal government; Business or other for-profit; Not-for-profit institutions.

Number of Respondents: 2.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 40.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 05–2970 Filed 2–15–05; 8:45 am]

BILLING CODE 3410–KD–M

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

2004 Dairy Disaster Assistance Payment Program (DDAP)

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 the United States Department of Agriculture, Commodity Credit Corporation, is seeking comments from all interested individuals and organizations regarding a new information collection. This collection is necessary to add information collections on a new form that will be used to gather specific information from producers on their dairy production and spoilage losses suffered as a result of the 2004 hurricanes. The information collected will be used to establish eligibility and to determine payment amounts.

DATES: Comments on the information collection requirements in this notice must be received on or before April 18, 2005 to be assured consideration.

FOR FURTHER INFORMATION CONTACT: Comments regarding this information collection requirement may be directed to Danielle Cooke, telephone (202) 720–1919; fax (202) 690–1536; e-mail: *Danielle_Cooke@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: 2004 Dairy Disaster Assistance Payment Program.

OMB Number: 0560–NEW.

Type of Request: Request for Approval of a New Information Collection.

Abstract: Dairy operations are eligible to receive direct payments provided they make certifications that attest to their eligibility to receive such payments. As appropriate, these operations must certify, with respect to: (1) The producers in the dairy operation being associated with a dairy farm operation physically located in a county declared a disaster by the President of the United States in 2004 due to hurricanes; (2) the pounds of dairy production losses and dairy spoilage losses incurred as a result of any of the 2004 hurricanes; (3) that they

understand the dairy operation must provide adequate proof of monthly milk production commercially marketed by all persons in the dairy operation during the period specified by the Commodity Credit Corporation (CCC) to determine the total pounds of eligible losses incurred by the operation. The information collection will be used by CCC to determine the program eligibility of the dairy operations. CCC considers the information collected essential to prudent eligibility determinations and payment calculations. Additionally, without accurate information on dairy operations, the national payment rate would be inaccurate, resulting in payments being made to ineligible recipients, and the integrity and accuracy of the program could be compromised.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 10 minutes per response.

Respondents: Dairy Operations.

Estimated Number of Respondents: 3,000.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 2,115 hours.

Proposed topics for comment include: (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 collected; or (d) ways to minimize the burden of the collection of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments regarding this information collection requirement may be directed to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503, and to Grady Bilberry, Director, Price Support Division, Farm Service Agency, United States Department of Agriculture, STOP 0512, 1400 Independence Avenue, SW., Washington, DC 20250–0512 or telephone (202) 720–7901. All comments will become a matter of public record.

Signed at Washington, DC, on February 9, 2005.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 05–2941 Filed 2–15–05; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Ravalli County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Ravalli County Resource Advisory Committee will be meeting to discuss project development for 2005 and project updates for 2004. Agenda topics will include public outreach methods, and a public forum (question and answer session). The meeting is being held pursuant to the authorities in the Federal Advisory Committee Act (Public Law 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106–393). The meeting is open to the public.

DATES: The meeting will be held on February 22, 2005, 6:30 p.m.

ADDRESSES: The meeting will be held at the Ravalli County Administration Building, 215 S., 4th Street, Hamilton, Montana. Send written comments to Daniel G Ritter, Acting District Ranger, Stevensville Ranger District, 88 Main Street, Stevensville, MT 59870, by facsimile (406) 777–5461, or electronically to *dritter@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Dan Ritter, Stevensville Acting District Ranger and Designated Federal Officer, Phone: (406) 777–5461.

Dated: February 9, 2005.

David T. Bull,

Forest Supervisor.

[FR Doc. 05–2962 Filed 2–15–05; 8:45 am]

BILLING CODE 3410–11–M

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Sunshine Act Meeting

In connection with its investigation into three separate incidents at the Honeywell International Inc. plant in Baton Rouge, Louisiana, in 2003, the United States Chemical Safety and Hazard Investigation Board (CSB) announces that it will convene a public meeting starting at 10 a.m. local time on Wednesday, March 2, 2005, at the Holiday Inn Select, Executive Center, 4728 Constitution Avenue, Baton Rouge, LA 70808, telephone (225) 925–2244.

On July 20, 2003, a release of chlorine gas from the Honeywell plant resulted in injuries to seven plant workers and issuance of a shelter-in-place advisory for residents within a half-mile radius. On July 29, 2003, a one-ton cylinder at the same plant released its contents to the atmosphere, fatally injuring a plant worker by exposure to toxic antimony pentachloride. On August 13, 2003, two workers at the plant were exposed to toxic hydrofluoric acid (HF), and one of them was hospitalized.

At the meeting CSB staff will present the Board with the results of their investigation into these three incidents, including a discussion of key findings, root and contributing causes, and proposed recommendations. The CSB staff presentation will focus on three key safety issues: hazard awareness, management of nonroutine situations, and safe operating procedures.

After the staff presentation, the Board will ask for public comments. Following the conclusion of the public comment period, the Board will consider whether to approve the final report and recommendations. All staff presentations are preliminary and are solely intended to allow the Board to consider in a public forum the issues and factors involved in this case. No factual analyses, conclusions or findings of the staff should be considered final. Only after the Board has considered the staff presentation and approved the staff report will there be an approved final record of this incident.

The meeting will be open to the public, and there is no fee or pre-registration required. Please notify CSB if a translator or interpreter is needed, at least 5 business days prior to the public meeting. For more information, please contact the Chemical Safety and Hazard Investigation Board at (202) 261–7600, or visit our Web site at: *http://www.csb.gov.*

Christopher W. Warner,

General Counsel.

[FR Doc. 05–3074 Filed 2–14–05; 12:42 pm]

BILLING CODE 6350–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–601]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Notice of Court Decision and Suspension of Liquidation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On January 21, 2005, in *Luoyang Bearing Factory* v. *United States*, Slip Op. 05–3, the Court of International Trade ("CIT") affirmed the Department of Commerce's *Final Results of Redetermination Pursuant to Remand* ("*Remand Results*"), dated September 30, 2004. Consistent with the decision of the U.S. Court of Appeals for the Federal Circuit ("CAFC") in *Timken Co.* v. *United States*, 893 F.2d 337 (Fed. Cir. 1990) ("*Timken*"), the Department will continue to order the suspension of liquidation of the subject merchandise, where appropriate, until there is a "conclusive" decision in this case. If the case is not appealed, or if it is affirmed on appeal, the Department will instruct U.S. Customs and Border Protection ("Customs") to liquidate all relevant entries from Luoyang Bearing Factory ("Luoyang"), Zhejiang Machinery Import & Export Corporation ("ZMC"), China National Machinery Import & Export Corporation ("CMC"), and Wafangdian Bearing Company, Limited ("Wafangdian") and revise the cash deposit rates as appropriate.

EFFECTIVE DATE: February 16, 2005.

FOR FURTHER INFORMATION CONTACT: Andrew Smith, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1276.

SUPPLEMENTARY INFORMATION:

Background

Following publication of the *TRBs XII Final Results*, the Timken Company ("Timken"), the petitioner in this case, and the respondents, Luoyang Bearing, ZMC, CMC and Wafangdian ("respondents"), filed a lawsuit with the CIT challenging the Department's findings in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1998–1999 Administrative Review, Partial Rescission of Review, and Determination Not to Revoke Order in Part*, 66 FR 1953 (January 10, 2001) ("*TRBs XII Final Results*").[1] In *Luoyang Bearing Corp. (Group), Zhejiang Machinery Import & Export Corp., China National Machinery Import & Export Corporation, and Wafangdian Bearing Company, Ltd.* v. *United States*, Slip Op. 04–53 (CIT 2004) ("*Luoyang Bearing*"), the CIT instructed the Department to (1) further explain why the surrogate values it chose for wooden cases and the steel used to produce tapered roller bearings for Wafangdian constitute the "best available information," and address the aberrational data referenced by the respondents; and (2) conduct the separate rates analysis with respect to Premier Bearing & Equipment Limited ("Premier") and apply the PRC rate to all of Premier's United States sales if it is determined that Premier is not independent of government control.

The *Draft Final Results Pursuant to Remand* ("*Draft Results*") were released to parties on August 31, 2004. The Department received comments from interested parties on the *Draft Results* on September 8, 2004, and rebuttal comments on September 13, 2004. There were no substantive changes made to the *Remand Results* as a result of comments received on the *Draft Results*. On September 30, 2004, the Department responded to the CIT's Order of Remand by filing the *Remand Results*. In its *Remand Results*, the Department revised the surrogate value used to value steel inputs used in the production of rollers by excluding aberrational data as well as data that the Department had reason to believe or suspect were distorted. The Department also corrected a clerical error in the programming used to calculate the margin for ZMC.

As a result of the remand redetermination, the antidumping duty rate for Luoyang was decreased from 4.37 to 3.85 percent. The antidumping duty rate for ZMC was decreased from 7.37 to 0.00. The antidumping duty rate for CMC was decreased from 0.82 to 0.78 percent. The antidumping duty rate for Wafangdian and the PRC–wide rate were unchanged from the TRBs XII Amended Final Results. On October 20 and 27, 2004, the CIT received comments from Timken and the respondents, respectively. On November 12, 2004, Timken filed rebuttal comments to the respondents' comments. On December 6, 2004, the Department responded to these comments.

On January 21, 2005, the CIT affirmed the Department's findings in the *Remand Results*. Specifically, the CIT upheld the Department's explanation of what constitutes the "best available information" with regard to the surrogate values the Department chose for wooden cases and for the steel used to produce rollers; the Department's application of the Separate Rates test; the Department's decision to not revoke the antidumping order for ZMC; and, the Department's practice of using other producers' factors data to calculate Premier's normal value. *See Luoyang Bearing Factory* v. *United States*, Slip Op. 05–3 (CIT January 21, 2005).

The only revisions made to *TRBs XII Final Results* were revisions to the surrogate values and the programming language noted above. The revision of the surrogate values resulted in a change in both Luoyang's and CMC's margins. The correction of the programming error resulted in a change to ZMC's margin.

Suspension of Liquidation

The CAFC, in *Timken*, held that the Department must publish notice of a decision of the CIT or the CAFC which is not "in harmony" with the Department's final determination or results. Publication of this notice fulfills that obligation. The CAFC also held that the Department must suspend liquidation of the subject merchandise until there is a "conclusive" decision in the case. Therefore, pursuant to *Timken*, the Department must continue to suspend liquidation pending the expiration of the period to appeal the CIT's January 21, 2005, decision or, if that decision is appealed, pending a final decision by the CAFC. The Department will instruct Customs to revise cash deposit rates, as appropriate, and to liquidate relevant entries covering the subject merchandise effective February 16, 2005, in the event that the CIT's ruling is not appealed, or if appealed and upheld by the CAFC.

Dated: February 8, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–651 Filed 2–15–05; 8:45 am]

BILLING CODE 3510–DS–S

[1] *See also Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Amended Final Results of 1998–1999 Administrative Review and Determination To Revoke Order in Part*, 66 FR 11562 (February 26, 2004) ("*TRBs XII Amended Final Results*") (the Department amended *TRBs XII Final Results* to correct for certain ministerial errors made in the calculation of the company-specific margin).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–830]

Carbon and Alloy Steel Wire Rod from Mexico: Extension of Time Limits for the Final Results of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 16, 2005.

FOR FURTHER INFORMATION CONTACT: Mark Young at (202) 482–6397, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW, Washington, DC 20230.

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to issue (1) the preliminary results of a review within 245 days after the last day of the month in which occurs the anniversary of the date of publication of an order or finding for which a review is requested, and (2) the final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within that time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary results to a maximum of 365 days and the final results to a maximum of 180 days (or 300 days if the Department does not extend the time limit for the preliminary results) from the date of the publication of the preliminary results. *See also* 19 CFR 351.213(h)(2).

Extension of Final Results of Reviews

We determine that it is not practicable to complete the final results of this review within the original time limits. Due to the complexity of issues present in this administrative review, such as complicated cost accounting issues, the Department needs more time to address these items and evaluate the issues more thoroughly. Therefore, we are extending the deadline for the final results of the above–referenced review 60 days[1]. As a result, the final results will be issued no later than May 9, 2005.

This extension is in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2).

[1] The 60-day extension of the final results falls on Saturday May 7, 2005; therefore, the final results will be issued no later than the first business day thereafter, Monday May 9, 2005.

Dated: February 10, 2005.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–652 Filed 2–15–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Marine Protected Areas Center Public Information and Feedback Forum

AGENCY: National Ocean Service, NOAA, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: Notice is hereby given of a public meeting concerning the development of a national system of marine protected areas (MPAs) pursuant to Executive Order 13158 (May 26, 2000). This meeting in the Washington, DC metropolitan area is the first in a series of regional forums to be held around the United States to solicit input from the public concerning their views on a national system of MPAs. Additional meetings will be announced and scheduled pending available resources. Refer to the web page listed below for background information concerning the development of a national system of MPAs. Meeting room capacity is limited to 75 people, and as such participants are required to RSVP via the e-mail address (preferable), fax number, or phone number listed below, by no later than 5 p.m. EST on February 28, 2005. Attendance will be available to the first 75 people who RSVP.

Those who wish to attend but cannot due to space or schedule limitations can find background materials at the web page listed below and may submit written statements to the e-mail, fax, or mailing address below. A written summary of the meeting will be posted on the Web site within one month of its occurrence.

DATES: The meeting will be held Monday, March 7, 2005 from 6:30 p.m. to 9 p.m. EST.

ADDRESSES: The meeting will be held at the Hotel Washington, 15th St NW., at Pennsylvania Ave NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Jonathan Kelsey, National System Development Coordinator, National Marine Protected Areas Center, 1305 East-West Highway, Silver Spring, Maryland, 20910. (Phone: 301–713–3155 ext. 230, Fax: 301–713–3110); email: *mpa.comments@noaa.gov;* or visit the National MPA Center Web site at *http://mpa.gov/national_system/*).

SUPPLEMENTARY INFORMATION: These forums are intended to solicit the public's views regarding the development of a national system of MPAs. All input received via these forums, email, or fax will be for the public record and considered in developing a draft proposal for a national system of MPAs. At this preliminary stage in the effort to develop the national system, NOAA does not intend to respond to any comments received via these forums, email, fax, or mail. Once a draft proposal is developed for the national system of MPAs, NOAA will publish it in the **Federal Register** for formal public comment and will subsequently provide a formal response to comments received.

Matters to be Considered: Executive Order 13158 (May 26, 2000) calls for the development of a national system of MPAs. These forums are intended to solicit the public's views concerning the development of a national system of MPAs. Refer to the Web page listed above for background information concerning the development of the national system of MPAs.

Dated: February 7, 2005.

Eldon Hout,

Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 05–2948 Filed 2–15–05; 8:45 am]

BILLING CODE 3510–08–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Meeting

AGENCY: United States Election Assistance Commission.

ACTION: Notice of public meeting (amended).

DATE AND TIME: Wednesday, February 23, 2005, 10 a.m.–11:30 a.m.

PLACE: Michael E. Moritz College of Law, The Ohio State University, 55 W. 12th Ave., Saxbe Auditorium, Columbus, OH 43210–1391.

AGENDA: The Commission will receive reports on the following: Updates on Title II Requirements Payments and other administrative or programmatic matters. The Commission will receive presentations on the following: Transition of the Voting System Qualification Process to EAC and the Transition of The Lab Accreditation Process to NIST and EAC.

PERSON TO CONTACT FOR INFORMATION: Bryan Whitener, telephone: (202) 566–3100.

Gracia M. Hillman,

Chair, U.S. Election Assistance Commission.

[FR Doc. 05–3089 Filed 2–14–05; 1:46 pm]

BILLING CODE 6820–YN–M

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Rocky Flats

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EMSSAB), Rocky Flats. 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, March 3, 2005, 6 p.m. to 9 p.m.

ADDRESSES: Broomfield Community Center, Lakeshore Room, 280 Lamar Street, Broomfield, CO.

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Executive Director, Rocky Flats Citizens Advisory Board, 10808 Highway 93, Unit B, Building 60, Room 107B, Golden, CO, 80403; telephone (303) 966–7855; fax (303) 966–7856.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

1. Discussion and Approval of Comments on the Draft Rocky Flats Site Wide Integrated Public Involvement Plan.
2. Presentation Development of the Rocky Flats RCRA Facility Investigation-Remedial Investigation/ Corrective Measures Study-Feasibility Study.
3. Update on the Independent Validation and Verification of Rocky Flats Cleanup.
4. Other Board business may be conducted as necessary.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provisions will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. 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 office of the Rocky Flats Citizens Advisory Board, 10808 Highway 93, Unit B, Building 60, Room 107B, Golden, CO 80403; telephone (303) 966–7855. Hours of operations are 7:30 a.m. to 4 p.m., Monday through Friday. Minutes will also be made available by writing or calling Ken Korkia at the address or telephone number listed above. Board meeting minutes are posted on RFCAB's Web site within one month following each meeting at: *http://www.rfcab.org/Minutes.HTML.*

Issued at Washington, DC on February 11, 2004.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 05–2966 Filed 2–15–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2738–054]

New York State Electric & Gas Corporation; Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

February 10, 2005.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New major license.

b. *Project No.:* P–2738–054.

c. *Date filed:* April 5, 2004.

d. *Applicant:* New York State Electric & Gas Corporation.

e. *Name of Project:* Saranac River Hydroelectric Project.

f. *Location:* On the Saranac River, in Clinton County, New York. This project does not occupy federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Carol Howland, New York State Electric & Gas Corporation, Corporate Drive, Kirkwood Industrial Park, P.O. Box 5224, Binghampton, NY 13902, (607) 762–8881.

i. *FERC Contact:* Tom Dean, (202) 502-6041 or *thomas.dean@ferc.gov.*

j. *Deadline for Filing Motions To Intervene and Protests:* 60 days from the issuance date of this notice.

All Documents (Original and Eight Copies) Should be Filed With: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "eFiling" link. The Commission encourages electronic filings.

k. This application has been accepted, but is not ready for environmental analysis at this time.

1. *Project Description:* The project consists of the following four developments:

The High Falls Development consists of the following existing facilities: (1) A 63-foot-high, 274-foot-long concrete gravity dam with spillway topped with 5-foot-high flashboards; (2) a 110-foot-long eastern wingwall and a 320-foot-long western wingwall; (3) a 46-acre reservoir; (3) an 800-foot-long, 19-foot-wide forebay canal; (4) an 11-foot by 12-foot, 3,581-foot-long tunnel; (5) a 10-foot-diameter, 1,280-foot-long penstock; (6) three 6-foot-diameter, 150-foot-long penstocks; (7) a 30-foot-diameter surge tank; (8) a powerhouse containing three generating units with a total installed capacity of 15,000 kW; (9) a 50-foot-long, 6.9-kV transmission line; and (10) other appurtenances.

The Cadyville Development consists of the following existing facilities: (1) A 50-foot-high, 237-foot-long concrete gravity dam with spillway topped with 2.7-foot-high flashboards; (2) a 200-acre reservoir; (3) a 58-foot-long, 20-foot-wide intake; (4) a 10-foot-diameter, 1,554-foot-long penstock; (5) a powerhouse containing three generating units with a total installed capacity of 5,525 kW; (6) a 110-foot-long, 6.6-kV transmission line; and (7) other appurtenances.

The Mill C Development consists of the following existing facilities: (1) A 43-foot-high, 202-foot-long stone masonry dam with spillway topped with 2-foot-high flashboards; (2) a 7.9-acre reservoir; (3) a 37-foot-long, 18-foot-wide intake; (4) a 11.5-foot to 10-foot-diameter, 494-foot-long penstock; (5) a 11.1-foot to 10-foot-diameter, 84-foot-long penstocks; (6) one powerhouse containing two generating units with a total installed capacity of 2,250 kW; (7) another powerhouse containing a single generating unit with an installed capacity of 3,800 kW; (8) a 700-foot-long, 6.6-kV transmission line; and (9) other appurtenances.

The Kents Falls Development consists of the following existing facilities: (1) A 59-foot-high, 172-foot-long concrete gravity dam with spillway topped with 3.5-foot-high flashboards; (2) a 34-acre reservoir; (3) a 29-foot-long, 22-foot-wide intake; (4) an 11-foot-diameter, 2,652-foot-long penstock; (5) three 6-foot-diameter, 16-foot-long penstocks; (6) a 28-foot-diameter surge tank; (7) a powerhouse containing two generating units with a total installed capacity of 12,400 kW; (8) a 390-foot-long, 6.6-kV transmission line; and (9) other appurtenances.

m. A copy of the application is on file with the Commission and is available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "eLibrary" link—select "Docket #" and follow the instructions. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676 or for TTY, contact (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

n. You may also register online at *http://www.ferc.gov.esubscribenow.htm* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

p. *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 Scoping Document—February 2005

Notice application ready for environmental analysis—April 2005

Notice of the availability of the EA—August 2005

Ready for Commission decision on the application—December 2005

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Magalie R. Salas,

Secretary.

[FR Doc. E5–644 Filed 2–15–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–2516–003, et al.]

Westar Energy, Inc., et al.; Electric Rate and Corporate Filings

February 9, 2005.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Westar Energy, Inc.

[Docket No. ER02–2516–003]

Take notice that on February 4, 2005, Westar Energy, Inc. (Westar) tendered for filing First Revised Sheet Nos. 5 and 5 as part of its First Revised FERC Electric Rate Schedule No. 227, between Westar and the City of Axtell, Kansas (Axtell). Westar states that the purpose of this filing is to remove an unexecuted second amendment that was never agreed to by Westar and Axtell and that never went into effect, which was erroneously filed with the Commission.

Westar states that copies of the filing were served upon the City of Axtell, Kansas and the Kansas Corporation Commission.

Comment Date: 5 p.m. Eastern Time on February 25, 2005.

2. Midwest Independent Transmission System Operator, Inc.

[Docket Nos. ER03–86–009, ER03–83–008]

Take notice that on February 4, 2004, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted an amendment to its January 8, 2005 filing in Docket Nos. ER03–86–008 and ER03–83–007 regarding proposed revisions to the Midwest ISO Open Access Transmission Tariff (OATT) to remove all TRANSLink references from the OATT in compliance to the Commission's order issued December 29, 2004, *Midwest Independent Transmission System Operator, Inc.* 109 FERC 61,374 (2004). The Midwest ISO requests an effective date of October 30, 2004.

The Midwest ISO states that it has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, as well as all State commissions within the region. In addition, the Midwest ISO states that the filing has been electronically posted on the Midwest ISO's Web site at *http://www.midwestiso.org* under the heading "Filings to FERC" for other interested parties in this matter and that it will provide hard copies to any interested parties upon request.

Comment Date: 5 p.m. Eastern Time on February 25, 2005.

3. New York Independent System Operator, Inc.

[Docket No. ER03–836–006]

Take notice that on January 14, 2005, New York Independent System Operator, Inc. (NYISO) submitted a motion to temporarily defer the

schedule set forth in its July 6, 2004 compliance filing in Docket No. ER03–486–004 for the implementation of a non-bid based self-supply option for Operating Reserve.

NYISO states that it has served a copy of the filing on all parties on the official service list in this proceeding, including the New York Public Service Commission, and to the electric utility regulatory agencies in New Jersey and Pennsylvania.

Comment Date: 5 p.m. Eastern Time on February 22, 2005.

4. FPL Energy Sooner Wind, LLC

[Docket No. ER03–1333–002]

Take notice that, on February 4, 2005, FPL Energy Sooner Wind, LLC submitted a compliance filing pursuant to the Commission order issued November 17, 2003, in Docket No. EL01–118–000, *et al. Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 105 FERC ¶ 61,218 (2003). FPL Energy Sooner Wind, LLC states that it is amending its market-based rate tariff to include the market behavior rules.

FPL Energy Sooner Wind, LLC states that copies of the filing were served on parties on the official service list in the above-captioned proceeding.

Comment Date: 5 p.m. Eastern Time on February 25, 2005.

5. PJM Interconnection, L.L.C.

[Docket No. ER04–539–007]

Take notice that, on February 4, 2005, PJM Interconnection, L.L.C. (PJM) submitted its responses to the Commission's deficiency letter issued January 5, 2005 in Docket No. ER04–539–006, amending PJM's filings of October 26, 2004 and December 6, 2004 in Docket No. ER04–539–006.

PJM states that copies of the filing were served on parties on the official service list in this proceeding.

Comment Date: 5 p.m. Eastern Time on February 25, 2005.

6. Mitchell Electric Membership Corporation

[Docket No. ER05–350–001]

Take notice that on February 4, 2005, Mitchell Electric Membership Corporation (Mitchell) tendered for filing additional information to supplement its petition for acceptance of initial rate schedule, waivers and blanket authority filed on December 16, 2004 in Docket No. ER05–350–000.

Comment Date: 5 p.m. Eastern Time on February 25, 2005.

7. Wisconsin Electric Power Company

[Docket No. ER05–540–000]

Take notice that on February 4, 2005, Wisconsin Electric Power Company (Wisconsin Electric) submitted revisions to its Market Based Power Sales and Resale Transmission Tariff, FERC Electric Tariff, Original Volume No. 8. Wisconsin Electric states that the changes would permit it to sell power into the Midwest Independent System Operator's (Midwest ISO) Day 2 Energy Market at market-based rates in the region described in Wisconsin Electric's Tariff as the "Restricted Area." Wisconsin Electric requests an effective date concurrent with the commencement of the Midwest ISO's Day 2 Energy Market, now scheduled to occur on April 1, 2005.

Wisconsin Electric states that copies of the filing were served on all of its customers under the Market Rate Tariff, as well as the regulatory bodies in Wisconsin and Michigan.

Comment Date: 5 p.m. Eastern Time on February 25, 2005.

8. New England Power Company

[Docket No. ER05–541–000]

Take notice that on February 4, 2005, New England Power Company (NEP) submitted for filing an Interconnection Agreement between NEP and TransCanada Hydro Northeast Inc. (TransCanada), designated as Original Service Agreement No. 13 under ISO New England Inc.'s FERC Electric Tariff No. 3. NEP states that the agreement concerns the interconnection of the Deerfield No. 3 Development, a hydro-electric generating unit, to NEP's transmission system.

NEP states that copies of the filing have been served on TransCanada, ISO New England, Inc. and applicable State regulators.

Comment Date: 5 p.m. Eastern Time on February 25, 2005.

9. New England Power Company

[Docket No. ER05–542–000]

Take notice that on February 4, 2005, New England Power Company (NEP) submitted for filing an Interconnection Agreement between NEP and TransCanada Hydro Northeast Inc. (TransCanada), designated as Original Service Agreement No. 19 under ISO New England Inc.'s FERC Electric Tariff No. 3. NEP states that the agreement concerns the interconnection of the Searsburg Station, a hydro-electric generating unit, to NEP's transmission system.

NEP states that copies of the filing have been served on TransCanada, ISO New England, Inc. and applicable State regulators.

Comment Date: 5 p.m. Eastern Time on February 25, 2005.

10. New England Power Company

[Docket No. ER05–543–000]

Take notice that on February 4, 2005, New England Power Company (NEP) submitted for filing an Interconnection Agreement between NEP and TransCanada Hydro Northeast Inc. (TransCanada), designated as Original Service Agreement No. 10 under ISO New England Inc.'s FERC Electric Tariff No. 3. NEP states that the agreement concerns the interconnection of the Bellow Falls Project, a hydro-electric generating unit, to NEP's transmission system.

NEP states that copies of the filing have been served on TransCanada, ISO New England, Inc. and applicable State regulators.

Comment Date: 5 p.m. Eastern Time on February 25, 2005.

11. New England Power Company

[Docket No. ER05–544–000]

Take notice that on February 4, 2005, New England Power Company (NEP) submitted for filing an Interconnection Agreement between NEP and TransCanada Hydro Northeast Inc. (TransCanada), designated as Original Service Agreement No. 11 under ISO New England Inc.'s FERC Electric Tariff No. 3. NEP states that the agreement concerns the interconnection of the Comerford Development, a hydro-electric generating unit, to NEP's transmission system.

NEP states that copies of the filing have been served on TransCanada, ISO New England, Inc. and applicable State regulators.

Comment Date: 5 p.m. Eastern Time on February 25, 2005.

12. New England Power Company

[Docket No. ER05–545–000]

Take notice that on February 4, 2005, New England Power Company (NEP) submitted for filing an Interconnection Agreement between NEP and TransCanada Hydro Northeast Inc. (TransCanada), designated as Original Service Agreement No. 21 under ISO New England Inc.'s FERC Electric Tariff No. 3. NEP states that the agreement concerns the interconnection of the Vernon Station, a hydro-electric generating unit, to NEP's transmission system.

NEP states that copies of the filing have been served on TransCanada, ISO New England, Inc. and applicable State regulators.

Comment Date: 5 p.m. Eastern Time on February 25, 2005.

13. New England Power Company

[Docket No. ER05–546–000]

Take notice that on February 4, 2005, New England Power Company (NEP) submitted for filing an Interconnection Agreement between NEP and TransCanada Hydro Northeast Inc. (TransCanada), designated as Original Service Agreement No. 18 under ISO New England Inc.'s FERC Electric Tariff No. 3. NEP states that the agreement concerns the interconnection of the Moore Development, a hydro-electric generating unit, to NEP's transmission system.

NEP states that copies of the filing have been served on TransCanada, ISO New England, Inc. and applicable State regulators.

Comment Date: 5 p.m. Eastern Time on February 25, 2005.

14. New England Power Company

[Docket No. ER05–547–000]

Take notice that on February 4, 2005, New England Power Company (NEP) submitted for filing an Interconnection Agreement between NEP and TransCanada Hydro Northeast Inc. (TransCanada), designated as Original Service Agreement No. 14 under ISO New England Inc.'s FERC Electric Tariff No. 3. NEP states that the agreement concerns the interconnection of the Deerfield No. 4 Development, a hydro-electric generating unit, to NEP's transmission system.

NEP states that copies of the filing have been served on TransCanada, ISO New England, Inc. and applicable State regulators.

Comment Date: 5 p.m. Eastern Time on February 25, 2005.

15. New England Power Company

[Docket No. ER05–548–000]

Take notice that on February 4, 2005, New England Power Company (NEP) submitted for filing an Interconnection Agreement between NEP and TransCanada Hydro Northeast Inc. (TransCanada), designated as Original Service Agreement No. 20 under ISO New England Inc.'s FERC Electric Tariff No. 3. NEP states that the agreement concerns the interconnection of the Sherman Development, a hydro-electric generating unit, to NEP's transmission system.

NEP states that copies of the filing have been served on TransCanada, ISO New England, Inc. and applicable State regulators.

Comment Date: 5 p.m. Eastern Time on February 25, 2005.

16. New England Power Company

[Docket No. ER05–549–000]

Take notice that on February 4, 2005, New England Power Company (NEP) submitted for filing an Interconnection Agreement between NEP and TransCanada Hydro Northeast Inc. (TransCanada), designated as Original Service Agreement No. 15 under ISO New England Inc.'s FERC Electric Tariff No. 3. NEP states that the agreement concerns the interconnection of the Deerfield No. 5 Development, a hydro-electric generating unit, to NEP's transmission system.

NEP states that copies of the filing have been served on TransCanada, ISO New England, Inc. and applicable State regulators.

Comment Date: 5 p.m. Eastern Time on February 25, 2005.

17. New England Power Company

[Docket No. ER05–550–000]

Take notice that on February 4, 2005, New England Power Company (NEP) submitted for filing an Interconnection Agreement between NEP and TransCanada Hydro Northeast Inc. (TransCanada), designated as Original Service Agreement No. 12 under ISO New England Inc.'s FERC Electric Tariff No. 3. NEP states that the agreement concerns the interconnection of the Deerfield No. 2 Development, a hydro-electric generating unit, to NEP's transmission system.

NEP states that copies of the filing have been served on TransCanada, ISO New England, Inc. and applicable State regulators.

Comment Date: 5 p.m. Eastern Time on February 25, 2005.

18. New England Power Company

[Docket No. ER05–551–000]

Take notice that on February 4, 2005, New England Power Company (NEP) submitted for filing an Interconnection Agreement between NEP and TransCanada Hydro Northeast Inc. (TransCanada), designated as Original Service Agreement No. 22 under ISO New England Inc.'s FERC Electric Tariff No. 3. NEP states that the agreement concerns the interconnection of the Wilder Project, a hydro-electric generating unit, to NEP's transmission system.

NEP states that copies of the filing have been served on TransCanada, ISO New England, Inc. and applicable State regulators.

Comment Date: 5 p.m. Eastern Time on February 25, 2005.

19. New England Power Company

[Docket No. ER05–552–000]

Take notice that on February 4, 2005, New England Power Company (NEP) submitted for filing an Interconnection Agreement between NEP and TransCanada Hydro Northeast Inc. (TransCanada), designated as Original Service Agreement No. 16 under ISO New England Inc.'s FERC Electric Tariff No. 3. NEP states that the agreement concerns the interconnection of the Harriman Development, a hydro-electric generating unit, to NEP's transmission system.

NEP states that copies of the filing have been served on TransCanada, ISO New England, Inc. and applicable State regulators.

Comment Date: 5 p.m. Eastern Time on February 25, 2005.

20. New England Power Company

[Docket No. ER05–553–000]

Take notice that on February 4, 2005, New England Power Company (NEP) submitted for filing an Interconnection Agreement between NEP and TransCanada Hydro Northeast Inc. (TransCanada), designated as Original Service Agreement No. 17 under ISO New England Inc.'s FERC Electric Tariff No. 3. NEP states that the agreement concerns the interconnection of the McIndoes Falls Development, a hydro-electric generating unit, to NEP's transmission system.

NEP states that copies of the filing have been served on TransCanada, ISO New England, Inc. and applicable State regulators.

Comment Date: 5 p.m. Eastern Time on February 25, 2005.

21. PacifiCorp

[Docket No. ER05–554–000]

Take notice that on February 4, 2005, PacifiCorp tendered for filing Generation Interconnection Agreements between PacifiCorp and Roseburg Forest Products Inc.; TDY Industries, Inc., a California corporation d/b/a Wah Chang; and Warm Springs Power Enterprises. PacifiCorp also filed a Transmission Service Agreement between PacifiCorp and Warm Springs Power Enterprises.

Comment Date: 5 p.m. Eastern Time on February 25, 2005.

22. Wisconsin Electric Power Company

[Docket No. ER05–556–000]

Take notice that on February 4, 2005, Wisconsin Electric Power Company (Wisconsin Electric) submitted revisions to its Market-Based Power Sales and Resale Transmission Tariff, Wisconsin Electric's FERC Electric Tariff, Original

Volume No. 8 which reflect administrative updates, including the fact that Wisconsin Electric is no longer a transmission provider. Wisconsin Electric requests an effective date of April 5, 2005.

Wisconsin Electric states that copies of the filing were served on all of its customers under the Market Rate Tariff, as well as the regulatory bodies in Wisconsin and Michigan.

Comment Date: 5 p.m. Eastern Time on February 25, 2005.

23. Grant Energy, Inc.

[Docket No. ER05–557–000]

Take notice that on February 4, 2005, Grant Energy, Inc. (Grant) filed an application for authorization to sell energy, capacity and ancillary services at market-based rates. Grant states that it intends to engage in wholesale electric power and energy purchases and sales as a marketer and is not in the business of generating or transmitting electric power. Grant requests an effective date of March 1, 2005.

Comment Date: 5 p.m. Eastern Time on February 25, 2005.

24. People's Electric Cooperative

[Docket No. ER05–558–000]

Take notice that on February 4, 2005, People's Electric Cooperative (People's) submitted an amendment to its Rate Schedule No. 1 for service to Chickasaw Tribal Utility Authority (CTUA) to add a new delivery point for service to CTUA.

People's states that a copy of the filing was served on CTUA and the Oklahoma Corporation Commission.

Comment Date: 5 p.m. Eastern Time on February 25, 2005.

25. United States Department of Energy, Bonneville Power Administrative

[Docket No. NJ05–2–000]

Take notice that on February 4, 2005, the United States Department of Energy, Bonneville Power Administration (Bonneville) submitted new tariff sheets to incorporate into its Open Access Transmission Tariff the Large Generator Interconnection Procedures and Large Generator Interconnection Agreement, as set forth in the Commission's Order No. 2003, *Standardization of Generator Interconnection Agreements and Procedures*, 104 FERC ¶ 61,103 (2003) and Order No. 2003–A, *Standardization of Generator Interconnection Agreements and Procedures*, 106 FERC ¶ 61,220 (2004). Bonneville also submitted Revised Tariff Sheet Nos. 133–135 to amend its existing Interconnection Procedures so that they do not apply to generation interconnections.

Bonneville states that an electronic copy of the filing has been sent to all of its transmission customers and has been posted on the Bonneville Transmission Business Line's Web site.

Comment Date: 5 p.m. Eastern Time on February 25, 2005.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all parties to this proceeding.

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.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–633 Filed 2–15–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–45–000]

TransColorado Gas Transmission Company; Notice of Intent to Prepare an Environmental Assessment for the Proposed North Expansion Project And Request for Comments on Environmental Issues

February 9, 2005.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the North Expansion Project involving construction and operation of facilities by TransColorado Gas Transmission Company (TransColorado) in Rio Blanco County and Mesa County, Colorado.[1] These facilities would consist of about 2,200 feet of 24-inch diameter pipeline, 4,670 horsepower (hp) ISO-rated of compression, and meter replacements. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

The FERC will be the lead federal agency for the preparation of the EA. The document will satisfy the requirements of the National Environmental Policy Act (NEPA). The U.S. Bureau of Land Management (BLM) has also agreed to participate as a cooperating agency in the preparation of the EA to satisfy its NEPA responsibilities. It is the goal of the FERC and the BLM to avoid duplication of effort and prepare a single EA that can be used to satisfy their NEPA responsibilities.

Summary of the Proposed Project

TransColorado proposes to:

- Construct and operate a new Greasewood Compressor Station, in Rio Blanco County, Colorado, comprised of two 1,000 hp compressor units and one 2,061 hp compressor unit;
- Construct about 2,200 feet of 24-inch diameter pipeline and one 12-inch bidirectional turbine meter on the discharge side of the proposed Greasewood Compressor Station; and
- Replace two existing 10-inch orifice meters with two new 12-inch turbine meters at the Raccoon Hollow Meter Station in Mesa County, Colorado.

Also, TransColorado indicates it would construct and operate, under

[1] TransColorado's application was filed with the Commission under section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

Section 2.55(a), the following ancillary facilities at the proposed Greasewood Compressor Station site: one emergency power generator, a station supervisory control system, and a motor control center building.

In support of its application TransColorado indicates that the proposed facility would enable it to deliver up to 300,000 decatherms per day of gas to the Greasewood Hub. TransColorado states that the proposed project would significantly enhance market access for developing natural gas supplies in the Piceance Basin.

The general location of the project facilities is shown in Appendix 1.[2]

Land Requirements for Construction

Construction of the proposed facilities would require about 15.0 acres of land. Following construction, about 5.8 acres would be maintained as new aboveground facility sites. The remaining 9.2 acres of land would be restored and allowed to revert to its former use. All of these facilities to be constructed at the Greasewood Compressor Station are located on federal land managed by the BLM. The facilities to be modified at the Raccoon Hollow Meter Station are located on private land. All disturbed areas not required for operation at the compressor station and new meter site would be properly reclaimed, including spreading of any salvaged topsoil and reseeding using BLM-approved seed mix.

The EA Process

NEPA requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission staff requests public comments on the scope of the issues to address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

In the EA we[3] will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils
- Land use
- Cultural resources
- Vegetation and wildlife
- Air quality and noise
- Endangered and threatened species
- Hazardous waste
- Public safety

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

Currently Identified Environmental Issues

We have already identified air and noise impacts as issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by TransColorado. This preliminary list of issues may be changed based on your comments and our analysis.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal, and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas Branch 2.
- Reference Docket No. CP05–45–000.
- Mail your comments so that they will be received in Washington, DC on or before March 11, 2005.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created on-line.

We may mail the EA for comment. If you are interested in receiving it, please return the Information Request (Appendix 3). If you do not return the Information Request, you will be taken off the mailing list.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an "intervenor". Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must send one electronic copy (using the Commission's eFiling system) or 14 paper copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see Appendix 2).[4] Only

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices, other than Appendix 1 (maps), are available on the Commission's website at the "eLibrary" link or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary refer to the Additional Information section of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[3] "We", "us", and "our" refer to the environmental staff of the Office of Energy Projects (OEP).

[4] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Magalie R. Salas,

Secretary.

[FR Doc. E5–645 Filed 2–15–05; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2003–0004; FRL–7700–5]

Access to Confidential Business Information by Eastern Research Group

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor Eastern Research Group (ERG), of Lexington, MA and Chantilly, VA; and its subcontractors, AH Environmental Consultants of Newport News,VA and ETI Professionals, Inc., of Lakewood, CO, 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 February 23, 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 the 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–05–014, ERG of 110 Hartwell Ave., Lexington, MA and 14555 Avion Parkway, Suite 200, Chantilly, VA; AH Environmental Consultants of 804 Omni Boulevard, Suite 201, Newport News, VA; and ETI Professionals, Inc. of 555 Zany St., Suite 104, Lakewood, CO, will assist EPA in preparing exposure and release assessments for EPA's Office of Pollution Prevention and Toxics (OPPT) new and existing chemical review programs; provide support for regulatory efforts such as the TSCA Inventory Update Rule Amendments; and preparing various technical analyses to support OPPT activities under all sections of TSCA.

In accordance with 40 CFR 2.306(j), EPA has determined that under Contract Number EP–W–05–014, ERG, AH Environmental Consultants, and ETI Professionals, Inc., will require access to CBI submitted to EPA under all sections of TSCA, to perform successfully the duties specified under the contract.

ERG, AH Environmental Consultants, and ETI Professionals, Inc. 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 ERG, AH Environmental Consultants, and ETI Professionals, Inc. 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 and ERG's Lexington, MA and Chantilly, VA sites.

Clearance for access to TSCA CBI under Contract Number EP–W–05–014 may continue until January 31, 2010. Access will commence no sooner than February 23, 2005.

ERG, AH Environmental Consultants, and ETI Professionals, Inc. 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: February 7, 2005.

Vicki A. Simons

Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 05–2980 Filed 2–15–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL –7873–7]

Science Advisory Board Staff Office; Notification of Public Meetings of the Science Advisory Board Environmental Engineering Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA), Science Advisory Board (SAB) Staff Office is announcing two public meetings of the SAB's Environmental Engineering Committee (EEC). The EEC will convene to provide advice on the proposed redesign of EPA's Pollution Prevention and New Technologies research program and conduct other committee business.

DATES: March 10, 2005. A public conference call from 3 p.m. to 5 p.m. Eastern Time for the Committee to plan for the public face-to-face meeting March 15–17, 2005.

March 15–17, 2005. A public meeting will begin on Tuesday, March 15, 2005 at 9 a.m., and adjourn on Thursday, March 17, 2004, about 3 p.m.

Technical Contact: The Office of Research and Development is providing the review materials. These will be posted at: *http://www.epa.gov/ORD/NRMRL/sab.* Questions about the review materials should be directed to Ms. Alva E. Daniels, Assistant Laboratory Director-Multimedia at the U.S. EPA–ORD National Risk Management Research Laboratory, via telephone/voicemail at (513) 569–7693, fax at (513) 569–7680, e-mail at *Daniels.Alva@epa.gov,* or by mail at USEPA, 26 West Martin Luther King Drive, Cincinnati, OH 45268.

Meeting Location: The face-to-face meeting will be held at the Science Advisory Board Conference Center located at 1025 F Street, NW., Suite 3705, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information regarding this meeting may contact Ms. Kathleen White, Designated Federal Officer (DFO), via telephone/voice mail at (202) 343–9878, via e-mail at *white.kathleen@epa.gov,* or by mail at U.S. EPA SAB (MC 1400F), 1200 Pennsylvania Ave., NW., Washington, DC 20460. General information about the SAB can be found at *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION:

Background: The SAB was established by 42 U.S.C. 4365 to provide independent scientific and technical advice, consultation, and recommendations to the EPA Administrator on the technical basis for Agency positions and regulations. The SAB's Environmental Engineering Committee advises on many issues relating to waste management, including pollution prevention and industrial ecology and research needs. EPA's Office of Research and Development is redesigning its Pollution Prevention and New Technologies research program and is seeking the advice of the SAB on its proposal. The EEC will provide advice to EPA through the chartered SAB and comply with the provisions of the Federal Advisory Committee Act (FACA) and all appropriate SAB procedural policies.

The SAB's EEC will also take the opportunity provided by this meeting to conduct some other committee business, such as planning for other FY2005 activities and exploration of possible FY2006 initiatives. A roster of EEC is posted on the SAB Web site at: *http://www.epa.gov/sab/.*

Availability of Meeting Materials: An agenda for each meeting and meeting-related materials will be posted on the SAB Web site at: *http://www.epa.gov/sab/agendas* prior to the meeting.

Procedures for Providing Public Comments. It is the policy of the SAB Staff Office to accept written public comments of any length, and to accommodate oral public comments whenever possible. The SAB expects that public statements presented at the meeting will not be repetitive of previously submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes (unless otherwise indicated). Interested parties should contact the DFO in writing (e-mail, fax or mail—see contact information above) by close of business March 4, 2005 in order to be placed on the public speaker list for the meeting. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the participants and public at the meeting. *Written Comments:* Although written comments are accepted until the date of the meeting, written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the panel for their consideration. Comments should be supplied to the DFO at the address/contact information noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat, WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 98/2000/XP format). Those providing written comments and who attend the meeting are also asked to bring 35 copies of their comments for public distribution.

Meeting Accommodations: Individuals requiring special accommodation to access this meeting, should contact the DFO at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: February 9, 2005.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 05–2989 Filed 2–15–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0308; FRL–7697–3]

Nicosulfuron; Tolerance Reassessment Decision for Low Risk Pesticide; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's Tolerance Reassessment Decision (TRED) for the pesticide nicosulfuron, and opens a public comment period on this document, related risk assessments, and other support documents. EPA has reviewed the low risk pesticide nicosulfuron through a modified, streamlined version of the public

participation process that the Agency uses to involve the public in developing pesticide tolerance reassessment and reregistration decisions. Through the tolerance reassessment program, EPA is ensuring that all pesticides meet current health and food safety standards.

DATES: Comments, identified by docket ID number OPP–2004–0308, must be received on or before March 18, 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: Meghan French, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8004; fax number: (703) 308–8005; e-mail address: *french.meghan@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–2004–0308. 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 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–2004–0308. 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–2004–0308. 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–2004–0308.

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–200–0308. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

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

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Background

A. What Action is the Agency Taking?

EPA has reassessed the uses of nicosulfuron, reassessed 7 existing tolerances or legal residue limits, and on December 22, 2004, reached a tolerance reassessment decision for this low risk pesticide. Nicosulfuron is a sulfonyl urea herbicide registered for early-postemergent and postemergent use on corn. It may be used alone or in formulation with other active ingredients (a.i.) to control annual and perennial grasses and broadleaf weeds. Application methods include band treatment, broadcast, low volume spray (concentrate) using aircraft, or ground equipment. The maximum application rate is 0.06248 lb a.i./acre. The highest usage of nicosulfuron is on corn and approximately 200,000 pounds are used annually.

Nicosulfuron is in Toxicity Category III or IV for acute oral, dermal, inhalation, eye irritation, and dermal irritation. Nicosulfuron is not likely to be carcinogenic based on bioassays in the rat and mouse and lack of *in vitro* and *in vivo* mutagenic effects. Nicosulfuron showed no developmental or reproductive effects in rats and developmental effects in rabbits only at high doses. There were no indications of neurotoxic effects elicited by nicosulfuron in animal tests. The Agency is now issuing for comment the resulting Report on Food Quality Protection Act (FQPA) Tolerance Reassessment Progress for nicosulfuron, known as a TRED, as well as related risk assessments and technical support documents.

EPA developed the nicosulfuron TRED through a modified, streamlined version of its public process for making tolerance reassessment and reregistration eligibility decisions. Through these programs, the Agency is ensuring that pesticides meet current standards under the Federal Food, Drug, and Cosmetic Act (FFDCA) and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended by FQPA. EPA must review tolerances and tolerance exemptions that were in effect when the FQPA was enacted, to ensure that these existing pesticide residue limits for food and feed commodities meet the safety standard established by the new law. Tolerances are considered reassessed once the safety finding has been made or a revocation occurs. EPA has reviewed and made the requisite safety finding for the nicosulfuron tolerances included in this notice.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** of May 14, 2004 (69 FR 26819) (FRL–7357–9), explains that in conducting these programs, the Agency is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide. EPA can expeditiously reach decisions for pesticides like nicosulfuron, which pose no risk concerns, have low use, affect few if any stakeholders, and require no risk mitigation. Once EPA assesses uses and risks for such low risk pesticides,

the Agency may go directly to a decision and prepare a document summarizing its findings, such as the nicosulfuron TRED.

The tolerance reassessment program is being conducted under Congressionally mandated time frames, and EPA recognizes the need both to make timely decisions and to involve the public in finding ways to effectively mitigate pesticide risks. Nicosulfuron, however, poses no risks that require mitigation. The Agency therefore, is issuing the nicosulfuron TRED, its risk assessments, and related support documents simultaneously for public comment. The comment period is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the TRED. All comments should be submitted using the methods in Unit I. of the **SUPPLEMENTARY INFORMATION**, and must be received by EPA on or before the closing date. These comments will become part of the Agency docket for nicosulfuron. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

In the absence of substantive comments requiring changes, the decisions reflected in the Nicosulfuron TRED will be implemented as presented. If any comment significantly affects the document, EPA will publish an amendment to the Nicosulfuron TRED in the **Federal Register.**

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

Section 408(q) of the FFDCA, 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review is to be completed by August 3, 2006.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: February 7, 2005.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 05–2976 Filed 2–15–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0220; FRL–7694–9]

2,4-DB (4-2,4-Dichlorophenoxy) butyric acid and 2,4-DB-DMAS (Dimethylamine 4-2,4-Dichlorophenoxy) Butyrate 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 2,4-DB (4-2,4-dichlorophenoxy) butyric acid and 2,4-DB-DMAS (dimethylamine 4-2,4-dichlorophenoxy) butyrate. The Agency's risk assessments and other related documents also are available in the 2,4-DB butyric acid and 2,4-DB-DMAS butyrate docket. 2,4-DB is a member of the chlorophenoxy class of herbicides which function by mimicking the action of auxins, plant growth hormones. 2,4-DB is used to control broadleaf weeds in alfalfa, clover, soybeans, peanuts, peppermint, spearmint, and birdfoot trefoil. 2,4-DB is manufactured as an acid and as the dimethylamine salt, 2, 4-DB-DMAS. EPA has reviewed 2,4-DB butyric acid and 2,4-DB-DMAS butyrate 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: 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 identification (ID) number OPP–2004–0220. 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 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, 2,4-DB butyric acid and 2,4-DB-DMAS butyrate under section 4(g)(2)(A) of FIFRA. 2,4-DB and 2,4-DB-DMAS are chlorophenoxy herbicides used to control broadleaf weeds in alfalfa, clover, soybeans,

peanuts, peppermint, spearmint, and birdfoot trefoil. End-use products are formulated as soluble, emulsifiable, or flowable concentrates and can be applied aerially or on the ground. EPA has determined that the data base to support reregistration is substantially complete and that products containing 2,4-DB butyric acid and 2,4-DB-DMAS butyrate are eligible for reregistration, provided the risks are mitigated either in the manner described in the RED or by another means that achieve 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 2,4-DB butyric acid and 2,4-DB-DMAS butyrate.

EPA must review tolerances and tolerance exemptions that were in effect when the Food Quality Protection Act (FQPA) was enacted in August 1996, to ensure that these existing pesticide residue limits for food and feed commodities meet the safety standard established by the new law. Tolerances are considered reassessed once the safety finding has been made or a revocation occurs. EPA has reviewed and made the requisite safety finding for the 2,4-DB butyric acid and 2,4-DB-DMAS butyrate tolerances included in this notice.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** of 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, 2,4-DB butyric acid and 2,4-DB-DMAS butyrate 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 2,4-DB butyric acid and 2,4-DB-DMAS butyrate.

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. Another comment period is not needed because all issues related to this pesticide were resolved through consultations with stakeholders. The Agency therefore is issuing the 2,4-DB butyric acid and 2,4-DB-DMAS butyrate 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."

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: January 27, 2005.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 05–2977 Filed 2–15–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0024; FRL–7698–4]

DCPA; Notice of Receipt of Request to Amend to Terminate Uses of Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of a request by the registrant to amend their registrations to terminate uses of certain products containing the pesticide DCPA (or dacthal). The requests would terminate DCPA use in or on alfalfa, arracacha, artichokes (Chinese and Jerusalem), beans, bean yam, beets, chestnuts (soil treatment and nursery stock), chufa, citron melon, cotton,crabapples (soil treatment and nursery stock), cucumber, edible canna, eggplant, garlic, ginger, kale, leren, peas, pepper, potatoes, residential uses (turf and ornamentals), squash (including pumpkin), sweet potatoes, tanier, turnips, walnuts (non-bearing and nursery stock), and yam. These requests would not terminate the last DCPA products registered for use in the U.S. EPA intends to grant these requests at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit its further review of the requests. Upon acceptance of these requests, any sale, distribution, or use of products listed in this notice will be permitted only if such sale, distribution, or use is consistent with the terms as described in the final order.

DATES: Comments, identified by docket ID number OPP–2005–0024, must be received on or before March 18, 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: Jill Bloom, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8019; fax number: (703) 308–8041; e-mail address: *bloom.jill@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, 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–2005–0024. 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 "Quick 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–2005–0024. 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–2005–0024. 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–2005–0024.

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–2005–0024. 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 on the Receipt of Requests to Amend Registrations to Delete Uses

This notice announces receipt by EPA of a request from Amvac to amend a number of its product registrations in which DCPA is an active ingredient to terminate certain uses. DCPA is an herbicide used to control weeds on a large number of sites, including cole crops, onions, cotton, alfalfa, tomatoes, and turf. Amvac requested termination of a number of uses in response to concerns about the contamination of ground water with DCPA and especially its metabolite tetrachloroterephthalic acid (TPA or di acid) which came to light when the tolerances for DCPA were being reassessed. Although the Agency was unable to identify a specific health risk associated with TPA, its prevalence and widespread detection in ground water were the basis of discussions with Amvac on the use deletions. The Agency identified a number of uses which can potentially contribute to ground water contamination, and Amvac responded with a proposal to delete these same uses. In a letter dated December 15, 2004, Amvac requested that EPA amend its DCPA product registrations to terminate the uses identified in the following list.

Alfalfa
Arracacha
Artichokes (Chinese and Jerusalem)
Beans
Bean yam
Beets
Chestnuts (soil treatment and nursery stock)
Chufa
Citron melon
Cotton
Crabapples (soil treatment and nursery stock)
Cucumber
Edible canna
Eggplant
Garlic
Ginger
Kale
Leren
Peas
Pepper
Potato
Residential turf and ornamentals
Squash (including pumpkin)
Sweet potatoes
Tanier
Turnip
Walnuts (non-bearing and nursery stock)
Yam

Amvac has requested that the use terminations become effective April 1, 2005, and that it be allowed to sell existing stocks with labels including the uses proposed for termination until April 1, 2007. Furthermore, Amvac made its request irrevocable on the condition that the Agency retain tolerances associated with the terminated uses when it is likely that there will be indirect or inadvertent residues. Amvac made the request for retaining tolerances based on the frequency with which residues are found in unregistered crops due to soil contamination. Amvac requested that such tolerances be established at 40 CFR 180.185(d). The termination of the subject uses will not terminate the last DCPA product registration in the United States, or the last pesticide products registered in the United States for these uses.

III. What Action is the Agency Taking?

This notice announces receipt by EPA of a request from a registrant to amend registrations to terminate specific uses of DCPA. The affected products and the registrant making the request are detailed in Table 1 of this unit.

TABLE 1.—DCPA PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR AMENDMENT

Registration No.	Product Name	Company and Address
5481–485	90% Dimethyl-T	Amvac Chemical Corporation,4695 MacArthur Court, Suite 1250,Newport Beach, CA 92660
5481–486	Dacthal 1.92F	Do.
5481–487	Dacthal Flowable Herbicide	Do.
5481–488	Dacthal G-2.5 Herbicide	Do.
5481–489	Dacthal G-5 Herbicide	Do.
5481–490	Dacthal W-75 Herbicide	Do.
5481–491	Dacthal W-75	Do.
5481–495	Technical Chlorthal Dimethyl	Do.

Under section 6(f)(1)(A) of FIFRA, registrants may request, at any time, that their pesticide registrations be canceled

or amended to terminate one or more pesticide uses. Section 6(f)(1)(B) of FIFRA requires that before acting on a request for voluntary cancellation, EPA must provide a 30–day public comment period on the request for voluntary cancellation or use termination. In addition, section 6(f)(1)(C) of FIFRA requires that EPA provide a 180–day comment period on a request for voluntary cancellation or termination of any minor agricultural use before granting the request, unless:

1. The registrants request a waiver of the comment period, or

2. The Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

Amvac has requested that EPA waive the 180-day comment period. EPA will provide a 30–day comment period on the proposed request.

Unless the Agency determines that there are substantive comments that warrant further review of this request, an order will be issued amending the affected registrations after the close of the comment period.

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

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled 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.

V. 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.

In any order issued in response to this request for amendment to terminate uses, the Agency proposes to include the following provisions for the treatment of any existing stocks of the products referenced in Table 1. Amvac will be permitted to sell or distribute existing stocks of its affected products through April 1, 2007.

If the request for voluntary use termination is granted as discussed above, the Agency intends to issue a cancellation order that will allow persons other than the registrant to continue to sell and/or use existing stocks of products labeled for use on the deleted sites until such stocks are exhausted, provided that such use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled product. The order will specifically prohibit any use of existing stocks that is not consistent with such previously approved labeling. If, as the Agency currently intends, the final cancellation order contains the existing stocks provision just described, the order will be sent only to the affected registrants of the cancelled products. If the Agency determines that the final cancellation order should contain existing stocks provisions different than the ones just described, the Agency will publish the cancellation order in the **Federal Register**.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: February 3, 2005.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 05–2979 Filed 2–15–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0365; FRL–7699–6]

Tributyltin Methacrylate; Product Cancellation Order

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's order for the cancellation, voluntarily requested by the registrant and accepted by the Agency, of a product containing the pesticide tributyltin methacrylate, pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. This cancellation order follows a December 8, 2004 **Federal Register** Notice of Receipt of Request (69 FR 71042) (FRL–7688–3) from the registrant to voluntarily cancel its sole tributyltin methacrylate product registration. This is the last tributyltin methacrylate product registered for use in the United States. In the December 8, 2004 Notice, EPA indicated that it would issue an order implementing the cancellation unless the Agency received substantive comments within the 30–day comment period that would merit its further review of this request. The Agency received one comment on the Notice but it did not merit further review of the request Accordingly, EPA hereby issues in this notice a cancellation order granting the requested cancellation. Any distribution, sale, or use of the tributyltin methacrylate product subject to this cancellation order is permitted only in accordance with the terms of this order including any existing stocks provisions.

DATES: The cancellation is effective February 16, 2005.

FOR FURTHER INFORMATION CONTACT: Jill Bloom, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8019; fax number: (703) 308–8041; e-mail address: *bloom.jill@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, 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–2004–0365. 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 "Quick Search," then key in the appropriate docket ID number.

II. What Action is the Agency Taking?

This notice announces the cancellation, as requested by the registrant, of an end-use antifouling paint product containing tributyltin methacrylate and registered under section 3 of FIFRA. This registration is described in the following Table of this unit.

TRIBUTYLTIN METHACRYLATE PRODUCT CANCELLATION

EPA Registration No.	Product Name	Company Name and Address
44891–6	Sea Hawk Biocop Antifouling Coating	New Nautical Coatings, Inc., 14805 49th Street, NorthClearwater, FL 33762

III. Summary of Public Comments Received and Agency Response to Comments

One comment was received during the public comment period for the notice of receipt of the request to cancel EPA Registration Number 44891–6. This comment, which is available from the docket as document ID number OPP–2004–0365, made note of the commenter's belief that no sale of the affected product should be permitted after cancellation. The Agency had proposed that the registrant be allowed to continue to sell its product through December 31, 2005, and that all other persons would be permitted to sell and use the product until stocks were exhausted. The Agency based its proposal on the request of the registrant, and on the belief that the existing stocks were limited in quantity. The comment submitted to the docket provided no substantive reason for disallowing sale after the effective date of cancellation. For this reason, the Agency does not believe that this comment merits further review or a denial of the request for voluntary cancellation.

IV. Cancellation Order

Pursuant to FIFRA section 6(f), EPA hereby approves the requested cancellation of the tributyltin methacrylate registration identified in the Table of Unit II. Accordingly, the Agency orders that the tributyltin methacrylate registration identified in the Table of Unit II is hereby canceled. Any distribution, sale, or use of existing stocks of the product identified in the Table 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.

New Nautical Coatings will be permitted to sell or distribute existing stocks of its product, EPA Registration Number 44891–6, through December 31, 2005.

Persons other than the registrant are allowed to continue to sell and/or use existing stocks of the canceled product until such stocks are exhausted, provided that such use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled product. Any use of existing stocks that is not consistent with such previously approved labeling is prohibited.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: February 7, 2005.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 05–2978 Filed 2–15–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0020; FRL–7697–4]

Experimental Use Permit; Receipt of Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application 432–EUP–O from Bayer Environmental Science requesting an experimental use permit (EUP) for Imidacloprid. The Agency has determined that the application may be of regional and national significance. Therefore, in accordance with 40 CFR 172.11(a), the Agency is soliciting comments on this application.

DATES: Comments, identified by docket identification (ID) number OPP–2005–0020, must be received on or before March 18, 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: Dani Daniel, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5409; e-mail address: *daniel.dani@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those persons who are or may be required to conduct testing of chemical substances under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP–2005–0020. 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–2005–0020. 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–2005–0020. 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–2005–0020.

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–2005–0020. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

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

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

This EUP is to determine the ability of Imidacloprid to control termite infestations around the periphery of homes and dwellings. Treated areas will not be used to grow edible plants for food or feed purposes.

III. What Action is the Agency Taking?

Following the review of the Bayer Environmental Science application and any comments and data received in response to this notice, EPA will decide whether to issue or deny the EUP request for this EUP program, and if issued, the conditions under which it is to be conducted. Any issuance of an EUP will be announced in the **Federal Register**.

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

The Agency's authority for taking this action is under FIFRA section 5.

List of Subjects

Environmental protection, Experimental use permits.

Dated: January 30, 2005.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 05–2617 Filed 2–15–05; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; Deletion of Agenda Item From February 10, 2005, Open Meeting

February 9, 2005.

The following item has been deleted from the list of Agenda items scheduled for consideration at the February 10, 2005, Open Meeting and previously listed in the Commission's Notice of February 3, 2005.

2	Media	*Title:* WRGT Licensee, LLC For Assignment of License of WRGT–TV, Dayton, Ohio, to WRGT Licensee, LLC (New Nevada, LLC); WVAH Licensee, LLC For Assignment of License of WVAH–TV, Charleston, West Virginia, to WVAH Licensee, LLC (New Nevada, LLC); WTAT Licensee, LLC For Assignment of License of WTAT–TV, Charleston, South Carolina, to WTAT Licensee, LLC (New Nevada, LLC); Cunningham Broadcasting Corp. (Transferor) and Sinclair Acquisition XIII, Inc. (Transferee) For consent to transfer of control of television station WTTE–TV, Columbus, Ohio; Cunningham Broadcasting Corp. (Transferor) and Sinclair Acquisition XIII, Inc. (Transferee) For consent to transfer of control of television station WNUV–TV, Baltimore, Maryland. *Summary:* The Commission will consider a Memorandum Opinion and Order concerning an Application for Review filed by various licensee subsidiaries of Sinclair Broadcast Group, Inc. seeking review of a decision by the Media Bureau dismissing applications through which Sinclair sought to acquire television stations from the licensee subsidiaries of Cunningham Broadcasting Corporation.

Federal Communications Commission.
Marlene H. Dortch,
Secretary.
[FR Doc. 05–3064 Filed 2–14–05; 11:51 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; Amendment to Agenda Item From February 10, 2005, Open Meeting

February 10, 2005.

The following Report and Order has been deleted from Agenda Item No. 9 scheduled for consideration at the February 10, 2005, Open Meeting and previously listed in the Commission's Notice of February 3, 2005.

9	Wireline Competition	*Title:* Sprint Petition for Declaratory Ruling Regarding Obligation of Incumbent LECs to Load Numbering Resources and Honor Routing and Rating Points; T-Mobile *et al.* Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs (CC Docket No. 01–92). *Summary:* The Commission will consider a Report and Order that resolves a number of issues regarding application of the Commission's intercarrier compensation rules.

Federal Communications Commission.
Marlene H. Dortch,
Secretary.
[FR Doc. 05–3065 Filed 2–14–05; 11:50 am]
BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may obtain copies of agreements by contacting the Commission's Office of Agreements at 202–523–5793 or via 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.: 011279–023.
Title: Latin America Agreement.
Parties: Central America Discussion Agreement; Hispaniola Discussion Agreement; Caribbean Shipowners Association; Venezuelan Discussion Agreement; ABC Discussion Agreement; West Coast of South America Discussion Agreement; Inland Shipping Services Association; Montemar Maritima S.A.; and Zim Integrated Shipping Services, Ltd.
Filing Party: Wayne R. Rohde, Esq., Sher & Blackwell, LLP, 1850 M Street, NW., Suite 900, Washington, DC 20036.
Synopsis: The amendment deletes the Colombia Discussion Agreement as a party, updates the addresses and membership of other agreement parties, and updates the names of carriers.

Agreement No.: 011654–011.
Title: Middle East Indian Subcontinent Discussion Agreement.
Parties: American President Lines; A.P. Moller-Maersk A/S; CMA CGM SA; Contship Containerlines, a division of CP Ships (UK) Ltd.; P&O Nedlloyd Limited; The National Shipping Company of Saudi Arabia; United Arab Shipping Company (S.A.G.).
Filing Party: Wayne R. Rohde, Esq., Sher & Blackwell, LLP, 1850 M Street, NW., Suite 900, Washington, DC 20036.
Synopsis: The amendment adds a provision dealing with the liability for penalties.

Agreement No.: 011737–013.
Title: The MCA Agreement.
Parties: Atlantic Container Line AB; Alianca Navegacao e Logistica Ltda.; Antillean Marine Shipping Corporation; A.P. Moller-Maersk A/S; China Shipping Container Lines Co., Ltd.; CMA CGM S.A.; Companhia Libra de Navegacao; Compania Sud Americana de Vapores S.A.; CP Ships (UK) Limited d/b/a ANZDL and d/b/a Contship Containerlines; Crowley Liner Services, Inc.; Dole Ocean Cargo Express, Inc.; Great White Fleet (U.S.) Ltd.; Hamburg-Süd; Hapag-Lloyd Container Linie; HUAL AS; Italia di Navigazione S.p.A.; Lykes Lines Limited, LLC; Montemar Maritima S.A.; Norasia Container Line Limited; Safmarine Container Lines N.V.; TMM Lines Limited, LLC; Tropical Shipping & Construction Co., Ltd.; Wallenius Wilhelmsen Lines AS.
Filing Party: James R. Halley, Esq., Halley & Halley, P.A., 328 Crandon Boulevard, Suite 224–225, Key Biscayne, Florida 33149.
Synopsis: The amendment adds Antillean Marine Shipping Corporation as a party.

Agreement No.: 011819–001.
Title: Contship/CMA CGM-Hapag Lloyd Space Charter Agreement.
Parties: CMA CGM S.A.; Contship Containerlines (a division of CP Ships (UK) Limited); Hapag-Lloyd Container Linie GmbH.
Filing Party: Wayne R. Rohde, Esq., Sher & Blackwell, LLP, 1850 M Street, NW., Suite 900, Washington, DC 20036.
Synopsis: The amendment updates the addresses of two of the parties and changes the number of vessels used in the service.

Agreement No.: 011900.
Title: Westwood/Star Sailing and Space Charter Agreement.
Parties: Westwood Shipping Lines, Inc. and Star Shipping A.S.
Filing Party: Pamela J. Auerbach, Esq., Kirkland & Ellis LLP, 655 Fifteenth Street, NW., Washington, DC 20005.
Synopsis: The proposed agreement would authorize the parties to operate a service and share space in the trade between the U.S. and Canadian Pacific Coasts and ports in Japan, Korea, and China.

Agreement No.: 011901.
Title: Zim/CSCL Vessel Sharing Agreement.
Parties: China Shipping Container Line Co., Ltd. and Zim Integrated Shipping Services, Ltd.
Filing Party: Wayne R. Rohde, Esq., Sher & Blackwell, LLP, 1850 M Street, NW., Suite 900, Washington, DC 20036.
Synopsis: The proposed agreement would permit the parties to operate a service between the U.S. West Coast and ports on the Adriatic and Mediterranean Seas and in Sri Lanka and Far East. The parties request expedited review.

Agreement No.: 011902.
Title: Maersk Sealand/CSAV Space Charter Agreement.
Parties: A.P. Moller Maersk A/S and Compania Sud Americana de Vapores S.A.
Filing Party: Wayne R. Rohde, Esq., Sher & Blackwell, LLP, 1850 M Street, NW., Suite 900, Washington, DC 20036.
Synopsis: The agreement authorizes Maersk Sealand to charter space to CSAV on vessels operated by Maersk Sealand in the trade between the U.S. East Coast and Brazil and Uruguay.

Dated: February 11, 2005.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 05–2998 Filed 2–15–05; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants:

Tropical Wind Cargo International, LLC, 8305 NW., 27 Street, Suite 113–B, Miami, FL 33122. Officers: Vivian Gonzalez, Manager, (Qualifying Individual), Eduardo Li Sanchez, Manager.

WEL Logistics, Inc., 11161 Fraley Street, Garden Grove, CA 92541. Officers: Andy Song, President, (Qualifying Individual), Hyun J. Lee, Secretary.

Ridge International Freight, Ltd., dba RIF Line, 2125 196th Street SW., Suite 118, Lynnwood, WA 98036. Officer: Qi Ye, President, (Qualifying Individual).

PAB Shipping Inc. dba PAB Maritime Service, 159 N. Courtland Street, East Stroudsburg, PA 18301. Officer: Pierangelo Bonati, President, (Qualifying Individual).

Autolog Forwarding Corporation, 1701 East Linden Avenue, Linden, NJ 07036. Officers: Larry Vasconez, Asst. Vice President, (Qualifying Individual), Myron Levine, President.

Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants:

Agent's House International, Inc., 2120 Dennis Street, Jacksonville, FL 32204. Officers: Kim Highsmith, Chief Operating Officer, (Qualifying Individual), Ronald Avery, President.

SYL Cargo USA, Inc. dba SYL Cargo, 8484 NW., 72nd Street, Miami, FL 33166. Officers: Enrique J. Chia, General Manager, (Qualifying Individual), Diana Cevallos, President.

Gridiron Forwarding Co., Inc., 731 Route 18 South, East Brunswick, NJ 08816. Officer: Donald G. Goldberg, President, (Qualifying Individual).

China Container Line Ltd., 17800 Castleton Street, Suite 158, City of Industry, CA 91748. Officers: Arthur King, President, (Qualifying Individual), Howard Chan, Treasurer.

Epic International Transport, LLC, 6048 Lido Lane, Long Beach, CA 90803. Officer: Charles Alphonsus Brennan, Manager, (Qualifying Individual).

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants:

JC Logistics, 30040 58th Place S., Auburn, Washington 98001, Cheryl Wilson, Sole Proprietor.

Action Brokerage Corp., 4477 NW., 97 Avenue, Miami, FL 33178. Officers: Elizabeth Zaldivar, President, (Qualifying Individual), John E. Lebold, Vice President.

MTHM, Inc., 6800 Sands Point, Houston, TX 77074. Officer: Thomas W. Chapman, President, (Qualifying Individual).

Carlin Logistics Incorporated, 441 N. Park Blvd., Unit 5J, Glen Ellyn, IL 60137. Officers: Linda Adams, President, (Qualifying Individual), Carl S. Adams, Vice President.

Dated: February 11, 2005.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 05–2997 Filed 2–15–05; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/.*

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 11, 2005.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521:

1. Sterling Financial Corporation, Lancaster, Pennsylvania; to retain 100 percent of the voting shares of Delaware Sterling Bank & Trust Company, Christiana, Delaware.

Board of Governors of the Federal Reserve System, February 10, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–2940 Filed 2–15–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the

proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 14, 2005.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. Independence Bancshares, Inc., Greenville, South Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of Independence National Bank, Greenville, South Carolina (in organization).

Board of Governors of the Federal Reserve System, February 11, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–2993 Filed 2–15–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

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 March 2, 2005.

A. Federal Reserve Bank of Atlanta (Andre Anderson, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. BankEast Corporation, Knoxville, Tennessee; to acquire Curtis Mortgage Company, Inc., Knoxville, Tennessee, and thereby engage in brokering residential and investor real estate loans in the secondary market, pursuant to section 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, February 10, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.05–2939 Filed 2–15–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Federal Open Market Committee

[Docket No. OP–1223]

Rules of Organization

AGENCY: Federal Open Market Committee.

ACTION: Notice; amendment to Rules of Organization.

SUMMARY: The Federal Open Market Committee (the "Committee") has amended its Rules of Organization to provide that the annual terms of Reserve Bank representatives on the Committee shall begin on the date of the Committee's first regularly scheduled meeting of each calendar year (rather than January 1 of each year). The Committee also has made other minor and technical amendments to its Rules of Organization to conform the rules to current practice and to make the rules gender-neutral.

DATES: The amendments to the Rules of Organization became effective on February 2, 2005.

FOR FURTHER INFORMATION CONTACT: Kieran J. Fallon, Assistant General Counsel (202–452–5270), April Snyder, Attorney (202–452–3099), Legal Division; Board of Governors of the Federal Reserve System; or Deborah J. Danker, Deputy Secretary (202–452–3253), Federal Open Market Committee, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Users of Telecommunication Device for Deaf (TTD) *only*, call (202) 263–4869.

SUPPLEMENTARY INFORMATION: The Committee is composed of the members of the Board of Governors of the Federal Reserve System and five representatives of the Federal Reserve Banks. The Reserve Bank representatives on the Committee are elected annually in the manner set forth in section 12A of the Federal Reserve Act (12 U.S.C. 263(a)). An alternate also is elected annually for each Reserve Bank representative, and the alternate serves on the Committee in the absence of the relevant Reserve Bank representative.[1] The Federal Reserve Act authorizes the Board to prescribe regulations governing the details of the elections of Reserve Bank representatives and alternates.[2]

The Committee has amended its Rules of Organization to provide that the annual terms of the Committee's Reserve Bank members (and alternates) shall begin on the date of the Committee's first regularly scheduled meeting of each calendar year (rather than on January 1st of each year). With this change, the annual terms of the Committee's Reserve Bank representatives (and alternates) will run from the Committee's first regularly scheduled meeting of a calendar year to the Committee's first regularly scheduled meeting of the next calendar year. The amendment synchronizes the terms of the Reserve Bank representatives (and alternates) with the terms of the Committee's officers and staff, who currently are elected annually at the Committee's first regularly scheduled meeting of each year.

The Committee also has amended its Rules of Organization to clarify that the Committee's officers and staff are elected at the Committee's first *regularly scheduled* meeting of each year, and to reflect the fact that the Committee currently appoints only one Manager for the System Open Market Account. These changes conform the rules to the Committee's current practice. Finally, the Committee has modified sections 2(b), 4(b), and 5 of its Rules of Organization to make the rules gender-neutral.

The Committee has incorporated the amendments into the Committee's Rules of Organization. The Committee's Rules of Organization are uncodified regulations for use by the Committee, issued pursuant to 5 U.S.C. 552. Because the amendments relate solely to the internal organization, procedure or

[1] Each Reserve Bank representative and alternate must be a president or first vice president of a Reserve Bank.

[2] *See* 12 U.S.C. 263(a).

practice of the Committee. the public notice, public comment, and delayed effective date provisions of the Administrative Procedure Act do not apply.[3]

For the reasons discussed above, the Committee has amended its Rules of Organization as follows:

1. Section 2(b) of the Rules of Organization is revised to read as follows:

Section 2—Composition of Committee

* * * * *

(b) *Reserve Bank representatives.* The representatives of the Federal Reserve Banks, and an alternate for each representative, are elected by the boards of directors of the Reserve Banks in accordance with section 12A of the Federal Reserve Act (12 U.S.C. 263) for annual terms commencing on the date of the first regularly scheduled meeting of the Committee occurring on or after January 1 of each year. Prior to the first regularly scheduled meeting of the Committee on or after January 1 of each year, each member of the Committee representing the Federal Reserve Banks shall cause a record of the member's election and of the election of the member's alternate to be forwarded to the secretary of the Committee. If any question is raised as to the election or eligibility of a member or alternate, the Committee determines such question before such member or alternate participates in a meeting of the Committee. In the event a member is absent from a meeting of the Committee, the member's alternate, in attending the meeting, shall have the same status as the member for whom the alternate is serving. If a member or alternate ceases to be a president or first vice president of a Reserve Bank, a successor may be chosen in a special election by the boards of directors of the appropriate Reserve Bank or Banks and such successor serves until the next annual election.

* * * * *

2. The first sentence of § 3 of the Rules of Organization is revised to read as follows:

Section 3—Chairman and Vice Chairman

At its first regularly scheduled meeting on or after January 1 of each year, the Committee elects a chairman and a vice chairman from among its membership.* * *

3. Paragraphs (a) and (b) of § 4 of the Rules of Organization are revised to read as follows:

Section 4—Staff

(a) *Selection of staff officers.* At its first regularly scheduled meeting on or after January 1 of each year, the Committee selects, from among the officers and employees of the Board and the Federal Reserve Banks, the following staff officers to serve until the first regularly scheduled meeting on or after January 1 of the next following year: secretary, deputy secretary, and one or more assistant secretaries; general counsel, deputy general counsel, and one or more assistant general counsels; economists, one or more of whom may be designated as senior or associate economists or given titles reflecting their areas of particular specialization; and such other officers as the Committee might wish from time to time.

(b) *Secretary and deputy and assistant secretaries.* The secretary keeps minutes of actions and records of discussions at all meetings of the Committee; maintains a complete record of the actions taken by the Committee upon all questions of policy relating to open market operations; and records the votes taken in connection with the determination of open market policies and the reasons underlying each such action. The secretary has custody of such minutes and records, and performs such other duties as the Committee may require. In the absence of the secretary of the Committee, the deputy secretary or an assistant secretary acts as secretary pro tem.

* * * * *

4. Section 5 of the Rules of Organization and its heading are revised to read as follows:

Section 5—Manager

The Committee selects a Manager of the System Open Market Account. The foregoing shall be satisfactory to the Federal Reserve Bank selected by the Committee to execute open market transactions for such Account and shall serve at the pleasure of the Committee. The Manager keeps the Committee informed on market conditions and on transactions made for such Account and renders such reports as the Committee may specify.

By order of the Federal Open Market Committee, February 8, 2005.

Vincent R. Reinhart,

Secretary, Federal Open Market Committee.

[FR Doc. 05–2776 Filed 2–15–05; 8:45 am]

BILLING CODE 6210–01–P

[3] *See* 5 U.S.C. 553(b) and (d).

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Meeting

TIME AND DATE: 9 a.m. (e.s.t.) February 22, 2005.

PLACE: 4th Floor Conference Room, 1250 H Street, NW., Washington, DC.

STATUS: Parts will be open to the public and parts closed to the public.

MATTERS TO BE CONSIDERED:

Parts Open to the Public

1. Approval of the minutes of the January 19, 2005, Board member meeting.

2. Thrift Savings Plan activity report by the Executive Director.

Parts Closed to the Public

3. Procurement.

FOR FURTHER INFORMATION CONTACT: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: February 14, 2005.

Elizabeth S. Woodruff,

Secretary to the Board, Federal Retirement Thrift Investment Board.

[FR Doc. 05–3105 Filed 2–14–05; 3:00 pm]

BILLING CODE 6760–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee to the Director, Centers for Disease Control and Prevention

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following Advisory Committee meeting.

Name: Advisory Committee to the Director, CDC.

Time and Date: 8:30 a.m.–4:30 p.m., March 3, 2005.

Place: Centers for Disease Control and Prevention, Century Center Facility, 1825 Century Boulevard, NE., Atlanta, Georgia 30345, Rooms 1A and 1B.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 65 people.

Purpose: The committee will provide advice to the CDC Director on strategic and other broad issues facing CDC.

Matters to be Discussed: Agenda items will include discussion of the CDC Futures Initiative and updates on CDC priorities with discussions of program

activities including updates on CDC scientific and programmatic activities.

Agenda items are subject to change as priorities dictate.

FOR FURTHER INFORMATION CONTACT: Robert Delaney,Executive Secretary, Advisory Committee to the Director,CDC, 1600 Clifton Road, NE., M/S D–14, Atlanta, Georgia 30333. Telephone 404/639–7000.

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: February 10, 2005.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 05–2961 Filed 2–15–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panels: Occupational Health and Safety Research, Program Announcement (PA) 04038, and NIOSH Support for Conferences and Scientific Meetings, Program Announcement Request (PAR) 05005

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panels (SEP): Occupational Health and Safety Research, Program Announcement 04038, and NIOSH Support for Conferences and Scientific Meetings, Program Announcement Request 05005.

Times and Dates: 5 p.m.–5:30 p.m., March 9, 2005 (Open); 5:30 p.m.–7:30 p.m., March 9, 2005 (Closed); 8:30 a.m.–6:30 p.m., March 10, 2005 (Closed).

Place: Royal Sonesta Hotel New Orleans, 300 Bourbon Street, New Orleans, LA 70140–1014 telephone 504–586–0300.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement 04038 and Program Announcement Request 05005.

Contact Person for More Information: Pamela J. Wilkerson, MPA, Scientific Review Administrator, Office of Extramural Programs, National Institute for Occupational Safety and Health, CDC, 1600 Clifton Road, NE., MS–E74, Atlanta, GA 30333, Telephone 404–498–2556.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the CDC and the Agency for Toxic Substances and Disease Registry.

Dated: February 8, 2005.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention CDC.

[FR Doc. 05–2963 Filed 2–15–05; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Cellular, Tissue and Gene Therapies Advisory Committee (formerly the Biological Response Modifiers Advisory Committee); Amendment of Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

The Food and Drug Administration (FDA) is announcing an amendment to the notice of meeting of the Cellular, Tissue and Gene Therapies Advisory Committee (formerly the Biological Response Modifiers Advisory Committee). This meeting was announced in the **Federal Register** of January 27, 2005 (70 FR 3934). The amendment is being made to reflect the cancellation of the closed portion of the meeting and the following portions of the document: *Date and Time*, *Agenda*, *Procedure*, and *Closed Committee Deliberations*. There are no other changes.

FOR FURTHER INFORMATION CONTACT: Gail Dapolito or Rosanna L. Harvey, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512389. Please call the Information Line for up-to-date information on this meeting.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 27, 2005, FDA announced that a meeting of the Cellular, Tissue and Gene Therapies Advisory Committee (formerly the Biological Response Modifiers Advisory Committee) would be held on March 3 and 4, 2005. On page 3935, in the first column, the introductory paragraph, *Date and Time*, *Agenda*, and *Procedure* portions of the document are amended to read as follows:

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Date and Time: The meeting will be held on March 3, 2005, from 8 a.m. to approximately 6 p.m. and on March 4, 2005, from 8 a.m. to approximately 5 p.m.

Agenda: On March 3, 2005, all day and on March 4, 2005, in the morning, the committee will discuss cellular therapies for repair and regeneration of joint surfaces. Additionally, on March 4, 2005, the committee will discuss safety issues related to retroviral vector-mediated tumorigenesis in gene transfer clinical trials.

Procedure: On March 3, 2005, from 8 a.m. to approximately 6 p.m. and on March 4, 2005, from 8 a.m. to approximately 5 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by February 23, 2005. Oral presentations from the public will be scheduled on March 3, 2005, between approximately 11 a.m. and 11:30 a.m. and on March 4, 2005, between approximately 12 noon and 12:30 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before February 23, 2005, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

On page 3935, in the second column, the *Closed Committee Deliberations* portion of the document is deleted to reflect the cancellation of the closed portion of the meeting on March 3, 2005.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to the advisory committees.

Dated: February 8, 2005.

Sheila Dearybury Walcoff,

Associate Commissioner for External Relations.

[FR Doc. 05–2920 Filed 2–15–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Industry Exchange Workshop on Food and Drug Administration Clinical Trial Requirements; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

SUMMARY: The Food and Drug Administration (FDA) Philadelphia District, in cooperation with the Society of Clinical Research Associates (SoCRA), is announcing a workshop on FDA Clinical trial statutory and regulatory requirements. This 2-day workshop for the clinical research community targets sponsors, monitors, clinical investigators, institutional review boards, and those who interact with them for the purpose of conducting FDA regulated clinical research. The workshop will include both industry and FDA perspectives on proper conduct of clinical trials regulated by FDA.

Date and Time: The public workshop is scheduled for Wednesday, April 13, 2005, from 8:15 a.m. to 5 p.m. and Thursday, April 14, 2005, from 8:15 a.m. to 4 p.m.

Location: The public workshop will be held at the Sheraton University City Hotel Philadelphia, 3549 Chestnut St., Philadelphia, PA 19104, 215–387–8000, FAX: 215–387–7920.

Contact: Marie Falcone, Food and Drug Administration, U.S. Customhouse, 200 Chestnut St., rm. 900, Philadelphia, PA 19106, 215–597–2120 ext. 4003, FAX: 215–597–5798, e-mail: *mfalcone@ora.fda.gov*.

Registration: Send registration information (including name, title, firm name, address, telephone, and fax number) and the registration fee of $485 (member), $560 (nonmember), or $460 (government employee nonmember). (Registration fee for nonmemebers includes a 1 year membership.) The registration fee for FDA employees is waived. Make the registration fee payable to SoCRA, P.O. Box 101, Furlong, PA 18925. To register via the Internet go to *http://www.socra.org/FDA_Conference.htm*. (FDA has verified the Web site address, but is not responsible for subsequent changes to the Web site after this document publishes in the **Federal Register**.)

The registrar will also accept payment by major credit cards. For more information on the meeting, or for questions on registration, contact 800–SoCRA92 (800–762–7292), or 215–345–7369, or via e-mail: *socramail@aol.com*. Attendees are responsible for their own accommodations. To make reservations at the Sheraton University City Hotel at the reduced conference rate, contact the Sheraton University City Hotel (see *Location*) before March 13, 2005.

The registration fee will be used to offset the expenses of hosting the conference, including meals, refreshments, meeting rooms, and materials. Space is limited, therefore interested parties are encouraged to register early. Limited onsite registration may be available. Please arrive early to ensure prompt registration.

If you need special accommodations due to a disability, please contact Marie Falcone (see *Contact*) at least 7 days in advance of the workshop.

SUPPLEMENTARY INFORMATION: The workshop on FDA Clinical Trials Statutory and Regulatory Requirements, helps fulfill the Department of Health and Human Services' and FDA's important mission to protect the public health by educating researchers on proper conduct of clinical trials. Topics for discussion include the following: (1) FDA and confidence in the conduct of clinical research; (2) medical device, drug, and biological product aspects of clinical research; (3) investigator initiated research; (4) Pre-investigational new drug (IND) application meetings and FDA meeting process; (5) informed consent requirements; (6) ethics in subject enrollment; (7) FDA regulation of Institutional Review Boards; (8) electronic records requirements; (9) adverse event reporting; (10) how FDA conducts bioresearch inspections, and (11) what happens after the FDA inspection. FDA has made education of the research community a high priority to assure the quality of clinical data and protect research subjects.

The workshop helps to implement the objectives of section 406 of the FDA Modernization Act (21 U.S.C. 393) and the FDA Plan for Statutory Compliance, which includes working more closely with stakeholders and ensuring access to needed scientific and technical expertise. The workshop also furthers the goals of the Small Business Regulatory Enforcement Fairness Act (Public Law 104–121) by providing outreach activities by Government agencies directed to small businesses.

Dated: February 4, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–2922 Filed 2–15–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Food and Drug Administration Drug Educational Forum; Public Workshop; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of February 3, 2005 (70 FR 5686). The document announced a public workshop. The document was published with a typographical error in the **SUPPLEMENTARY INFORMATION** section. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Joyce Strong, Office of Policy (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7010.

SUPPLEMENTARY INFORMATION: In FR Doc. 05–2098, appearing on page 5686, in the **Federal Register** of Thursday, February 3, 2005, the following correction is made:

1. On page 5687, in the second column, the fifth line from the bottom should read "abbreviated new drug applications (ANDAs)".

Dated: February 8, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–2921 Filed 2–15–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0355]

Scientific Considerations Related to Developing Follow-On Protein Products; Reopening of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening until

March 16, 2005, the comment period for the notice that appeared in the **Federal Register** of August 16, 2004 (69 FR 50386). In the notice, FDA announced a public workshop on scientific and technical considerations related to the development of follow-on protein pharmaceutical products and plans to develop draft guidance and requested comments related to developing and approving follow-on protein pharmaceutical products. The agency is taking this action in response to requests for an extension to allow interested persons additional time to submit comments.

DATES: Submit written and electronic comments by March 16, 2005.

ADDRESSES: Submit written comments on scientific topics related to follow-on protein products to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.*

FOR FURTHER INFORMATION CONTACT: Keith Webber, Center for Drug Evaluation and Research (HFD–121), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20852, 301–443–5089, e-mail: *keith.webber@fda.gov*, or Chris Joneckis, Center for Biologics Evaluation and Research (HFM–1), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20892, 301–827–2000, e-mail: *christopher.joneckis@fda.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of August 16, 2004 (69 FR 50386), FDA published a notice with a 90-day comment period to request comments on the scientific and technological perspectives of manufacturers, academia, and other interested persons to determine the state of the science as it relates to protein characterization, production, and assessment of similarity.

The agency has received requests for an extension of the comment period for the notice. In response to these requests, FDA has decided to reopen the comment period for the notice for an additional 30 days, until March 16, 2005.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on this document. Two copies of mailed comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 11, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–3027 Filed 2–11–05; 4:50 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Health Professions Preparatory, Health Professions Pregraduate and Indian Health Professions Scholarship Programs: Correction

ACTION: Notice; correction.

SUMMARY: The Indian Health Service published a document in the **Federal Register** on January 19, 2005. The document contained two errors.

FOR FURTHER INFORMATION CONTACT: Mr. Jess Brien, Chief, Scholarship Branch, Indian Health Service, 801 Thompson Avenue, Suite 120, Rockville, Maryland 20852; Telephone (301) 443–6197. (This is not a toll-free number.)

Correction

In the **Federal Register** of January 19, 2005, in FR Doc. 05–1030, on page 3046, in the second column, correct the Anticipated Award Start Date to read August 1, 2005; page 3048, in the second column, Application Receipt Date, correct February 28, 2005 to March 28, 2005.

Dated: January 27, 2005.

Charles W. Grim,

Assistant Surgeon General, Director, Indian Health Service.

[FR Doc. 05–2971 Filed 2–15–05; 8:45 am]

BILLING CODE 4160–16–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 meetings.

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 Innovations in Cancer Sample Preparation.

Date: April 28, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, EPN–J, 6130 Executive Boulevard, Rockville, MD 20852.

Contact Person: Timothy C. Meeker, MD, Scientific Review Administrator, Special Referral and Resources Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8088, Rockville, MD 20852, (301) 594–1279.

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.

(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: February 8, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–2957 Filed 2–15–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Heart, Lung, and Blood Institute Special Emphasis Panel, March 2, 2005, 8 a.m. to March 2, 2005, 5 p.m., Sheraton Inner Harbor Hotel, 300 South Charles Street, Baltimore, MD 21201 which was published in the **Federal Register** on January 18, 2005, FR70:2867–2868.

The meeting will be held on March 1 at 8 a.m. instead of March 2, 2005 as previously advertised. The meeting is closed to the public.

Dated: February 8, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–2956 Filed 2–15–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; 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/or 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 grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Hunter SNRP Type 2.

Date: February 24–25, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: Excelsior Hotel, 45 West 81st Street, New York, NY 10024.

Contact Person: Phillip F. Wiethorn, Scientific Review Administrator, DHHS/NIH/NINDS/DER/SRB, 6001 Executive Boulevard; MSC 9529, Neuroscience Center; Room 3203, Bethesda, MD 20892–9529, (301) 496–5388, *wiethorp@ninds.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: February 9, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–2953 Filed 2–15–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee, February 28, 2005, 8 a.m. to February 28, 2005, 5 p.m., Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD, 20814 which was published in the **Federal Register** on January 26, 2005, FR 70, 3721–3722.

The meeting date has changed to February 27–28, 2005. The meeting will begin the evening of February 27, 2005 from 7 p.m.–11 p.m. The morning of February 28, 2005 the meeting will begin at 7 a.m.–5 p.m. The meeting is closed to the public.

Dated: February 9, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–2954 Filed 2–15–05; 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 Meetings

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: National Institute of Mental Health Special Emphasis Panel, Statistical and Psychometric Applications for Clinical Studies.

Date: February 24, 2005.

Time: 9 a.m. to 10:45 a.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: Mark Czarnolewski, PhD, Scientific Review Administrator, Division of Extramural Activities, Neuroscience Center, 6001 Executive Blvd., Room 8122, MSC 9667, Bethesda, MD 20892–9667, 301–345–4582, *mczarnol@mail.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.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Imaging and Mood Disorders II.

Date: March 3, 2005.

Time: 1:30 p.m. to 2:30 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: Peter J. Sheridan, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6142, MSC 9606, Bethesda, MD 20892–9606, 301–443–1513, *psherida@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: February 8, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–2955 Filed 2–15–05; 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 a meeting of the Board of Scientific Counselors, National Institute of Mental Health.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Mental Health, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would

constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Institute of Mental Health.

Date: March 13–15, 2005.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Susan Koester, PhD, Executive Secretary, Associate Director for Science, Intramural Research Program, National Institute of Mental Health, NIH, Building 10, Room 4N222, MSC 1381, Bethesda, MD 20892–1381. 301–496–3501.

(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: February 8, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–2958 Filed 2–15–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Enabling Bioanalytical and Biophysical Technologies Study Section, February 17, 2005, 8 a.m. to February 18, 2005, 6 p.m., The Fairmont Washington, DC, 2401 M Street NW., Washington, DC 20037 which was published in the **Federal Register** on January 25, 2005, 70 FR 3539–3541.

The starting time of the meeting has been changed to 8:30 a.m. on February 17, 2005. The meeting dates and location remain the same. The meeting is closed to the public.

Dated: February 8, 2005.

Laverne Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–2959 Filed 2–15–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center For Scientific Review; Notice of Closed Meetings

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 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: Center For Scientific Review Special Emphasis Panel. Digestive Sciences-SBIRs.

Date: February 17, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 2007.

Contact Person: Mushtaq A. Khan, PhD, DVM, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2176, MSC 7818, Bethesda, MD 20892, (301) 435–1778, *khanm@csr.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.

Name of Committee: Center For Scientific Review Special Emphasis Panel. Heat Shock Induced Apoptosis.

Date: March 2, 2005.

Time: 3 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: Manzoor Zarger, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, (301) 435–2477, *zargerma@csr.nih.gov.*

Name of Committee: Center For Scientific Review Special Emphasis Panel, Superstolides as Anti Cancer Agents/Clinical Development of 4–HO–IFOS.

Date: March 3, 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, Clinical Neurophysiology, Devices and Neuroprosthetics/Brain Disorders and Clinical Neuroscience/SBIR.

Date: March 7–8, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Vinod Charles, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5196, MSC 7846, Bethesda, MD 20892, 301–435–0902, *charlesvi@csr.nih.gov.*

Name of Committee: AIDS and Related Research Integrated Review Group. AIDS Immunology and Pathogenesis Study Section.

Date: March 7–8, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Suites, 285 N. Palm Canyon Drive, Palm Springs, CA 92262.

Contact Person: Abraham P. Bautista, MSC, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5102, MSC 7852, Bethesda, MD 20892, (301) 435–1506, *bautista@csr.nih.gov.*

Name of Committee: Cardiovascular Sciences Integrated Review Group. Vascular Cell and Molecular Biology Study Section.

Date: March 7–8, 2005.

Time: 8 a.m. to 5 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: Anshumali Chaudhari, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4124, MSC 7802, Bethesda, MD 20892, (301) 435–1210, *chaudhaa@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SBIB–Q 50R: PAR–03–106: Innovations in Biomedical Computational Science and Technology R21/R33.

Date: March 7, 2005.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Guo Feng Xu, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217, MSC 7854, Bethesda, MD 20892, 301–435–1032, *xuguofen@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 VACC–01 Q: HIV/AIDs Vaccines,

Date: March 7–8, 2005.
Time: 8 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Suites, 285 North Palm Canyon Drive, Palm Springs, CA 92262.
Contact Person: Mary Clare Walker, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852, Bethesda, MD 20892, (301) 435–1165, *walkermc@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel. Brain Disorders and Clinical Neurosciences Fellowships.
Date: March 7–8, 2005.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.
Contact Person: Sherry L. Stuesse, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5188, MSC 7846, Bethesda, MD 20892, (301) 435–1785, *stuesses@csr.nih.gov*.

Name of Committee: AIDS and Related Research Integrated Review Group. AIDS Molecular and Cellular Biology Study Section.
Date: March 7–8, 2005.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Suites, 285 North Palm Canyon Dr., Palm Springs, CA 92262.
Contact Person: Kenneth A. Roebuck, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5214, MSC 7852, Bethesda, MD 20892, (301) 435–1166, *roebuckk@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel. Cancer Drug Development and Therapeutics.
Date: March 7–8, 2005.
Time: 8 a.m. to 5 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: Eva Petrakova, PhD, MPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6158, MSC 7804, Bethesda, MD 20892, (301) 435–1716, *petrakoe@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel. ZRG1 BDCN A 02M: Member Conflict: Brain Disorders and Clinical Neurosciences.
Date: March 7–8, 2005.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.
Contact Person: David M. Armstrong, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194, MSC 7846, Bethesda, MD 20892, (301) 435–1253, *armstrda@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel. ZRG1 SBIB J 90S: Development of Methods for in vivo Imaging and Bioengineering Research.
Date: March 7–8, 2005.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Four Points by Sheraton Bethesda, 8400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Behrouz Shabestari, PhD, Scientific Review Administrator, Surgery, Biomedical Imaging and Bioengeering, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5106, MSC 7854, Bethesda, MD 20892, (301) 435–2409, *shabestb@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel. Psychopathology and Adult Disorders.
Date: March 7–8, 2005.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.
Contact Person: Dana Jeffrey Plude, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3192, MSC 7848, Bethesda, MD 20892, 301–435–2309, *pluded@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Drug Discovery and Development.
Date: March 7–8, 2005.
Time: 8:30 a.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: Georgetown Suites, 1000 29th Street, NW., Washington, DC 20007.
Contact Person: Sergei Ruvinov, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7806, Bethesda, MD 20892, 301–435–1180, *ruvinser@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Developmental Disabilities, Communication and Science Education.
Date: March 7–8, 2005.
Time: 8:30 a.m. to 1 p.m.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.
Contact Person: Thomas A. Tatham, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, 301–594–6836, *tathamt@csr.nih.gov*.

Name of Committee: AIDS and Related Research Integrated Review Group. AIDS Discovery and Development of Therapeutics Study Section.
Date: March 7–8, 2005.
Time: 8:30 a.m. to 3:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Suites, 285 North Palm Canyon Drive, Palm Springs, CA 92262.
Contact Person: Eduardo A. Montalvo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5212, MSC 7852, Bethesda, MD 20892, 301–435–1168, *montalve@csr.nih.gov*.

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group. Ethical, Legal, and Social Implications of Human Genetics—1.
Date: March 7–8, 2005.
Time: 9 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Rudy O. Pozzatti, PhD, Scientific Review Administrator, Scientific Review Branch, National Human Genome Research Institute, 5635 Fishers Lane, Suite 4076, MSC 9306, Rockville, MD 20852, 301–402–0838, *pozzattr@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Animal Behavior.
Date: March 7, 2005.
Time: 11:30 a.m. to 1 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: Maribeth Champoux, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3146, MSC 7759, Bethesda, MD 20892, 301 594–3163, *champoum@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel. Modulation of CD32 Isoforms.
Date: March 7, 2005.
Time: 3 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: Calbert A. Laing, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4210, MSC 7812, Bethesda, MD 20892, 301–435–1221, *laingc@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel. Physiology and Pathobiology of the Organ Systems.
Date: March 8–9, 2005.
Time: 8 a.m. to 5 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: Peter J. Perrin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2183, MSC 7818, Bethesda, MD 20892, (301) 435–0682, *perrinp@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel. SBIB 90: Development of Methods for in vivo Imaging and Bioengineering Research.
Date: March 8, 2005.

Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Four Points by Sheraton Bethesda, 8400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Behrouz Shabestari, PhD, Scientific Review Administrator, Surgery, Biomedical Imaging and Bioengineering, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5106, MSC 7854, Bethesda, MD 20892, (301) 435–2409, *shabestb@csr.nih.gov*.

Name of Committee: Respiratory Sciences Integrated Review Group, Respiratory Integrative Biology and Translational Research Study Section.
Date: March 8–9, 2005.
Time: 8:30 a.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: Beacon Hotel and Corporate Quarters, 1615 Rhode Island Avenue, NW., Washington, DC 20036.
Contact Person: Everett E. Sinnett, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2178, MSC 7818, Bethesda, MD 20892, (301) 435–1016, *sinnett@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, SBIB 25: Fellowships: Imaging.
Date: March 8, 2005.
Time: 10 a.m. to 12 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: Hector Lopez, DSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5120, MSC 7854, Bethesda, MD 20892, 301–435–2392, *lopezh@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, BMRD Members 03.
Date: March 8, 2005.
Time: 1 p.m. to 2 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: Yvette M. Davis, MPh, VMD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3152, MSC 7770, Bethesda, MD 20892, (301) 435–0906, *davisy@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Bioengineering Research Partnerships.
Daie: March 8, 2005.
Time: 2 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Vinod Charles, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5196, MSC 7846, Bethesda, MD 20892, 301–435–0902, *charlesvi@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel BMRD Members 02.
Date: March 8, 2005.
Time: 3 p.m. to 5 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: Yvette M. Davis, MPh, VMD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3152, MSC 7770, Bethesda, MD 20892, (301) 435–0906, *davisy@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Macromolecular Structure and Function Review Panel.
Date: March 9, 2005.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.
Contact Person: Kathryn M. Koeller, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4095D, MSC 7806, Bethesda, MD 20892, 301–435–2681, *koellerk@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Genetic Tools for Zebrafish Par.
Date: March 9, 2005.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.
Contact person: Alexandra M. Ainsztein, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5144, MSC 7840, Bethesda, MD 20892, 301–451–3848, *ainsztea@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 9–10, 2005.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.
Contact Person: Ping Fan, PhD, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5154, MSC 7840, Bethesda, MD 20892, 301–435–1740, *fanp@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Behavioral Genetics.
Date: March 9, 2005.
Time: 9 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: Ann Hardy, DRPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892, (301) 435–0695, *hardyan@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, SBIB 26: Fellowships: Bone and Skin.
Date: March 9, 2005.
Time: 1 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: Hector Lopez, DSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5120, MSC 7854, Bethesda, MD 20892, 301–435–2392, *lopezh@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SBIB G 02M: Member Conflict: Surgery Anesthesia and Trauma.
Date: March 9, 2005.
Time: 3 p.m. to 5 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: Paul F. Parakkal, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5122, MSC 7854, Bethesda, MD 20892, (301) 435–1176, *parakkap@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: February 9, 2005.

Laverne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–2960 Filed 2–15–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2005–20103]

Nontank Vessel Response Plan Guidance

AGENCY: Coast Guard, DHS.

ACTION: Notice of availability.

SUMMARY: The Coast Guard announces the availability of a document that provides interim guidelines for the development and review of plans for responding to a discharge, or threat of a discharge, of oil from nontank vessels. The document, in the form of a Navigation and Vessel Inspection Circular, is available as indicated in this

notice. Federal law requires that these response plans be prepared and submitted to the Coast Guard no later than August 8, 2005.

FOR FURTHER INFORMATION CONTACT: If you have questions on the Navigation and Vessel Inspection Circular, call the Vessel Response Plan Program staff at telephone 202–267–6714. If you have questions on viewing material in the docket, call Ms. Renee K. Wright, Program Manager, Docket Operations, telephone 202–366–0271.

SUPPLEMENTARY INFORMATION:

Background

On August 9, 2004, the President signed the Coast Guard and Marine Transportation Act of 2004 (Pub. L. 108–293) (2004 Act). Section 701 of the 2004 Act amends section 311(a) and (j) of the Federal Water Pollution Control Act to require the preparation and submission of oil response plans for nontank vessels. The 2004 Act defines "nontank vessel" as a self-propelled vessel of 400 gross tons or greater, other than a tank vessel, that carries oil of any kind as fuel for main propulsion and that is a vessel of the United States or operates on the navigable waters of the United States. Under the 2004 Act, response plans must be submitted to the Coast Guard by August 8, 2005.

The 2004 Act requires the Coast Guard to issue response plan regulations. However, to assist industry in meeting the August 8, 2005, deadline, the Coast Guard has issued guidance, in the form of a Navigation and Vessel Inspection Circular (NVIC), for use in the preparation and submission of response plans until regulations are in effect. As there are already certain provisions in the existing statute that these response plans must meet, the NVIC identifies those requirements, as well as the Coast Guard's recommendations.

Access to the NVIC

A copy of the nontank vessel response plan NVIC can be found in the docket at *http://dms.dot.gov/* and at *http://www.uscg.mil/hq/g-m/nvic/*. For those individuals without Internet access, a copy of the NVIC may be obtained by contacting the VRP Program staff at the number above, or your local U.S. Coast Guard Marine Safety Office.

Dated: February 10, 2005.

T. H. Gilmour,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety, Security and Environmental Protection.

[FR Doc. 05–2945 Filed 2–15–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Reports, Forms, and Record Keeping Requirements: Agency Information Collection Activity Under OMB Review; Application for Participation in Biometric Device Performance Qualification Testing Program

AGENCY: Transportation Security Administration (TSA), DHS.

ACTION: Notice of emergency clearance request.

SUMMARY: The U.S. Department of Homeland Security, Transportation Security Administration, has submitted a request for emergency processing of a new public information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 35). This notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to OMB for review and comment. The ICR describes the nature of the information collection and its expected burden.

DATES: Send your comments by March 18, 2005. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Comments may be faxed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: DHS–TSA Desk Officer, at (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Katrina Wawer, Information Collection Specialist, Office of Transportation Security Policy, TSA–9, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220; telephone (571) 227–1995; facsimile (571) 227–2559.

SUPPLEMENTARY INFORMATION:

Transportation Security Administration (TSA)

Title: Application for Participation in Biometric Device Performance Qualification Testing Program.

Type of Request: Emergency processing request of new collection.

OMB Control Number: Not yet assigned.

Forms(s): Biometric Product Qualification Application Form.

Affected Public: Biometric Device Manufacturers.

Abstract: Section 4011—Provision for the Use of Biometric or Other Technology, of Title IV—Transportation Security, in the Intelligence Reform and Terrorism Prevention Act of 2004 (Pub. L. 108–458, 12/17/2004, S.2845–75), directs TSA to issue guidance for use of biometric technology in airport access control systems including a list of qualified biometric device products and vendors by March 31, 2005. In compliance, TSA has developed a process that examines the fitness of the technology for application to airport access controls systems. TSA will ask biometric device manufacturers, who wish to have their devices considered for use in airport-access control systems, to submit an application containing detailed information describing their devices.

TSA intends to make the forms, which provide the basis for the device manufacturer's application to this process, widely available to the interested manufacturers through "Current Opportunities" in the "Business Opportunities" link within the TSA Web site: *http://www.tsa.gov/public.* The online application would be made via that Web site. TSA will use the information to evaluate the products' readiness for performance testing. TSA is seeking emergency processing of this collection to comply with the statutory mandate to issue biometric guidance.

Number of Respondents: 100.

Estimated Annual Burden Hours: An estimated 800 hours annually.

TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Issued in Arlington, Virginia, on February 9, 2005.

Lisa S. Dean,

Privacy Officer.

[FR Doc. 05–2919 Filed 2–15–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4972–N–01]

Notice of Proposed Information Collection: Comment, Request Relocation and Real Property Acquisition, Under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1979

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* April 18, 2005.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Sheila Jones, Reports Liaison Officer, Department of Housing Urban and Development, 451 7th Street, SW., Room 7232, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Joan Morgan, Director, Relocation and Real Estate Division, CGHR, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Rm 7168, Washington DC 20410; e-mail *Joan_Morgan@HUD.gov*, (202) 708–0614. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Morgan.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as Amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate . automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also list the following information:

Title of Proposal: Relocation and Real Property Acquisition, Recordkeeping Requirements under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (as amended).

OMB Control Number, if applicable: 2506–0121.

Description of the Need for the Information and proposed use: Agencies receiving HUD funding for projects involving relocation of owners or tenants displaced due to a project that includes rehabilitation, demolition, or acquisition of property are subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA). Agencies are required to document their compliance with the requirements of the URA and applicable implementing regulations. Revised government-wide URA regulations were published by the Department of Transportation on January 4, 2005 (effective February 3, 2005). Changes in these regulations which will impact on recordkeeping requirements are: Establishing a list of items to be include in interviews with displaced businesses (24.205(c)(2)(i)(A) thru (F)), prohibiting an agency from proposing or requesting that a displaced person waive rights or entitlements under the URA (24.207(f)), including the cost of professional home inspections in replacement housing payments for homeowners (24.401(e)(4)), and implementing the use of HUD low income limits to determine eligibility for URA benefits applicable to low income persons (24.402(b)(2)).

Agency form numbers, if applicable: None.

Estimation of the total numbers of hours needed to prepare the Information collection including number of respondents, frequency of response, and hours of response.

Status of the proposed information collection: Revision due to change in URA regulations.

Number of Respondents: 2000.

Frequency of Responses: 40.

Hours per Response: 3.5

Burden Hours: 280,000.

Change: 20,000.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: February 9, 2005.

Nelson R. Bregon,

General Deputy Assistant, Secretary for Community Planning and Development.

[FR Doc. 05–2930 Filed 2–15–05; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4972–N–02]

Notice of Proposed Information Collection: Comment Request, Optional Relocation Payment Claim Forms

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* April 18, 2005.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Shelia Jones, Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street, SW., Room 7232, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Joan Morgan, Director, Relocation and Real Estate Division, DGHR, Department of Housing and Urban Development, 451 Seventh Street, SW., Rm. 7168, Washington, DC 20410; e-mail *Joan_Morgan@HUD.gov*, (202) 708–0614. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Morgan.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as Amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the

accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Optional Relocation Payment Claim Forms.

OMB Control Number, if applicable: 2506–0016.

Description of the need for the information and proposed use: Application for displacement/relocation assistance for persons (families, individuals, businesses, nonprofit organizations and farms) displaced by certain HUD programs. Revised government-wide URA regulations were published by the Department of Transportation on January 4, 2005 (effective February 3, 2005). Changes in these regulations which will impact on HUD forms are: Including the cost of professional home inspections in replacement housing payments for homeowners (24.401(e)(4)), and implementing the use of HUD low income limits to determine eligibility for URA benefits applicable to low income persons (24.402(b)(2)). Only the HUD–40054 and 40058 will be affected by these changes and will be revised to conform to the new regulations and improve the flow of the form. The HUD–40055, 40056, and 40057 will be revised to more closely track the existing regulations and improve the flow of the forms. A minor change is being made to the HUD–40061 to eliminate the requirement that the agency make adjustments to the asking price for a property to reflect an anticipated sale price (this requirement was eliminated in the new rule). No changes are being made in the HUD–40072.

Agency form numbers, if applicable: HUD–40054, 40055, 40056, 40057, 40058, 40061, 40072.

Estimation of the total numbers of hours needed to prepare the Information collection including number of respondents, frequency of response, and hours of response.

Status of the proposed information collection: Revision.

Number of Respondents: 12,800.

Frequency of Response: 3.

Hours per Response: 8.

Total Estimated Burden Hours: 31,000 (no change).

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: February 9, 2005.

Nelson R. Bregon,

General Deputy Assistant, Secretary for Community Planning and Development.

[FR Doc. 05–2931 Filed 2–15–05; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Preparation of an Environmental Impact Statement for Issuance of an Incidental Take Permit Associated With a Habitat Conservation Plan for the California Department of Parks and Recreation's Operation of Certain San Luis Obispo Coast District Parks and the Oceano Dunes State Vehicular Recreation Area in San Luis Obispo County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) (42 U.S.C. 4321, *et seq.*), the U.S. Fish and Wildlife Service (Service or "we") advises the public that we intend to gather information necessary to prepare, in coordination with the California Department of Fish and Game (CDFG) and the California Department of Parks and Recreation (CDPR), a joint Environmental Impact Statement/ Environmental Impact Report (EIS/EIR) on the proposed Habitat Conservation Plan for the San Luis Obispo Coast District and Oceano Dunes State Vehicular Recreation Area (HCP). The proposed HCP is being prepared under section 10(a)(1)(B) of the Endangered Species Act of 1973 as amended, (ESA) (16 U.S.C. 1531 *et seq.*). The incidental take permit is needed to authorize the incidental take of listed species as a result of implementing activities covered under the proposed HCP.

We provide this notice to: (1) Describe the proposed action and possible alternatives; (2) advise other Federal and State agencies, affected Tribes, and the public of our intent to prepare an EIS/EIR; (3) announce the initiation of a 30-day public scoping period; and (4) obtain suggestions and information on the scope of issues and alternatives to be included in the EIS/EIR.

DATES: Public meetings will be held on: Wednesday, February 23, 2005 from 1 p.m. to 3 p.m. and 6 p.m. to 8 p.m. Written comments should be received on or before March 18, 2005.

ADDRESSES: The public meetings on Wednesday, February 23, 2005 will both be held at the Morro Bay Natural History Museum, 20 State Park Road, Morro Bay, CA 93442. Information, written comments, or questions related to the preparation of the EIS/EIR and the NEPA process should be submitted to Diane Noda, Field Supervisor, U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, California 93003; *fw1sloparks@fws.gov;* or FAX (805) 644–3958.

FOR FURTHER INFORMATION CONTACT: Steve Henry (see **ADDRESSES**) at (805) 644–1766.

SUPPLEMENTARY INFORMATION:

Reasonable Accommodation

Persons needing reasonable accommodations in order to attend and participate in the public meeting should contact Max Mora (see **ADDRESSES**) at (805) 644–1766 as soon as possible. In order to allow sufficient time to process requests, please call no later than one week before the public meeting. Information regarding this proposed action is available in alternative formats upon request.

Background

Section 9 of the ESA and Federal regulations prohibit the "take" of a fish or wildlife species listed as endangered or threatened. Under the ESA, the following activities are defined as take: harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect listed animal species, or attempt to engage in such conduct (16 U.S.C. 1538). However, under section 10(a) of the ESA, we may issue permits to authorize "incidental take" of listed species. Incidental take is defined by the ESA as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing permits for threatened and endangered species are at 50 CFR 13 and 50 CFR 17.

Take of listed plant species is not prohibited under the ESA and cannot be authorized under an ESA section 10 permit. We propose to include plant species on the permit in recognition of the conservation benefits provided for them under the HCP. All species included on the permit would receive assurances under the Service's "No Surprises" regulation, if at the time of issuance of the incidental take permit the "No Surprises" regulation is in effect (63 FR 8859).

CDPR intends to request a permit authorizing the incidental take of 4 animal species for approximately 15.

years during the course of conducting otherwise lawful land use activities on public land. The permit would also cover 8 federally listed plants and 2 currently unlisted plants. Listed species proposed to be covered are the federally-endangered California least tern (*Sterna antillarum browni*), Morro shoulderband snail (*Helminthoglypta walkeriana*), marsh sandwort (*Arenaria paludicola*), La Graciosa thistle (*Cirsium loncholepis*), salt marsh bird's-beak (*Cordylanthus maritimus* ssp. *maritiinus*), Indian Knob mountainbalm (*Eriodictyon altissimum*), Nipomo Mesa lupine (*Lupinus nipomoensis*), Gambel's water cress (*Rorippa gambellii*), California seablite (*Suaeda californica*); the federally-threatened western snowy plover (*Charadrius alexandrinus nivosus*), California red-legged frog (*Rana aurora draytonii*), and Morro manzanita (*Arcotostaphylos morroensis*). Unlisted species proposed to be covered are the State-threatened surf thistle (*Cirsium rhothophilum*) and beach spectacle pod (*Dithyrea maritima*).

Currently, CDPR is requesting a permit for incidental take of the covered animal species on six park units, or portions thereof, in the Estero Bay and Guadalupe-Nipomo Dunes areas of San Luis Obispo County. From north to south, the park units are: Estero Bluffs, Morro Strand State Beach, Morro Bay State Park, Montaña De Oro State Park, Pismo Dunes Natural Preserve (a subunit of Pismo State Beach), and Oceano Dunes State Vehicular Recreation Area. Together, the covered units encompass approximately 24 square miles. The proposed HCP would be designed principally to avoid the take of the Covered Species, but it also would include provisions to minimize and mitigate the impacts of any take that may occur.

Activities proposed to be covered by the HCP (Covered Activities) are generally activities that result from visitor use, ongoing operations of the State Parks, or from the resource protection measures needed to avoid and minimize the impacts of park use on the covered species. Covered Activities fall into five broad categories: park visitor activities, general park maintenance and operations, natural resource management, special projects, and special events.

The proposed HCP would describe how the effects of the Covered Activities would be minimized and mitigated under the conservation program. Program components would likely include: avoidance and minimization measures; monitoring; adaptive management; predator control; and mitigation measures consisting of habitat restoration and enhancement.

Environmental Impact Statement

CDPR and the Service have selected Thomas Reid Associates (TRA) to prepare the EIS/EIR. The document will be prepared in compliance with NEPA and the California Environmental Quality Act (CEQA). TRA will prepare the EIS/EIR under the supervision of the Service, which will be responsible for the scope and content of the NEPA document. CDPR will be responsible for the scope and content of the CEQA document.

The EIS/EIR will consider the proposed action, the issuance of a Section 10(a)(1)(B) permit under the ESA, no action (no permit), and a reasonable range of alternatives. A detailed description of the impacts of the proposed action and each alternative will be included in the EIS/EIR. The alternatives to be considered for analysis in the EIS/EIR may include: variations in the scope of covered activities; variations in the location, amount and type of conservation; variations in permit duration; or, a combination of these elements.

The EIS will also identify potentially significant direct, indirect, and cumulative impacts on biological resources, land use, air quality, water quality, water resources, socioeconomics, and other environmental issues that could occur with the implementation of the proposed actions and alternatives. For all potentially significant impacts, the EIS will identify avoidance, minimization, and mitigation measures to reduce these impacts, where feasible, to a level below significance.

Review of the EIS will be conducted in accordance with the requirements of NEPA, Council on the Environmental Quality Regulations (40 CFR 1500–1508), the Administrative Procedures Act, other applicable regulations, and the Service's procedures for compliance with those regulations. This notice is being furnished in accordance with 40 CFR 1501.7 of NEPA to obtain suggestions and information from other agencies and the public on the scope of issues and alternatives to be addressed in the EIS. The primary purpose of the scoping process is to identify important issues and alternatives raised by the public, related to the proposed action. Written comments from interested parties are welcome to ensure that the full range of issues related to the permit request is identified. Comments will only be accepted in written form. You may submit written comments by mail, e-mail, or facsimile transmission (see **ADDRESSES**). All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

Dated: February 10, 2005.

Ken McDermond,

Deputy Manager, California/Nevada Operations Office, U.S. Fish and Wildlife Service.

[FR Doc. 05–2965 Filed 2–15–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Fiscal Year 2005 Landowner Incentive Program (Non-Tribal Portion) for States, Territories, and the District of Columbia

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of request for proposals.

SUMMARY: The Service is requesting proposals at this time under the Landowner Incentive Program (LIP) for conservation grants to States, the District of Columbia, and the territories of Puerto Rico, Guam, the United States Virgin Islands, the Northern Mariana Islands, and American Samoa (all hereafter referred to collectively as States), and Tribes. The Service will address will address the Tribal component of LIP under a separate Federal Register notice.

DATES: The Service must receive your grant proposal no later than April 18, 2005.

ADDRESSES: All parts of the grant proposal must be received prior to the deadline. We will not accept facsimile grant proposals. States are required to submit their proposals in two formats: *electronic* (e.g., Word, Word Perfect or PDF files) *and hard copy*. Electronic files must be sent to Kim Galvan at *kim_galvan@fws.gov*. In addition, hard copy grant proposals must be hand-delivered, couriered, or mailed to the Service's Division of Federal Assistance at one of the addresses listed in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Kim Galvan or Genevieve Pullis LaRouche, U.S. Fish and Wildlife Service, Division of Federal Assistance, 4401 North Fairfax Drive—Mailstop MBSP 4020, Arlington, VA 22203–1610; telephone, 703–358–2420; e-mail, *kim_galvan@fws.gov* or *Genevieve LaRouche@fws.gov*. Alternatively, you may contact any of the individuals identified under the Regional Office

Addresses in the **SUPPLEMENTARY INFORMATION** section.

SUPPLEMENTARY INFORMATION: The Service will award grants on a competitive basis to State fish and wildlife agency programs that enhance, protect, or restore habitats that benefit federally listed, proposed, or candidate species, or other at-risk species on private lands. A copy of the FY 2005 LIP Guidelines can be obtained at *http://federalaid.fws.gov/lip/lipguidelines.html* or from the Regional Offices listed in the **SUPPLEMENTARY INFORMATION** section.

The Service will distribute any LIP funds made available in the FY 2005 budget in the same manner as that described in this notice. The Service requests that the States number the pages in their proposals and limit each proposal to no more than 50 pages, inclusive of attachments.

Background Information: Earlier this year, we invited comments from the States regarding proposal ranking criteria the Service uses in evaluating Tier-2 grants for LIP. Based on these comments and our experience operating this program for 3 years, we made some changes to Grant Proposal National Review Team Subcriteria Guidance. It is our hope that these changes will provide greater clarity to the selection criteria and improve the overall fairness of the approval process. The following is a copy of the new Guidance.

Grant Proposal Review Team Ranking Criteria Guidance

Tier-2 Grant Proposals

Review and Scoring Based on Criteria

(a) Proposal provides clear and sufficient detail to describe the program. States are encouraged to describe any projects that are part of a broader scale conservation effort at the State or regional level (10 points total).

- Proposal is easy to understand and contains all elements described in 522 FW 1.3C (0–2 pts).
- The objectives are clearly stated and have quantifiable outcomes (0–2 pts).
- Proposal clearly describes the types of conservation projects and/or activities eligible for funding (0–2 pts).
- Proposal clearly describes how conservation project and/or activities will implement portions of conservation plans on a local, State, regional, or national scale (0–2 pts).
- Proposal describes how species and habitats will be monitored and evaluated to determine effectiveness of LIP-sponsored activities (0–2 pts).

(b) Proposal describes adequate management systems for fiscal, contractual, and performance accountability, including annual monitoring and evaluation of progress toward desired program objectives and performance measures and goals identified in the "expected results or benefits" section of the grant application (7 points total).

- Fiscal accountability process are clearly described (0–2 pts).
- Contractual accountability standards and processes are clearly described (0–2 pts).
- Monitoring process that will ensure accurate and timely evaluation of program performance are clearly described (0–3 pts).

(c) Proposal describes the State's fair and equitable system for fund distribution (10 points total).

- System described is inherently fair and free from bias (0–3) pts.
- Proposal describes State's ranking criteria and process of selecting projects (0–3 pts).
- States' ranking criteria are adequate to prioritize projects based on conservation priorities identified in proposal (0–2 pts).
- Project proposals will be (or were) subject to an objective ranking procedure (diverse ranking panel, computerized ranking model, etc.) (0–2 pts).

(d) Proposal describes outreach efforts to effect broad public awareness, support, and participation (2 points total). LIP outreach efforts funded with Tier-1 grants or other funding sources can be described.

(e) Proposal describes by name the species-at-risk to benefit from the proposal and how the described activities would benefit each species (10 points total).

0 points if no species are identified,
5 points if 1–5 species are identified,
6 points for 6 species,
7 points for 7 species,
8 points for 8 species,
9 points for 9 species, or
10 points for 10 or more species.

Note: Assign fewer points if a proposal merely has a long list attached versus one that talks about what will be done for each species and its habitat on private lands if the proposal is funded.)

(f) Proposal describes the percentage of the State's total LIP Tier-2 program funds identified for use on private lands as opposed to staff and related administrative support (4 points total).

0 points if this is not addressed or admin is >35%,
1 point if admin is 25 to 35%,
2 points if admin is 15 to 25%,
3 points if admin is 5 to 15%,
4 points if admin is 0 to 5%.

"Use on private lands" includes all costs directly related to implementing on-the-ground projects with LIP funds. Activities considered project use include technical guidance to landowner applicants; habitat restoration, enhancement, or management; purchase of conservation easements (including costs for appraisals, land survey, legal review, etc.); biological monitoring of Tier-2 project sites; and performance monitoring of Tier-2 projects. Staffing costs should be included in this category only when the staff-time will directly relate to implementation of a Tier-2 project. Standard Indirect rates negotiated between the State and Federal Government should also be included under Project Use.

"Staff and related administrative support" includes all costs related to administration of LIP. Activities considered administrative included outreach (presentations, development, or printing of brochures, etc.); planning; research; administrative staff support; staff supervision; and overhead charged by subgrantees (unless the rate is an approved negotiated rate for Federal grants.)

(g) Proposal identifies the percentage of nonfederal cost sharing (3 points total).

(Note: I.T. = Insular Territories)

0 points if nonfederal cost share is 25%,
1 point if nonfederal cost share is >25% to 50% (>0 to 25% I.T.),
2 points if nonfederal cost share is >50% to 75% (>25 to 50% I.T.), or
3 points if nonfederal cost share is >75% nonfed share (>50% I.T.).

(h) Proposal demonstrates the urgency of the conservation actions, and the short- and long-term benefits to be gained (10 points total).

- Proposal shows no, low, medium, or high urgency of need for identified at-risk species (0–3 pts).
- Proposal shows no or some short-term benefits to be achieved (0–1 pt).
- Proposal shows no or some long-term benefits to be achieved (0–1 pt).
- Proposal describes discrete, obtainable, and quantifiable performance measures to be accomplished (for example, the number of acres of wetlands or stream miles to be restored, or number of at-risk species whose status within the State will be improved) (0–2 pts).
- Proposal, taken as a whole, demonstrates that the State can implement a LIP that has a high likelihood for success in conserving at-risk species on private lands (0–3 pts).

(i) Has applicant received Tier-2 grant funds previously? (5 points total)

(1) 0 points, if State has received Tier 2-funds previously, or

(2) If State has not received Tier-2 funds previously:

1 point if State has not applied for Tier-2 funds previously,
3 points if State has applied one of two previous years,
5 points if State has applied both previous years.
Total Score Possible = 61 points
Total Score ___

Regional Office Addresses: Hard copy grant proposals must be hand-delivered, couriered, or mailed to the Service's Division of Federal Assistance at the following locations:

Region 1. California, Hawaii, Idaho, Nevada, Oregon, Washington, American Samoa, Guam, and Commonwealth of the Northern Mariana Islands

Regional Director, Division of Federal Assistance, U.S. Fish and Wildlife Service, 911 NE., 11th Avenue, Portland, Oregon 97232–4181. LIP Contact: Verlyn Ebert, (503) 231–6128; *verlyn_ebert@fws.gov*.

Region 2. Arizona, New Mexico, Oklahoma, and Texas

Regional Director, Division of Federal Assistance, U.S. Fish and Wildlife Service, 500 Gold Avenue SW, Suite 9019, PO Box 1306, Albuquerque, New Mexico 87103–1306, LIP Contact: Bob Anderson, (505) 248–7459; *bob_anderson@fws.gov*.

Region 3. Illinois, Indiana. Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin

Regional Director, Division of Federal Assistance, U.S. Fish and Wildlife Service, Bishop Henry Whipple Federal Building, One Federal Drive, Fort Snelling. Minnesota 55111–4056. LIP Contact: Lucinda Corcoran, (612) 713–5135; *lucinda_corcoran@fws.gov*.

Region 4. Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Puerto Rico, and the U.S. Virgin Islands

Regional Director, Division of Federal Assistance, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345. LIP Contact: Christine Willis, (404) 679–4154; *Christine_willis@fws.gov*.

Region 5. Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virgina, and West Virginia

Regional Director, Division of Federal Assistance, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley MA 01035–9589. LIP Contact: Colleen Sculley, (413) 253–8509; *colleen_sculley@fws.gov*.

Region 6. Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming

Regional Director, Division of Federal Assistance, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225–0486. LIP Contact: Otto Jose, (303) 236–8156 ext. 236; *otto_jose@fws.gov*.

Region 7. Alaska

Regional Director, Division of Federal Assistance, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503–6199. LIP Contact: Nancy Tankersley, (907) 786–3545; *nancy_tankersley@fws.gov*.

Dated: February 4, 2005.

Kris LaMontagne,

Acting Assistant Director.

[FR Doc. 05–2929 Filed 2–15–05; 8:45 am]

BILLING CODE 4310–SS–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Multistate Conservation Grant Program; Priority List for Conservation Projects

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of receipt of priority list.

SUMMARY: The U.S. Fish and Wildlife Service is publishing in the **Federal Register** the priority list of wildlife and sport fish conservation projects submitted by the International Association of Fish and Wildlife Agencies for funding under the Multistate Conservation Grant Program. This notice is required by the Wildlife and Sport Fish Restoration Programs Improvement Act of 2000 (Public Law 106–408). FY 2005 grants may be made from this priority list.

FOR FURTHER INFORMATION CONTACT: Pam Matthes, Multistate Conservation Grants Program Coordinator, Division of Federal Assistance, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Mail Stop FA–4020, Arlington, Virginia 22203; phone (703) 358–2066; or e-mail *Pam_Matthes@fws.gov*.

SUPPLEMENTARY INFORMATION: The Wildlife and Sport Fish Restoration Programs Improvement Act of 2000 (Improvement Act) amended the Pittman-Robertson Wildlife Restoration Act (16 U.S.C. 669 *et seq.*) and the Dingell-Johnson Sport Fish Restoration Act (16 U.S.C. 777 *et seq.*) and established the Multistate Conservation Grant Program. The Improvement Act authorizes grants of up to $3 million annually from funds available under each of the Restoration Acts, for a total of up to $6 million annually. Grants may be made from a priority list of projects submitted by the International Association of Fish and Wildlife Agencies (IAFWA), which represent the State fish and wildlife agencies. The Director of the U.S. Fish and Wildlife Service, exercising the authority of the Secretary of the Interior, need not fund all recommended projects, but must not fund projects that are not recommended.

To be eligible for consideration by the IAFWA, a project must benefit fish and/or wildlife conservation in at least 26 States, a majority of the States in a region of the U.S. Fish and Wildlife Service, or a regional association of State fish and wildlife agencies. Grants may be made to a State or group of States, to nongovernmental organizations, and to the U.S. Fish and Wildlife Service or a State or group of States for the purpose of carrying out the National Survey of Fishing, Hunting and Wildlife-Associated Recreation. IAFWA requires proposals to address its National Conservation Needs, which are announced annually at the same time as the request for proposals.

The IAFWA prepares the priority list through a committee comprised of the heads of State fish and game departments (or their designees) in consultation with non-governmental organizations that represent conservation organizations, sportsmen organizations and industries that support or promote hunting, trapping, recreational shooting, bow hunting, or archery. The priority list must be approved by majority vote of the heads of State fish and game departments (or their designees).

The priority list of projects submitted by the IAFWA follows:

Attachments

Dated: December 6, 2004.

Matt Hogan,

Deputy Director.

BILLING CODE 4310–55–P

2005 Multistate Conservation Grant Proposals Selected for Funding

ID	Project Title	Submitter	2005 WR	2005 SFR	2006 WR	2006 SFR	2007 WR	2007 SFR	Total Grant Request
05-001	STEP OUTSIDE--Expanding Recruitment Opportunities	National Shooting Sports Foundation	$49,250	$49,250	$73,200	$73,200	$73,200	$73,200	$391,300
05-002	The Future of Hunting & Shooting Sports: Research Strategies to Increase Participation & Retention	National Shooting Sports Foundation w/ Responsive Management	$11,964		$174,000		$203,000		$388,964
05-003	Status of Western Native Freshwater Fishes	Western Division of the American Fisheries Society		$50,000		$30,000			$80,000
05-005	Hunter Education Program Reviews: A Peer Evaluation Approach	International Hunter Education Assoc.	$45,000		$45,000		$45,000		$135,000
05-006	OWP's Approach to Expanding Multistate Collaboration & Communication	Organization of Wildlife Planners	$2,250.00	$2,250.00					$4,500
05-009	How Much Is Enough for 2007? A regional wildlife habitat needs assessment for the 2007 Farm Bill	Wildlife Management Institute	$91,000						$91,000
05-014	Eastern Brook Trout Joint Venture	Conservation Management Institute		$250,781		$180,810			$431,592
05-019	Enhance & Improve the *Design Handbook for Recreation & Fishing Access Facilities* to include new standards and technical considerations	State Organization of Boating Administrators		$96,145					$96,145
05-020	Enhancement of the Multi-State Aquatic Resources Information System (MARIS) to support the National Fish Habitat Initiative	American Fisheries Society		$188,294		$188,294		$192,719	$569,307
05-021	National Master Naturalist Initiative	Texas Parks & Wildlife Department	$45,700	$45,700					$91,400
05-023	Focus on The Woman - Recruitment & Retention Strategies and Tactics for Women Involved in Outdoor Recreation	National Wild Turkey Federation	$39,440	$39,440					$78,880
05-026	Case Studies and Guidebook for Conducting Instream Flows for Riverine Resource Stewardship	Instream Flow Council, Inc.		$32,400		$65,900			$98,300
05-027	Management Assistance Team	IAFWA	$216,294.07	$216,294.07	$232,798.85	$232,798.85	$237,814.14	$237,814.14	$1,373,814.13

2005 Multistate Conservation Grant Proposals Selected for Funding

ID	Project Title	Submitter	2005 WR	2005 SFR	2006 WR	2006 SFR	2007 WR	2007 SFR	Total Grant Request
05-028*	Furbearer Management & Communication Professional Development Workshops for Fish & Wildlife Professionals and Colleges/Universities with Wildlife Programs	IAFWA Furbearer Resources Task Force & Education, Outreach, & Diversity Committees	$25,000						$25,000
05-029*	New Strategies to Increase Fishing License Sales, Revenues & Participation	IAFWA's AWDS Task Force & the American Sportfishing Association		$64,548					$64,548
05-030*	Coordination of the National Fish Habitat Initiative	IAFWA Fisheries & Water Resources Policy Committee		$151,250		$130,430		$109,920	$391,600
05-031	A Summary of the Best Current Practices for Recruiting & Retaining Participants in Hunting, Angling, Boating & Shooting Sports	AFWA	$8,187.50	$8,187.50					$16,375
05-035	Representation of the Western Association of Fish & Wildlife Agencies in International Conventions & Protocols	WAFWA	$4,950	$4,950	$4,950	$4,950	$7,700	$7,700	$35,200
05-036	Representation of the Southeastern Association of Fish & Wildlife Agencies in International Conventions & Protocols	SEAFWA	$4,950	$4,950	$4,950	$4,950	$7,700	$7,700	$35,200
05-037	Representation of the Northeastern Association of Fish & Wildlife Agencies in International Conventions & Protocols	NEAFWA	$4,950	$4,950	$4,950	$4,950	$7,700	$7,700	$35,200
05-038	Representation of the Midwest Association of Fish & Wildlife Agencies in International Conventions & Protocols	MAFWA	$4,950	$4,950	$4,950	$4,950	$7,700	$7,700	$35,200
		TOTAL	$553,886	$1,214,340	$544,799	$921,233	$589,814	$644,453	$4,468,525

NOTES:
05-028*: The funding request of this propcsal was reduced by the IAFWA Executive Committee but provides for video production.
05-029*: This multi-year proposal was funded for 2005.
05-030*: The funding request of this proposal was reduced by the IAFWA Executive Committee by removing IAFWA coordinator salary and benefits.

[FR Doc. 05–2928 Filed 2–15–05; 8:45 am]
BILLING CODE 4310–55–C

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–320–1330–PB–24 1A]

OMB Control Number 1004–0103; Information Collection Submitted to the Office of Management and Budget Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has submitted the proposed collection of information listed below to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). On April 2, 2004, the BLM published a notice in the **Federal Register** (69 FR 17443) requesting comments on this proposed collection. The comment period ended on June 1, 2004. The BLM received one comment. You may obtain copies of the proposed collection of information and related forms and explanatory material by contacting the BLM Information Collection Clearance Officer at the telephone number listed below.

The OMB is required to respond to this request within 60 days but may respond after 30 days. For maximum consideration your comments and suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget, Interior Department Desk Officer (1004–0103), at OMB–OIRA via facsimile to (202) 395–6566 or e-mail to *OIRA_DOCKET@omb.eop.gov*. Please provide a copy of your comments to the Bureau Information Collection Clearance Officer (WO–630), Bureau of Land Management, Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

Nature of Comments: We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility.

2. The accuracy of the BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;

3. The quality, utility and clarity of the information to be collected; and

4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: Mineral Materials Disposal (43 CFR 3600, 3601, and 3602).

OMB Control Number: 1004–0103.

Bureau Form Number: 3600–9.

Abstract: The Bureau of Land Management proposes to extend the currently approved collection of information for the disposal of mineral materials on public lands through sales (sand, gravel, and petrified wood). BLM uses the information the applicants provide to:

(1) Determine if the sale of the mineral materials is in the public interest;

(2) Mitigate any environmental impacts associated with the mineral development;

(3) Get fair market value for the materials sold; and

(4) Prevent the trespass removal of the resource.

Frequency: Annually (sometimes monthly for some contracts).

Description of Respondents: Operators desiring sand, gravel, stone, and other mineral materials from public lands under BLM jurisdiction.

Estimated Completion Time: Varies from 15 minutes to several days for large projects, with an average of 30 minutes.

Annual Responses: 5,400.

Application Fee per Response: 0.

Information Collection Cost Recovery Fee: $20.

Annual Burden Hours: 2,700.

Bureau Clearance Officer: Ian Senio, (202) 452–5033.

Dated: January 5, 2005.

Ian Senio,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 05–2933 Filed 1–15–05; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–220–1020–BP–24 1A]

OMB Control Number 1004–0041; Information Collection Submitted to the Office of Management and Budget Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has submitted an extension of a currently approved collection to collect the information listed below to the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). On November 24, 2004, the BLM published a notice in the **Federal Register** (69 FR 68388) requesting comment on this information collection. The comment period ended on January 24, 2005. The BLM received no comments. You may obtain copies of the collection of information and related forms and explanatory material by contracting the BLM Information Collection Clearance Office at the telephone listed below.

The OMB must respond to this request within 60 days but may respond after 30 days. For maximum consideration your comments and suggestions on the requirements should be directed within 30 days to the Office of Management and Budget, Interior Department Desk Officer (1004–0041), at OMB–OIRA via facsimile to (202) 395–6566 or e-mail to *OIRA_DOCKET@omb.eop.gov*. Please provide a copy of your comments to the Bureau Information Collection Clearance Officer (WO–630), Bureau of Land Management, Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

Nature of Comments: We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;

2. The accuracy of BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;

3. The quality, utility and clarity of the information we collect; and

4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: Authorizing Grazing Use (43 CFR subparts 4110 and 4130).

OMB Control Number: 1004–0041.

Bureau Form Number:

Forms	4130–1	4130–1a	4130–1b	4130–3a	4130–4	4130–5
Annual # of Responses Filed	6,000	6,000	6,000	7,689	600	15,000
Average Response Time	20 min.	15 min.	15 min.	14 min.	20 min.	25 min.
Annual Burden Hours	2,000	1,500	1,500	1,794	200	6,250
Cost per Hour to Respondent	$20	$20	$20	$20	$20	$20
Annual Cost	$40,000	$30,000	$30,000	$35,880	$4,000	$125,000

Abstract: The BLM uses the information submitted by permittees and lessees to authorize grazing on public lands.

Frequency: Annually or as needed during the scheduled grazing periods.

Description of Respondents: Lessees and permittees.

Estimated Completion Time: Varies 15–25 minutes.

Annual Responses: 41,289.

Information Collection Cost Recovery Fee: $20.

Annual Burden Hours: 13,244.

Bureau Clearance Officer: Ian Senio, (202) 452–5033.

Dated: December 22, 2004.

Ian Senio,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 05–2934 Filed 2–15–05; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–260–09–1060–00–24 1A]

Wild Horse and Burro Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Announcement of Meeting.

SUMMARY: The Bureau of Land Management (BLM) announces that the Wild Horse and Burro Advisory Board will conduct a meeting on matters pertaining to management and protection of wild, free-roaming horses and burros on the Nation's public lands.

DATES: The Advisory Board will meet Monday, March 14, 2005, from 8 a.m. to 5 p.m., local time. This will be a one day meeting.

ADDRESSES: The Advisory Board will meet at the Owyhee Plaza Hotel, 1109 Main Street, Boise, Idaho, 83702 (208) 343–4611. Written comments pertaining to the Advisory Board meeting should be sent to: Bureau of Land Management, National Wild Horse and Burro Program, WO–260, Attention: Ramona Delorme, 1340 Financial Boulevard, Reno, Nevada, 89502–7147. Submit written comments pertaining to the Advisory Board meeting no later than close of business March 9, 2005. See **SUPPLEMENTARY INFORMATION** section for electronic access and filing address.

FOR FURTHER INFORMATION CONTACT: Janet Neal, Wild Horse and Burro Public Outreach Specialist, 775–861–6583. Individuals who use a telecommunications device for the deaf (TDD) may reach *Ms. Neal* at any time by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Public Meeting

Under the authority of 43 CFR part 1784, the Wild Horse and Burro Advisory Board advises the Secretary of the Interior, the Director of the BLM, the Secretary of Agriculture, and the Chief of Forest Service, on matters pertaining to management and protection of wild, free-roaming horses and burros on the Nation's public lands. The tentative agenda for the meeting is:

Monday, March 14, 2005 (8 a.m.–5 p.m.)

8 a.m. Call to Order & Introductions:
8:30 a.m. Old Business:
—Program Updates
Break (9:30 a.m.–9:45 a.m.)
9:45 a.m. Old Business (continued):
National Adoption Plan
CA Volunteer Pilot Project Presentation
Lunch (11:45 a.m.–1 p.m.)
1 p.m. New Business:
Current Program Items
Break (2:30 p.m.–2:45 p.m.)
2:45 p.m. Board Recommendations
4 p.m. Public Comment
4:45 p.m. Recap/Summary/Next Meeting/Date/Site
5 p.m. Adjourn

The meeting site is accessible to individuals with disabilities. An individual with a disability needing an auxiliary aid or service to participate in the meeting, such as interpreting service, assistive listening device, or materials in an alternate format, must notify the person listed under **FOR FURTHER INFORMATION CONTACT** two weeks before the scheduled meeting date. Although the BLM will attempt to meet a request received after that date, the requested auxiliary aid or service may not be available because of insufficient time to arrange it.

The Federal Advisory Committee Management Regulations [41 CFR 101–6.1015(b),] require BLM to publish in the **Federal Register** notice of a meeting 15 days prior to the meeting date.

II. Public Comment Procedures

Members of the public may make oral statements to the Advisory Board on March 14, 2005 at the appropriate point in the agenda. This opportunity is anticipated to occur at 4 p.m., local time. Persons wishing to make statements should register with the BLM by noon on March 14, 2005, at the meeting location. Depending on the number of speakers, the Advisory Board may limit the length of presentations. At previous meetings, presentations have been limited to three minutes in length. Speakers should address the specific wild horse and burro-related topics listed on the agenda. Speakers must submit a written copy of their statement to the address listed in the **ADDRESSES** section or bring a written copy to the meeting.

Participation in the Advisory Board meeting is not a prerequisite for submission of written comments. The BLM invites written comments from all interested parties. Your written comments should be specific and explain the reason for any recommendation. The BLM appreciates any and all comments, but those most useful and likely to influence decisions on management and protection of wild horses and burros are those that are either supported by quantitative information or studies or those that include citations to and analysis of applicable laws and regulations. Except for comments provided in electronic format, speakers should submit two copies of their written comments where feasible. The BLM will not necessarily consider comments received after the time indicated under the **DATES** section or at locations other than that listed in the **ADDRESSES** section.

In the event there is a request under the Freedom of Information Act (FOIA) for a copy of your comments, the BLM will make them available in their entirety, including your name and address. However, if you do not want the BLM to release your name and address in response to a FOIA request, you must state this prominently at the beginning of your comment. The BLM will honor your request to the extent allowed by law. The BLM will release all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, in their entirety, including names and addresses.

Electronic Access and Filing Address

Speakers may transmit comments electronically via the Internet to: *Janet_Neal@blm.gov*. Please include the identifier "WH&B" in the subject of your message and your name and address in the body of your message.

Dated: February 11, 2005.

Thomas H. Dyer,

Assistant Director, Renewable Resources and Planning.

[FR Doc. 05–3031 Filed 2–14–05; 10:28 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf (OCS), Pacific Region, Environmental Documents Prepared for Granting Suspensions of Production or Operations for Nine Units and One Non-Unitized Lease Located on the Federal OCS Offshore California

AGENCY: Minerals Management Service (MMS), Interior.

ACTIONS: Notice of Availability of Environmental Assessments (EAs) and Findings of No Significant Impact (FONSI).

SUMMARY: The MMS prepared six EAs for processing applications for Suspensions of Production or Operations for nine units and one non-unitized lease located on the Pacific OCS and issued a FONSI for each EA pursuant to the requirements of the National Environmental Policy Act (NEPA). These environmental documents are available on MMS's Web site at *http://www.mms.gov/omm/pacific.*

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Pacific OCS Region, 770 Paseo Camarillo, Camarillo, California 93010, Mr. Maurice Hill, telephone (805) 389–7815.

SUPPLEMENTARY INFORMATION: A suspension is defined as a deferral of the requirement to produce or to conduct leaseholding operations. The length of the suspensions analyzed in the EAs varies by application to allow unit/lease operators time to conduct the activities described in their suspension applications. Each EA provides an analysis of activities that would occur during the suspensions and includes three alternatives: (1) Grant Suspension(s) (Proposed Action), (2) Deny Suspension(s), and (3) No Action. A decision by MMS on the suspensions will not take place until after they have been subject to the consistency review process set forth in the Coastal Zone Management Act.

The MMS prepares NEPA documents for Federal OCS oil and gas exploration and development activities and other operations. The MMS prepares EAs to determine whether proposed projects or operations constitute a major Federal action that significantly affects the quality of the human environment as described in NEPA Section 102(2)(C). A FONSI is prepared in those instances where the MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the EA. MMS completed the EAs and issued the FONSIs on February 11, 2005. This Notice constitutes the public Notice of Availability of environmental documents required under the NEPA regulations.

Dated: February 4, 2005.

Thomas A. Readinger,

Associate Director for Offshore Minerals Management.

[FR Doc. 05–3004 Filed 2–15–05; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Lake Berryessa Visitor Services Plan, Napa County, CA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Reopening of comment period for review of Draft Environmental Impact Statement (DEIS).

SUMMARY: The Bureau of Reclamation is reopening the review period for the DEIS to consider additional or new information related to alternatives and impacts from the alternatives. Comments previously submitted need not be resubmitted. The notice of availability of the DEIS and notice of public workshop and notice of public hearings was published in the **Federal Register** on October 31, 2003 (68 FR 62097). A notice for an additional open house meeting was published in the **Federal Register** on December 19, 2003 (68 FR 70835). The public review period was originally to end on February 4, 2004, but was first extended to March 22, 2004 (69 FR 7261). The public review period was extended a second time to April 22, 2004 (69 FR 24668).

DATES: Submit comments on the DEIS on or before April 4, 2005.

ADDRESSES: Send comments on the DEIS to Ms. Janet Sierzputowski, Bureau of Reclamation, 2800 Cottage Way (Attn: MP–140), Sacramento, CA 95825. Comments may also be faxed to Ms. Sierzputowski at (916) 978–5114 or 5177.

FOR FURTHER INFORMATION CONTACT: Mr. Pete Lucero at (707) 966–2111 x106. A copy of the Executive Summary, DEIS, the technical appendices, and/or a CD of the information on the Lake Berryessa Web site may be obtained by calling Ms. Sierzputowski at (916) 978–5112.

SUPPLEMENTARY INFORMATION: Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, 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. 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 disclosure in their entirety.

Dated: February 3, 2005.

Frank Michny,

Regional Environmental Officer, Mid-Pacific Region.

[FR Doc. 05–2974 Filed 2–15–05; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–499]

In the Matter of Certain Audio Digital-to-Analog Converters and Products Containing Same; Termination of the Investigation; Issuance of Limited Exclusion Order

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has terminated the above-captioned investigation and has issued a limited exclusion order.

FOR FURTHER INFORMATION CONTACT: Timothy P. Monaghan, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3152. Copies of the public version of the ID and all nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be

viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on November 14, 2003, based on a complaint filed on behalf of Cirrus Logic, Inc. of Austin, TX ("Cirrus"). 68 FR 64641 (Nov. 14, 2003). The complaint, as supplemented, alleged violations of section 337 in the importation into the United States, sale for importation, and sale within the United States after importation of certain audio digital-to-analog converters and products containing same by reason of infringement of claims 1 and 11 of U.S. Patent No. 6,492,928 ("the '928 patent"). The notice of investigation named Wolfson Microelectronics, PLC of Edinburgh, United Kingdom; and Wolfson Microelectronics, Inc. of San Diego, CA (collectively "Wolfson") as respondents.

On December 29, 2003, the ALJ issued an ID (Order No. 5) granting complainant's motion to amend the complaint and notice of investigation to add allegations of infringement of claims 2, 3, 5, 6, and 15 of the '928 patent, and of claims 9, 12, and 19 of U.S. Patent No. 6,011,501 ("the '501 patent"). 69 FR 4177 (Jan. 28, 2004). On July 1, 2004, the ALJ issued an ID (Order No. 16) granting complainant's motion to terminate the investigation as to claims 1 and 2 of the '928 patent. On July 27, 2004, the ALJ issued an ID (Order No. 24) granting complainant's motion to terminate the investigation in part as to claim 11 of the '928 patent. Order Nos. 5, 16, and 24 were not reviewed by the Commission.

The ALJ held an evidentiary hearing in the investigation from August 3, 2004, to August 11, 2004, and on November 15, 2004, he issued his final ID finding a violation of section 337 based on his findings that the asserted claims of the '501 patent are infringed, that they are not invalid in view of any prior art, and that claims 9 and 12 of the '501 patent are not invalid because of failure to provide an enabling written description of the claimed invention. The ALJ found the '928 patent to be unenforceable because the inventors intentionally withheld highly material prior art from the examiner during the prosecution of the '928 patent application at the United States Patent and Trademark Office ("USPTO"). As an independent ground for unenforceability, the ALJ found that the '928 patent is unenforceable because one person was mistakenly listed on the patent as an inventor. The ALJ found that the accused devices infringe the asserted claims of the '928 patent, if enforceable, that the asserted claims of the '928 patent are not invalid in view of any prior art, or because of a failure to provide an enabling written description of the claimed invention, or for failure to disclose the best mode.

On November 23, 2004, the USPTO issued a certificate correcting the inventorship of the '928 patent thereby curing one ground for unenforceability of that patent. *See Viskase Corp.* v. *American National Can Co.*, 261 F.3d 1316, 1329 (Fed. Cir. 2001) ("Absent fraud or deceptive intent, the correction of inventorship does not affect the validity or enforceability of the patent for the period before the correction."). On November 30, 2004, Cirrus, Wolfson and the Commission's investigative attorney filed petitions for review of the final ID, and on December 7, 2004, all parties filed responses. On December 30, 2004, the Commission determined to review and reverse the ID's finding that the '928 patent is unenforceable due to incorrect inventorship in view of the recently issued certificate of correction by the USPTO. 70 FR 1275 (Jan. 6, 2005). It further determined not to review the remainder of the ID, thereby finding a violation of section 337. Id. The Commission invited the parties to file written submissions on remedy, the public interest and bonding, and provided a schedule for filing such submissions. Id.

Having reviewed the record in this investigation, including the parties' written submissions and responses thereto, the Commission determined that the appropriate form of relief is a limited exclusion order prohibiting the importation of Wolfson's accused audio digital-to-analog converters that infringe claims 9, 12 and 19 of the '501 patent. The limited exclusion order applies to any of the affiliated companies, parents, subsidiaries, licensees, contractors, or other related business entities, or their successors or assigns, of Wolfson. The Commission further determined that the statutory public interest factors enumerated in section 337(d)(1), 19 U.S.C. 1337(d)(1), do not preclude issuance of the limited exclusion order. Finally, the Commission determined that the bond under the limited exclusion order during the Presidential review period shall be in the amount of 5 percent of the entered value of the imported articles. The Commission's order and opinion in support thereof were delivered to the President on the day of their issuance.

The authority for the Commission's determinations is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.50 of the Commission's Rules of Practice and Procedure (19 CFR 210.50).

Issued: February 11, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–2972 Filed 2–15–05; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–249 and 731–TA–262, 263, and 265 (Second Review)]

Certain Iron Construction Castings From Brazil, Canada, and China

AGENCY: International Trade Commission.

ACTION: Scheduling of expedited five-year reviews concerning the countervailing and antidumping duty orders on certain iron construction castings from Brazil, Canada, and China.

SUMMARY: The Commission hereby gives notice of the scheduling of expedited reviews pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)) (the Act) to determine whether revocation of the countervailing duty order on heavy iron construction castings from Brazil, the antidumping duty order on heavy iron construction castings from Canada, and/or the revocation of the antidumping duty orders on iron construction castings (heavy and light) from Brazil and China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: January 11, 2005.

FOR FURTHER INFORMATION CONTACT: Harry Lenchitz (202–205–2737 or *harry.lenchitz@usitc.gov*), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://*

www.usitc.gov). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background. On January 4, 2005, the Commission determined that the domestic interested party group response to its notice of institution (69 FR 58952, October 1, 2004) of the subject five-year reviews was adequate and that the respondent interested parties responses were inadequate. The Commission did not find any other circumstances that would warrant conducting full reviews.[1] Accordingly, the Commission determined that it would conduct expedited reviews pursuant to section 751(c)(3) of the Act.[2]

Staff report. A staff report containing information concerning the subject matter of the reviews will be placed in the nonpublic record on May 3, 2005, and made available to persons on the Administrative Protective Order service list for these reviews. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions. As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the reviews and that have provided individually adequate responses to the notice of institution,[3] and any party other than an interested party to the reviews may file written comments with the Secretary on what determinations the Commission should reach in the reviews. Comments are due on or before May 10, 2005, and may not contain new factual information. Any person that is neither a party to the five-year reviews nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the reviews by May 10, 2005. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination. The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: February 9, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–2925 Filed 2–15–05; 8:45 am]

BILLING CODE 7020–02–P

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

[2] Vice Chairman Deanna Tanner Okun and Commissioner Daniel R. Pearson dissenting.

[3] The Commission has found the responses submitted by Deeter Foundry, Inc.; East Jordan Iron Works, Inc.; LeBaron Foundry, Inc.; Municipal Castings, Inc.; Neenah Foundry Co.; Tyler Pipe Co.; and U.S. Foundry & Mfg. Corp. to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–466]

Advice Concerning Possible Modifications to the U.S. Generalized System of Preferences, 2004 Review

AGENCY: International Trade Commission.

ACTION: Institution of investigation and scheduling of hearing.

SUMMARY: Following receipt on February 7, 2005 of a request from the United States Trade Representative (USTR) under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332 (g)), the Commission instituted investigation No. 332–466, Advice Concerning Possible Modifications to the U.S. Generalized System of Preferences, 2004 Review.

Background: As requested by the USTR, in accordance with sections 503(a)(1)(A), 503(e), and 131(a) of the Trade Act of 1974 (1974 Act), and under section 332(g) of the Tariff Act of 1930, the Commission will provide advice as to the probable economic effect on U.S. industries producing like or directly competitive articles and on consumers of the elimination of U.S. import duties for all beneficiary developing countries under the GSP for the following HTS subheadings: 0804.10.20, 0804.10.40, 0804.10.60, 0804.10.80, 2008.99.25, 5702.51.20, 5702.91.30, 5702.92.0010, 5702.99.1010, 5703.10.0020, 5703.20.10, 5703.30.0020, and 7320.10.60. In providing its advice on these articles, the USTR asked that the Commission assume that the benefits of the GSP would not apply to imports that would be excluded from receiving such benefits by virtue of the competitive need limits specified in section 503(c)(2)(A) of the 1974 Act.

As requested by the USTR, pursuant to section 332(g) of the Tariff Act of 1930, the Commission will provide advice as to the probable economic effect on U.S. industries producing like or directly competitive articles and on consumers of the removal of Russia from eligibility for duty-free treatment under the GSP for HTS subheading 3904.61.00.

As requested under section 332(g) of the Tariff Act of 1930 and in accordance with section 503(d)(1)(A) of the 1974 Act, the Commission will provide advice on whether any industry in the United States is likely to be adversely affected by a waiver of the competitive need limits specified in section 503(c)(2)(A) of the 1974 Act for the Philippines for HTS subheading 3823.19.20; for Argentina for HTS subheadings 4107.19.50 and 4107.92.80; and for Turkey for HTS subheading 6802.91.25. With respect to the competitive need limit in section 503(c)(2)(A)(i)(I) of the 1974 Act, the Commission, as requested, will use the dollar value limit of $115,000,000.

As requested by the USTR, the Commission will seek to provide its advice not later than May 9, 2005.

DATES: *Effective Date:* February 9, 2005.

FOR FURTHER INFORMATION CONTACT:

Project Leader, Cynthia B. Foreso ((202) 205–3348 or *cynthia.foreso@usitc.gov*).

Deputy Project Leader, Eric Land ((202) 205–3349 or *eric.land@usitc.gov*).

The above persons are in the Commission's Office of Industries. For information on legal aspects of the investigation, contact William Gearhart of the Commission's Office of the General Counsel at (202) 205–3091 or *william.gearhart@usitc.gov*.

Public Hearing: A public hearing in connection with this investigation is scheduled to begin at 9:30 a.m. on March 23, 2005, at the United States International Trade Commission Building, 500 E Street, SW., Washington, DC. All persons have the right to appear by counsel or in person, to present information, and to be heard. Persons wishing to appear at the public hearing should file a letter with the Secretary, United States International Trade Commission, 500 E St., SW., Washington, DC 20436, not later than the close of business (5:15 p.m.) on

March 4, 2005, in accordance with the requirements in the "Submissions" section below. In the event that no requests to appear at the hearing are received by the close of business on March 4, 2005, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary to the Commission ((202) 205–1816) after March 4, 2005 to determine whether the hearing will be held.

Written Submissions: In lieu of or in addition to participating in the hearing, interested parties are invited to submit written statements or briefs concerning these investigations. All written submissions, including requests to appear at the hearing, statements, and briefs, should be addressed to the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436. Any prehearing statements or briefs should be filed not later than 5:15 p.m., March 7, 2005; the deadline for filing posthearing statements or briefs is 5:15 p.m., March 30, 2005. All written submissions must conform with the provisions of section 201.8 of the Commission's Rules of Practice and Procedure (19 CFR 201.8). Section 201.8 of the rules requires that a signed original (or a copy designated as an original) and fourteen (14) copies of each document be filed. In the event that confidential treatment of the document is requested, at least four (4) additional copies must be filed, in which the confidential information must be deleted (see the following paragraph for further information regarding confidential business information). The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the rules (see Handbook for Electronic Filing Procedures, *ftp://ftp.usitc.gov/pub/reports/electronic_filing_handbook.pdf*). Any submissions that contain confidential business information must also conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the "confidential" or "nonconfidential" version, and that the confidential business information be clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available in the Office of the Secretary to the Commission for inspection by interested parties.

The Commission may include some or all of the confidential business information submitted in the course of these investigations in the report it sends to the USTR and the President. As requested by the USTR, the Commission will publish a public version of the report. However, in the public version, the Commission will not publish confidential business information in a manner that would reveal the operations of the firm supplying the information.

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Secretary at (202) 205–2000.

Issued: February 10, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–2924 Filed 2–15–05; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Index and Description of Major Information Systems and Availability of Records

AGENCY: International Trade Commission.

ACTION: Notice announcing availability of public information.

SUMMARY: The United States International Trade Commission (USITC or Commission) provides notice of its index and description of major information systems and availability of its records.

FOR FURTHER INFORMATION CONTACT: Marilyn R. Abbott ((202) 205–2000), Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission and persons seeking information on the Commission, or making submittals or requests, and seeking decisions, may contact the Office of the Secretary at (202) 205–2000.

SUPPLEMENTARY INFORMATION: The Commission makes agency records available to the public in a number of ways: *Electronic Document Information System (II).* This system provides Internet access to public documents filed with the Office of the Secretary. Docketing information for USITC investigations instituted since 1996 is available electronically by accessing the USITC Internet site at "*http://www.usitc.gov*" or directly at "*http://edis.usitc.gov.*"

FOIA. Commission records may also be requested under the Freedom of Information Act (FOIA) (5 U.S.C. 552). These requests are filed with the Secretary at 500 E Street, SW., Washington, DC 20436, and shall indicate clearly in the request letter, and on the envelope if the request is in paper form, that it is a "Freedom of Information Act Request." A written request may be made either (1) in paper form, or (2) electronically by contacting the Commission at "*http://www.usitc.gov/secretary/foia/index.htm.*" Commission rules for requesting information under FOIA are set out in 19 CFR 201.17–201.21.

Frequently requested FOIA-processed records can be accessed by following the "Privacy Statement, Accessibility Statement, Freedom of Information, and Other Web Site Policies and Important Links" link on the USITC Internet site at "*http://www.usitc.gov.*"

Harmonized Tariff Schedule of the United States. The USITC maintains and publishes the Harmonized Tariff Schedule of the United States (HTS) pursuant to the omnibus Trade and Competitiveness Act of 1988. The Tariff Information Center, providing the current HTS and related materials, is available on-line at "*http://www.usitc.gov/tata/hts/index.html.*"

Government Information Locator. The USITC has an entry in the Government Information Locator Service, at "*http://www.access.gpo.gov/su_docs/gils/index.html.*"

Libraries. The Commission maintains two libraries, its National Library of International Trade (the Commission's main reference library), located on the 3rd floor of the Commission building, and a law library, located on the 6th floor. Both are open to the public during normal business hours of 8:45 a.m. to 5:15 p.m. The libraries contain, among other things, complete sets of Commission reports. To determine whether the respective libraries have the information sought, persons seeking information may call the main library at (202) 205–2630, or the law library at (202) 205–3287.

Public Reading Room. The Commission's docket files in the Office of the Secretary contain the submissions made in all Commission investigations. The files are available for inspection in the Public Reading Room in the Office of the Secretary. The Public Reading Room is located on the 1st floor of the Commission building. Persons having questions regarding availability of records may call the Dockets staff at

(202) 205–1802. Depending on the age of the records requested, the files are available electronically, in hard copy, and/or on microfiche.

Reports. Reports containing the findings and conclusions of Commission investigations and Commissioner opinions are available in hard copy and/or CD-ROM, generally at no charge, from the Office of the Secretary (telephone (202) 205–1806). Reports are also made available for download from the USITC Internet site "*http://www.usitc.gov.*"

Rules. The Commission's Rules of Practice and Procedure set out the procedures used in Commission proceedings. The rules in 19 CFR Parts 200–213 are located in the Code of Federal Regulations and the Commission's Internet site.

Tariff and Trade DataWeb. The Commission's DataWeb, "*http://dataweb.usitc.gov,*" provides public access to U.S. tariff and international trade data. Data from 1989 are available and can be retrieved in a number of classification systems.

USITC Internet Site. Recent Commission notices, news releases, meeting agendas, monthly calendars, general information "fact sheets," Commissioner biographies, schedules of pending investigations (including hearing dates and deadlines for written submissions), reports, information frequently requested under FOIA, and general information about the Commission are available electronically through the Internet at "*http://www.usitc.gov.*"

Copies of Commission public records can also be obtained from the Secretary.

By order of the Commission:

Issued: February 10, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–2923 Filed 2–15–05; 8:45 am]

BILLING CODE 7020–02–P

LIBRARY OF CONGRESS

Copyright Royalty Judges

[Docket No. 2005–1 CRJ DTRA]

Digital Performance Right in Sound Recordings and Ephemeral Recordings

AGENCY: Copyright Royalty Judges, Library of Congress.

ACTION: Notice announcing commencement of proceeding with request for Petitions to Participate.

SUMMARY: The Interim Chief Copyright Royalty Judge of the Library of Congress is announcing the commencement of the proceeding to determine the reasonable rates and terms for two statutory licenses for the period beginning January 1, 2006, and ending on December 31, 2010. One license allows public performances of sound recordings by means of an eligible nonsubscription transmission and transmissions made by a new subscription service; the other permits the making of an ephemeral phonorecord of a sound recording in furtherance of making a permitted public performance of the sound recording. The Interim Chief Copyright Royalty Judge is also announcing the date by which a party who wishes to participate in the rate adjustment proceeding must file its Petition to Participate and the accompanying $150 filing fee..

DATES: Petitions to Participate and the filing fee are due no later than March 18, 2005.

ADDRESSES: If hand delivered by a private party, an original and five copies of a Petition to Participate along with the $150 filing fee should be brought to Room LM–401 of the James Madison Memorial Building between 8:30 a.m. and 5 p.m. and the envelope should be addressed as follows: Copyright Office General Counsel/CRJ, U.S. Copyright Office, James Madison Memorial Building, Room LM–401, 101 Independence Avenue, SE., Washington, DC 20559–6000. If delivered by a commercial carrier, an original and five copies of a Petition to Participate along with the $150 filing fee must be delivered to the Congressional Courier Acceptance Site located at 2nd and D Street, NE., between 8:30 a.m. and 4 p.m. The envelope should be addressed as follows: Copyright Office General Counsel/CRJ, Room 403, James Madison Memorial Building, 101 Independence Avenue, SE., Washington, DC. If sent by mail (including overnight delivery using U.S. Postal Service Express Mail), an original and five copies of a Petition to Participate along with the $150 filing fee should be addressed to: Copyright Royalty Judges (CRJ)/CARP, P.O. Box 70977, Southwest Station, Washington, DC 20024–0977. Petitions to Participate and the $150 filing fee may not be delivered by means of overnight delivery services such as Federal Express, United Parcel Service, etc., due to delays in processing receipt of such deliveries.

FOR FURTHER INFORMATION CONTACT: William J. Roberts, Jr., Senior Attorney, or Abioye E. Oyewole, CARP Specialist. Telephone: (202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION:

Background

On November 30, 2004, the President signed into law the Copyright Royalty and Distribution Reform Act of 2004 (the "Act"), Public Law 108–419, 118 Stat. 2341. This Act, which becomes effective on May 31, 2005, amends the Copyright Act, title 17 of the United States Code, by phasing out the Copyright Arbitration Royalty Panel ("CARP") system and replacing it with three permanent Copyright Royalty Judges ("CRJs"). As such, the CRJs will conduct proceedings to adjust the royalty rates paid under certain statutory licenses and to determine the distribution of royalties collected under sections 111, 119, and chapter 10. *See* 17 U.S.C. 801 (effective May 31, 2005).[1]

The Act directs that "as soon as practicable after the date of enactment of this Act," the CRJs or interim CRJs shall publish a notice initiating "a proceeding to establish or adjust rates and terms for the statutory licenses under section 114(f)(2) and 112(e) . . . for new subscription services and eligible nonsubscription services for the period commencing on January 1, 2006." [2] Section 6(b)(4) of the Copyright Royalty and Distribution Reform Act of 2004, Public Law 108–419. This notice initiates the rate adjustment proceeding.

Petitions To Participate

Any party who wishes to participate in the proceeding to adjust the rates and terms for the digital public performance of sound recordings by means of an eligible nonsubscription transmission [3] or a transmission made by a new subscription service [4] under section

[1] Unless otherwise noted, all references to Chapter 8 of title 17 of the United States Code become effective May 31, 2005.

[2] In 2004, a proceeding to adjust the rates and terms for these services for the license period 2005–2006 was initiated by the Copyright Office under the CARP system. *See* 69 FR 689 (January 6, 2004) and 69 FR 5196 (February 3, 2004). However, the Act terminated this proceeding and directed that the rates and terms in effect on December 31, 2004, shall remain in effect at least for 2005. Section 6(b)(3) of the Copyright Royalty and Distribution Reform Act of 2004, Public Law 108–419; *see also* 70 FR 6736 (February 8, 2005).

[3] An "eligible nonsubscription transmission" is a noninteractive digital audio transmission which, as the name implies, does not require a subscription for receiving the transmission. The transmission must also be made as part of a service that provides audio programming consisting in whole or in part of performances of sound recordings the purpose of which is to provide audio or entertainment programming, but not to sell, advertise, or promote particular goods or services. *See* 17 U.S.C. 114(j)(6).

[4] A "new subscription service" is "a service that performs sound recordings by means of

114(f)(2) and for the making of ephemeral copies in furtherance of these digital public performances under section 112(e) must submit to the CRJs a Petition to Participate by no later than March 18, 2005. 17 U.S.C. 803(b)(1)(B). The Petition must describe the party's interest in the proceeding and be accompanied by a $150 filing fee. Parties with similar interests may join in the filing of a single Petition, accompanied by a single fee. *Id.* Cash will not be accepted; therefore, parties must pay the filing fee with a check or money order made payable to "Copyright Royalty Judge Program." If a check received in payment of the filing fee is returned for lack of sufficient funds, the corresponding Petition to Participate will be dismissed.

Once Petitions to Participate are filed, the CRJs will provide to the parties a list of participants and will initiate a three-month voluntary negotiation period to afford the parties an opportunity to reach a settlement. 17 U.S.C. 803(b)(3). A party who fails to submit a timely Petition to Participate will be precluded from objecting to a settlement reached during the voluntary negotiation period, even if the CRJs ultimately accept such late-filed Petition. 17 U.S.C. 803(b)(1)(A)(ii).

Structure of Proceeding

If no settlement is reached during the voluntary negotiation period, the CRJs will specify a date falling within four to five months after the closure of the voluntary negotiation period for the filing of written direct statements. 17 U.S.C. 803(b)(6)(C)(i). Such statements will be comprised of witness statements, testimony and exhibits to be presented in the proceeding as well as "such other information that is necessary to establish terms and rates." 17 U.S.C. 803(b)(6)(C)(ii)(II).

Once written direct statements are filed, the CRJs will meet with the parties to schedule the 60-day discovery period. 17 U.S.C. 803(b)(6)(C)(ii)(I), (iv). After closure of the discovery period, the CRJs will schedule a settlement conference among the parties to take place outside the presence of the CRJs "to facilitate the presentation of offers of settlement among" the parties. 17 U.S.C. 803(b)(6)(C)(x). The 21-day settlement conference will follow the discovery period. *Id.* If no full settlement of all disputes result, the CRJs will conduct hearings and will issue their determination "not later than 11 months after the conclusion of the 21-day settlement conference period." 17 U.S.C. 803(c)(1).

Applicable Regulations

The CRJs must apply the regulations governing the CARP system, to the extent that they are not inconsistent with the Act, until such time as they adopt regulations under section 803(b)(6)(A). 17 U.S.C. 803(b)(6)(B). Therefore, in accordance with 37 CFR 251.44(a), parties must submit an original and five copies of their Petitions to Participate.

Dated: February 10, 2005.

Bruce G. Forrest,

Interim Chief Copyright Royalty Judge.

[FR Doc. 05–2973 Filed 2–15–05; 8:45 am]

BILLING CODE 1410–72–P

noninteractive subscription digital audio transmissions and that is not a preexisting subscription or a preexisting satellite digital audio radio service." 17 U.S.C. 114(j)(8).

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 05–01]

Public Information Session Regarding Development of a Natural Resources Indicator

AGENCY: Millennium Challenge Corporation.

ACTION: Notice.

SUMMARY: The Millennium Challenge Corporation ("MCC") will hold a public information meeting on Monday, February 28, 2005, at the American Society of Association Executives in Washington, DC. The meeting will inform interested parties that MCC is seeking an indicator that measures a country's economic policies that promote the sustainable management of natural resources. MCC Board member Christine Todd Whitman will chair the event, and the MCC Chief Executive Officer and relevant staff will also attend to facilitate discussion.

DATES: Monday, February 28, 2005; from 1–2:30 p.m.

ADDRESSES: American Society of Association Executives,1575 Eye Street, NW(Enter through the Eye Street entrance, check in with the security guard and proceed to the conference facility at the back of the lobby), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Information on the meeting may be obtained from Sherri Kraham at (202) 521–3600.

SUPPLEMENTARY INFORMATION: Due to security requirements at the meeting location, all individuals wishing to attend the meeting are encouraged to arrive at least 15 minutes before the meeting begins and must supply a photo identification. Those wishing to attend should e-mail Sherri Kraham at *events@mcc.gov* with the following information: Name, Telephone Number, E-mail address; Affiliation/Company Name. Seating will be available on a first come, first served basis.

Dated: February 10, 2005.

Frances C. McNaught,

Vice President, Domestic Relations, Millennium Challenge Corporation.

[FR Doc. 05–2994 Filed 2–15–05; 8:45 am]

BILLING CODE 9210–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 05–025]

NASA Advisory Council, Aerospace Medicine and Occupational Health Advisory Committee

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Aerospace Medicine and Occupational Health Advisory Committee.

DATES: Tuesday, March 8, 2005, 8:30 a.m. to 4:30 p.m.

ADDRESSES: National Aeronautics and Space Administration, 300 E Street, SW., Room 9H40, Washington, DC. Attendees must check in at the Visitor's Center located in the West Lobby (4th and E Streets).

FOR FURTHER INFORMATION CONTACT: Ms. Pamela Barnes, Mail Suite 8V39, National Aeronautics and Space Administration, Washington, DC, 20546, (202) 358–2390.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Opening Remarks by Chief Health and Medical Officer
—Aerospace Medicine and Occupational Health Advisory Committee Report from June 2, 2004, Meeting
—Aerospace Medicine Highlights and Issues
—Occupational Health Highlights and Issues
—Discussion of Independent Technical Authority
—Open discussion and action assignments

—Closing Comments

Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. Foreign nationals attending this meeting will be required to provide the following information: full name; gender; date/place of birth; citizenship; visa/green card information (number, type, expiration date); employer/affiliation information (name of institution, address, county, phone); and title/position of attendee. To expedite admittance, attendees can provide identifying information in advance by contacting Ms. Pamela R. Barnes via e-mail at *pamela.r.barnes@nasa.gov* or by telephone at (202) 358–2390. Persons with disabilities who require assistance should indicate this. It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Dated: February 9, 2005.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 05–2935 Filed 2–15–05; 8:45 am]

BILLING CODE 7510–13–P

THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Daniel Schneider, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* March 1, 2005.
   Time: 8:30 a.m.–5 p.m.
   Room: Library of Congress, Thomas Jefferson Bldg., Room 113.
   Program: This meeting will review applications for Kluge Center Fellowships: Panel 1, submitted to the Division of Research Programs at the August 15, 2004 deadline.
2. *Date:* March 1, 2005.
   Time: 9 a.m.–5 p.m.
   Room: 415.
   Program: This meeting will review applications for Stabilizing Humanities Collections Grants I, submitted to the Division of Preservation and Access at the October 1, 2004 deadline.
3. *Date:* March 3, 2005.
   Time: 8:30 a.m.–5 p.m.
   Room: Library of Congress, Thomas Jefferson Bldg., Room 113.
   Program: This meeting will review applications for Kluge Center Fellowships: Panel 2, submitted to the Division of Research Programs at the August 15, 2004 deadline.
4. *Date:* March 4, 2005.
   Time: 9 a.m.–5 p.m.
   Room: 415.
   Program: This meeting will review applications for Stabilizing Humanities Collections Grants II, submitted to the Division of Preservation and Access at the October 1, 2004 deadline.
5. *Date:* March 8, 2005.
   Time: 9 a.m.–5 p.m.
   Room: 415.
   Program: This meeting will review applications for Stabilizing Humanities Collections Grants III, submitted to the Division of Preservation and Access at the October 1, 2004 deadline.
6. *Date:* March 11, 2005.
   Time: 9 a.m.–5 p.m.
   Room: 415.
   Program: This meeting will review applications for Stabilizing Humanities Collections Grants IV, submitted to the Division of Preservation and Access at the October 1, 2004 deadline.

Daniel Schneider,

Advisory Committee Management Officer.

[FR Doc. 05–2936 Filed 2–15–05; 8:45 am]

BILLING CODE 7536–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection: Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR Part 36—Licenses and Radiation Safety Requirements for Irradiators.
2. *Current OMB approval number:* 3150–0158.
3. *How often the collection is required:* On occasion. It is estimated that there are approximately 3 NRC and 10 Agreement State reports submitted annually.
4. *Who is required or asked to report:* Irradiator licensees licensed by NRC or an Agreement State.
5. *The estimated number of annual respondents:* 95 (19 NRC licensees and 76 Agreement State licensees).
6. *The number of hours needed annually to complete the requirement or request:* 44,356 (8,872 hours for NRC licensees [8,712 recordkeeping + 160 reporting] and 35,484 hours for Agreement State licensees [34,846 recordkeeping + 638 reporting]), or 467 hours per licensee.
7. *Abstract:* 10 CFR part 36 contains requirements for the issuance of a license authorizing the use of sealed sources containing radioactive materials in irradiators used to irradiate objects or materials for a variety of purposes in research, industry, and other fields. The subparts cover specific requirements for obtaining a license or license exemption, design and performance criteria for irradiators; and radiation

safety requirements for operating irradiators, including requirements for operator training, written operating and emergency procedures, personnel monitoring, radiation surveys, inspection, and maintenance. Part 36 also contains the recordkeeping and reporting requirements that are necessary to ensure that the irradiator is being safely operated so that it poses no danger to the health and safety of the general public and the irradiator employees. Submit, by April 18, 2005, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the burden estimate accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html*. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–5 F53, Washington, DC 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail to *INFOCOLLECTS@NRC.GOV*.

Dated in Rockville, Maryland, this 10th day of February, 2005.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 05–2951 Filed 2–15–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide; Extension of Comment Period

On December 16, 2004 (69 FR 75359–75360), the U.S. Nuclear Regulatory Commission (NRC) issued for public comment a draft revision to an existing guide in the agency's Regulatory Guide Series. Draft Regulatory Guide DG–1130, entitled "Criteria for Use of Computers in Safety Systems of Nuclear Power Plants," is the proposed Revision 2 of Regulatory Guide 1.152. As such, DG–1130 describes a method that is acceptable to the NRC staff for complying with the NRC's regulations for promoting high functional reliability and design quality for the use of computers in safety systems of nuclear plants. In addition, DG–1130 contains the staff's regulatory position on the "Standard Criteria for Digital Computers in Safety Systems of Nuclear Power Generating Stations," * which the Nuclear Power Engineering Committee of the Institute of Electrical and Electronics Engineers (IEEE) has promulgated as IEEE Std 7–4.3.2–2003. It is the staff's intent to endorse IEEE Std 7–4.3.2–2003, with certain exceptions, as an acceptable method for satisfying the NRC's regulations with respect to (1) high functional reliability and design requirements for computers used in safety systems of nuclear power plants, and (2) independence between safety software and nonsafety software residing on the same computer.

To date, the NRC has received only one comment letter concerning draft regulatory guide DG–1130; however, several stakeholders have asked the NRC to extend the comment period, which is currently scheduled to expire on February 11, 2005. Given that the draft regulatory guide addresses a relatively new area of technology (*i.e.*, cyber-security), stakeholders may need additional time to assess the proposed regulatory guidance. Consequently, the NRC has decided to extend the comment period until March 14, 2005.

Comments received after March 14, 2005, will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before that date. Although a time limit is given, the NRC welcomes comments and suggestions at any time in connection with items for inclusion in guides that are currently being developed, as well as improvements to previously published guides.

Comments on draft regulatory guide DG–1130 may be accompanied by relevant information or supporting data. Please mention DG–1130 in the subject line of your comments. Comments on this draft regulatory guide submitted in writing or in electronic form will be made available to the public in their entirety in the NRC's Agencywide Documents Access andManagement System (ADAMS). Personal information will not be removed from your comments. You may submit comments by any of the following methods.

Mail comments to: Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

E-mail comments to: *NRCREP@nrc.gov*. You may also submit comments via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov*. Address questions about our rulemaking Web site to Carol A. Gallagher (301) 415–5905; e-mail *CAG@nrc.gov*.

Hand-deliver comments to: Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

Fax comments to: Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission at (301) 415–5144.

Requests for technical information about draft regulatory guide DG–1130 may be directed to Satish K. Aggarwal, Senior Program Manager, at (301) 415–6005 or via e-mail to *SKA@nrc.gov*.

Electronic copies of the draft regulatory guide are available through the NRC's public Web site under Draft Regulatory Guides in the Regulatory Guides document collection of the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/doc-collections/*. Electronic copies are also available in the NRC's Agencywide Documents Access and Management System (ADAMS) at *http://www.nrc.gov/reading-rm/adams.html*, under Accession No. ML043170314. Note, however, that the NRC has temporarily suspended public access to ADAMS so that the agency can complete security reviews of publicly available documents and remove potentially sensitive information. Please check the NRC's Web site for updates concerning the resumption of public access to ADAMS.

In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR), which is located at 11555 Rockville Pike, Rockville, Maryland; the PDR's mailing address is USNRC PDR, Washington, DC 20555–0001. The PDR can also be reached by telephone at (301) 415–4737 or (800) 397–4205, by fax at (301) 415–3548; and by e-mail to *PDR@nrc.gov*. Requests for single copies of draft or final guides (which may be reproduced) or for placement on an automatic

* IEEE publications may be purchased from the IEEE Service Center, 445 Hoes Lane, Piscataway, NJ 08854.

distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Reproduction and Distribution Services Section; by e-mail to *distribution@nrc.gov*; or by fax to (301) 415–2289. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 9th day of February, 2005.

For the U.S. Nuclear Regulatory Commission.

Michael E. Mayfield,

Director, Division of Engineering Technology, Office of Nuclear Regulatory Research.

[FR Doc. 05–2950 Filed 2–15–05; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26759; 812–13103]

The Adams Express Company, et al.; Notice of Application

February 10, 2005.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application under sections 6(c), 17(d) and 23(c) of the Investment Company Act of 1940 (the "Act") and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: The Adams Express Company ("Adams") and Petroleum & Resources Corporation ("Petroleum") request an order to permit applicants to adopt an equity-based employee compensation plan.

APPLICANTS: Adams and Petroleum.

FILING DATES: The application was filed on June 25, 2004 and amended February 9, 2005.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on March 7, 2005, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 5th Street, NW., Washington, DC 20549–0609. Applicants, c/o Lawrence L. Hooper, Jr., Vice President, General Counsel and Secretary, The Adams Express Company, 7 Saint Paul Street, Baltimore, MD 21202.

FOR FURTHER INFORMATION CONTACT: Marilyn Mann, Senior Counsel, at (202) 551–6813, or Mary Kay Frech, Branch Chief, at (202) 551–6814 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 5th Street, NW., Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. Adams and Petroleum, which are both Maryland corporations, are registered under the Act as closed-end management investment companies. Each company is internally managed. Each company's stock is listed on the New York Stock Exchange and the Pacific Exchange.

2. Adams has twelve directors and seventeen employees and Petroleum has twelve directors and fourteen employees. The boards of Adams and Petroleum are comprised of the same individuals. There are thirteen employees who serve both Adams and Petroleum.

3. In 1985, the Commission issued an order (the "1985 Order") to permit internally-managed, closed-end investment company members of the Association of Publicly Traded Investment Funds ("APTIF") to offer their employees deferred equity compensation in the form of stock options and stock appreciation rights.[1] Both Adams and Petroleum were members of APTIF, which voluntarily dissolved subsequent to the issuance of the 1985 Order, and are currently members of the Closed-End Division of the Investment Company Institute, into which the operations of APTIF were consolidated. At their respective annual meetings held in March 1986, the stockholders of the applicants approved the Adams Stock Option Plan (the "Old Adams Plan") and the Petroleum Stock Option Plan (the "Old Petroleum Plan," and together with the Old Adams Plan, the "Old Stock Plans"). The Old Stock Plans were adopted in reliance on the 1985 Order.

4. Because the investment management business is highly competitive, the applicants believe that their successful operation will depend on their ability to attract, motivate and retain their professional staffs with competitive compensation packages similar to those offered by their competitors. Applicants are requesting relief to permit the adoption of The Adams Express Company 2005 Equity Incentive Compensation Plan and Petroleum & Resources Corporation 2005 Equity Incentive Compensation Plan (each, a "Plan" and together, the "Plans"). Each Plan will be administered by a compensation committee (the "Committees") composed of three or more directors who (a) are not "interested persons" of the relevant applicant as defined in section 2(a)(19) of the Act, (b) are "non-employee directors" within the meaning of rule 16b–3 under the Securities Exchange Act of 1934 (the "Exchange Act"), and (c) are "outside directors" as defined under section 162(m) of the Internal Revenue Code of 1986 (the "Code"). [p. 10–11] The Plans would permit the applicants to issue stock options ("Options"), stock appreciation rights,[2] restricted stock,[3] restricted stock units,[4] deferred stock units,[5] dividend equivalents[6] and performance awards[7] ("Performance Awards") (each referred to individually as an "Award" and, collectively, as "Awards") to key employees and to directors who are not interested persons as defined in section

[1] Association of Publicly Traded Investment Funds, Investment Company Act Release No. 14541 (May 28, 1985) (notice) and 14594 (June 21, 1985) (order).

[2] A stock appreciation right is a right to receive, upon exercise, the excess of (i) the Fair Market Value (as defined below) of one share of an applicant's stock on the date of exercise over (ii) the stock appreciation right's grant price. Stock appreciation rights issued under the Plans will expire no later than ten years from the date of grant. [p. 20]

[3] Restricted stock is stock that is subject to restrictions on transferability, risk of forfeiture, or other restrictions. [p. 21]

[4] Restricted stock units are rights to receive stock and are subject to certain restrictions and a risk of forfeiture. [p. 21]

[5] A deferred stock unit is a right to receive stock, cash or a combination thereof at the end of a specified deferral period. [p. 22]

[6] If and to the extent provided for in the applicable Award agreement, recipients of Options, stock appreciation rights, restricted stock units and deferred stock units will be entitled to receive dividend equivalents equal to the amount or value of any cash or other dividends or distributions payable on an equivalent number of shares of stock. Dividend equivalents will be paid in shares of common stock, cash or a combination thereof. [p. 23]

[7] Performance Awards, which are payable in cash or stock of the applicants, are conditioned upon satisfaction of performance criteria established by the relevant Committee. [p. 23]

2(a)(19) of the Act ("disinterested directors"). The exercise price of Options must be at least 100% of the Fair Market Value [8] of a share of an applicant's stock on the date of the grant. Options issued under the Plans will expire no later than 10 years from the date of grant. The Old Stock Plans will be terminated following approval by stockholders of the Plans. Existing awards made under the Old Stock Plans would remain outstanding and would remain subject to the terms and conditions of the Old Stock Plans.

5. Each Plan has been approved by the applicable applicant's board of directors ("Board"), including a majority of the disinterested directors of each applicant. Subject to receipt of the order, each applicant's Board is expected to approve the submission of the respective Plan to stockholders for approval at each applicant's annual meeting.

6. Grants under each Plan may be made only to the applicable applicant's disinterested directors and employees, or to the employees of such applicant's subsidiaries where such employees provide management, administrative or advisory services to the applicant (the "Participants"). Employees who serve both Adams and Petroleum on a combined full-time basis would be eligible to receive Awards under both Plans.

7. Immediately following each annual meeting of stockholders, each disinterested director who is elected a director at, or who was previously elected and continues as a director after, that annual meeting shall receive an award of 750 restricted stock units of Adams and 400 restricted stock units of Petroleum, as applicable. In addition, at the effective date of any disinterested director's initial election to the Board, the disinterested director will be granted 750 restricted stock units of Adams and 400 restricted stock units of Petroleum, as applicable. Disinterested directors will also receive dividend equivalents in respect of such restricted stock units equal to the amount or value of any cash or other dividends or distributions payable on an equivalent number of shares of common stock. The restricted stock units and related dividend equivalents will vest (and become non-forfeitable) and be paid (in the form of shares of common stock) one year from the date of grant. In addition, disinterested directors may elect each year, not later than December 31 of the year preceding the year as to which the annual grant of restricted stock units is to be applicable, to defer to a fixed date or pursuant to a specified schedule payment of all or any portion of the annual grant of restricted stock units. Under the Plans, disinterested directors may also elect each year, not later than December 31 of the year preceding the year as to which deferral of fees is to be applicable, to defer to a fixed date or pursuant to a specified schedule all or any portion of the cash retainer to be paid for Board service in the following calendar year through the issuance of deferred stock units, valued at the Fair Market Value of the relevant applicant's stock on the date when each payment of such retainer amount would otherwise be made in cash.

8. The total number of shares of each applicant's stock reserved and available for delivery in connection with Awards under the applicable Plan (other than any shares of Adams Stock or Petroleum Stock issued in payment of dividend equivalents) is 4% of the outstanding shares of the applicable applicant as of the effective time of the Plan. As of December 31, 2004, this represents 3,445,411 shares of Adams stock and 879,187 shares of Petroleum stock.

9. In the event that a dividend, capital gain distribution or other distribution, recapitalization, forward or reverse stock split, reorganization, merger, consolidation, spin-off, combination, repurchase, share exchange, liquidation, dissolution or other similar corporate transaction affects the common stock of an applicant, then the relevant Committee will, in such manner as it may deem equitable, adjust any or all of (i) the aggregate number of shares subject to the relevant Plan; (ii) the number and kind of shares which may be delivered under the relevant Plan; (iii) the number and kind of shares by which per-person Award limitations are measured; (iv) the number and kind of shares subject to or deliverable in respect of outstanding Awards; and (v) the exercise price or grant price relating to any Award. In addition, after the occurrence of any such corporate transaction, the relevant Committee will also have the authority to make provision for payment of cash or other property in respect of an Award. In the event a capital gains distribution is made to the applicant's stockholders, the exercise price of outstanding Options and the grant price of outstanding stock appreciation rights issued under the Plan may be reduced to reflect any such distribution made after the date of grant (provided that no such reduction will be made that would reduce the exercise price or grant price below zero).

Applicants' Legal Analysis

Sections 18(d), 23(a) and 23(b) of the Act

1. Section 18(d) of the Act generally prohibits a registered management investment company from issuing rights to purchase the company's shares.[9] The applicants state that section 18(d) would prohibit the issuance of Options and stock appreciation rights under the Plans.

2. Section 23(a) of the Act generally prohibits a registered closed-end investment company from issuing securities for services. The applicants state that this provision would prohibit the issuance of Awards under the Plans as compensation for employees' services.

3. Section 23(b) of the Act prohibits a registered closed-end investment company from selling common stock at below its current net asset value. The applicants state that, since Adams stock and Petroleum stock have often traded at a discount to their net asset value and Awards under the Plans will be valued at the current market price of the stock, section 23(b) would in most cases prohibit the issuance of the Awards.

4. Section 6(c) of the Act provides, in part, that the Commission may, by order upon application, conditionally or unconditionally exempt any person, security or transaction, or any class or classes thereof, from any provision of the Act, if and to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. The applicants request an exemption under section 6(c) from section 18(d) and sections 23(a) and (b) of the Act to the extent necessary to implement the Plans.

5. The applicants state that the concerns underlying those sections include (i) the possibility that Options could be granted to persons whose interests might be contrary to the interests of stockholders; (ii) the potential dilutive impact of Awards on stockholders; (iii) the possibility that

[8] For purposes of the Plans, "Fair Market Value" equals the mean of the high and low sale prices per share of the stock of the applicant as reported on the New York Stock Exchange-Composite Transactions (or such other national securities exchange or automated inter-dealer quotation system on which the stock has been duly listed and approved for quotation and trading) on the date on which the value is to be determined, or if no sale of the stock is reported for such date, the next preceding day for which there is a reported sale. [fn. 4, pp. 15–16]

[9] Section 18(d) permits a fund to issue only warrants or rights, ratably to a class of stockholders, that have an exercise period of no more than 120 days or in exchange for warrants in connection with a reorganization.

Options might facilitate a change of control; (iv) the introduction of complexity and uncertainty into the investment company's financial structure, thereby making it more difficult to appraise the value of their stock; (v) possible obfuscation of the extent of management compensation; and (vi) encouragement of speculative portfolio investments at the insistence of the Option holders (to increase the possibility of a rise in market price from which they might benefit).

6. The applicants state that, because Awards under each Plan are issuable only to the applicable applicant's directors, officers and other key employees, Awards will not be granted to individuals with interests contrary to those of the applicant's stockholders. The applicants also assert that the Plans would not become a means for insiders to obtain control of Adams or Petroleum because the number of shares of stock issuable under the Plans would be limited to 4% of the outstanding shares of Adams or Petroleum. Moreover, as a condition to the requested order, no individual Participant could be issued more than 35% of the shares reserved for issuance under the Plans. In addition, in no event may the total number of shares of Adams stock or Petroleum stock, with respect to which all types of Awards may be granted to a Participant under the applicable Plan, exceed 300,000 shares of stock within any thirty-six month period during which the applicable Plan is in effect.

7. The applicants further state that each Plan will be submitted to stockholders for their approval. The applicants represent that a concise, "plain English" description of the Plans, including their potential dilutive effect, will be provided in the proxy materials that will be submitted to their respective stockholders. The applicants also state that they will comply with the proxy disclosure requirements in Item 10 of Schedule 14A under the Exchange Act. The applicants further note that the Plans will be disclosed to investors in accordance with the requirements of Item 18 of Form N–2, and pursuant to the standards and guidelines adopted by the Financial Accounting Standards Board for operating companies. In addition, as a condition to the requested order, Adams and Petroleum will comply with the disclosure requirements for executive compensation plans applicable to operating companies under the Exchange Act. The applicants conclude that the Plans will be adequately disclosed to investors and appropriately reflected in the market value of their stock.

8. The applicants acknowledge that, while Awards granted under the Plans would have a dilutive effect on the stockholders' equity in Adams and Petroleum, as the case may be, that effect would not be significant and would be outweighed by the anticipated benefits of the Plans to Adams, Petroleum and their stockholders. The applicants assert that they need the flexibility to provide equity-based employee compensation in order to be able to compete effectively with investment management companies for talented professionals. The applicants also assert that equity-based compensation would more closely align the interests of Adams and Petroleum directors, officers and employees with those of the applicants' stockholders.

9. In addition, the applicants state that stockholders will be further protected by the conditions to the requested order that assure continuing oversight of the operation of the Plans by the applicable Board. Under these conditions, each applicant's Board will review the relevant Plan at least annually. In addition, the applicable Committee periodically will review the potential impact that the grant, exercise or vesting of Awards could have on an applicant's earnings and net asset value per share, such review to take place prior to any decisions to grant Awards, but in no event less frequently than annually. Adequate procedures and records will be maintained to permit such review. The relevant Committee will be authorized to take appropriate steps to ensure that neither the grant nor the exercise or vesting of Awards would have an effect contrary to the interests of the stockholders of the applicant. This authority will include the authority to prevent or limit the grant of additional Awards.

Section 17(d) of the Act

10. Section 17(d) of the Act and rule 17d–1 under the Act generally prohibit an affiliated person of a registered investment company, or an affiliated person of such a person, from participating in a joint enterprise, joint arrangement or profit-sharing plan in which the company is a participant, unless the Commission by order approves the transaction. Rule 17d–1(c) defines a joint enterprise to include any stock option or stock purchase plan. Rule 17d–1(b) provides that, in considering relief pursuant to the rule, the Commission will consider (i) whether the participation of the registered investment company in a joint enterprise is consistent with the Act's policies and purposes and (ii) the extent to which that participation is on a basis different from or less advantageous than that of other participants.

11. The applicants request an order pursuant to section 17(d) and rule 17d–1 to permit the Plans. The applicants state that the Plans, although benefiting the Participants and Adams and Petroleum in different ways, are in the interests of stockholders of Adams and Petroleum because the Plans will help them attract, motivate and retain talented professionals and help align the interests of employees with those of their stockholders. Thus, the applicants assert that the Plans are consistent with the policies and purposes of the Act and that the applicants' participation in the Plans will be on a basis no less advantageous than that of other participants.

Section 23(c) of the Act

12. Section 23(c) of the Act generally prohibits a registered closed-end investment company from purchasing any securities of which it is the issuer except in the open market, pursuant to tender offers or under other circumstances as the Commission may permit to insure that the purchase is made on a basis that does not unfairly discriminate against any holders of the class or classes of securities to be purchased.

13. The applicants state that a purchase by Adams or Petroleum of Adams or Petroleum stock from a Participant in connection with an Award, or where shares are withheld by the applicants in payment of the exercise price, might be prohibited by section 23(c) and request an order under section 23(c) to permit these purchases. The applicants state that these purchases will be made on a basis which does not unfairly discriminate against the stockholders of Adams and Petroleum because Adams and Petroleum will purchase their shares from the Participants at their Fair Market Value, as defined in the Plans, on the date of the repurchase, which would not be significantly different from the price at which all other Adams and Petroleum stockholders could sell their shares on the New York Stock Exchange.

Applicants' Conditions

The applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

1. Each Board will maintain a Committee, none of the members of which will be "interested persons" of the applicants as defined in the Act. Each Committee will administer the

relevant Plan and will be composed of three or more directors of the relevant applicant who (i) are not "interested persons" of the relevant applicant, (ii) are "non-employee directors" within the meaning of rule 16b–3 under the Exchange Act and (iii) are "outside directors" as defined under section 162(m) of the Code.

2. A Plan will not be implemented unless it is approved by a majority of the votes cast by stockholders at a meeting called to consider the Plan. Any amendment to a Plan will be subject to the approval of the applicable applicant's stockholders to the extent such approval is required by applicable law or regulation or the applicable Board otherwise determines. Unless terminated or amended, during the fifth year of each Plan (and each fifth year thereafter), the Plan shall he submitted for reapproval to the relevant applicant's stockholders and all Awards made during that year shall be contingent upon stockholder reapproval.

3. Awards are not transferable or assignable, except as the Committees will specifically approve to facilitate estate planning or to a beneficiary upon a Participant's death or by will or the laws of descent and distribution. Awards may also be transferred pursuant to a qualified domestic relations order.

4. The existence and nature of the Awards granted will be disclosed in accordance with standards or guidelines adopted by the Financial Accounting Standards Board for operating companies and the requirements of the Commission under Item 402 of Regulation S–K, Item 8 of Schedule 14A under the Exchange Act and Item 18 of Form N–2.

5. The maximum number of shares of stock available for delivery in connection with Awards under a Plan (other than any shares of Adams Stock or Petroleum Stock, as applicable, issued in payment of Dividend Equivalents) will be 4% of the relevant applicant's stock outstanding on the effective date of the relevant Plan, subject to adjustment for corporate transactions.

6. Each applicant's Board will review the relevant Plan at least annually. In addition, the applicable Committee periodically will review the potential impact that the grant, exercise, or vesting of Awards could have on an applicant's earnings and net asset value per share, such review to take place prior to any decisions to grant Awards, but in no event less frequently than annually. Adequate procedures and records will be maintained to permit such review, and the relevant Committee will be authorized to take appropriate steps to ensure that neither the grant nor the exercise or vesting of Awards would have an effect contrary to the interests of investors in the applicant. This will include the authority to prevent or limit the grant of additional Awards. All records maintained pursuant to this condition will be subject to examination by the Commission and its staff.

7. The Old Stock Plans will be terminated pursuant to their terms following approval by stockholders of the Plans. No further grants would be made under the Old Stock Plans beyond those already made as of the date hereof. Existing awards made under the Old Stock Plans would remain outstanding and would remain subject to the terms and conditions of the Old Stock Plans.

8. Awards under the Plans are issuable only to directors, officers, employees of the relevant applicant and employees of certain of its subsidiaries. No person will be granted Awards relating to more than 35% of the shares reserved for issuance under the relevant Plan. Subject to the immediately preceding limitation, in any thirty-six month period during which a Plan is in effect, no person may be granted under that Plan more than 300,000 shares of stock in respect of Options, 300,000 shares of stock in respect of stock appreciation rights, 300,000 shares of stock in respect of restricted stock, 300,000 shares of stock in respect of restricted stock units or 300,000 shares of stock in respect of deferred stock units. In addition, in no event may the total number of shares of stock with respect to which all types of Awards may be granted to an eligible person under the applicable Plan exceed 300,000 shares of stock within any thirty-six month period during which the applicable Plan is in effect, which amount may be adjusted to reflect certain corporate transactions or events that affect the applicant's stock. Grants to disinterested directors are limited to those described in paragraph 2 below.

9. In each fiscal year, a disinterested director will he granted 750 restricted stock units of Adams and 400 restricted stock units of Petroleum, as applicahle, which amounts may be adjusted to reflect certain corporate transactions. At the effective date of any disinterested director's initial election to the Board of an applicant, such disinterested director will be granted 750 restricted stock units of Adams and 400 restricted stock units of Petroleum, as applicable, which amounts may be adjusted to reflect certain corporate transactions. Disinterested directors will also receive dividend equivalents in respect of such restricted stock units equal to the amount or value of any cash or other dividends or distributions payable on an equivalent number of shares of common stock. The restricted stock units and related dividend equivalents will vest (and become non-forfeitable) and be paid (in the form of shares of common stock) one year from the date of grant. In addition, disinterested directors may elect each year. not later than December 31 of the year preceding the year as to which the annual grant of restricted stock units is to be applicable, to defer to a fixed date or pursuant to a specified schedule payment of all or any portion of the annual grant of restricted stock units. Any modification of the deferral election may be made only upon satisfaction of any conditions that the relevant Committee may impose. Disinterested directors may also elect each year, not later than December 31 of the year preceding the year as to which deferral of fees is to be applicable, to defer to a fixed date or pursuant to a specified schedule all or any portion of the cash retainer to be paid for Board or other service related to Board activities in the following calendar year through the issuance of deferred stock units, valued at the Fair Market Value of the relevant applicant's stock on the date when each payment of such retainer amount would otherwise be made in cash.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–637 Filed 2–15–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51185; File No. SR–Amex–2005–14]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to a Suspension of Transaction Fees in Connection With the iShares® COMEX Gold Trust

February 10, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 1, 2005, the American Stock Exchange LLC ("Amex" or "Exchange") filed with

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Amex. The Exchange filed the proposal as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to suspend through February 28, 2005. Exchange transaction charges for specialist, registered trader, broker-dealer and customer orders for the iShares COMEX Gold Trust (the "Gold Trust"). The text of the proposed rule change is available on Amex's Web site *http://www.amex.com*, at the Amex's Office of the Secretary, and 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, Amex included statements concerning the purpose of and basis for the proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The Amex 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

Specialist, registered traders, broker-dealers and customer orders in the Gold Trust are subject to the following transaction charges. Off-Floor orders (*i.e.*, customer and broker-dealer) currently are charged $.0060 per share ($0.60 per 100 shares), capped at $100 per trade (16,667 shares). Orders entered electronically into the Amex Order File ("System Orders") from off the Floor for up to 5,099 shares are currently not assessed a transaction charge. This provision, however, does not apply to System Orders of a member or member organization trading as an agent for the account of a non-member competing market maker. System Orders over 5,099 shares currently are subject to a $.0060 per share transaction charge, capped at $100 per trade. Specialists currently are charged $0.0033 ($0.33 per 100 shares), capped at $300 per trade (90,909 shares). Registered traders currently are charged $0.0036 ($0.36 per 100 shares), capped at $300 per trade (83,333 shares).

The Exchange is suspending all transaction charges in the Gold Trust for specialist, registered trader, broker-dealer and customer orders until February 28, 2005. The Exchange believes a suspension of fees for the Gold Trust is appropriate to enhance the competitiveness of executions for the Gold Trust on the Amex. The Exchange will reassess the fee suspension as appropriate and will file a proposed rule change for any modification to the fee suspension with the Commission pursuant to Section 19(b)(3)(A) of the Act.[6]

The Exchange is amending the Equities Fee Schedule and Exchange Traded Funds and Trust Issued Receipts Fee Schedule to indicate that transaction charges have been suspended until February 28, 2005 for the Gold Trust. In addition, the Exchange Traded Funds and Trust Issued Receipts Fee Schedule is being amended to refer to the suspension of transaction charges for certain Exchange Traded Funds and the application of customer transaction charges in connection with the iShares S&P 100 Index Fund (Symbol: OEF) previously filed with the Commission.[7]

2. Statutory Basis

The Exchange believes that the proposed fee change is consistent with Section 6(b) of the Act[8] in general, and furthers the objectives of Section 6(b)(4)[9] in particular in that it is intended to assure the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change 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

No written comments were solicited or received by the Exchange with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; the proposed rule change has become effective pursuant to Section 19(b)(3)(A)[10] of the Act and Rule 19b–4(f)(6)[11] thereunder.

Although Rule 19b–4(f)(6) under the Act[12] requires that an Exchange submit notice of its intent to file at least five business days prior to the filing date, the Commission is waiving this requirement at the Exchange's request in view of the fact that the proposed rule change waives fees for all market participants and similar suspension of transaction fees have been approved for similar products.[13]

The Exchange has also requested that the Commission waive the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii), and designate the proposed rule change immediately operative by finding that such action is consistent with the protection of investors and the public interest. The Commission notes that by waiving the operative period, the Exchange has stated that the suspension of transaction fees will enhance the competitiveness of the product and will permit the Exchange to implement the fee waiver immediately.[14]

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[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] Rule 19b–4(f)(6) under the Act requires the Amex to provide the Commission with five business days notice of its intention to file a non-controversial proposed rule change. The Amex did not provide such notice but requested that the Commission waive the notice requirement. The Amex also requested that the Commission to waive the 30-day operative delay. *See* Rule 19b–4(f)(6)(iii) under the Act. 17 CFR 240.19b–4(f)(6)(iii).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] *See* Securities Exchange Act Release Nos. 46384 (August 20, 2002), 67 FR 55048 (August 27, 2002) (suspension of transaction charges for SHY, IEF, TLT and LQD); and 47668 (April 11, 2003), 68 FR 19241 (April 18, 2003) (OEF transaction charges).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR.240–19b–4(f)(6).

[13] *See supra* note 7.

[14] The Exchange will reassess the fee waivers prior to February 28, 2005 and will make any required filing pursuant to Rule 19b–4 of the Act prior to that date.

Furthermore, the Commission notes that Amex's suspension of transaction fees have been approved for similar products and that trading in the Gold Trust on the Exchange commenced on January 28, 2005. The Exchange also has stated that the fee suspension is for all market participants and is intended to provide cost savings to investors, members, and other market participants. For these reasons, the Commission, consistent with the protection of investors and the public interest, has waived the 30-day operative date requirement for this proposed rule change and has determined to designate the proposed rule change as operative on February 1, 2005, the date it was submitted to the Commission.

At any time within 60 days of the filing of this proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *http://www.sec.gov/rules/sro.shtml;* or
- Send an e-mail to *rule-comments@sec.gov.* Please include SR–Amex–2005–14 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to SR–Amex–2005–14. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use 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 on the Exchange's Web site at *http://www.amex.com* and for inspection and copying at the principal office of the Exchange. 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 SR–Amex–2005–14 and should be submitted on or before March 9, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–650 Filed 2–15–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51172; File No. SR–CBOE–2004–63]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto Relating to Short Term Option Series

February 9, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 12, 2004, the Chicago Board Options Exchange, Inc. ("CBOE" 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 substantially prepared by the Exchange. CBOE filed Amendment No. 1 to the proposed rule change on January 21, 2005.[3] The Commission is publishing this notice to solicit comment 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

CBOE proposes to amend its rules to permit the listing of option series that expire one week after being opened for trading ("Short Term Option Series"). This rule change is being proposed as a one-year pilot program. The text of the proposed rule change, as amended, is available on CBOE's Web site (*http://www.cboe.org/legal/*), at CBOE's Office of the Secretary, 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, CBOE included statements concerning the purpose of and basis for the proposal and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its rules to accommodate the listing of Short Term Option Series that would expire one week after the date on which the series is opened. Short Term Option Series could be opened on any approved option class[4] on any Friday that is a business day ("Short Term Option Opening Date") and would expire at the close of business on the next Friday that is a business day ("Short Term Option Expiration Date"). If a Friday were not a business day, the series could be opened (or would expire) on the first business day immediately prior to that Friday. Short Term Option Series would be P.M.-settled.

The proposal would allow the Exchange to open up to five Short Term Option Series for each Short Term Option Expiration Date. The strike price for each series would be fixed at a price per share, with at least two strike prices above and two strike prices below the approximate value of the underlying security, or the calculated index value

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaced the original filing in its entirety.

[4] Short Term Options Series could be opened in any option class that satisfied the applicable listing criteria under CBOE rules (*i.e.*, stock options, options on exchange-traded funds as defined under Interpretation and Policy .06 to CBOE Rule 5.3, or options on indexes).

in the case of an index class, at about the time that Short Term Option Series was opened for trading on the Exchange. No Short Term Option Series on an option class could expire in the same week in which monthly option series on the same class expire, except that with regard to index option classes, no Short Term Option Series in an index option class could expire in the same week during which any P.M.-settled monthly option series in the same index class expires or, in the case of QIXs, in the same week during which QIXs expire. This provision means that a Short Term Option Series in an index class (which is P.M.-settled) could expire in the same week in which an A.M.-settled option series in the same underlying index class expires. Finally, the interval between strike prices on Short Term Option Series would be the same as the strike price for series in the same option class that expires in accordance with the normal monthly expiration cycle.

The Exchange believes that Short Term Option Series would provide investors with a flexible and valuable tool to manage risk exposure, minimize capital outlays, and be more responsive to the timing of events affecting the securities that underlie option contracts. At the same time, the Exchange is cognizant of the need to be cautious in introducing a product that can increase the number of outstanding strike prices. For that reason, the Exchange intends to employ a limited pilot program ("Pilot Program") for Short Term Options Series. Under the terms of the Pilot Program, the Exchange could select up to five option classes on which Short Term Option Series may be opened on any Short Term Option Opening Date.[5] The Exchange also would be allowed to list those Short Term Option Series on any option class that is selected by other securities exchanges that employ a similar Pilot Program under their respective rules. This would ensure that the addition of the new series through this Pilot Program would have only a negligible impact on the Exchange's and OPRA's quoting capacity. Also, limiting the term of the Pilot Program to a period of one year would allow the Exchange and the Commission to determine whether the Short Term Option Series program should be extended, expanded, and/or made permanent.

If the Exchange were to propose an extension or an expansion of the program, or should the Exchange propose to make the program permanent, the Exchange would submit, along with any filing proposing such amendments to the program, a Pilot Program report ("Report") that would provide an analysis of the Pilot Program covering the entire period during which the Pilot Program was in effect. The Report would include, at a minimum: (1) Data and written analysis on the open interest and trading volume in the classes for which Short Term Option Series were opened; (2) an assessment of the appropriateness of the option classes selected for the Pilot Program; (3) an assessment of the impact of the Pilot Program on the capacity of CBOE, OPRA, and market data vendors (to the extent data from market data vendors is available); (4) any capacity problems or other problems that arose during the operation of the Pilot Program and how CBOE addressed such problems; (5) any complaints that CBOE received during the operation of the Pilot Program and how CBOE addressed them; and (6) any additional information that would assist in assessing the operation of the Pilot Program. The Report must be submitted to the Commission at least sixty (60) days prior to the expiration date of the Pilot Program.

The Exchange represents that it has the system capacity to adequately handle the series that would be permitted by this proposal. The Exchange provided to the Commission information in a confidential submission that supports its system capacity representations.

2. Statutory Basis

The Exchange believes that the introduction of Short Term Option Series would attract order flow to the Exchange, increase the variety of listed options to investors, and provide a valuable hedging tool to investors. For these reasons, the Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[6] in general, and with Section 6(b)(5) of the Act[7] in particular, in that it is designed to promote just and equitable principles of trade as well as to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2004–63 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–CBOE–2004–63. 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

[5] *See* note 4 *supra*.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

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 Exchange. 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–CBOE–2004–63 and should be submitted on or before March 9, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–635 Filed 2–15–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51173; File No. SR–CBOE–2004–85]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving a Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 Thereto Regarding Designated Primary Market-Makers' Handling of Non-Public Customer Orders

February 9, 2005.

I. Introduction

On December 15, 2004, the Chicago Board Options Exchange, Inc. ("CBOE" 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 its rules regarding Designated Primary Market-Makers' handling of non-public customer orders. On December 21, 2004, the CBOE submitted Amendment No. 1 to the proposed rule change.[3] The proposed rule change was published for comment in the **Federal Register** on December 29, 2004.[4] The Commission received no comments on the proposal.

On February 4, 2005, the CBOE submitted Amendment No. 2 to the proposed rule change.[5] This order approves the proposed rule change, as amended by Amendment Nos. 1 and 2. Simultaneously, the Commission is providing notice of filing of Amendment No. 2 and granting accelerated approval of Amendment No. 2.

II. Description

The Exchange proposes to amend CBOE Rule 8.85(b)(iii) to require each Designated Primary Market-Maker ("DPM") to accord priority to both public and non-public customer orders which a DPM represents as agent over its own principal transactions, unless the customer who placed the order has consented to not being accorded such priority.[6]

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[7] and, in particular, the requirements of Section 6(b) of the Act[8] and the rules and regulations thereunder. The Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[9] which requires that the rules of an 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.

Specifically, the Commission finds that requiring DPMs to accord priority to all orders, non-public as well as public customer orders, that they hold as agent in CBOE's rules should ensure that these orders are handled in compliance with federal securities laws and agency law principles.

In Amendment No. 2, the CBOE proposed to delete the language of Interpretation and Policy .03 of CBOE Rule 8.85, which defined the term "public customer" order for purposes of CBOE Rule 8.85(b)(iii). Because the term "public customer" order will no longer be in CBOE Rule 8.85(b)(iii), the interpretation is no longer necessary. The Commission notes that the proposed text of CBOE Rule 8.85(b)(iii) has been subject to notice and comment, and that no comments have been received. The Commission believes that the deletion of the language of proposed language of Interpretation and Policy .03 of CBOE Rule 8.85 will clarify CBOE Rule 8.85 by removing a definition that is no longer necessary and, therefore, merits approval. Accordingly, the Commission finds that there is good cause, consistent with Section 6(b)(5)[10] and Section 19(b)(2) of the Act,[11] to approve Amendment No. 2 on an accelerated basis prior to the 30th day of the date of publication of notice of filing thereof in the **Federal Register**.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 2 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2004–85 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–CBOE–2004–85. 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

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 made technical corrections to the propose rule text of the proposed rule change.

[4] *See* Securities Exchange Act Release No. 50909 (December 22, 2004), 69 FR 78072.

[5] Amendment No. 2 deleted the language of Interpretation and Policy .03 of CBOE Rule 8.85, which defined "public customer" order for purposes of CBOE Rule 8.85(b)(iii). Since the term "public customer" order will no longer be in CBOE Rule 8.85(b)(iii), the interpretation is no longer necessary.

[6] On January 25, 2002, the Commission approved a CBOE proposed rule change eliminating from CBOE rules the obligation of DPMs to accord priority to non-public customer orders. *See* Securities Exchange Act Release No. 45341 (January 25, 2002), 67 FR 5016 (February 1, 2002). In this filing, the Exchange proposes to revert back to the original language.

[7] 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).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(2).

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 the filing also will be available for inspection and copying at the principal office of the CBOE. 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–CBOE–2004–85 and should be submitted on or before March 9, 2005.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (File No. SR–CBOE–2004–85), as amended by Amendment No. 1, be, and hereby is, approved, and that Amendment No. 2 to the proposed rule change be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–642 Filed 2–15–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51178; File No. SR–FICC–2005–03]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Appendix A to Its Cross-Margining Agreement With the Chicago Mercantile Exchange To Update the List of Other Cross-Margining Agreement To Which Each Is a Party

February 9, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on January 21, 2005, the Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by FICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to Appendix A to the cross-margining agreement ("Agreement") between the Chicago Mercantile Exchange ("CME") and the Government Securities Division ("GSD") of FICC which lists other cross-margining and loss sharing arrangements to which the GSD and CME are parties.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

FICC is currently participating in a cross-margining arrangement with the Chicago Mercantile Exchange ("CME"). The Agreement governing the arrangement contains Appendix A on which the parties are required to list other cross-margining or loss sharing arrangements to which they are parties. The Agreement provides that the parties may amend Appendix A without prior approval of the other party by giving notice to the other party.

The CME recently notified FICC that it has amended Appendix A to remove two agreements it had with the Board of Trade Clearing Corporation and to add an agreement that it now has with the New York Mercantile Exchange. This rule change incorporates these changes into the Agreement, which is a part of the GSD's rules.

The proposed rule change is consistent with the requirements of Section 17A of the Act[3] and the rules and regulations thereunder applicable to FICC because it facilitates the establishment of linked or coordinated facilities for clearance and settlement of transactions in securities and in futures.

(B) Self-Regulatory Organization's Statement on Burden on Competition

FICC does not believe that the proposed rule change will have an impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have been solicited or received. FICC will notify the Commission of any written comments received by FICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act[4] and Rule 19b–4(f)(4)[5] thereunder because the proposed rule does not significantly affect the respective rights or obligations of the clearing agency or persons using the service and does not adversely affect the safeguarding of securities or funds in the custody or control of FICC or for which it is responsible. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–FICC–2005–03 on the subject line.

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by FICC.

[3] 15 U.S.C. 78q–1.

[4] 15 U.S.C. 78s(b)(3)(A)(iii).

[5] 17 CFR 240.19b–4(f)(4).

Paper Comments

• Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–FICC–2005–03. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of FICC and on FICC's Web site at *www.ficc.com*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FICC–2005–03 and should be submitted on or before March 9, 2005.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–638 Filed 2–15–05; 8:45 am]

BILLING CODE 8010–01–P

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51175; File No. SR–FICC–2004–19]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Approving a Proposed Rule Change Relating to Changes To Eliminate or Amend Rules That Are Inconsistent With Current Practice, Have Expired, Are Outdated, Are Unnecessary, or Require Technical Correction

February 9, 2005.

SUMMARY: On October 7, 2004, the Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] (File No. SR–FICC–2004–19). Notice of the proposal was published in the **Federal Register** on December 29, 2004.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The proposed rule change will eliminate or amend FICC's Government Securities Division ("GSD") and Mortgage-Backed Securities Division ("MBSD") rules in the following manner:

1. Delete Provisions in GSD's Rules Regarding the Automated Customer Account Transfer Service ("ACATS")

The ACATS provisions were added to GSD's rules in 1998, when the National Securities Clearing Corporation requested that the Government Securities Clearing Corpoartion ("GSCC"), the GSD's predecessor, establish with it an interface that would enable account transfers involving netting-eligible government securities to be processed using GSCC's existing netting and settlement processes. This service was never implemented, and its continued reference in the rules is inconsistent with current practice.

2. Delete Provisions From GSD's Rules That Designate Participation in the Repo Comparison and Netting Processes

GSD's rules used to refer to FICC as designating a member to be eligible to participate in the repo comparison and repo netting processes. When these repo services commenced in 1995, GSCC required testing prior to participation and subsequently designated members as eligible to participate in the services. Participation in these services has now become commonplace and special testing and designation for participation in the repo services is no longer necessary. As such, the provisions in question are outdated and are being deleted.

3. Make Technical Corrections to GSD Rules By

i. Changing the definitions of "Interest Adjustment Payment" and "Interest Rate Mark Adjustment Payment" in GSD Rule 1 (Definitions) to correct an erroneous reference in both definitions to the "Federal Funds Rate" and replacing them with references to a newly defined term, "Overnight Investment Rate;"

ii. changing the term in Rule 1 "Multilateral Clearing Organization" to "Multilateral Clearing Agency;"

iii. changing the language of the definition in Rule 1 of "Member" to reflect the fact that certain members (*i.e.*, comparison-only members) are approved for membership by senior management and not by the Membership and Risk Management Committee;

iv. correcting Section 1(d) of Rule 2, where GSD is erroneously referred to as its predecessors name, GSCC;

v. deleting subsection (b) of Rule 11B, which has expired;

vi. changing an incorrect reference to "Rule 7" to "Rule 6C" in Rule 17, Section 4; and

vii. changing a reference to the "Membership and Standards Committee" to the "Membership and Risk Management Committee" in Rule 48, Section 2.

4. Technical Corrections in the MBSD Rules

FICC will renumber MBSD Rule 15 (Notices) of Article X to Rule 16 as it is in fact the 16th rule in that article.

II. Discussion

Section 17A(b)(3)(A) of the Act requires, among other things, that a clearing agency be organized to facilitate the prompt and accurate clearance and settlement of securities transactions.[3] FICC's proposed rule change will eliminate unnecessary or outdated provisions, and make technical changes. This should promote greater transparency and understanding of FICC's actual practices and policies, which should enhance FICC's organizational capacity to facilitate the

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 50888 (Dec. 20, 2004), 69 FR 78073.

[3] 15 U.S.C. 78q–1(b)(3)(A).

prompt and accurate clearance and settlement of securities transactions.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act[4] and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–FICC–2004–19) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–639 Filed 2–15–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51146; File No. SR–FICC–2004–13]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of a Proposed Rule Change To Amend the Rules of the Mortgage-Backed Securities Division To Impose Fines on Members for Violations of Minimum Financial Standards and To Modify the Penalty Assessment Process for Failures of Members To Submit Requisite Financial Reports on a Timely Basis

February 7, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on June 24, 2004, the Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") and on February 2, 2005, amended the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by FICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FICC is seeking to amend the rules of its Mortgage-Backed Securities Division ("MBSD") to impose fines on members for violations of minimum financial standards and to modify the penalty assessment process for failures of members to submit requisite financial reports on a timely basis.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change would amend the rules of the MBSD by imposing fines on members for violations of minimum financial standards and by modifying the penalty assessment process for failures of members to submit requisite financial reports on a timely basis.

1. Violations of Minimum Financial Standards

The rules of the MBSD require clearing members to meet and maintain certain minimum financial standards at all times. While the majority of MBSD members consistently satisfy their minimum financial requirements, occasionally members do breach these requirements and create undue risk for FICC and its members.

Currently, the MBSD rules do not impose specific margin consequences for falling out of compliance with minimum financial requirements but allow the Membership and Risk Management Committee in its discretion to impose conditions which can include an increase to the participant's minimum required deposits to the Participants Fund.

Under the proposed rule change, a violation of a minimum financial requirement by an MBSD clearing participant would result in the imposition on such member of a margin premium equal to the greater of (a) 25 percent of the member's unadjusted[3] Participants Fund requirement or (b) $1,000,000, to continue for ninety calendar days after the later to occur of (i) the member's return to compliance with applicable minimum financial standards or (ii) FICC's discovery of the applicable violation.[4] In addition, such violation would result in (1) a report of the violation to the FICC Membership and Risk Management Committee at its next regularly scheduled meeting or sooner if deemed appropriate by FICC and (2) the placement of such member on FICC's "watch list" subjecting it to frequent and thorough monitoring. None of these consequences would preclude FICC from imposing any other margin consequences permitted by the MBSD rules.

2. Failure To Submit Requisite Financial Reports on a Timely Basis

Certain members that are required to provide monthly or quarterly financial data to FICC at times have violated MBSD's membership requirements by not timely providing such financial data. In such instances, management contacts each offending member and follows up with a letter.

Failure to timely receive required information creates risk to FICC and as a result hinders FICC's ability to appropriately assess the financial condition of such members. To encourage timely submission of required financial data, FICC has established a mechanism to fine delinquent participants.[5] FICC is now proposing two additional measures to enforce timely filing of financial information.

First, FICC proposes to subject delinquent participants to a more stringent Participants Fund requirement. Specifically, the proposed rule filing would automatically impose a margin premium equal to the greater of (1) 25 percent of the member's unadjusted Participants Fund requirement or (2) $1,000,000. The margin premium would be applied until appropriate financial data is submitted to FICC and reviewed for compliance purposes. In addition, delinquent members would be precluded from taking back any excess Participants Fund collateral to which they might ordinarily be entitled.

Second, participants that fail to submit requisite financial reports on a timely basis would also automatically be placed on FICC's "watch list" and

[4] 15 U.S.C. 78q–1.

[5] 17 CFR 200.30–3(a)(12).

[1] 1 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by FICC.

[3] "Unadjusted" means the standard calculation before any additional assessments.

[4] The required clearing fund deposit premium that will be assessed for violation of applicable minimum financial standards will be effective beginning on the day of the violation but will begin to be assessed on the date FICC becomes aware of the violation.

[5] Securities Exchange Act Release No. 49947 (June 30, 2004), 69 FR 41316 [File No. SR–FICC–2003–01].

subject to frequent and thorough monitoring.

FICC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[6] and the rules and regulations thereunder applicable to FICC because it assures the safeguarding of securities and funds which are in the custody or control of FICC by encouraging participants to maintain their minimum financial standards and to submit their required financial reports on a timely basis. As a result, FICC's ability to maintain a financially sound participant base should be enhanced.

(B) Self-Regulatory Organization's Statement on Burden on Competition

FICC does not believe that the proposed rule change will have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not yet been solicited or received. FICC will notify the Commission of any written comments received by FICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–FICC–2004–13 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–FICC–2004–13. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of FICC and on FICC's Web site at *http://www.ficc.com/gov/gov.docs.jsp?NS-query*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–FICC–2004–13 and should be submitted on or before March 9, 2005.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–647 Filed 2–15–05; 8:45 am]

BILLING CODE 8010–01–P

[6] 15 U.S.C. 78q–1.

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51176; File No. SR–ISE–2005–03]

Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Relating to the Calculation of Securities Indexes Underlying Options

February 9, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 5, 2005, the International Securities Exchange, Inc. ("Exchange" or "ISE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II, which Items have been prepared by the Exchange. The Exchange filed the proposal as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. On February 4, 2005, the Exchange filed Amendment No. 1 to the proposal.[5] 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 proposes to amend its rules to clarify the determination of the source of securities price information used to calculate values of certain securities indexes underlying options traded on the Exchange. The text of the rule change is below. Proposed new language is *italicized*.[6]

Rule 2009. Terms of Index Options Contracts

(a)–(e) no change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] In Amendment No. 1, the Exchange modified the purpose section of the proposed rule change to reflect that the proposal is intended to clarify ISE rules pertaining to the source of pricing information for securities that comprise any particular securities index on which options are traded on the Exchange. Additionally, the Exchange withdrew its request for the waiver of the 30-day operative period, as the Exchange does not currently trade options on any indexes that may be subject to this rule.

[6] The proposed rule language is based on a Chicago Board Options Exchange, Inc. ("CBOE") rule change recently approved by the Commission. *See* Securities Exchange Act Release No. 50269 (August 26, 2004), 69 FR 53755 (September 2, 2004).

(f) Index Level at Expiration. With respect to any securities index on which options are traded on the Exchange, the source of the prices of component securities used to calculate the current index level at expiration is determined by the reporting authority for that index.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change 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 purpose of this proposed rule change is to clarify ISE rules related to index options as they pertain to the source of pricing information for securities that comprise any particular securities index on which options are traded on the Exchange. The purpose of the rule change is to clarify that the "reporting authority" (or index calculator) for any securities index on which options are traded on the ISE may determine to use the reported sale prices for one or more underlying securities from a market that may not necessarily be the primary market for that security in calculating the appropriate index value.[7] This clarification is necessary because ISE's rules may be read to mean that the primary market for each security that comprises an index will always be the source of reported sale prices to calculate the index. While the Exchange does not currently trade options on any indexes that are calculated by using prices from sources other than the primary market, the Exchange seeks to adopt this rule in the event it does list such options in the future.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.[8] Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(5)[9] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited 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 does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective[10] pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6) thereunder,[12]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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–2005–03 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–ISE–2005–03. 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 Commissions 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–2005–03 and should be submitted on or before March 9, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–641 Filed 2–15–05; 8:45 am]

BILLING CODE 8010–01–P

[7] On May 12, 2004, Dow Jones & Company ("Dow Jones") published a plan to implement a pilot program in which Dow Jones proposed to use the opening and closing prices of Nasdaq-listed stocks reported from the American Stock Exchange to calculate certain Dow Jones Averages. Dow Jones has since terminated the pilot program.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] The Exchange provided the Commission with notice of its intent to file the proposed rule change at least five days prior to the filing date.

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51171; File No. SR–NASD–2005–016]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Fees for the Nasdaq Information Exchange Protocol

February 9, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 31, 2005, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] Nasdaq has designated this proposal as one establishing or changing a due, fee, or other charge of a self-regulatory organization, which renders the proposed rule change effective immediately upon filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes to modify its fees for the Nasdaq Information Exchange protocol. Nasdaq will implement the proposed rule change on February 1, 2005.

The text of the proposed rule change is available on the NASD's Web site (*http://www.nasd.com*), at the NASD's Office of the Secretary, 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, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq recently submitted a proposed rule change to establish fees for the Nasdaq Information Exchange, or "QIX," a new proprietary messaging protocol that, unlike the current application programming interface ("API") protocol, does not require use of an service delivery platform ("SDP") at the premises of the subscriber.[5] Nasdaq has concluded that it underestimated its costs of providing the new protocol when it initially established these fees, and is now revising the fees accordingly. The fee for a QIX port pair (including an ECN direct connection port pair) is being increased from $1,000 to $1,200 per month, and the fee for an unsolicited message port is being increased from $750 to $1,000 per month. Despite these fee increases, Nasdaq believes that the implementation of QIX will still result in significant cost savings to subscribers in comparison to the current SDP/API protocol.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[6] in general, and section 15A(b)(5)[7] of the Act, in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. Even with the fee increases reflected in the proposed rule change, the new QIX protocol will offer substantial cost savings in comparison with the current SDP/API protocol. Fees for access services are equitably allocated based on the level of message traffic between Nasdaq and each firm.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act[8] and subparagraph (f)(2) of Rule 19b–4 thereunder, because it establishes or changes a due, fee, or other charge.[9] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2005–016 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NASD–2005–016. 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

[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.
[3] 15 U.S.C. 78s(b)(3)(A).
[4] 17 CFR 240.19b–4(f)(2).
[5] *See* Securities Exchange Act Release No. 51170 (February 9, 2005) (File No. NASD–2005–002).
[6] 15 U.S.C. 78*o*–3.
[7] 15 U.S.C. 78*o*–3(5).
[8] 15 U.S.C. 78s(b)(3)(a).
[9] 17 CFR 240.19b–4(f)(2).

Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2005–016 and should be submitted on or before March 9, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–634 Filed 2–15–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51170; File No. SR–NASD–2005–002]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto To Establish Fees for Connectivity to the Nasdaq Market Center

February 9, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 7, 2005, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On January 28, 2005, Nasdaq filed Amendment No. 1 to the proposed rule change.[3] Pursuant to Section 19(b)(3)(A) of the Act[4] and Rule 19b–4(f)(1), (2), and (5) thereunder,[5] Nasdaq has designated this proposal in part as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule, in part as establishing or changing a due, fee, or other charge, and in part as a proposal effecting a change in an existing order-entry or trading system of a self-regulatory organization, which renders the proposed rule change effective immediately upon filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes to amend NASD Rule 7010 to establish fees for new options for connecting to the Nasdaq Market Center and is filing a related Member Alert and Head Trader Alert. Nasdaq will implement the proposed rule change immediately.

The text of the proposed rule change, and the texts of the related Member Alert and Head Trader Alert, that were attached as exhibits to the proposal, are available on the NASD's Web site (*http://www.nasd.com*), at the NASD's Office of the Secretary, 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, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq Information Exchange

Nasdaq offers market participants and other Nasdaq subscribers a choice of messaging protocols for communicating with Nasdaq systems, with the goal of allowing firms to select the connectivity options that best suit their needs. The protocol options currently available to firms include the Financial Information Exchange ("FIX") protocol, the computer-to-computer interface ("CTCI") protocol, and an application programming interface ("API") protocol that requires the use of a Service Delivery Platform ("SDP"), a hardware unit located at the subscriber's premises. Although the SDP/API protocol has offered distinct advantages in terms of functional support for quoting market participants and other firms with high volumes of message traffic, the need for firms to install and maintain one or more SDPs has resulted in comparatively higher communications and infrastructure costs for firms using SDP/API. As a result, Nasdaq has developed the Nasdaq Information Exchange or "QIX," a new proprietary protocol that does not require use of an SDP. Nasdaq believes that QIX will offer the benefits of the current API protocol but at a significantly reduced cost to its users.

The QIX protocol is being made available for use in production immediately. During a period of approximately ten months thereafter, Nasdaq will work with users of the SDP/API protocol to transition them to QIX, FIX, and/or CTCI. Nasdaq intends to sunset the SDP/API protocol and connectivity by the end of October 2005 (or such later date as Nasdaq may announce to market participants); all users of that protocol will be required to transition by that time. The sunset of SDP/API will not affect the operation of any of the rules governing trading through the Nasdaq Market Center (*e.g.*, the 4700 Series of the NASD Rules).

In contrast to the SDP/API protocol, which requires market participants to use, and pay Nasdaq for the use of, a telecommunications network supplied by MCI pursuant to an agreement with Nasdaq, QIX will offer market participants choice in the establishment of connections to Nasdaq. As is currently the case for FIX, market participants may use a range of third-party communications providers, may establish connections to service bureaus that in turn connect to Nasdaq, or may take advantage of additional modes of telecommunications that may become available to the financial sector in the future. As a result, member firms will benefit from the forces of competition, choice, and innovation when selecting telecommunications services for the purpose of connecting to Nasdaq's facilities through QIX and FIX, rather than receiving connectivity as a vertically integrated component of Nasdaq's facilities.

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, Nasdaq added representations with respect to monitoring usage traffic on dedicated and non-dedicated FIX servers and steps it would take to provide a high level of support across all other FIX servers, and replaced the text of the original filing in its entirety.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(1), (2), and (5).

Nasdaq will assess a basic charge of $1,000 for each pair of "ports" that uses QIX.[6] A port is a discrete right of access to Nasdaq's trading facility using the QIX protocol. Ports, which are analogous to a "logon" in the SDP/API environment, are provided in pairs to increase throughput performance by separating unsolicited message streams from quote/order entry and response streams. The number of port pairs that a particular firm will require will depend on the volume of its message traffic. The direct connection for electronic communications networks ("ECNs") that Nasdaq recently established[7] will continue to be available, at the same charge of $1,000 per port pair per month. Upon the sunset of the SDP/API protocol, ECNs will no longer be able to connect to Nasdaq using an SDP, so the use of a direct connection will become mandatory for ECNs quoting in Nasdaq. Subscribers will also be able to receive a single port that is used solely to receive unsolicited messages (such as drop copy execution reports) at a cost of $750 per month.[8]

QIX, unlike the SDP/API, will not support the risk management function of Nasdaq's trade reporting service, but this function will continue to be available through the Nasdaq Workstation. In addition, QIX will not provide a market data feed, so firms that currently use the SDP/API for market data will need to subscribe separately to the appropriate market data feeds. Nevertheless, Nasdaq expects that the overall cost of QIX to support a given level of usage will be significantly lower than the cost of SDP/API to support an equivalent level. Nasdaq also expects that the effort required by firms to transition from SDP/API to QIX will be quite manageable by firms, given the similarities between the two protocols. To assist in the transition, SDP/API and CTCI users will be provided with the ability to segregate unused bandwidth on T1 circuits supporting these existing connections to establish temporary QIX and/or FIX connections while firms await installation of such new circuits as may be required to support their planned QIX and/or FIX usage. In addition, pursuant to NASD Rule 7050(d)(3), subscribers that are transitioning from SDP/API to QIX or FIX will be permitted to use the Nasdaq Testing Facility to test QIX or FIX functionality free of charge for a 90-calendar day period. Nasdaq has been providing notice to all market participants that will be affected by the sunset of SDP/API through direct contacts and through widely disseminated written notices, including Nasdaq Head Trader Alert (2004–105), which was disseminated in July 2004,[9] and Nasdaq Head Trader Alert (2005–009) and an NASD Member Alert, which are being disseminated in conjunction with this filing.[10] To further ensure the availability of this information, Nasdaq is filing the NASD Member Alert and the new Head Trader Alert as Exhibits to this proposed rule change.

FIX Servers

In response to requests from market participants, Nasdaq is also offering users of the FIX protocol the option of using FIX through a dedicated server (also known as a "FIX engine"). Currently, Nasdaq's FIX servers are not dedicated to a specific firm, but rather a single FIX server may carry message traffic from multiple firms. Nasdaq carefully monitors usage to ensure that capacity is adequate to handle message traffic. Nevertheless, in response to the request of several firms, Nasdaq is proposing to provide the option of a dedicated server at a cost of $1,000 per server per month to reflect Nasdaq's additional costs of providing this service. Nasdaq represents that it will carefully monitor message traffic on all dedicated and non-dedicated servers to ensure that dedicated servers will not provide firms that receive them with any advantage over other market participants in terms of the speed with which messages are transmitted to and from the Nasdaq Market Center. Specifically, Nasdaq represents that it will install additional non-dedicated servers whenever necessary to provide a high level of support across all FIX servers.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[11] in general, and Section 15A(b)(5)[12] of the Act, in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. Nasdaq believes the proposed rule change would provide market participants with a choice of several cost-effective methods to connect to Nasdaq's facilities, including QIX, a new API protocol that will offer substantial cost savings in comparison with the current SDP/API protocol. Nasdaq represents that fees for access services are equitably allocated based on the level of message traffic between Nasdaq and each firm.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[13] and subparagraphs (f)(1), (2), and (5) of Rule 19b–4 thereunder, because it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule, establishes or changes a due, fee, or other charge, and effects a change in an existing order-entry or trading system.[14] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the

[6] A subscriber that seeks to track its proprietary quotes separately from customer orders that are reflected in its quotes will have the option of receiving a third proprietary quote information port for that purpose at no additional charge. The Commission notes that in a subsequent filing (NASD–2005–016), Nasdaq proposed to revise the QIX fees. The fee for a QIX port pair (including an ECN direct connection port pair) would be increased from $1,000 to $1,200 per month, and the fee for an unsolicited message port would be increased from $750 to $1,000 per month. *See* Securities Exchange Act Release No. 51171 (February 9, 2005).

[7] *See* Securities Exchange Act Release No. 50647 (November 8, 2004), 69 FR 65667 (November 15, 2004) (SR–NASD–2004–158).

[8] Because Nasdaq's charges are assessed against the Nasdaq market participant rather than telecommunications providers or service bureaus that act as intermediaries, the fees established by this proposed rule change apply only to NASD members.

[9] *See http://www.nasdaqtrader.com/dynamic/newsindex/headtraderalerts_2004.stm.*

[10] *See http://www.nasdaqtrader.com/dynamic/newsindex/headtraderalerts_2005.stm* and *http://www.nasd.com/web/idcplg?IdcService=SS_GET_PAGE&nodeId=1193&ssSourceNodeId=546.* The Head Trader Alerts and Member Alert also describe Nasdaq's plans to replace the current Nasdaq Workstation II with a new Nasdaq Workstation by October 2005. Nasdaq will submit a separate proposed rule change to establish fees for the new Nasdaq Workstation.

[11] 15 U.S.C. 78*o*–3.

[12] 15 U.S.C. 78*o*–3(5).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(1), (2), and (5).

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.[15]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2005–002 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NASD–2005–002. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2005–002 and should be submitted on or before March 9, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–636 Filed 2–15–05; 8:45 am]

BILLING CODE 8010–01–P

[15] *See* 15 U.S.C. 78s(b)(3)(C). For purposes of calculation the 60-day abrogation period, the Commission considers the period to commence on January 28, 2005, the date Nasdaq filed Amendment No. 1.

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51181; File No. SR–NASD–2004–171]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Amendments to Rule 2340 (Customer Account Statements)

February 10, 2005.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 ("Act") [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on November 2, 2004, the National Association of Securities Dealers, Inc. ("NASD"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. On February 2, 2005 NASD filed Amendment No. 1 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to amend Rule 2340 to require that account statements include a statement that advises each customer to promptly report any inaccuracy or discrepancy in that person's account to his or her introducing firm and clearing firm (where these are different firms) and to re-confirm any oral communications in writing to further protect the customer's rights, including rights under the Securities Investor Protection Act ("SIPA"). Below is the text of the proposed rule change. Proposed new language is in italics.

* * * * *

2340. Customer Account Statements

(a) General

Each general securities member shall, with a frequency of not less than once every calendar quarter, send a statement of account ("account statement") containing a description of any securities positions, money balances, or account activity to each customer whose account had a security position, money balance, or account activity during the period since the last such statement was sent to the customer. *In addition, each general securities member shall include in the account statement a statement that advises the customer to report promptly any inaccuracy or discrepancy in that person's account to his or her brokerage firm. (In cases where the customer's account is serviced by both an introducing and clearing firm, each general securities member must include in the advisory a reference that such reports be made to both firms.) Such statement also shall advise the customer that any oral communications should be re-confirmed in writing to further protect the customer's rights, including rights under the Securities Investor Protection Act (SIPA).*

(b) through (d) No change

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD 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. NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

On May 25, 2001, the U.S. General Accounting Office ("GAO") issued *Securities Investor Protection: Steps Needed to Better Disclose SIPC Policies to Investors* (GAO–01–653). In that report, the GAO made recommendations to SEC and the Securities Investor

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a *et seq.*

[3] 17 CFR 240.19b–4.

[4] In Amendment No. 1, NASD filed a partial amendment to change the proposed effective date from 30 days following Commission approval to 180 days following Commission approval. NASD also changed the reference to "each customer" to "the customer" in the sentence proposed to be added as the second sentence to paragraph (a) of Rule 2340.

Protection Corporation ("SIPC") about ways to improve the information available to the public about SIPC and the Securities Investor Protection Act.[5] Among other things, the GAO recommended that self-regulatory organizations ("SROs") explore actions to include information on periodic statements or trade confirmations to inform investors that they should document any unauthorized trading in writing. This is important because, in the event a firm goes into SIPC liquidation, SIPC and the trustee generally will assume that the firm's records are accurate unless the customer is able to prove otherwise.[6] Currently, clearing firms may include language in customer account statements advising customers to immediately report to the firm any discrepancies in balances or positions, but these advisories may not necessarily direct customers to do so in writing, nor are they *required* to be included on the statements.

Therefore, NASD is proposing to amend Rule 2340, which specifies disclosures required to be made on customer account statements. The proposed amendment to Rule 2340 would require general securities firms to include in monthly account statements a statement advising customers to report promptly any inaccuracy or discrepancy in their account to their clearing firm and the introducing firm (where these are different firms). Such statement also would need to advise customers that any oral communications should be re-confirmed in writing to further protect customers' rights, including rights under SIPA. The proposed disclosure requirement would not impose any limitation whatsoever on a customer's right to raise concerns regarding inaccuracies or discrepancies in his or her account at any time, either in writing or orally. Further, a customer's failure to promptly raise such concerns, either in writing or orally, does not act to estop a customer from reporting an inaccuracy or discrepancy in his or her account during any SIPC liquidation of his or her brokerage or clearing firm.

[5] In July 2003, the GAO issued *Securities Investor Protection: Update on Matters Related to the Securities Investor Protection Corporation*, in which the GAO noted that the Commission was working with self-regulatory organizations to explore ways in which the GAO's recommendations could be implemented.

[6] The SIPC Brochure advises customers that if they ever discover an error in a confirmation or statement, they should immediately bring the error to the attention of the brokerage firm in writing and keep a copy of this writing. SIPC advises that if there is something wrong with the brokerage firm's records, the customer will have to prove that the records are inaccurate, or SIPC and the trustee will assume that the firm's records are correct.

NASD will announce the effective date of the proposed rule change in a Notice to Members to be published no later than 30 days following Commission approval. NASD is proposing an effective date of 180 days following Commission approval. This will give members time to make necessary changes to their customer documentation and systems.

(b) Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that NASD rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed rule change is consistent with the provisions of the Act noted above because each customer will be advised to promptly report any discrepancies or inaccuracies in his or her account to his or her brokerage firm (both the clearing firm and introducing firm, where the customer's account is serviced by both) and to re-confirm any oral communications in writing, thereby further protecting the customer's rights, including rights under SIPA.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2004–171 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File No. SR–NASD–2004–171. 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. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to file number SR–NASD–2004–171 and should be submitted on or before March 9, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–649 Filed 2–15–05; 8:45 am]

BILLING CODE 8010–01–P

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51177; File No. SR–NSCC–2004–11]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Amending the Fee Schedule of the Insurance Processing Service

February 9, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 20, 2004, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will revise the transaction fees for NSCC's Insurance Processing Service ("IPS").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[2]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Pursuant to this rule change, fees for the Positions and Valuations ("POV") product of IPS, which enables carriers to send annuity and life insurance contract details to their distributors, will be adjusted as follows (each fee is for 1,000 items):

- For zero to 500,000 items per month (the previous range was zero to 49,999 items per month), there will be a price increase from $6.00 to $8.00;
- For 500,001 to 2,000,000 items per month (the previous range was 50,000 to 249,999 items per month), there will be a price decrease from $5.00 to $4.50;
- For 2,000,001 to 4,000,000 items per month (the previous range was 250,000 to 999,999 items per month), there will be a price decrease from $4.00 to $3.75; and
- For 4,000,001 or more items per month (the previous range was 1,000,000 or more items per month), there will be a price increase from $2.00 to $3.50.

The effective date for these fee adjustments was January 1, 2005. NSCC represents that these proposed fee revisions are consistent with NSCC's overall pricing philosophy to align service fees and underlying cost.

NSCC believes that the proposed rule change is consistent with the requirements of the Section 17A of the Act[3] and the rules and regulations thereunder because it provides for a reasonable fee to cover the clearing agency's costs and as such it promotes the prompt and accurate clearance and settlement of securities transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC believes that the proposed rule change will not impact or impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

NSCC has not solicited or received written comments relating to the proposed rule change. NSCC will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change took effect upon filing with the Commission pursuant to Section 19(b)(3)(A)(ii) of the Act[4] and Rule 19b–4(f)(2)[5] thereunder because the proposed rule change changes a due, fee, or other charge imposed by NSCC. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NSCC–2004–11 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NSCC–2004–11. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at NSCC's principal office and on NSCC's Web site at *http://www.nscc.com/legal/index2004.html*. 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–NSCC–2004–11 and should be submitted on or before March 9, 2005.

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[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by NSCC.

[3] 15 U.S.C. 78q–1.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–640 Filed 2–15–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51179; File No. SR–Phlx–2004–95]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Relating to Limitation of the Net Inbound ITS Credit to Certain Phlx and SCCP Fees and Transaction-Related Charges

February 9, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 30, 2004, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Phlx. On January 24, 2005, the Exchange filed Amendment No. 1.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to revise its schedule of fees to limit the Net Inbound Intermarket Trading System ("ITS")[4] Credit ("ITS Credit")[5] to certain Phlx and Stock Clearing Corporation of Philadelphia ("SCCP")[6] fees and transaction-related charges. Specifically, the proposal limits the ITS Credit to the amount of Phlx Permit Fees, Phlx Outbound ITS Fees, SCCP Trade Recording Fees, SCCP Value Fees, SCCP Transaction Charges (Remote Specialist Only), SCCP ETF Fees (related to NASDAQ-100 Trust, Series 1 ("QQQ"),[7] Standard & Poor's Depository Receipts® ("SPDRs"),[8] and DIAMONDS® Exchange Traded Funds ("DIAMONDS®"))[9] incurred in the same month that the credit is earned.[10] On a monthly basis, ITS Credit in excess of the amount charged for the fees may not be used for any other purpose and may not be carried forward.[11] The proposed amendment is scheduled to become effective for transactions occurring in February, 2005.

The text of the proposed rule change is available on the Phlx's Web site *http://www.phlx.com*, at the Phlx's Office of the Secretary, 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 Phlx 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 Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to continue encouraging ITS trades by allowing equity specialists to get an ITS Credit, but to limit the credit in a reasonable fashion so as not to financially burden the Exchange, particularly in light of the change in equity business on the Exchange. Specifically, while the current ITS Fee and ITS Credit methodology was practical when instituted in 2002,[12] the equity business mix on the Exchange has changed, such that the ITS Credit is now substantially greater than the ITS Fee, with the Exchange generally having to credit substantial amounts to equity specialists. The Exchange is therefore constricting the amount of the ITS Credit, which will continue to be calculated on a monthly basis, such that the credit is limited as described above. The fees to which the ITS Credit is now limited reflect the most fundamental fees applicable to equity specialists.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[13] in general, and furthers the objectives of Section 6(b)(4) of the Act[14] in particular, in that it is an equitable allocation of reasonable fees among Exchange members.

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[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 clarified certain terminology used in the proposed rule change and slightly changed the text of the rule.

[4] ITS is an order routing network designed to facilitate intermarket trading in exchange-listed equity securities among participating self-regulatory organizations based on current quotation information emanating from their markets.

[5] Currently, the ITS Credit (which is calculated on a monthly basis) is: $0.30 per 100 shares on the excess, if any, of the number of inbound ITS shares executed compared to the number of outbound ITS shares sent and executed on a monthly basis. The outbound ITS fee ("Outbound ITS Fee") for PACE orders (PACE is the Exchange's electronic order routing, delivery, execution, and reporting system for equities) sent over ITS and containing customer clearing information is: $0.60 per 100 shares for up to 501 shares and $0.30 per 100 shares for 501 to 4,999 shares. *See* Securities Exchange Act Release No. 45388 (February 4, 2002), 67 FR 6310 (February 11, 2002) SR–Phlx–2001–121).

[6] SCCP, a subsidiary of Phlx, is a registered clearing agency.

[7] The Nasdaq-100®, The Nasdaq-100 Index®, Nasdaq® The Nasdaq Stock Market®, Nasdaq 100 Shares℠, Nasdaq-100 Trust℠, Nasdaq-100 Index Tracking Stock℠ and QQQ℠ are trademarks or service marks of The Nasdaq Stock Market, Inc. ("Nasdaq") and have been licensed for use for certain purposes by the Phlx pursuant to a License Agreement with Nasdaq. The Nasdaq-200 Index® ("Index") is determined, composed, and calculated by Nasdaq without regard to the licensee of the product, the Nasdaq-100 Trust℠, or the beneficial owners of Nasdaq-100 Shares℠. Nasdaq has complete control and sole discretion in determining, comprising or calculating the Index or in modifying in any way its method for determining, comprising or calculating the Index in the future.

[8] "Standard & Poor's®," "S&P®," "S&P 500®," "Standard & Poor's 500®", and "500" are trademarks of The McGraw-Hill Companies, Inc., and have been licensed for use by the Phlx, in connection with the listing and trading of SPDRs, on the Phlx. These products are not sponsored, sold or endorsed by Standard & Poor's ("S&P"), a division of The McGraw-Hill Companies, Inc., and S&P makes no representation regarding the advisability of investing SPDRs.

[9] "Dow Jones ®," "The Dow℠," "Dow 30℠," "Dow Jones Industrial Average℠", "Dow Jones Industrials℠," "DJIA℠." "DIAMONDS ®," and "The Market's Measure®" are trademarks of Dow Jones & Company, Inc. ("Dow Jones") and have been licensed for use for certain purposes by the Phlx, pursuant to a License Agreement with Dow Jones. The DIAMONDS Trust, based on the DJIA, is not sponsored, endorsed, sold or promoted by Dow Jones, and Dow Jones makes no representation regarding the advisability of investing in the DIAMONDS Trust.

[10] SCCP is simultaneously submitting a proposed rule change that adds reference to the ITS Credit in the SCCP Fee Schedule and also renames fees related to certain products as "ETF Fees." *See* SR–SCCP–2004–05.

[11] Thus, for example, if an equity specialist had a monthly ITS Credit of $30,000 and monthly Phlx and SCCP charges that were eligible to be reduced by the ITS Credit of $5,000 and $20,000, respectively, the equity specialist would receive a credit of $25,000, and the unused credit amount of $5,000 could not be used for any purpose.

[12] *See* Securities Exchange Act Release No. 45388 (February 4, 2002), 67 FR 6310 (February 11, 2002) (SR–Phlx–2001–121).

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(4).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [15] and paragraph (f) of Rule 19b–4 thereunder,[16] because it establishes or changes a due, fee, or other charge imposed by the Phlx. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[17]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2004–95 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–Phlx–2004–95. 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 the filing also will be available for inspection and copying at the principal office of the Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2004–95 and should be submitted on or before March 9, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–646 Filed 2–15–05; 8:45 am]

BILLING CODE 8010–01–P

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(2).

[17] For purposes of claculating the 60-day abrogation period, the Commission considers the proposed rule change to have been filed on January 24, 2005 when Amendment No. 1 was filed.

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51182; File No. SR–SCCP–2004–04]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Adoption of a New Per Side Transaction Charge for Remote Specialist Units

February 10, 2005.

Pursuant to Section 19(b)(1) of 1934 ("Act"),[1] notice is hereby given that on December 29, 2004, the Stock Clearing Corporation of Philadelphia ("SCCP") 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 primarily by SCCP. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

SCCP will amend its schedule of fees by adding a new transaction fee applicable to remote specialists that deliver certain types of orders to the Philadelphia Stock Exchange ("Phlx") over PACE.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, SCCP 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. SCCP has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[3]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Under the proposed rule change, SCCP will add a $0.15 per Program Trading Side transaction fee. Program Trading Sides are defined as market orders that are sent by an order flow provider to a remote specialist through PACE pursuant to the order flow provider's computerized trading methodology that is based on a predetermined algorithm.[4] In order for the Program Trading Sides to qualify for the $0.15 fee, the order flow provider sending the Program Trading Sides must be affiliated with the remote specialist to whom the Program Trading Sides are directed.

The purpose of this new fee is to provide an incentive for remote specialists to generate additional volume by attracting additional Program Trading Sides. Pursuant to the rule change, remote specialists will be charged a fee of $0.15 per trade side for Program Trading Sides (both odd-lots and round-lots) instead of the current fee of $0.30 per round-lot trade side and $0.10 per odd-lot trade side. For a given month, the fee for each remote specialist will be capped at $10 per day per

[1] 15 U.S.C. 78s(b)(1).

[2] PACE is Phlx's automated order routing, delivery, execution, and reporting system for equities. Phlx Rule 229.

[3] The Commission has modified the text of the summaries prepared by SCCP.

[4] Phlx Rules 229 and 229A govern the handling of orders received through PACE.

security provided the total number of Program Trading Sides settled by the remote specialist in all specialty securities exceeds 50,000 sides for that calendar month. SCCP proposed that the fee become effective beginning with trades settling on January 3, 2005.

SCCP believes that the proposed rule change is consistent with Section 17A(b)(3)(D) of the Act[5] which requires that the rules of a registered clearing agency provide for the equitable allocation of reasonable dues, fees, and other charges among its participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

SCCP does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

SCCP did not solicit or receive written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change took effect upon filing with the Commission pursuant to Section 19(b)(3)(A)(ii) of the Act[6] and Rule 19b–4(f)(2)[7] thereunder because the proposed rule change changes a due, fee, or other charge imposed by SCCP. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–SCCP–2004–04 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–SCCP–2004–04. 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 the filing also will be available for inspection and copying at SCCP's principal office and on SCCP's Web site at *http://www.phlx.com/SCCP/memindex_sccpproposals.html*. 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–SCCP–2004–04 and should be submitted on or before March 9, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–643 Filed 2–15–05; 8:45 am]

BILLING CODE 8010–01–P

[5] 15 U.S.C. 78q–1(b)(3)(D).

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 240.19b–4(f)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51186; File No. SR–SCCP–2004–05]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Limitation of the Net Inbound ITS Credit to Certain SCCP and Phlx Fees and Transaction-Related Charges

February 10, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 30, 2004, the Stock Clearing Corporation of Philadelphia ("SCCP") 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 primarily by SCCP. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

SCCP will amend SCCP's fee schedule to indicate that the Net Inbound ITS Credit ("ITS Credit")[2] established in the Philadelphia Stock Exchange's ("Phlx") Summary of Equity Charges is limited to certain SCCP and Phlx transaction-related charges.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, SCCP 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. SCCP has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[3]

[1] 15 U.S.C. 78s(b)(1).

[2] The ITS Credit is a credit that is calculated on a monthly basis consisting of: $0.30 per 100 shares on the excess, if any, of the number of inbound ITS shares executed compared to the number of outbound ITS shares sent and executed. Securities Exchange Act Release No. 45388 (Feb. 2, 2002), 67 FR 6310 (Feb. 11, 2002) [SR–Phlx–2001–121].

[3] The Commission has modified the text of the summaries prepared by SCCP.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Under the rule change, the ITS Credit will be limited to the amount of SCCP's Trade Recording Fees, Value Fees, ETF Fees, and Transaction Charges (Remote Specialist Only) plus Phlx Permit Fees and Phlx Outbound ITS Fees [4] that are incurred in the same month that the credit is earned. On a monthly basis, ITS Credits in excess of the amount charged for all of these fees may not be used for any other purpose and may not be carried forward.[5] The proposed amendment was effective for transactions settling on or after January 3, 2005.

Also under the rule change, SCCP will rename the fees related to certain products [6] as "ETF Fees" for ease of reference.

The purpose of the proposed rule change is to encourage ITS trades by allowing equity specialists to get an ITS Credit but to limit the credit in a reasonable fashion so as not to financially burden Phlx, particularly in light of the change in Phlx's equity business. While the ITS Fee and ITS Credit methodology was practical when instituted in 2002,[7] Phlx's equity business has changed so that the ITS Credit is now substantially greater than the ITS Fee. As a result, Phlx oftentimes has to credit substantial amounts to equity specialists. Phlx is therefore limiting the amount of the ITS Credit as described above. The fees to which the ITS Credit is now limited reflect the most fundamental fees applicable to equity specialists.

SCCP believes that the proposed rule change is consistent with Section 17A(b)(3)(D) of the Act [8] which requires that the rules of a registered clearing agency provide for the equitable allocation of reasonable dues, fees, and other charges among its participants.

[4] Phlx has submitted a companion proposed rule change to the Commission that adds reference to the ITS Credit in the Summary of Equity Charges in Phlx's schedule of fees. [SR–Phlx–2004–95.]

[5] For example, if an equity specialist had a monthly ITS Credit of $30,000 and monthly Phlx and SCCP charges that were eligible to be reduced by the ITS Credit of $5,000 and $20,000, respectively, the equity specialist would receive a credit of $25,000, and the unused credit amount of $5,000 would not be used for any other purpose.

[6] *I.e.* Nasdaq 100 Trust, Series 1 (also known as QQQ), Standard & Poor's Depositary Receipts (also known as SPDRs), and Diamonds Exchange Traded Funds (also known as Diamonds).

[7] Securities Exchange Act No. 45388 (Feb. 2, 2002), 67 FR 6310 (Feb. 11, 2002) [SR–Phlx–2001–121].

[8] 15 U.S.C. 78q–1(b)(3)(D).

B. Self-Regulatory Organization's Statement on Burden on Competition

SCCP does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

SCCP did not solicit or receive any comments regarding the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change took effect upon filing with the Commission pursuant to Section 19(b)(3)(A)(ii) of the Act [9] and Rule 19b–4(f)(2) [10] thereunder because the proposed rule change changes a due, fee, or other charge imposed by SCCP. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–SCCP–2004–05 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–SCCP–2004–05. 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 the filing also will be available for inspection and copying at SCCP's principal office and on SCCP's Web site at *http://www.phlx.com/SCCP/memindex_sccpproposals.html*. 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–SCCP–2004–05 and should be submitted on or before March 9, 2005.

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–648 Filed 2–15–05; 8:45 am]

BILLING CODE 8010–01–P

[11] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 10020 and # 10021]

California Disaster # CA–00001 Disaster Declaration

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of California (FEMA–1577–DR), dated 02/04/2005.

Incident: Severe Storms, Flooding, Debris Flows, and Mudslides.

Incident Period: 12/27/2004 through 01/11/2005.

EFFECTIVE DATE: 02/04/2005.

Physical Loan Application Deadline Date: 04/05/2005.

EIDL Loan Application Deadline Date: 11/04/2005.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Disaster Area Office 1, 360 Rainbow Blvd. South 3rd Floor, Niagara Falls, NY 14303.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 02/04/2005, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Los Angeles, Ventura.

Contiguous Counties: California, Kern, Santa Barbara, Orange, San Bernardino.

The Interest Rates are:

	Percent
Homeowners With Credit Available Elsewhere	5.875
Homeowners Without Credit Available Elsewhere	2.937
Businesses With Credit Available Elsewhere	5.800
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	4.750
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 10020B and for economic injury is 100210.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 05–2943 Filed 2–15–05; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 10007 and # 10008]

Indiana Disaster Number IN–00001

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Indiana (FEMA–1573–DR), dated 01/21/2005.

Incident: Severe Winter Storms and Flooding.

Incident Period: 01/01/2005 and continuing.

Effective Date: 01/31/2005.

Physical Loan Application Deadline Date: 03/22/2005.

EIDL Loan Application Deadline Date: 10/21/2005.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Disaster Area Office 1, 360 Rainbow Blvd. South 3rd Floor, Niagara Falls, NY 14303.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Indiana dated 01/21/2005, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties

Adams
Allen
Dearborn
De Kalb
Elkhart
Fayette
Franklin
Fulton
Jasper
Kosciusko
Lake
Laporte
Marshall
Newton
Noble
Porter
Pulaski
Ripley
St. Joseph
Starke
Union
Wayne
Whitley

Contiguous Counties

Indiana
- Lagrange
- Ohio
- Steuben
- Switzerland

Illinois
- Cook
- Kankakee
- Will

Kentucky
- Boone

Michigan
- Berrien
- Cass
- St. Joseph

Ohio
- Butler
- Defiance
- Hamilton
- Paulding
- Preble
- Van Wert
- Williams

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 05–2942 Filed 2–15–05; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Delegation of Authority Number 276]

Designation of Central Authority and Delegation of Authority Regarding Functions Under Treaties Governing the Return of Stolen, Embezzled, or Appropriated Vehicles and Aircraft

(1) By virtue of the authority vested in me as Secretary of State, including the authority of section 1 of the State Department Basic Authorities Act, as amended (22 U.S.C. 2651a), I hereby:

(a) Designate the Assistant Secretary for Consular Affairs and the Chief of Mission of the relevant United States Embassy as the Central Authority for the United States under treaties governing the return of stolen, embezzled, or appropriated vehicles and aircraft that do or may hereafter specify that the Central Authority is the Secretary of State or such persons designated by the Secretary of State; and

(b) delegate to the Assistant Secretary for Consular Affairs the authority to promulgate such rules and regulations as may be necessary or appropriate to carry out the functions of the Secretary of State and the Department of State under treaties that do or may hereafter govern the return of stolen, embezzled, or appropriated vehicles and aircraft.

(2) The foregoing functions may also be performed by the Secretary of State, the Deputy Secretary of State, or the Under Secretary of State for Management.

This designation of Central Authority and delegation of authority shall be published in the **Federal Register**.

Dated: January 2, 2005.

Colin L. Powell,

Secretary of State, Department of State.

[FR Doc. 05–3003 Filed 2–15–05; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on November 2, 2004 [69 FR 63568].

DATES: Comments must be submitted on or before March 18, 2005.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention NHTSA Desk Officer.

FOR FURTHER INFORMATION CONTACT: Richard Morse, National Highway Traffic Safety Administration, Office of Odometer Fraud Investigation (NVS–230), 202–366–4761. 400 Seventh Street, SW., Room 6130, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: 49 CFR Part 580 Odometer Disclosure Statement.

OMB Number: 2127–0047.

Type of Request: Extension of a currently approved collection.

Abstract: The Federal Odometer Law, 49 U.S.C. chapter 327, and implementing regulations, 49 CFR part 580 require each transferor of a motor vehicle to provide the transferee with a written disclosure of the vehicle's mileage. This disclosure is to be made on the vehicle's title, or in the case of a vehicle that has never been titled, on a separate form. If the title is lost or is held by a lien holder, and where permitted by state law, the disclosure can be made on a state-issued, secure power of attorney.

Affected Public: Households, Business, other for-profit, and not-for-profit institutions, Federal Government, and State, local, or tribal Government.

Estimated Total Annual Burden: 2,247,014.

Comments Are Invited On: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A Comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, DC, on February 10, 2005.

Richard C. Morse,

Director, Office of Odometer Fraud Investigation.

[FR Doc. 05–2944 Filed 2–15–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Public Meeting of the President's Advisory Panel on Federal Tax Reform

AGENCY: Department of the Treasury.

ACTION: Notice of meeting.

SUMMARY: This notice advises all interested persons of a public meeting of the President's Advisory Panel on Federal Tax Reform.

DATES: The meeting will be held on Thursday, March 3, 2005, at 9:30 a.m.

ADDRESSES: The meeting will be held at the Jack Morton Auditorium, Media and Public Affairs Building, The George Washington University, 805 21st Street, NW., Washington, DC 20052. Seating will be available to the public on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: The Panel staff at (202) 927–2TAX (927–2829) (not a toll-free call) or e-mail *info@taxreformpanel.gov* (please do not send comments to this box; a comment box will be available shortly). Additional information is available at *http://www.taxreformpanel.gov.*

SUPPLEMENTARY INFORMATION:

Purpose: This is the second meeting of the Advisory Panel. The meeting will be focused on understanding problems presented by the tax system, including its complexity and the impact of complexity on overall compliance.

Comments: Interested parties are invited to attend the meeting; however, no public comments will be heard at this meeting. The public will be invited to submit comments regarding specific issues of tax reform at later dates. Any written comments with respect to this meeting may be mailed to the President's Advisory Panel on Federal Tax Reform, 1440 New York Avenue, NW., Suite 2100, Washington, DC 20220. All written comments will be made available to the public.

Records: Records are being kept of Advisory Panel proceedings and will be available at the Internal Revenue Service's FOIA Reading Room at 1111 Constitution Avenue, NW., Room 1621, Washington, DC 20024. The Reading Room is open to the public from 9 a.m. to 4 p.m., Monday through Friday except holidays. The public entrance to the reading room is on Pennsylvania Avenue between 10th and 12th streets. The phone number is (202) 622–5164 (not a toll-free number). Advisory Panel documents, including meeting announcements, agendas, and minutes, will also be available on *http://www.taxreformpanel.gov.*

Dated: February 14, 2005.

Mark S. Kaizen,

Designated Federal Officer.

[FR Doc. 05–3086 Filed 2–15–05; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 1 Taxpayer Advocacy Panel (Including the States of New York, Connecticut, Massachusetts, Rhode Island, New Hampshire, Vermont and Maine)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 1 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, March 2, 2005.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227 (toll-free), or 718–488–3557 (non toll-free).

SUPPLEMENTARY INFORMATION: An open meeting of the Area 1 Taxpayer Advocacy Panel will be held Wednesday, March 2, 2005 from 3 p.m. ET to 4 p.m. ET via a telephone conference call. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a

written statement, please call 1–888–912–1227 or 718–488–3557, or write Marisa Knispel, TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Marisa Knispel. Ms. Knispel can be reached at 1–888–912–1227 or 718–488–3557, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: February 16, 2005.

Bernard E. Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. 05–3001 Filed 2–15–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Small Business/Self Employed—Taxpayer Burden Reduction Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Small Business/Self Employed—Taxpayer Burden Reduction Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The TAP will be discussing issues pertaining to increasing compliance and lessening the burden for Small Business/Self Employed individuals.

DATES: The meeting will be held Thursday, March 3, 2005.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227 or 718–488–3557.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Small Business/Self Employed—Taxpayer Burden Reduction Committee of the Taxpayer Advocacy Panel will be held Thursday, March 3, 2005 from 3 p.m. ET to 4:30 p.m. ET via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 718–488–3557, or write to Marisa Knispel, TAP Office, 10 Metro Tech Center, 625 Fulton Street, Brooklyn, NY 11201. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Marisa Knispel. Ms. Knispel can be reached at 1–888–912–1227 or 718–488–3557, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include the following: Various IRS issues.

Dated: February 10, 2005.

Bernard E. Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. 05–3002 Filed 2–15–05; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Wednesday,
February 16, 2005

Part II

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 926
Montana Regulatory Program; Final Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 926

[MT–024–FOR]

Montana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We are approving, with certain exceptions, a proposed amendment to the Montana regulatory program (the "Montana program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Montana proposed revisions to and additions of statutes about: State policy and findings concerning mining and reclamation; definitions; the time required to approve or disapprove minor permit revisions; permit application requirements, including determinations of probable hydrologic consequences and land use; requirements to protect the hydrologic balance; area mining, post-mine land use, and wildlife enhancement; revegetating disturbed areas; timing of reclamation; standards for successful revegetation; making vegetation the landowner's property after bond release; jurisdictional venue in right-of-entry actions; transfer of revoked permits; and mandamus. The State also proposes to add new provisions to its statutes for: Revising applications for permits, permit amendments, and permit revisions; codifying the changes proposed in the amendment; clauses for severability, saving, and contingent voidness; and a delayed effective date for the proposed changes. Montana intends to revise its program to incorporate the additional flexibility afforded by the revised Federal regulations and SMCRA, as amended, to provide additional clarification, and to improve operational efficiency.

EFFECTIVE DATE: February 16, 2005.

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Director; Casper Field Office. Telephone: (307) 261–6550. E-mail: *gpadgett@osmre.*

SUPPLEMENTARY INFORMATION:

I. Background on the Montana 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 State 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 Montana program on April 1, 1980. You can find background information on the Montana program, including the Secretary's findings, the disposition of comments, and conditions of approval in the April 1, 1980, **Federal Register** (45 FR 21560). You can also find later actions concerning Montana's program and program amendments at 30 CFR 926.15, 926.16, and 926.30.

II. Submission of the Proposed Amendment

By letter dated July 29, 2003, Montana sent us an amendment to its program (State Amendment Tracking System (SATS) MT–024–FOR; Administrative Record No. MT–21–1) under SMCRA (30 U.S.C. 1201 *et seq.*). Montana sent the amendment to include the changes made at its own initiative.

We announced receipt of the proposed amendment in the October 27, 2003, **Federal Register** (68 FR 61175). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy (Administrative Record No. MT–21–06). We did not hold a public hearing or meeting because no one requested one. The public comment period ended on November 26, 2003. We received one comment from a citizens group and two comments from coal-mining-related entities in Montana.

III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment with exceptions and additional requirements as described below.

We note here that most of the revisions proposed in this submittal were included within House Bill (HB) 373. Included in that legislation (at Section 15: contingent voidness) was a provision that if any other provision of HB 373 were to be disapproved by OSM, then that disapproved portion would be void. For that reason, for any proposed revisions that we do not approve (as noted below), those portions of HB 373 are automatically void. Therefore we do not need to require Montana to delete them.

A. Minor Revisions to Montana's Statutes

Montana proposed minor wording, editorial, punctuation, grammatical, and recodification changes to the following previously-approved statutes.

Montana Code Annotated (MCA) 82–4–202, except new paragraphs (1) and (3)(c) through (e); legislative intent, policy, and findings.

MCA 82–4–203, except paragraphs (2), (4), (13), (16), (17), (20) through (24), (26) through (28), (30), (37), (38), (42) through (44), (46), (47), (50), and (55); definitions.

MCA 82–4–222(1) through (1)(l), and (1)(q) through (6); permit application requirements.

MCA 82–4–232 recodification; Area mining, bond.

MCA 82–4–233 recodification and (5); Planting of vegetation.

MCA 82–4–234 except last sentence; Commencement of reclamation.

MCA 82–4–235 recodification and (2) through (3)(b); Determination of successful revegetation.

MCA 82–4–236; Vegetation as property of landowner.

MCA 82–4–252 except (2) deletion of "in the district court * * *"; Mandamus.

Because these changes are minor, we find that they will not make Montana's statutes less effective than the corresponding Federal regulations and/or less stringent than SMCRA.

B. Revisions to Montana's Statutes That Have the Same Meaning as the Corresponding Provisions of the Federal Regulations and/or SMCRA

Montana proposed revisions to the following statutes containing language that is the same as or similar to the corresponding sections of the Federal regulations and/or SMCRA.

MCA 82–4–203(2), (13), (16), (17), (20) through (23), (26), (27), (28), (37), (38), (42) through (44), and (46) [No SMCRA counterparts; 30 CFR 701.5], definitions.

MCA 82–4–222(1)(m) and (n) [No SMCRA counterparts; 30 CFR 780.21(f)(3), (i), (j)], permit application hydrology requirements.

MCA 82–4–232(7) and (8) (as newly enacted) [SMCRA 515(b)(2), 30 CFR 816/817.133], land use capability.

Because these proposed rules contain language that is the same as or similar

to SMCRA and/or the corresponding Federal regulations, we find that they are no less effective than the corresponding Federal regulations and no less stringent than SMCRA.

C. Revisions to Montana's Statutes That Are Not the Same as the Corresponding Provisions of SMCRA and/or the Federal Regulations

C.1. MCA 82–4–203(4) Definition of Approximate Original Contour (AOC) [SMCRA 701(2), 30 CFR 701.5].

a. Montana proposed to add a new statutory definition of this term. Under the proposal, " 'approximate original contour' means that surface configuration achieved by backfilling and grading of the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls, spoil piles, and coal refuse piles eliminated, so that: * * *." This introductory text duplicates the Federal definition, except that the Montana definition makes no allowance for impoundments. Impoundments as an aspect of AOC are addressed in a proposed revision of MCA 82–4–232(1)(a), which is addressed in a separate finding below. Since this introductory language is the same as the Federal language, we approve this part of the proposed definition.

b. The "so that" phrase introduces four proposed new subparagraphs which are intended to provide clarification or refinement of the definition in the introductory text. Proposed MCA 82–4–203(4)(a) provides additional guidance on the meaning of the phrase "closely resembles the general surface configuration." Specifically, it provides that the regraded area "closely resembles" the general surface configuration if it is comparable to the premine terrain. The proposal gives as an example that if the area was basically level or gently rolling before mining, it should retain these features after mining, recognizing that rolls and dips need not be restored to their original locations and that level areas may be increased. This additional guidance in the proposal is consistent with the intent of SMCRA in that reclaimed surface configuration does not have to duplicate the premine topography, only approximate it. This means that not all premine features need necessarily be restored in the same location as they the existed prior to mining. Nor is it necessary to restore all the minor undulations that existed prior to mining. We also note that this language is very similar to that in OSM's policy guidance contained in Directive INE–26:

> The reclaimed area should closely resemble the general surface configuration of the land prior to mining. This should not be interpreted, however, as requiring that postmining contours exactly match the premining contours or that long uninterrupted premining slopes must remain the same. Rather, the general terrain should be comparable to the premining terrain; that is, if the area was basically level or gently rolling before mining, it should retain these general features after mining. Rolls and dips need not be restored in their original locations and level areas may be increased or terraces created in accordance with 30 CFR 816.102.

Since Montana's proposal essentially duplicates the Federal guidance, we approve proposed subparagraph MCA 82–4–203(4)(a).

c. Proposed MCA 82–4–203(4)(b) provides additional guidance in implementing the phrase "complements the drainage pattern of the surrounding terrain," providing that "the reclaimed area blends with and complements the drainage pattern of the surrounding area so that water intercepted within or from the surrounding terrain flows through and from the reclaimed area in an unobstructed and controlled manner." It is one intent of the requirement for restoration of the hydrologic balance in SMCRA that backfilling and grading restore the flow of surface water across the site to premining conditions; we note that water quantity inflow into a hydrologic unit, minus water quantity outflow from that unit, is the most basic level of "hydrologic balance" (see the Federal definition of "hydrologic balance" at 30 CFR 701.5J. The proposed language simply clarifies this requirement as part of the restoration of AOC. We approve proposed MCA 82–4–203(4)(b).

d. Proposed MCA 82–4–203(4)(c) provides still more guidance on the phrase "blends into and complements the drainage pattern of the surrounding terrain," providing that "postmining drainage basins may differ in size, location, configuration, orientation, and density of ephemeral drainageways compared to the premining topography if they are hydrologically stable, soil erosion is controlled to the extent appropriate for the postmining land use, and the hydrologic balance is protected as necessary to support postmining land uses within the area affected and the adjacent area." SMCRA and the Federal regulations lack a counterpart to this language. The initial proposed language ("postmining drainage basins may differ in size, location, configuration, orientation, and density of ephemeral drainageways compared to the premining topography") provides guidance beyond that contained in the Federal AOC definition. The remaining proposed language provides specialized performance standards for protection of the hydrologic balance and control of soil erosion when postmining drainage basins differ from premining.

We note first that, since they are being used in defining AOC, these special performance standards are applicable to the proposed postmining topography to be created during the reclamation process, and thus do not apply during the mining process. Second, erosion rates are controlled by both land shape and vegetation cover (in cases, like mine reclamation, where precipitation and soil do not change). So, the erosion control referred to here is that provided by land shape (we note that erosion control provided by revegetation, as required by SMCRA 515(b)(19), is addressed in the proposed amendment at MCA 82–4–233(1)(d), discussed in a separate finding below).

Regarding soil erosion, Federal performance standards at SMCRA 515(b)(4) require all affected areas to be stabilized and protected to effectively control erosion and attendant air and water pollution. "Effectively" is not defined; but the legislative history on "effective vegetative cover" indicates control to "normal premining background levels" ["effective" vegetative cover includes both "the productivity of the vegetation concerning its utility for the postmining land use as well as its capability of stabilizing the soil surface with respect to reducing siltation to normal premining background levels" H. Rep. No. 95–218, pg. 106]. SMCRA 515(b)(10)(B) requires the use of the best technology currently available to control sediment, and requires compliance with State and Federal effluent limits. Neither of these Federal erosion control requirements limits erosion control, and hence in this instance land shape, to the needs of the postmining land use.

However, we believe that this does not render the proposed definition inconsistent with SMCRA, provided the proposed definition is interpreted as requiring that all four subparagraphs apply; that is, that subparagraph (c) does not take precedence over subparagraph (a). To be no less effective than the Federal definition of AOC, subparagraph (c) may not be interpreted as authorizing selection of a postmining land use that would necessitate a deviation from the remainder of the AOC definition; *i.e.*, the postmining

land topography must still closely resemble the general surface configuration of the land prior to mining regardless of the nature of the approved postmining land use. If the reclaimed terrain is comparable to the premine terrain, then the erosion control provided by land shape should approximate the normal premining background level.

Regarding protection of the hydrologic balance, SMCRA 515(b)(10) requires that disturbances to the hydrologic balance on the mine site be minimized, regardless of the postmining land use. Further, SMCRA 515(b)(10)(E) prohibits channel deepening or enlargement in receiving streams (an aspect of hydrologic balance protection), regardless of any effect or lack of effect on postmining land uses.

We conclude that this clarification of the AOC definition, when applied to the performance standard at MCA 82–4–232(1)(a) to restore AOC, would conflict with SMCRA's performance standards requiring protection of the hydrologic balance. Therefore we do not approve, in this subparagraph, the phrase "as necessary to support postmining land uses within the area affected and the adjacent area" in the clause regarding hydrologic balance protection.

Based on the above discussion, we approve proposed MCA 82–4–203(4)(c) except the phrase "as necessary to support postmining land uses within the area affected and the adjacent area" in the clause regarding hydrologic balance protection.

e. Proposed MCA 82–4–203(4)(d) provides that one part of the definition of AOC is that the reclaimed surface configuration must be appropriate for the postmining land use. The SMCRA definition has no such provision. Here Montana is inserting a performance standard in the definition of AOC, equivalent to 30 CFR 816.102(a)(5). We believe that this does not render the definition inconsistent with SMCRA, provided the definition is interpreted as requiring that all four subparagraphs apply; that is, that subparagraph (d) does not take precedence over subparagraphs (a) through (c). To be no less effective than the Federal definition of AOC, subparagraph (d) may not be interpreted as authorizing selection of a postmining land use that would necessitate a deviation from the remainder of the AOC definition; *i.e.*, the postmining land topography must still closely resemble the general surface configuration of the land prior to mining regardless of the nature of the approved postmining land use. Consistent with the above reasoning, we approve proposed MCA 82–4–203(4)(d).

C.2 MCA 82–4–203(24) Definition of Hydrologic balance [30 CFR 701.5].

Montana proposes here a new definition for "hydrologic balance," as follows:

> "Hydrologic balance" means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit, such as a drainage basin, aquifer, soil zone, lake, or reservoir, and encompasses the dynamic relationships among precipitation, runoff, evaporation, and changes in ground water and surface water storage as they relate to uses of land and water within the area affected by mining and the adjacent area.

The first part of this duplicates both Montana's regulatory definition at Administrative Rules of Montana (ARM) 17.24.301(53) and the Federal definition at 30 CFR 701.5, down through and including the term "surface water storage." Montana has now added the last clause, "as they relate to uses of land and water within the area affected by mining and the adjacent area." Under this proposal, dynamic hydrologic relationships would be considered only to the extent that they relate to uses of the land and water; in short, Montana proposes to define hydrologic balance in terms of the anticipated post-mining land use. Therefore, under the proposal, components of the hydrologic regime would not be identified, protected, or monitored unless those components relate to post-mining uses of land and water.

As used in SMCRA and the Federal regulations, "hydrologic balance" describes a natural resource, the hydrologic conditions and interactions, that exists within and around the area proposed for mining. These conditions are independent of the intended land use. By proposing to define "hydrologic balance" in terms of the proposed post-mining land use, the Montana definition is significantly narrower than the Federal regulatory definition of "hydrologic balance." We therefore find that this proposal is not consistent with the Federal regulatory definition. We approve proposed MCA 82–4–203(24) to the extent that it duplicates ARM 17.24.301(53); we do not approve the final phrase "as they relate to uses of land and water within the area affected by mining and the adjacent area."

C.3. MCA 82–4–221(3) Permit revisions [SMCRA 511(a)(2)].

Montana proposed to decrease the time allowed to approve or disapprove an application for minor permit revision from 120 days to 60 days, with an additional 30 day extension by mutual agreement. SMCRA 511(a)(2) requires only that each regulatory program establish a timeframe. We find that Montana's proposal is consistent with the Federal requirement, and we approve it.

C.4. MCA 82–4–222(1)(o) Permit application: proposed postmining topography [SMCRA 507(b)(14), 30 CFR 780.18(b)(3)].

As part of the permit application, proposed MCA 82–4–222(1)(o) requires submission of maps, cross sections, range diagrams or other means approved by the Department (the Department of Environmental Quality) (which is the regulatory authority under SMCRA), that depict the projected postmining topography, soil placement, overburden swell, and drainage patterns and their tie-in points to surrounding drainages. There is no direct comparison to this requirement in either SMCRA or the Federal regulations. SMCRA section 507(b)(14) does require maps, cross sections or plans that identify constructed or natural drainways and the location of any discharges to any surface body of water on the area of land to be affected or adjacent thereto, and profiles at appropriate cross sections of the anticipated final surface configuration that will be achieved pursuant to the operator's proposed reclamation plan. The Federal regulations at 30 CFR 780.18(b)(3) also require contour maps or cross sections that show the final surface configuration. Montana's proposed language provides additional specificity beyond that in SMCRA or the Federal regulations. We find that proposed MCA 82–4–222(1)(o) is consistent with and no less stringent than SMCRA and no less effective than the Federal regulations. We approve the proposed language.

C.5. MCA 82–4–222(1)(p) Permit Application—Land Capability [SMCRA 508(a)(2)].

The Montana proposed language is identical in all respects to SMCRA except for the SMCRA requirement that, if applicable, the application include a soil survey prepared pursuant to section 507(b)(16). Section 507(b)(16) requires a soil survey be done to confirm the location of prime farmlands, if a reconnaissance inspection suggests that such lands may be present in those lands in the permit application. The Montana Act as proposed lacks a counterpart to section 507(b)(16).

However, the Montana rules, at ARM 26.4.306, require a prime farmland investigation and ARM 26.4.304(11) requires a soil survey according to the standards of the Natural Cooperative Soil Survey describing all soils on the proposed permit area. Minimum soils information, including soil series and phase, mapping unit, descriptions,

physical and chemical analysis of all horizons and soils maps, is also specified as part of this rule. Because the State rules require a soil survey for all soils within a proposed permit with sufficient information to identify any prime farmland soils within a proposed permit area this fulfills the requirements of sections 507(b)(16) and 508(b)(2). Therefore, the lack of a counterpart in MCA 82–4–222(1)(p) to the Federal requirement that, if applicable, a soil survey be prepared pursuant to section 507(b)(16), does not render the State program less stringent. Based on the proposed language at MCA 82–4–222(1)(p) and the existing requirements of the State rules, we find the proposed change to be consistent with and no less effective than SMCRA and the Federal regulations. We approve the proposed revision.

C.6. MCA 82–4–231(10)(k) Protection of Hydrologic Balance [SMCRA 515(b)(10), 30 CFR 816.41(a)].

The existing provision duplicates the Federal provision and requires the operator to minimize disturbances to the prevailing hydrologic balance at the mine site and in associated offsite areas and to minimize disturbances to the quantity and quality of water in the surface water and ground water systems by a specified list of techniques. Montana proposed to revise this, first, by changing "associated offsite areas" to "adjacent areas." We note that the SMCRA provision also uses the phrase "associated offsite areas," but the Act does not define that phrase. In the implementing rules at 30 CFR 816.41(a), the phrase "within the permit and adjacent areas" is substituted, and the rules define both areas (30 CFR 701.5). OSM has noted in a rule preamble that the final definition of "adjacent area" was modified from the proposed definition to delete the spatial concept of "near" or "contiguous" to focus instead on protecting the natural resources which may be impacted. 44 FR 14923; March 13, 1977. The Montana statute also does not define the phrase "associated offsite areas," but does define "adjacent area," and that definition essentially duplicates the Federal rule definition. Therefore we approve this change.

Montana proposed to further revise this requirement by adding a limitation that these minimizations would only be required "as necessary to support postmining land uses and to prevent material damage to the hydrologic balance in the adjacent area." In other words, some efforts at minimization would not be required if postmining land uses would not be adversely affected and material damage in the adjacent area would not occur. This limitation would render the Montana statute less stringent than SMCRA and it would not meet SMCRA's minimum requirements. Montana stated in the submittal that this language was intended to be consistent with the general performance standard in the Federal regulations at 30 CFR 816.41(a). However, we find that the cited Federal regulation establishes three separate performance standards: surface mining and reclamation must be conducted (1) to minimize disturbance of the hydrologic balance on permit and adjacent areas, (2) to prevent material damage to the hydrologic balance outside the permit area, and (3) to support postmining land uses. This language does not, like Montana's proposal, limit the application of the first standard (minimization).

We also note that there is an internal inconsistency within this proposed new language. The proposed limitation would apply to material damage in the "adjacent area." But the new definition of "material damage" applies to all areas "outside of the permit area," which is an area more extensive than "adjacent area."

For these reasons, we do not approve the addition of the phrase "as necessary to support postmining land uses and to prevent material damage to the hydrologic balance in the adjacent area."

C.7. MCA 82–4–231(10)(k)(viii) Protection of Hydrologic Balance [SMCRA 515(b)(10)(G)].

Similar to the provision discussed in the Finding immediately above, the existing provision duplicates the Federal provision. It allows the Department to prescribe "any other actions" to minimize the specified disturbances to the hydrologic balance. And similar to the provision discussed above, Montana proposed to revise this allowance by adding a limitation. In this case, the Department would be limited to prescribing actions to minimize the specified disturbances "to protect the hydrologic balance as necessary to support postmining land uses within the area affected and to prevent material damage to the hydrologic balance in adjacent areas." In other words, the Department would not be allowed to prescribe some actions to minimize disturbances to the hydrologic balance if postmining land uses would not be adversely affected or if material damage in the adjacent area would not occur without those actions. This limitation would limit the discretion of the regulatory authority provided by SMCRA and hence render the Montana statute less stringent than SMCRA.

Montana again stated in the submittal that this language was intended to be consistent with the general performance standard in the Federal regulations at 30 CFR 816.41(a). But we again note that the cited Federal regulation establishes minimization of disturbance to the hydrologic balance (on permit and adjacent areas) as a separate goal from the prevention of material damage to the hydrologic balance (outside the permit area) and support of the postmining land use.

We again note that there is an internal inconsistency within this proposed new language. The proposed limitation would apply to material damage in the "adjacent area." But the new definition of "material damage" applies to all areas "outside of the permit area," which is an area more extensive than "adjacent area."

For these reasons, we do not approve the addition of the phrase "to protect the hydrologic balance as necessary to support postmining land uses within the area affected and to prevent material damage to the hydrologic balance in adjacent areas."

C.8. MCA 82–4–231(10)(k)(vii) Protection of Hydrologic Balance [SMCRA 515(b)(10)].

Montana proposed an addition to the existing list of techniques required to minimize disturbances to the hydrologic balance. The existing list duplicated the list in SMCRA at 515(b)(10). The proposed addition would require that disturbances to the hydrologic balance be minimized by "designing and constructing reclaimed channels of intermittent streams and perennial streams to ensure long-term stability." Insofar as this is an addition to the list provided in SMCRA, this proposed addition would be considered under SMCRA 515(b)(10)(G) as "such other actions as the regulatory authority may prescribe," the prescription being, in this case, a program-wide one. There is a question, though, whether by specifying intermittent and perennial streams, this provision may be interpreted to exclude ephemeral streams. That is, does this provision implicitly, if not expressly, state that it is not necessary to design and construct the reclaimed channels of ephemeral streams to ensure long-term stability? For the following reasons, we believe that the answer to this question is "no." We note that under MCA 82–4–231(10)(k)(ii)(A) and (k)(v), operators are required to prevent additional contributions of sediment to runoff, and to avoid channel deepening or enlargement when water is discharged from mines. These requirements effectively require long-term stability in

reclaimed channels of ephemeral streams. Thus we find that the proposed addition is consistent with SMCRA 515(b)(10)(G), and we approve the language.

C.9. MCA 82–4–232(1)(a) Backfilling & Approximate Original Contour (AOC) [SMCRA 515(b)(3); 30 CFR 816.102(a)].

Montana proposed to delete language requiring highwall reduction/elimination and spoil pile elimination, leaving requirements that area mining is required for strip mines and that the area of land affected must be backfilled and graded to AOC. Montana further proposed to add another sentence containing four clauses after the word "However." Clause (i) provides that, if it is consistent with the adjacent unmined landscape elements, the operator may propose and the Department may approve a regraded topography gentler than the premining topography if the gentler topography is consistent with adjacent unmined landscape elements and if it would enhance the postmining land use, improve stability, provide greater moisture retention, and reduce erosional soil losses. Clause (ii) provides that postmining slopes may not exceed the angle of repose or whatever lesser slope is necessary to achieve a long-term static safety factor of at least 1.3 and to prevent slides. Clause (iii) allows the creation of permanent impoundments in some cases. Clause (iv) provides that the reclaimed topography must be suitable for the postmining land use.

The corresponding Federal provision in section 515(b)(3) of SMCRA requires that all surface coal mining operations backfill, compact, and grade in order to restore the approximate original contour of the land with all highwalls, spoil piles, and depressions eliminated (except small depressions for moisture retention). Section 515(b)(8) also authorizes the creation of permanent impoundments under certain conditions. The Federal regulations at 30 CFR 816.102(a) require that disturbed areas be backfilled and graded to—

(1) Achieve the approximate original contour (except as provided in paragraph (k), which provides exceptions for thin and thick overburden, mountaintop removal operations, and certain steep-slope operations);

(2) Eliminate all highwalls, spoil piles, and depressions, except as provided in paragraph (h) (small depressions) and in paragraph (k)(3)(iii) (previously mined highwalls);

(3) Achieve a postmining slope that does not exceed either the angle of repose or such lesser slope as is necessary to achieve a minimum long-term static safety factor of 1.3 and to prevent slides;

(4) Minimize erosion and water pollution both on and off the site; and

(5) Support the approved postmining land use.

In summary, the Federal requirements are to backfill and grade to restore AOC (with four specified exemptions); eliminate highwalls, spoil piles, and depressions (except certain small depressions and permanent impoundments); achieve long-term stability; minimize erosion and water pollution; and support the postmining land use.

The Montana proposal deletes the performance standard requiring the elimination of all highwalls and spoil peaks.

However, it continues to require restoration of AOC. As discussed in finding C.1. above, Montana also is adding a definition of AOC at section 82–4–203(4), MCA, that requires the elimination of all highwalls, spoil piles, and coal refuse piles. Therefore, the deletion of this requirement from the Montana performance standards does not render the State program less stringent than SMCRA or less effective than the Federal regulations. We are predicating this finding upon interpretation of the sentence beginning "However," in section 82–4–232(1)(a), as not establishing an exemption to the highwall and spoil pile elimination requirement. In other words, we are interpreting that sentence as providing additional parameters for determining when AOC restoration has been achieved, not as exceptions to the AOC restoration requirement. With this stipulation, we approve the proposed deletion of the sentence: "Reduction, backfilling, and grading must eliminate all highwalls and spoil peaks."

Proposed clause (i) in the sentence beginning "However," provides that, if it is consistent with the adjacent unmined landscape elements, the operator may propose and the Department may approve a regraded topography gentler than the premining topography if the gentler topography is consistent with adjacent unmined landscape elements and if it would enhance the postmining land use, improve stability, provide greater moisture retention, and reduce erosional soil losses. We find that this provision is consistent with the discussion of the meaning of "approximate original contour" in OSM Directive INE–26. In pertinent part, Part 3.a. of that directive specifies that "the reclamation of any minesite must take into consideration and accommodate site-specific and unique characteristics of the surrounding terrain and postmining land uses." Part 3.c.(2)(a) of the directive also clarifies that "level areas may be increased," provided that, as specified in Part 3.c.(2)(c), all highwalls, spoil piles, and unapproved depressions are eliminated. Therefore we approve this proposed clause (i).

Montana's proposed clause (ii) requires slope stability equivalent to that required by the Federal regulations, proposed clause (iii) provides for permanent impoundments equivalent to that provided by the Federal regulations, and proposed clause (iv) requires compatibility with the postmining land use equivalent to that required by the Federal regulations discussed above. Therefore, we approve these three provisions.

C.10. MCA 82–4–232(1)(b) Backfilling & Approximate Original Contour (AOC) [30 CFR 816.102].

MCA 82–4–232(1)(b) allows the operator to leave spoil from the first cut in place so long as highwalls are eliminated, first cut spoils are blended with the surrounding terrain and AOC is achieved. There is no direct Federal counterpart addressing whether first-cut spoil should be transported to the last cut. The Federal regulations at 30 CFR 816.102(d) provide that, in non-steep-slope areas, spoil may be placed outside the mined-out area under some conditions (this is informally known as "blending"). Additionally, in the preamble to the Federal regulations addressing backfilling and grading, OSM indicates that the regulatory authority should have the discretion to establish the final provisions for the disposal of first cut or box cut spoils so long as (1) the area where the box cut spoils are placed conforms to other requirements, such as topsoil removal and grading of the mined area to AOC; (2) the box cut spoils are also graded to AOC or to the lowest practicable grade; (3) the reclamation achieves an ecologically sound land use compatible with the surrounding region; and (4) other provisions pertaining to spoil handling are met (44 FR 15227, March 13, 1977). These are the same conditions specified in 30 CFR 816.102(d). The preamble goes on to indicate that any excess spoil, including box cut spoils, which is deposited on lands that satisfy the slope angles specified in the definitions for head-of-hollow and valley fills must comply with the excess spoil regulations and that the stockpiling and transportation of box cut spoil to the final cut is encouraged in order that the requirements for the elimination of highwalls, spoil piles and depressions are satisfied. Montana's proposed language complies with these

requirements. Highwalls must be eliminated, grading of the box cut spoils must blend with the surrounding terrain and AOC must be achieved. In addition, MCA 82–4–232(1)(a)(iv) requires that the grading must be suitable for the postmining land use.

Thus proposed MCA 82–4–232(1)(b) is consistent with the intent of SMCRA and the Federal regulations. We approve proposed MCA 82–4–232(1)(b).

C.11. MCA 82–4–232(1)(c) Backfilling & Approximate Original Contour (AOC) [SMCRA 515(b)(3)].

At MCA 82–4–232(1)(c), Montana proposed to delete from the provision, which addresses the creation of terraces and diversions during final grading, a sentence which allowed the Department to promulgate rules requiring "additional restoration work." This provision is newly designated at subparagraph (c); as currently approved, these are the last two sentences of paragraph (1). Hence, the "additional restoration work" applies to the general performance standard of backfilling and grading, highwall and spoil pile elimination, and restoration of AOC.

The corresponding Federal provision at SMCRA 515(b)(3) does not specially provide for the promulgation of additional backfilling and grading requirements (although SMCRA 515(a) and (b) do provide for the regulatory authority to promulgate "other requirements" and note that the defined performance standards are minimums). By deleting this discretionary provision, Montana is not removing from its program anything required by SMCRA. Therefore we approve the proposed deletion.

C.12. MCA 82–4–232(7) and (8) Alternate Reclamation [SMCRA 515(b)].

Montana has proposed to delete previously existing paragraphs (7) and (8). [We note that Montana in this submittal has enacted new paragraphs (7) and (8), providing requirements for land capability and alternative land uses. These new paragraphs are addressed in Finding B above.] The deleted paragraphs address "alternatives" to backfilling, grading, highwall elimination, topsoiling, and planting of a permanent diverse cover; the implementing rules refer to this as "alternate reclamation."

When the Montana program was initially approved, these deleted paragraphs were a topic of public comment (see 45 FR 21572; April 1, 1980; Disposition of Comments No. 24). At that time, OSM wrote that it found that the implementing rule "is analogous to the Federal alternative postmining land use provisions rather than to the experimental practices provision." The deleted provisions resemble the Federal experimental practice provision, but also provided the only means for Montana to provide for postmining land uses other than the otherwise-required combination of grazing and fish & wildlife habitat.

Since the newly-promulgated paragraphs (7) and (8) now provide requirements for land capability and alternative land uses (as addressed in Finding B. above), deletion of the original paragraphs will not render the Montana program inconsistent with SMCRA. Therefore we approve these deletions.

However, we note that several rules within the Montana program were statutorily authorized only by these now-deleted paragraphs. This also applies to a couple of rules proposed in earlier amendments to the Montana program on which OSM had deferred decisions (see 55 FR 19728, 19730, May 11, 1990; 67 FR 6395, 6400, February 12, 2002; and 68 FR 46460, 46466, August 6, 2003). Since the statutory authorization for these Montana rules will no longer exist upon the effective date of this OSM rule, Montana will have to remove these Montana rules when promulgating new rules to implement these statutory changes. OSM will follow up on this matter when such proposed implementing rules are submitted. The rules this deleted authority applies to are: ARM 17.24.313(3)(b)(second sentence), 17.24.515(2), 17.24.821, 17.24.823, 17.24.824, and 17.24.825.

C.13. MCA 82–4–232(9) Wildlife Enhancement [SMCRA 515(b)(24)].

Montana proposed to add a new paragraph (9) to this statute to require that wildlife habitat enhancement features be integrated into the postmining land use plans for "cropland, grazing land, pastureland, land occasionally cut for hay, or other uses"; the features are to enhance habitat diversity, emphasizing big game animals, game birds, and threatened and endangered species in the area. Features must also be planned to enhance wetlands and riparian areas. Finally, the provision states that such wildlife habitat enhancement features do not constitute a land use change to fish and wildlife habitat, and may not interfere with the designated postmining land use.

We note that the Montana program already contains, at MCA 82–4–231(10)(j), an exact duplicate of the Federal requirement at SMCRA 515(b)(24), with both requiring that the operator, to the extent possible using the best technology currently available, minimize disturbances and adverse impacts of the operation on fish, wildlife, and related environmental values and achieve enhancement of such resources where practicable. Since the proposed new paragraph does not address minimizing disturbance or adverse impacts, it must be read together with the last part of the existing Montana and Federal requirements; that is, read together with the requirement that operators, where practicable, achieve enhancement of fish, wildlife, and related environmental values to the extent possible using the best technology currently available. If the proposed new provision would in any way limit the existing requirement for "enhancement where practicable," then the proposed provision would conflict with the existing Montana and SMCRA requirement.

In one way, the proposed provision is more stringent than the existing Montana and Federal requirements: by stating that reclamation plans "must incorporate appropriate wildlife habitat enhancement features," this provision effectively declares that enhancement of habitat diversity is always "practicable." At first reading, the required enhancement appears to be limited to agricultural postmining land uses. But other postmining land uses are referenced by the proposed language "or other uses," though this expanded application would be clearer if the words "and all" were added: "and all other uses." Although the proposed new provision would provide for an "emphasis" on three specified "wildlife types," this does not exclude other wildlife types from the requirement; and a placement of emphasis is within Montana's discretion. The SMCRA and existing Montana requirement requires "enhancement where practicable" for all postmining land uses; so we agree that inclusion of those features does not necessarily turn other postmining land uses into the postmining land use of fish and wildlife habitat.

The final clause of the proposed new paragraph prohibits enhancement features from interfering with the postmining land use. Read together with the requirement that reclamation plans "must" incorporate appropriate enhancement features, this clause in effect requires that if a given type of enhancement feature (for example, hedgerows) would interfere with a postmining land use (for example, cropland), then other enhancement features must be employed (for example, raptor perches or songbird nest boxes) that would be more appropriate by interfering less. We find this to be consistent with the existing SMCRA and

Montana provisions, which require enhancement where practicable.

Based on the above discussion, we approve proposed MCA 82–4–232(9).

C.14. MCA 82–4–233 Planting of revegetation [SMCRA 515(b)(19), 30 CFR 816/817.111].

a. Montana proposed to delete existing paragraph (1), providing general revegetation requirements, and replace it with a new paragraph (1) that almost exactly duplicates 30 CFR 816/817.111(a). These Federal regulations directly implement, with increased detail, SMCRA 515(b)(19). Therefore, the proposed new paragraph, with the two exceptions noted below, provides revegetation requirements equivalent to SMCRA 515(b)(19) and 30 CFR 816/817.111(a).

The first exception is that Montana's proposal at proposed paragraph (1) would not require operators to plant water areas, surface areas of roads, "and other constructed features." The Federal requirements of SMCRA 515(b)(19), as implemented at 30 CFR 816/817.111(a), provide only the first two exemptions. The third exemption provided by Montana, "and other constructed features," is undefined. All of reclamation could be considered "constructed," so this exemption could broadly be construed to apply to the whole affected area. We believe that Montana intended here that this exemption would be applied to parking lots, material storage yards, etc., that are limited in size and slope, and are stabilized against erosion by paving or gravel. We are approving this language with the proviso that Montana not apply it until (1) Montana promulgates rules to implement it, which rules must provide for a clear definition of "other constructed features" and provide for limits on size and slope and stabilization against erosion, and other factors that may affect environmental stability, and (2) those rules are approved by OSM.

The second exception is that Montana's proposal adds to new (1)(d) (corresponding to 30 CFR 816/817.111(a)(4)) a limitation that the revegetation need only be capable of stabilizing soil erosion to the extent appropriate for the postmining land use. SMCRA 515(b)(19), by requiring establishment of vegetation at least equal in extent of cover to the natural vegetation of the area, might be interpreted as requiring the revegetation to stabilize soil erosion to the level of the premining conditions [see note included in Finding C.1. above about the meaning of "effective" vegetation]. However, we note that the phrase "of the area" need not refer to the specific parcel being mined. This is particularly true when an alternative, "higher or better," land use is being established during reclamation. OSM's interpretation of this situation, as indicated in the requirements for success standards at 30 CFR 816.116(a)(2), is that revegetation success standards must be representative of unmined lands under that proposed postmining land use in the area. In this case, the erosion control achieved by revegetation that meets the success standards will be equivalent to the erosion protection of unmined lands being used for the same purpose, within that general vicinity. For example, if an area that premining was unmanaged grazing land is reclaimed, postmining, to a "higher or better" land use of row crops, the required erosion control will be that comparable to other (unmined) row crop fields in the area, not the erosion control that is achieved by grazing land. The possible increase in soil erosion would be one factor that the regulatory authority would have to consider in deciding whether row crops would in fact be a higher or better use than grazing in this situation. We find Montana's proposal to be consistent with this interpretation of SMCRA 515(b)(19) as expressed at 30 CFR 816.116(a)(2), and we approve it with this understanding.

For the reasons discussed above, we are approving MCA 82–4–233(1), with the proviso that the exemption for "and other constructed features approved as part of the postmining land use" not be applied until Montana promulgates implementing rules to limit the exemption, and those rules are approved by OSM.

b. We note that existing paragraph (1), proposed for deletion, required the revegetative cover to be capable of (1) "feeding and withstanding grazing pressure from a quantity and mixture of wildlife and livestock at least comparable to [premining conditions]" (subparagraph (1)(a)); and (2) "regenerating under the natural conditions * * * including occasional drought, heavy snowfalls, and strong winds."

Neither SMCRA nor the Federal regulations contain these requirements. Therefore, deletion of them is not inconsistent with SMCRA or the Federal regulations. As noted above, the other general revegetation requirements of existing paragraph (1) have been replaced by the new paragraph (1). We therefore approve the deletion of existing paragraph (1). We note, however, that the deleted language of existing subparagraph (1)(a) ["feeding and withstanding grazing pressure from a quantity and mixture of wildlife and livestock at least comparable to [premining conditions"] was the language that up until this time had been interpreted by Montana as requiring, as a postmining land use, a combination of grazing and fish & wildlife habitat (unless a higher or better use was approved). Therefore, upon the effective date of this approval, Montana will no longer generally require the combination of grazing and fish & wildlife habitat as a postmining land use. Instead, Montana will be evaluating premining land use and land use capability with proposed postmining land uses under the terms of new MCA 82–4–232(7) and (8) (as newly codified) [equivalent to SMCRA 515(b)(2), 30 CFR 816/817.133], addressing land use capability [approved at Finding B above].

c. Montana proposed to delete existing MCA 82–4–233(2), which provided that the regulatory authority ("board") must define by rule the requirements for seed mixtures, quantities, and other planting requirements. SMCRA has no such specific requirement. Therefore deletion of this requirement is not inconsistent with SMCRA, and we approve it.

d. Montana proposed to replace deleted existing paragraph (2) with a new paragraph (2) that exactly duplicates 30 CFR 816/817.111(b). This Federal regulation, in turn, provides additional detail to SMCRA 515(b)(19). Since the proposed new paragraph (2) is the same as the Federal regulation, and in accordance with SMCRA, we approve it.

e. Montana proposed to add a new paragraph (3), which requires revegetation to be appropriate for the postmining land use. This proposed provision to some extent addresses general revegetation success standards; but we note that Montana has provided additional requirements for revegetation success standards at proposed MCA 82–4–235 (to be addressed in a finding below). At subparagraph (3)(a), revegetation appropriate for cropland provides exemptions from the general revegetation requirements of: diverse, effective, permanent; at least equal in cover to the natural vegetation; having the same seasonal characteristics of growth as the natural vegetation; and being capable of self-regeneration and plant succession. This same exemption for cropland from the general requirements of SMCRA 515(b)(19) is provided in the Federal regulations at 30 CFR 816/817.111(d).

At subparagraph (3)(b), revegetation appropriate for pastureland or grazing land must have use for grazing by

domestic livestock at least comparable to premining conditions, and enhanced when practicable. Again, we note that proposed success standards will be addressed below. There is no exact Federal equivalent to this proposal. It is consistent with the requirements of SMCRA 515(b)(19) that the revegetation be effective and at least equal in extent of cover to the natural vegetation of the area. The postmining land uses of grazing and pastureland imply land management practices directed to livestock use, but this does not preclude wildlife use. We believe it will usually be the case that if the postmining revegetation provides for at least as much livestock use as the premining vegetation, the same would hold true for grazing wildlife. We note that the definition of "grazing" at MCA 82–4–203(22) (addressed above) requires that the vegetation be indigenous, and hence would be appropriate for wildlife.

At subparagraph (3)(c), revegetation appropriate for fish and wildlife habitat, forestry, or recreation requires that trees and shrubs must be planted to achieve appropriate stocking rates. Again, we note that proposed success standards will be addressed below; as noted below, the success standards for these land uses require ground cover measures. There is no exact Federal equivalent to this proposal. It is consistent with the requirements of SMCRA 515(b)(19) that the revegetation be diverse and effective.

For the reasons discussed above, we approve proposed paragraph (3).

C.15. MCA 82–4–234 Commencement of Reclamation [SMCRA 515(b)(16)].

Montana proposed to delete the final sentence of this provision. The sentence requires that Departmental approval is required before an operator may redisturb any area already seeded for revegetation. Neither SMCRA nor the Federal regulations contain such a requirement. Therefore, deletion of this sentence is not inconsistent with SMCRA, and we approve it.

C.16. MCA 82–4–235 Determination of Successful Revegetation [SMCRA 515(b)(19) & (20); 30 CFR 816.111, 816.116].

Introductory note: The nature of the material proposed for addition here (for example, the proposed rule addresses ground cover, crop production, stem density, and "reestablished vegetation"), plus the similarity to the Federal regulations at 30 CFR 816/817.116, suggests that these proposed new requirements are meant, like 30 CFR 816/817.111 and 816/817.116, to set basic requirements for success standards to measure when operators have met the requirement of MCA 82–4–233 to establish a vegetative cover. We have evaluated these requirements with this understanding. We further note that these basic requirements do not satisfy the Federal requirements at 30 CFR 816/817.116(a)(1) that the regulatory authority select detailed success standards (with consultation with State agencies required in some cases and recommended in all cases). This has actually already been accomplished by the Department; see ARM 17.24.711 through 17.24.733.

Montana proposed to change the title of this provision from "inspection of vegetation" to "determination of successful revegetation," with (in both cases) a subtitle of "final bond release." Montana also proposed to add a new paragraph (1) as follows:

(1) Success of revegetation must be judged on the effectiveness of the vegetation for the approved postmining land use, the extent of cover compared to the cover occurring in the natural vegetation, and the requirements of 82–4–233. Standards for success are:

(a) for areas reclaimed for use as cropland, crop production must be at least equal to that achieved prior to mining based on comparison with historical data, comparable reference areas, or United States department of agriculture (sic) publications applicable to the area of the operation, as referenced in rules adopted by the board;

(b) for areas reclaimed for use as pastureland or grazing land, the ground cover and production of living plants on the revegetated area must be at least equal to that of a reference area or other standard approved by the department as appropriate for the postmining land use;

(c) for areas reclaimed for use as fish and wildlife habitat, forestry, or recreation, success of revegetation must be determined on the basis of approved tree density standards or shrub density standards, or both, and vegetative ground cover required to achieve the postmining land use;

(d) reestablished vegetation is diverse if multiple plant species meeting the requirements of 82–4–233(1)(b) are present. The department may approve a lesser diversity standard for postmining land uses other than grazing land.

(e) reestablished vegetation is considered effective if the postmining land use is achieved and erosion is controlled;

(f) reestablished vegetation is considered permanent if it is diverse and effective at the end of the 10-year responsibility period specified under subsection (2); and

(g) plant species comprising the reestablished vegetation are considered to have the same seasonal characteristics of growth as the original vegetation, to be capable of regeneration and plant succession, and to be compatible with the plant and animal species of the area if those plant species are native to the area, are introduced species that have become naturalized, or are introduced species approved by the department as desirable and necessary to achieve the postmining land use.

a. In part, these proposed new requirements are derived from the Federal regulations at 30 CFR 816/817.116; in particular, proposed paragraph (1) duplicates 30 CFR 816/817.116(a). And subparagraphs (1)(a) and (c) effectively duplicate 30 CFR 816/817.116(b)(2) and (3). Subparagraph (1)(b) duplicates 30 CFR 816/817.116(b)(1), except for the addition of the phrase "appropriate for the postmining use." Since proposed paragraph (1) requires success standards to reflect the extent of cover compared to natural cover, and MCA 82–4–233(1)(c) [addressed in a finding above] requires the established cover to be at least equal to the natural cover, any standard approved by the Department as "appropriate" under this section would have to exceed this minimum requirement. And, since subparagraphs MCA 82–4–235(1), (1)(a), (1)(b), and (1)(c) effectively duplicate the Federal regulations, we approve these subparagraphs.

b. Subparagraphs (1)(e) and (f) provide definitions of "effective" and "permanent." Neither SMCRA nor the Federal regulations define these terms. But these concepts were discussed in preambles to Federal regulations, which themselves discuss House Report No. 95–218 (see 47 FR 12597; March 23, 1982; and 48 FR 48141–48146; September 2, 1983). According to these preambles:

> Effective means * * * both the productivity of the planted species concerning its utility to the intended postmining land use * * * as well as its capability of stabilizing the soil surface with respect to reducing siltation to normal background levels * * * Permanent means that the plant community as a whole must be capable of providing the necessary amount of ground cover over time through plant succession, and not necessarily that every individual plant species will propagate itself in identical numbers and rations throughout the future.

Montana's proposed definitions here are consistent with these preamble discussions. Proposed subparagraph (e) provides that vegetation is effective if the postmining land use is achieved and erosion is controlled; these are the same two factors considered in the Federal preambles. And proposed subparagraph (f) provides that vegetation is permanent if it is diverse and effective at the end of the bond liability period. We note, though, that while this definition of "permanent" may serve as a basis for determining criteria for bond release, it provides little guidance applicable to approving revegetation plans in permit applications. Since these definitions are

consistent with the Federal regulations, we approve subparagraphs (1)(e) and (f).

c. Subparagraph (1)(d) defines "diverse" as "multiple" plant species and provides for a "lesser" diversity standard for all postmining land uses except grazing. We understand "multiple" as being more than one. So, this provision could allow as few as two species, and possibly one if approved by the Department for non-grazing land.

Neither SMCRA nor the Federal regulations define "diverse." But pertinent discussion is found in the rule preambles cited above: " 'Diverse' means sufficiently varied amounts and types of vegetation to achieve ground cover and support the postmining land use. The precise numbers required to achieve this diversity should be determined by regional climate and soil conditions. However, the ultimate test will be the sufficiency of the plant communities to assure survival of adequate number and varieties to achieve the postmining land use and the required extent of ground cover. Diversity does not necessarily mean that every species or variety of premining grass, shrubs, or trees be established in identical numbers and ratios after mining." See 47 FR 12597; March 23, 1982. We do not believe that this Federal description for diversity, and the conclusion that the ultimate test is related to the plant communities' ability to assure survival of adequate numbers and varieties to achieve the postmining land use and required extent of cover, is consistent with Montana's proposal, which could result in as few as two species and possibly one in some cases. In particular, the postmining land use of fish and wildlife habitat will often require a fairly high diversity (*i.e.*, sufficiently varied amounts and types of vegetation) to fulfill the various food and cover needs of various species of wildlife and other biota.

Based on the above discussion, we find proposed subparagraph (1)(d) to be less effective than the Federal requirements, and we do not approve it.

d. Subparagraph (1)(g) describes the criteria required to meet the terms "same seasonal characteristics of growth as the original vegetation," "capable of regeneration and plant succession," and "to be compatible with the plant and animal species of the area." In all three cases, the proposal states that these requirements are met if the reestablished vegetation species meet one or more of three criteria: (1) They are native to the area, (2) they are introduced species that have been naturalized, or (3) they are introduced species approved by the Department as both necessary and desirable for the postmining land use.

The Federal regulations do not define the terms "same seasonal characteristics of growth as the original vegetation," "capable of regeneration and plant succession," and "to be compatible with the plant and animal species of the area". But preamble discussion (see 47 FR 12597; March 23, 1982) clarifies that "seasonality" refers to the major season of growth. Herbaceous species are generally grouped into cool season species (which grow mostly in spring or fall, but are largely dormant in mid-summer) and warm season species (which grow in late spring and summer, but are dormant in early spring and fall); woody species may be deciduous or evergreen. Species that are native to the area would exhibit these characteristics. Introduced species could be approved by the Department as "desirable" only if they exhibit these characteristics. "Naturalized species," in this context, are introduced species that were not planted with Department approval; however, they may have invaded the area after planting, or their seeds may have been in the soil prior to mining. Since they have not been planted with approval, it is unknown whether they match the seasonality of the original vegetation. Based on this discussion, we approve this definition of "the same seasonal characteristics of growth as the original vegetation," except for its inclusion of naturalized species.

Regarding capacity for regeneration and plant succession, species that are native to the area would exhibit these characteristics. Introduced species could be approved by the Department as "desirable" only if they exhibit these characteristics. Since naturalized species would not have been planted with approval, it is unknown whether they would have these characteristics. Based on this discussion, we approve this definition of "capable of regeneration and plant succession," except for its inclusion of naturalized species.

Regarding compatibility with local plants and animals, the native species are co-adapted with plant and animal species of the area and therefore have this characteristic. Introduced species could be approved by the Department as "desirable" only if they exhibit this characteristic. As OSM noted in the preamble to 30 CFR 816.111(b)(4), "[a]ny species approved for use in reclamation must be compatible with the plant and animal species of the area. Hence, 816.111(b)(4) is one of the criteria that the regulatory authority will use in determining whether to approve or disapprove any plant species proposed for planting in disturbed areas" (48 FR 40145; September 2, 1983). Therefore, introduced species approved by the Department must, consistent with 30 CFR 816.111(b), be compatible with other species of the area. Since naturalized species would not have been planted with approval, it is unknown whether they would have this characteristic. Based on this discussion, we approve this definition of "to be compatible with the plant and animal species of the area," except for its inclusion of naturalized species.

For the reasons discussed above, we approve subparagraph (1)(g) except insofar as it includes "introduced species that have become naturalized."

C.17. MCA 82–4–252(2) Mandamus [SMCRA 520].

Montana proposed to revise Paragraph (2) of this section to delete the option for actions of mandamus to be brought in the first judicial district of the State, thereby requiring that such actions be brought in the district court of the county in which the land is located.

The Federal citizen suit provision at SMCRA 520 requires that Federal district courts have jurisdiction for Federal citizen suit actions. It does not specify jurisdiction for State actions. We find that Montana's proposal is not inconsistent with this, and we approve it.

D. Revisions to Montana's Statute With No Corresponding Federal Regulation and/or Statute

D.1. MCA 82–4–202(1) Policy Intent.

Montana proposed to add a new paragraph (1), stating the legislature's intent to fulfill its responsibility under the Montana Constitution. There is no direct Federal counterpart.

We find that the adequacy of this legislation to meet the obligations of the Montana Constitution is beyond the scope of our review. We are empowered under SMCRA 503 and 505 only to evaluate Montana's laws in comparison to SMCRA. Therefore, we take no action on this proposed new paragraph.

D.2. MCA 82–4–202(3)(c)—(e) Policy Intent.

Montana proposed to add three new subparagraphs (c) through (e) to renumbered paragraph (3), as follows:

(3)(c) coal mining alters the character of soils and overburden materials and that duplication of premining topography, soils, and vegetation composition is not practicable;

(d) the standard for successful reclamation of lands mined for coal is the reestablishment of sustainable land use comparable to premining conditions or to higher or better uses; and

(e) standards for successful reclamation must be well-defined, consistent, and

attainable so that mine operators can reclaim lands disturbed by mining with confidence that the release of performance bonds can be achieved."

There are no similar provisions in SMCRA. We agree with proposed subparagraph (c) that surface mining alters soils and geology, and that an exact duplication of premining conditions is not practicable. This provision is not inconsistent with the intent of SMCRA. Therefore we approve subparagraph (3)(c).

In regard to proposed (3)(d), we note that restoration of sustainable land use is indeed one of the main requirements of SMCRA, as noted at SMCRA 515(b)(2). But in SMCRA 101(c), Congress also identified many other adverse effects of mining which SMCRA is intended to prevent:

(c) many surface mining operations result in disturbances of surface areas that burden and adversely affect commerce and the public welfare by destroying or diminishing the utility of land for commercial, industrial, residential, recreational, agricultural, and forestry purposes, by causing erosion and landslides, by contributing to floods, by polluting the water, by destroying fish and wildlife habitats, by impairing natural beauty, by damaging the property of citizens, by creating hazards dangerous to life and property[,] by degrading the quality of life in local communities, and by counteracting governmental programs and efforts to conserve soil, water, and other natural resources.

Therefore, in addition to restoring or enhancing sustainable land use, other standards for successful reclamation include highwall elimination and restoration of AOC to, for example, prevent impairment of natural beauty and eliminate hazards dangerous to life and property; protection and enhancement of fish & wildlife habitat; control of erosion and other pollution of surface waters and ground waters; contemporaneous reclamation, etc. Thus the body of SMCRA itself, not just the findings in section 101, contain postmining reclamation requirements that are not necessarily limited to the postmining land use, *e.g.*, hydrologic balance protection outside the permit area and fish and wildlife protection and enhancement even when fish and wildlife habitat is not the postmining land use (see also 30 CFR 816.97(a), (h), and (i)). Also, we note that that section 519(c)(3) of SMCRA specifies that no bond shall be fully released until "all reclamation requirements of this Act are fully met."

Therefore we do not agree with Montana that restoration of sustainable land use is "the [one] standard" for successful reclamation of lands mined for coal. We additionally note a conflict between proposed (d) and proposed (e): proposed (d) states that there is one "standard" for successful reclamation, while proposed (e) addresses plural "standards for successful reclamation." For these reasons, we find that this provision is inconsistent with the intent of SMCRA, and we do not approve proposed subparagraph MCA 82–4–202(3)(d).

With regard to proposed subparagraph (3)(e), we agree that standards for successful reclamation must be well-defined, because as Montana notes, considerable legal and monetary liability is attached. The term "consistent" can be used in several different ways. We certainly agree that standards for successful reclamation should be consistent in the administrative sense; that is, not arbitrarily created or applied, and applied to all operators equally.

But we disagree that such standards should be, as proposed here, "attainable." Standards for reclamation success must be based on premining conditions. It is possible that mining and reclamation technology are not capable of restoring the premining conditions of some specific geographic areas; hence, reclamation success could not be attained in those areas. If the standards for successful reclamation were attainable everywhere, then surface mining operations under SMCRA could be conducted everywhere. But on the contrary, SMCRA 102(c) states as one purpose for the Act to "assure that surface mining operations are not conducted where reclamation as required by this Act is not feasible." Similarly, SMCRA 510(b)(2) requires that before a permit application is approved, the regulatory authority must find in writing that "the applicant has demonstrated that reclamation as required by this Act and the [regulatory] program can be accomplished by the reclamation plan contained in the permit application." If the standards for successful reclamation under SMCRA were always "attainable," these two SMCRA requirements would be rendered pointless. We additionally note that this Montana provision, if approved, could provide a basis for Montana's approval of standards that are inconsistent with those required by SMCRA and the Federal regulations.

Based on the above discussion, we approve proposed subparagraph MCA 82–4–202(3)(e), except for the words "and attainable." We do not approve the words "and attainable."

D.3. MCA 82–4–203(30) Definition of "Material damage."

Montana proposes to add a new definition, as follows:

(30) "Material damage" means, with respect to protection of the hydrologic balance, degradation or reduction by coal mining and reclamation operations of the quality or quantity of water outside of the permit area in a manner or to an extent that land uses or beneficial uses of water are adversely affected, water quality standards are violated, or water rights are impacted. Violation of a water quality standard, whether or not an existing water use is affected, is material damage.

We note that there is no such definition in Montana's rules. Neither is there a definition in SMCRA or in the Federal regulations. Because of the great variation nationwide, and even permit-to-permit, in geologic, hydrologic, climate, and weather systems, OSM has elected not to establish any fixed criteria to measure material damage except for compliance with water-quality standards and effluent limits (see 48 FR 43973; September 26, 1983). This proposal is consistent with that position. We therefore find this proposal to be not inconsistent with SMCRA, and we approve it.

D.4. MCA 82–4–203(47) Definition of "Restore or restoration."

Montana proposes to add a new definition, as follows:

(47) "Restore" or "restoration" means reestablishment after mining and reclamation of the land use that existed prior to mining or to higher or better uses.

We note that the introduction to the "definitions" section provides: "Definitions. Unless the context requires otherwise, in this part, the following definitions apply:". We note further that there is no such definition in Montana's rules. Neither is there a definition in SMCRA or in the Federal regulations.

We examined Montana's statute (MCA Title 82, Chapter 4, Part 2) to determine where these defined words are used. We did not observe any place where they are used in the sense defined here. We found several places in which the context requires the usual interpretation of "restore," meaning to return something to its original condition (MCA 82–4–202(2)(d), 82–4–231(10)(k)(i)(C)(iv), 82–4–239, 82–4–243(1)(a)). Therefore we question the need to add this definition to the Montana program. However, anyplace where "restore" or "restoration" are used in the Montana statute as counterparts to SMCRA provisions, it is clear from context to mean "return to original condition." Therefore we do not find this proposed definition to be inconsistent with SMCRA, and we approve it.

D.5. MCA 82–4–203(50) Definition of "Surface owner."

Montana proposed to revise this existing definition by deleting the phrase "and whose principal place of residence is on the land" from the defined category of persons holding legal or equitable title to the land surface. Therefore, Montana has revised this category to make it more inclusive, so that the Montana program will protect the interests of more people. Montana also proposed to add a new subparagraph (d) to provide that "surface owner" means the Federal land management agency when the United States government owns the surface. We agree that this is accurate, and will simplify permit applications for operators; it is also consistent with the permit application requirements and land use requirements of the Federal regulations. Therefore we find this proposal to be not inconsistent with SMCRA, and we approve it.

D.6. MCA 82–4–203(55) Definition of "Wildlife habitat enhancement feature."

Montana proposed to add a new definition, as follows:

> "Wildlife habitat enhancement feature" means a component of the reclaimed landscape, established in conjunction with land uses other than fish and wildlife habitat, for the benefit of wildlife species, including but not limited to tree and shrub plantings, food plots, wetland areas, water sources, rock outcrops, microtopography, or raptor perches.

We examined Montana's statute (MCA Title 82, Chapter 4, Part 2) to determine where this phrase is used. We found it only at the related performance standard at MCA 82–4–232(9), where it seems it would be clear from context. Therefore we question the need to add this definition to the Montana program. However, we do not find it to be in conflict with SMCRA 515(b)(24) or 30 CFR 816.97, both dealing with the protection of fish, wildlife, and related environmental values. Therefore we find it to be not inconsistent with SMCRA, and we approve it.

D.7. MCA 82–4–232(10) Pre-existing Facilities & Roads [SMCRA 522(e)(4)].

Montana proposed to add a new paragraph, MCA 82–4–232(10), to provide that "facilities existing prior to mining, including but not limited to public roads, utility lines, railroads, or pipelines, may be replaced as part of the reclamation plan."

Of these facilities, only public roads are addressed by SMCRA (at 522(e)(4)), which provides that public roads may be disturbed by mining operations (other than at mine road intersections with public roads) only after a public hearing and finding that the interests of the public and the landowners will be protected. Montana's proposal is not inconsistent with this Federal requirement. Indeed, Montana has a duplicate of the SMCRA 522(e)(4) requirement, at MCA 82–4–227(7)(d).

The other types of premining facilities here would be addressed as right-of-entry questions under SMCRA 507(b)(1) and 510(b)(6). We find that Montana's proposal is not inconsistent with these requirements, and we approve the proposal.

D.8. HB 373 Section 11 [not yet codified as submitted], Revision of Permits or Applications to Incorporate These Statutory Provisions [SMCRA 511].

This proposed section would allow any existing permits, or applications for permits or permit revisions, to be revised to incorporate provisions of House Bill 373 (which includes most of the revisions proposed in this submittal). SMCRA does not address the revision of permits to incorporate newly approved regulatory provisions. But neither does it prohibit this; it appears that such revisions would be addressed as any other revisions under SMCRA 511. Montana's rules at ARM 17.24.404(1) address the effects of revisions upon applications already in the review process. We find that this proposal is not inconsistent with SMCRA, and we approve it.

D.9. MCA 82–4–239(3) through (5), Reclamation by Department.

One substantive and several minor revisions were proposed for this section, which was included in this submittal (SATS MT–024–FOR; Administrative Record No. MT–21–1), and was included in the proposed rule **Federal Register** notice for this amendment (68 FR 61175; October 27, 2003). However, upon closer review of this statutory section, we find that it is not applicable to Montana's regulatory program under SMCRA Title V, but rather to Montana's Abandoned Mined Land (AML) program under SMCRA Title IV. Therefore we are taking no action on the proposed amendments to this statutory section. We will consider them in connection with a future proposed amendment to the Montana AML program.

D.10. MCA 82–4–250 Operating permit revocation—permit transfer.

Montana proposes to delete from this statutory section a clause that the section would terminate on October 1, 2005. With the proposed deletion, MCA 82–4–250 would not terminate, but would remain part of the Montana program until removed by legislation.

OSM approved MCA 82–4–250 (including the termination clause) as being no less stringent than SMCRA (see 66 FR 58375; November 21, 2001; SATS MT–022-FOR). Since MCA 82–4–250 was consistent with SMCRA at that time, it remains consistent until or unless SMCRA is changed. Therefore we find that deletion of the termination clause does not affect the findings made by OSM in approving the entire MCA–82–4–250, and we approve the deletion.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment (Administrative Record No. MT–21–06), and received three comment letters.

a. We received a letter from Westmoreland Mining LLC ("WML"), which operates three mines in Montana (Administrative Record No. MT–21–09). WML commented that one provision in the Montana statute had remained unchanged since 1973 (thus predating SMCRA by several years). That provision required that mined land be reclaimed to a postmining land use of native rangeland and wildlife habitat (with any exceptions requiring a cumbersome review process). WML further stated that this statutory provision has increasingly been applied as a requirement to restore ecological function. The result, WML states, is that reclamation success has been impossible to define, hence subject to shifting and varying interpretation by individual staff members, and a lack of objective evaluation of reclamation success for release of bond (and therefore, there have been very few final bond releases).

WML goes on to state that this proposed program amendment has been developed through a cooperative effort by the Montana Coal Council, the Department, and OSM. The proposed amendment "is a clear statement of legislative intent that the 'standard for successful reclamation of lands mined for coal is the reestablishment of sustainable land use comparable with premining conditions or higher or better uses.'" WML comments that approval by OSM will enable Montana to proceed with bond releases based on standards that are objective, attainable, and consistent with OSM requirements. WML urges timely approval of the proposed amendment.

In response, we note that we have approved the proposed deletion of existing MCA 82–4–233(1)(a), which was the provision interpreted as requiring a postmining land use of grazing and fish & wildlife habitat. Further, we are approving proposed new MCA 82–4–232(7) and (8), which

require restoration of the land to a condition capable of supporting the premining uses, or higher or better uses. See Findings B. and C.14.b.

Regarding the statements of legislative intent at proposed MCA 82–4–202(3)(d) and (e), as discussed in more detail above, we disagree with the Montana legislature that the reestablishment of a sustainable land use is the only standard for reclamation success. We note that for final bond release, SMCRA 519(c)(3) requires that "all reclamation requirements of this Act are met." This includes such requirements as elimination of highwalls and restoration of AOC, protection of the hydrologic balance, and protection and enhancement of fish & wildlife habitat and related environmental values. See Finding D.2. above. We also note that SMCRA provides other protections that are applicable earlier in the operation, but not at final bond release, such as contemporaneous reclamation, control of blasting, and protection of surface owner rights. Violations of these requirements delay, hinder, or reduce the success of mine reclamation.

We also disagree with the Montana legislature that whatever standards might be applied to measure reclamation success must be across-the-board "attainable." As noted in Finding D.2. above, mining and reclamation technology (or the economic aspects of the operation) may not be able to adequately restore premining conditions (as required by SMCRA) in all situations. In those situations, the standards for success would not be attainable with current technology and/or current investment and coal prices.

b. We received a letter from the Montana Coal Council ("MCC"), which represents the coal industry before the Montana legislature (Administrative Record No. MT–21–08). MCC commented that the Montana program statute had allowed reclamation standards to be set subjectively, and that in application they had changed over time, providing a "moving target." MCC believes that this proposed amendment will allow the coal mining industry to return the land to its premining condition, and allow input from the entity who will own and use the land in the future. MCC urges approval of the proposed amendment.

In response, we note that we cannot comment here on how statutory or regulatory requirements are applied. The application of requirements to specific cases, including what standards are applicable to which parts of which mines over time, is subject to administrative and judicial review as part of the Montana program, and possibly under other parts of Montana law as well. In its regular oversight of State regulatory programs, OSM reviews the implementation of regulatory programs; OSM seeks input from the public (including the industry) in determining what parts of program implementation to review. Here we can comment only on the establishment of the statutory and regulatory requirements. We note that when we initially approved the Montana program under SMCRA in 1980, OSM determined that the Montana program met SMCRA requirements. And in this action, we are also determining whether the proposed amendment is in accordance with SMCRA.

We interpret the comment about obtaining input from the future land possessor and user as applying to proposed MCA 82–4–232(8)(b). We note that this is a valuable addition to the program, and we commend the industry and the legislature for this service to Montana's citizens.

c. Finally, we received a lengthy and complex comment letter from the Northern Plains Resource Council ("NPRC") (Administrative Record No. MT–21–07), which describes itself on its Web site as follows:

> "Northern Plains Resource Council organizes Montana citizens to protect our water quality, family farms and ranches, and unique quality of life. We are a grassroots conservation and family agriculture group that gets the job done—protecting the Northern Plains and the people who make their home here."

The letter included some general comments and many section-by-section comments.

In general comments, NPRC noted that this proposal marks a shift in the Montana program, from the required postmining land use of combination grazing/wildlife (with limited alternatives) to a focus on process, where any operator going through the process can get bond release. NPRC sees this in the new legislative intent at proposed MCA 82–4–202(2)(c)–(e). NPRC also comments that the Montana legislature has said it is not practicable to reclaim. NPRC noted that other Western states find it practicable to reclaim using native grasses, forbs, shrubs, and trees to attain a climax vegetation; this goal is sought because if native species can grow as well postmining as they did premining, then there is a stable, self-regenerating landscape that can be used in the future for any use that was foreseeable prior to mining (implying that under the proposed amendment, some of those potential future land uses would be lost). Further, NPRC comments that the broad array of now-available postmining land uses are "pie-in-the-sky," and are poorly delineated.

In response, we agree that Montana in this proposal would eliminate the grazing/wildlife preference. But it is being replaced with the SMCRA system of comparing premining and proposed postmining land uses (which is the system that the other Western states, referred to positively by NPRC, are using). Regarding alternative postmining land uses, we note that under the proposal any postmining uses different from the premining use must: have a likelihood to be achieved; not present any hazard to public health or safety or any threat of water diminution or pollution; not be impractical or unreasonable; be consistent with applicable land use policies or plans; not involve unreasonable delay in implementation; and not cause or contribute to violation of federal, state, or local law. See proposed MCA 82–4–232(8) and Finding B above. SMCRA relies in part on public comment on permit applications including land use changes. We also note that under the proposal (see proposed MCA 82–4–203 (20) and (28)), "fish and wildlife habitat" can include land only partially managed for protection or management of wildlife species. Hence, unless premining grazing land or pastureland are managed to exclude wildlife, wildlife habitat is probably a joint use, and must be considered in postmining planting plans and revegetation success standards.

Regarding native species, we note that under this proposal (see proposed MCA 82–4–233(1)(b)), just as under SMCRA 515(b)(19), introduced species may be used only when desirable and necessary.

With regard to NPRC's comment on legislative intent and proposed MCA 82–4–202(2)(c)–(e), including whether it is practicable to reclaim, we note that we agree in part with Montana and in part with NPRC. We agree with Montana that surface mining operations are a radical disruption of the physical environment (soils, geology, premining vegetation) that cannot be totally undone; postmining overburden is not undisturbed geologic strata, reconstructed soils are not undisturbed soils, and exact replacement of the premining vegetation community is not possible). But as noted at Finding D.2. above, SMCRA requires, in addition to restoring or enhancing land productivity, other standards for successful reclamation, including highwall elimination and restoration of AOC, protection and enhancement of fish & wildlife habitat, control of erosion

and other pollution of surface waters and ground waters, contemporaneous reclamation, and others. These provisions require amelioration of the environmental disruption. But as we noted above, we also agree with NPRC that standards for determining reclamation success are not always attainable, and even where attainable they are not always attained; bond release is not automatic.

As a further general comment, the NPRC letter closed with a summary that this proposal is less protective than the Federal requirements, especially regarding AOC, alternate land uses, protection of the hydrologic balance, and not requiring native species. Further, NPRC thinks that the legislature was unduly influenced by a few mines, without much thought to how these amendments would change the larger environment of eastern Montana as more areas are mined. We reply that SMCRA counts on citizen review and awareness to ensure that the regulatory programs are properly implemented. We also note that OSM counts on input from the public in choosing which areas to review in our regular oversight of State programs; we encourage NPRC to participate in this process. We thank NPRC for its efforts in reviewing this submittal.

Specific NPRC comments: regarding the proposed definition of AOC (proposed MCA 82–4–203(4)), NPRC commented that subparagraph (4)(a) is too broad, and would allow rolling or hilly terrain to be flattened. Also, NPRC comments that under the proposed definition a hill might be moved 500 feet from its premining location, and questions whether that 500 foot shift should have been approved in the reclamation plan, rather than happening without planning during the last stage of backfilling and grading.

In response, we disagree that this proposal, like the guidance provided by OSM in Directive INE–26, would allow hilly or rolling terrain to be reclaimed as virtually flat. But we do agree that under both this proposal and OSM's Directive, a hill might be restored in the postmining landscape 500 feet from its premining location. However, we note that under both this proposed amendment (at proposed MCA 82–4–222(1)(o)) and under OSM's Directive, the proposed postmining location (500 feet removed from the premining location) would have to be proposed in the permit application, and approved before mining begins. An operator that actually reconstructed the hill (during backfilling and grading) shifted 500 feet from the location approved in the permit would be in violation of the permit and could not obtain Phase I bond release.

NPRC further comments on proposed subparagraph (4)(c) (addressing postmining drainage basins), noting that the discretion provided is too broad, and is coupled with a gradual erosion of State supervision over several years (under the old definition) of the location and design of ephemeral streams, with the result that the actual locations are decided by the equipment operators. In response, as noted above, we cannot here address field practice, only the statutes and rules. As noted immediately above, we observe that proposed drainage basins (like hills) must be shown in permit applications, as part of the postmining topography. Actual field construction by the equipment operator might vary a little bit, but not significantly, from the approved postmining topography. If such field construction does significantly vary from that approved in the permit, this would be a violation of the permit, and the operator could not obtain Phase I bond release.

NPRC further comments in regard to proposed subparagraph (4)(c) that this proposed provision is one instance of a subject that occurs throughout the entire proposed amendment. Here it is expressed in the control of adverse effects being required only to the extent appropriate to the postmining land use. NPRC comments that SMCRA 515(b)(10)(B)(i) requires erosion control using best available technology. Further, the proposed amendment (unlike SMCRA) ties protection of the hydrologic balance to the postmining land use. NPRC comments that in that case, if the postmining land use is industrial, little or no protection might be applied to the hydrologic balance. Further, NPRC notes, under such logic there would be many different standards for protecting the hydrologic balance, depending on the postmining land use. NPRC comments that the concept of "'hydrologic balance * * * protected as necessary to support post mining land uses'" is inconsistent with SMCRA, and does not belong either in this definition or elsewhere in the Montana program.

In response, we note that we largely agree with NPRC on these comments. We agree that limiting resource protection to that needed for the postmining land use is a recurrent theme throughout this submittal, and we have attempted to address it in each case. We also noted that Montana has at several points drafted proposed definitions to impose performance standards (or limitations of performance standards). We believe that we addressed these instances in the Findings above, and will do so again where applicable in response to these comments. Finally, we agree that the proposal, in limiting hydrologic balance protection to the postmining land use, is not in accordance with SMCRA. As noted at Finding C.1.d. above, we have not approved this language. However, we disagree that limiting erosion control to that needed for the postmining land use would be inconsistent with SMCRA 515(b)(10)(B)(i). Erosion control using best available technology is required in all cases, regardless of any particular proposed postmining topography. See MCA 82–4–231(10)(k)(ii)(A).

NPRC comments that the proposed definition at MCA 82–4–203(17) of "drainageway" sounds very industrial, and that the Federal term "ephemeral stream" is more accurate. In response, we note that Montana is applying the proposed definition not just to the premining condition (where "stream" would indeed be more appropriate) but also to postmining constructed features. We did not find that it was defined or used in a way inconsistent with SMCRA; indeed, we only found it used in the definition of "approximate original contour."

NPRC comments that the proposed definition at MCA 82–4–203(24) of "hydrologic balance" is another instance of limiting the resource to be protected according to postmining land uses. We agree with this comment. As noted at Finding C.2. above, we find that this definition imposes a limit on the resource to be protected that is not in accordance with SMCRA; we did not approve this language.

At proposed MCA 82–4–203(22) (the proposed definition of "grazing land"), NPRC questioned whether the term "indigenous" was in accordance with SMCRA, noting that the term can mean "native," but may also have broader meanings. We respond that "indigenous" is also used in the Federal definition of "grazing land" (at 30 CFR 701.5). Thus Montana's proposed definition is consistent with the Federal definition. It must be kept in mind, though (as noted above), that both SMCRA and the Montana program require native species unless the land use cannot be achieved with them.

NPRC commented on the proposed definition of "reclamation" at MCA 82–4–203(42). NPRC commented that "here we see reclamation reduced to a process without a restoration goal. The goal of reclamation in the federal regs is to "restore" mined land to a postmining land use approved by [those regs]." We note that the only change proposed here was to add that the work is under a plan approved by the Department "to make

those lands capable of supporting the uses those lands were capable of supporting prior to any mining or to higher or better uses." So we understand NPRC to be saying that by adding the clause stating that the goal is land capability, Montana has removed the restoration goal; and that goal in the Federal regulations is to actually achieve a postmining land use rather than merely the capability. We note that the Federal definition of "reclamation" at 30 CFR 701.5 is not used within the Federal program to determine the applicability of any requirement or define the success of reclamation. Both SMCRA 515(b)(2) and 30 CFR 816/817.133(a) require that mined land be restored to a condition capable of supporting the premining land use or of supporting higher or better land uses than the premining use. Generally, that capability is indicated by land stability, hydrologic balance protection, erosion control, revegetation success, wildlife protection and enhancement, etc. Despite OSM's regulatory definition of "reclamation," OSM and the courts have held that the operator's responsibility is to restore the land's capability for the postmining land use, not to actually implement that postmining land use (with the exception of prime farmland and cropland). See 48 FR 39897; September 1, 1983. Thus, Montana's proposal is consistent with SMCRA and the Federal regulations.

NPRC commented that the proposed new definition of "restore or restoration" (MCA 82–4–203(47)) has been narrowed from SMCRA 515(b)(2), which includes "capability" for various uses; and that "capability" for various uses should be discussed in the permitting process. We note, as discussed in Finding D.4. above, that we do not see a need for this definition. We also note that this definition is essentially the same as the Federal definition of "reclamation" at 30 CFR 701.5, commented upon directly above. We further note that the Montana program requires discussion of land capabilities during the permitting process, at ARM 17.24.304(12); this requirement is not dependent upon this statutory definition of "restoration."

NPRC commented on the proposed shortening of time to review permit revisions, at MCA 82–4–221(3); NPRC has reservations that there will be enough staff, or funding for staff, to make the shorter time work. As noted in Finding C.3. above, SMCRA does not require a specific time allowance. We note that the unaltered portion of this Montana provision provides that the Department may not approve a revision application unless it finds that reclamation in accordance with the Montana program would be accomplished. The proposed amendment does not require that revision applications be automatically approved at the end of the time allowance.

NPRC commented on the requirements for the determination of Probable Hydrologic Consequences (PHC) at MCA 82–4–222(1)(m)(iii), noting that the term "beneficial uses" is employed whereas the Federal regulations at 30 CFR 780.21(f)(3)(iii) employ the term "legitimate uses." NPRC is concerned that this language again indicates a shift from looking at the resource to looking at the postmining use. We believe that Montana has chosen the term "beneficial use" because that term is used elsewhere in Montana law; for example:

> MCA 85–1–101. Policy considerations. It is hereby declared as follows:
>
> (1) The general welfare of the people of Montana, in view of the state's population growth and expanding economy, requires that water resources of the state be put to optimum beneficial use and not wasted.
>
> (2) The public policy of the state is to promote the conservation, development, and beneficial use of the state's water resources to secure maximum economic and social prosperity for its citizens.

Some other states use the term "legitimate use" for the same purpose. We believe that State water authorities, and State regulatory authorities under SMCRA, would protect premining water uses and potential postmining water uses (beyond merely the use for the designated postmining land use) under either term, "legitimate use" or "beneficial use." NPRC also commented that this new set of requirements for the PHC does not include a counterpart for the Federal provision at 30 CFR 780.21(e), which requires information on alternative water sources (if the PHC indicates that water diminution or contamination may occur). We respond that this proposal is a non-exclusive list; the existing statute also does not provide for a counterpart to the cited Federal provision. However, the requirement still exists in Montana's regulations, at ARM 17.24.314(4).

NPRC made a similar comment about the term "beneficial use" at MCA 82–4–222(1)(m)(iv)(E). Our response above applies here; we also note that the corresponding Federal provision at 30 CFR 780.21(f)(3)(iv)(E) allows, but does not require, regulatory authorities to require information on additional impacts.

NPRC has the same concern about the hydrologic monitoring plan at subparagraph (1)(n), that it is limited to protecting water use for the designated postmining land use, not protecting the hydrologic balance in general. We note that Montana's wording is equivalent to that used in 30 CFR 780.21(i) and (j).

NPRC commented relevant to proposed MCA 82–4–222 and 82–4–231 that there does not seem to be a requirement for inclusion in the permit application for consultation with the landowner about the postmining land use (other than seeing a newspaper notice, finding and reviewing the permit application, and filing comments as any member of the public can do). We would agree with NPRC that the newspaper notice process does not meet Federal requirements. And we also do not find in the existing Montana program a general requirement for landowner comments on the proposed postmining land use. However, we note that up until this time, when Montana is proposing to delete existing MCA 82–4–231(1) and 82–3–232(7) and (8), the required postmining land use for all mined lands has been "grazing land for livestock and wildlife, fish and wildlife habitat, or both" (ARM 17.24.762). Apparently because the postmining choices were so limited, Montana and OSM decided that landowner comment was not necessary. Any alternate postmining land use had to be approved as "alternate reclamation." ARM 17.24.824(4) requires consultation with the landowner or land management agency for such alternate uses. We note that under this proposed amendment, at proposed new MCA 82–4–232(7) and (8), if an alternate postmining land use is proposed, landowner (or agency) concurrence is required. We note that Montana will have to promulgate new rules to implement these new statutory sections; OSM will ensure that the implementing rules contain counterparts to 30 CFR 780.23(b)/784.15(b).

NPRC commented on proposed MCA 82–4–231(10)(k), noting that hydrologic balance protection was being limited to protecting postmining land uses. We agree; as noted in Finding C.6. above, we are not approving the language proposed for addition in the introductory subparagraph. NPRC further commented on proposed subparagraph (10)(k)(vii), saying that there is problem with definitions of intermittent stream and perennial stream. We wonder if NPRC was commenting on an earlier version of the legislation; in the official administrative record document provided to OSM, "intermittent stream" and "perennial stream" are defined, and there are not definitions of "drainageways" other

than ephemeral drainageways. We also note that Montana has long had regulatory definitions of "intermittent stream" and "perennial stream" at ARM 17.24.301. NPRC commented further on proposed subparagraph (10)(k)(viii), saying that again, protection of the hydrologic balance is being limited to that needed by the postmining land use. We agree; as discussed in Finding C.7. above, we are not approving the proposed additional language in this subparagraph.

NPRC commented on proposed MCA 82–4–232(1), noting that (1)(a)(i) is much too broad; total discretion would be given to the equipment operator or his boss. Also, the Federal regulations (30 CFR 816.102) allow for only specific variances from AOC under specific conditions, and those Federal limitations are not contained in the proposal. We might agree regarding 30 CFR 816.102; however, OSM's Directive INE–26, as cited in Finding C.9. above, instructs us to allow this much flexibility. Since the concept of AOC is this flexible, Montana's proposal need not be considered a variance from AOC. Additionally, we note that this provision states that "the operator may propose and the Department may approve * * *" such topography. We interpret this to mean postmining topography proposed and approved in the permit application or a revision application. Hence, these matters could not be determined by an equipment operator. NPRC gave a further comment on proposed (1)(a)(ii); however, the comment is confusing because it seems to address an AOC variance for higher or better land uses in steep slope mining, but the cited provision ("MCA 82–4–232(1)(a)(ii)") is only a general performance standard for backfilling and grading. Again, we wonder if NPRC was reviewing an earlier version of the legislation.

NPRC had three comments on proposed new MCA 82–4–232(8). First, NPRC noted that this section would be better located in the permit application section, expressing concern that the landowner might not want this, and that the operator might propose this at the last moment before bond release. In response, we note that the corresponding SMCRA provision (515(b)(2)) is also in the performance standard section. However, we agree with NPRC that the land use must be approved in the permit application, or possibly changed in a subsequent permit revision. [Relevant here and to the last response, we note that permit revisions that change the postmining land use or postmining drainage pattern are considered "major revisions" that must receive public notice under ARM 17.24.301 and 17.24.409.]

Second, NPRC suggested that the expanded definition of "landowner" be moved to the definitions section. We note that localizing the expanded definition here provides the additional persons concurrence rights for alternative postmining land uses, but might not provide them with other rights (for example, bond release notifications). We also respond that SMCRA and the Federal regulations recognize the legal and equitable owners of record of the surface, the holders of record of any leasehold interest, and purchasers of record under a real estate contract (see 30 CFR 778.13(a)). These same parties are listed in the Montana program at ARM 17.24.303(3). To the extent that the parties added here ("a person who has sold the surface estate to the operator with an option to repurchase the surface estate after mining and reclamation are complete") are included under those parties, they receive SMCRA rights and protections; to the extent that these "option holders" are not included in the Federal regulations, this proposal is a right and protection that goes beyond SMCRA minimums, and we cannot require Montana to apply the expanded definition to other parts of the program.

Third, NPRC stated that these standards are less stringent than those at SMCRA "515(3)(B)(i) through (vii) [sic]." We reply that the provisions proposed here are near duplicates of SMCRA 515(b)(2) and 30 CFR 816/817.133. The SMCRA provisions cited by NPRC are apparently those of SMCRA 515(c)(3)(B)(i)–(vii), and refer to the requirements for alternative postmining land uses to be approved with AOC variances for mountaintop removal operations; therefore they are not applicable here.

NPRC comments on proposed MCA 82–4–232(9) that there is a concern that this section is an attempt to evade the need to plant forbs, trees, and shrubs, and asks if this meets the standards for protecting threatened and endangered species. We reply that this provision requires the reclamation plan to incorporate enhancement features; these are defined in the proposal at MCA 82–4–203(55) as including tree and shrub plantings, *etc.* So we do not agree that incorporating such enhancements might lead to grass monocultures. We further reply that this proposal, like SMCRA itself, does not specifically address the required protections for threatened and endangered species; in both cases, these requirements are in the regulations (for Montana, at ARM 17.24.312 and 17.24.751). NPRC further asks whether under this proposal, land that premining had dual uses, could one prior use be dropped postmining? We assume that NPRC is addressing the usual Montana situation where premining use is both grazing and wildlife habitat. We reply that under both the definition and under this section, it is clear that wildlife habitat enhancement features do not make up a postmining use of wildlife habitat, and that enhancements are different than habitat land use and are applied to other land uses. In the premining grazing/wildlife scenario, postmining the land use would also have to be either: (1) A dual use (all of the area could be reclaimed to the dual use, or part could be reclaimed to wildlife and the other part to grazing, which would have to have enhancements); or (2) a higher or better use, which probably would also require wildlife enhancement features.

NPRC also commented on proposed MCA 82–4–233, expressing concern that in promulgating implementing rules, Montana will allow the use of naturalized introduced species as a substitute for native species. We reply, as noted in a response to a comment above, that under the language in this proposal, introduced species are allowed only when "desirable and necessary" to achieve the postmining land use. NPRC further comments that this proposal only requires control of erosion to the extent required by the postmining land use. We agree; as discussed in Finding C.14.a. above, OSM's regulations pertaining to revegetation success standards at 30 CFR 816.116 require the postmining revegetation to be equivalent not to the premining vegetation. but rather equivalent to the natural vegetation of unmined lands of that same land use in the vicinity of the mine. In essence, the "reducing siltation to normal background levels" mentioned in Federal regulation preambles (cited at Finding C.16.b.), means normal background levels for that postmining land use, not background levels of that particular parcel as it was prior to mining. Therefore we are approving the proposal. NPRC further commented on the encouragement at proposed subparagraph (3)(b) that carrying capacity of pastureland and grazing land be "enhanced when practicable." NPRC is concerned that this might re-initiate failed old efforts using introduced species, fertilizer, and irrigation. We note that the use of introduced species, irrigation, and fertilizer is what distinguishes pastureland from grazing land; they would be appropriate for the

first, but we agree they may not be used for the second (grazing land).

NPRC commented on proposed MCA 82–4–235, inquiring how certain success standards fit in with the 10-year bond release period, and how suitable plants and erosion control are determined. We reply that SMCRA also has no such detail; compare SMCRA 515(b)(19) and (20). Such detail is usually in the regulations. Many of these questions are addressed in the Montana regulations at ARM 17.24.711–17.24.733. Generally, the 10-year period (and we note that this is a minimum, not a maximum) starts when the operator completes planting and any supplemental watering or fertilizer needed to get the revegetation going well. If there is a subsequent failure or decline of the revegetation, and the operator must repeat some of that work, the time clock starts over again. There are some exceptions for replanting trees and shrubs; also for some cultivation work on pastureland, which is normal husbandry practice for that land use. NPRC further expressed a concern that the land uses described in subparagraph (1)(c) [wildlife habitat, forestry, dispersed recreation, using trees and shrubs] will never be used as postmining land uses, even if those uses existed premining. We reply that under this proposal, mined land must be restored to conditions capable of supporting those premining land uses, meaning those land uses would have to be selected as postmining land uses, unless a "higher or better" use can be approved.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Montana program (Administrative Record No. MT–21–03). We received no comments.

Environmental Protection Agency (EPA) Concurrence and Comments

None of the revisions that Montana proposed to make in this amendment pertains to air or water quality standards. Under 30 CFR 732.17(h)(11)(i), OSM requested comments on the amendment from EPA (Administrative Record No. MT–21–04). EPA did not respond to our request.

State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. We requested comments on Montana's amendment (Administrative Record No. MT–21–03). SHPO responded that it had no comments (Administrative Record No. MT–21–05). No response was received from the ACHP.

V. OSM's Decision

Based on the above findings, we approve, with the following exceptions, Montana's July 29, 2003, amendment.

We do not approve the following provisions or parts of provisions.

1. As discussed in Finding No. D.2., we do not approve MCA 82–4–202(3)(d), concerning legislative policy on the standard for successful reclamation.

2. As discussed in Finding No. D.2., MCA 82–4–202(3)(e), concerning legislative policy on standards for successful reclamation, we do not approve the words "and attainable."

3. As discussed in Finding No. C.1., MCA 82–4–203(4)(c), concerning the definition of approximate original contour, we do not approve the phrase "as necessary to support postmining land uses within the area affected and the adjacent area" in the clause regarding hydrologic balance protection.

4. As discussed in Finding No. C.2., MCA 82–4–203(24), concerning the definition of hydrologic balance, we do not approve the final phrase "as they relate to uses of land and water within the area affected by mining and the adjacent area."

5. As discussed in Finding No. C.6., MCA 82–4–231(10)(k), concerning protection of the hydrologic balance, we do not approve the added phrase "as necessary to support postmining land uses and to prevent material damage to the hydrologic balance in the adjacent area."

6. As discussed in Finding No. C.7., MCA 82–4–231(10)(k)(viii), concerning protection of the hydrologic balance, we do not approve the added phrase "to protect the hydrologic balance as necessary to support postmining land uses within the area affected and to prevent material damage to the hydrologic balance in adjacent areas."

7. As discussed in Finding No. C.16.c., we do not approve MCA 82–4–235(1)(d), concerning diversity in the determination of successful revegetation.

8. As discussed in Finding No. C.16.d., we do not approve in MCA 82–4–235(1)(g) the phrase "are introduced species that have become naturalized."

As discussed in Finding No. D.1., we are taking no action on MCA 82–4–202(1), as the adequacy of this legislation under the Montana Constitution is beyond the power and scope of our review.

As discussed in Finding No. D.9., we are taking no action on MCA 82–4–239 because it does not apply to Montana's regulatory program under SMCRA.

As discussed in Finding C.14.a., we are approving MCA 82–4–233(1) with the proviso that the exemption for "and other constructed features" not be applied until Montana promulgates implementing rules to limit the exemption and OSM has approved those rules.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 926, which codify decisions concerning the Montana program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrates that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this regulation effective immediately will expedite that process. Additionally, we have been informed that Montana is in the process of developing implementing regulations for these statutory revisions; making this rule effective immediately will allow Montana to focus that work on the correct provisions. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. For most of the State provisions addressed, this determination is based on the analysis performed for the counterpart Federal regulation. For the remaining State provisions, this determination is based on the fact that the rule will not have an impact on the use or value of private property and so, does not result in significant costs to the government.

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 (Regulatory Planning and Review).

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 any Tribe, 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. The State of Montana, under a Memorandum of Understanding with the Secretary of the Interior (the validity of which was upheld by the U.S. District Court for the District of Columbia), does have the authority to apply the provisions of the Montana regulatory program to mining of some coal minerals held in trust for the Crow Tribe. This proposed program amendment does not alter or address the terms of the MOU. Therefore, this rule does not affect or address the distribution of power between the Federal Government and Indian Tribes or the relationship between the Federal Government and Indian Tribes. Additionally, we note that we provided the proposed amendment to the Crow Tribe for comment, but we did not receive any comments from it.

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 largely 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. For those State provisions submitted that are not based on counterpart Federal regulations, we note that the coal mining industry in Montana consists of a few large companies, and that the industry commenters urged approval of the submittal.

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. For the reasons stated above, 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.

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 was made at the State's initiative, and was not the result of any action mandated by us.

List of Subjects in 30 CFR Part 926

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 23, 2004.

Allen D. Klein,

Regional Director, Western Regional Coordinating Center.

■ For the reasons set out in the preamble, 30 CFR part 926 is amended as set forth below:

PART 926—MONTANA

■ 1. The authority citation for part 926 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 926.15 is amended in the table by adding a new entry in chronological order by "Date of Final Publication" to read as follows:

§ 926.15 Approval of Montana regulatory program amendments

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	* * * * * * *
July 29, 2003	February 16, 2005.	MCA 82–4–202(3)(c); (3)(e) except for the phrase "and attainable"; 82–4–203(2); 82–4–203(4) except at (4)(c) the phrase "as necessary to support postmining land uses within the area affected and the adjacent area"; 82–4–203(13), (16), (17), (20) through (23); (24) except the phrase "as they relate to uses of land and water within the area affected by mining and the adjacent area"; (26), (27), (28), (30), (37), (38), (42) through (44), (46), (47), (50), (55); 82–4–221(3); 82–4–222(1)(m)–(p); 82–4–231(10)(k) except the phrase "as necessary to support postmining land uses and to prevent material damage to the hydrologic balance in the adjacent area"; 82–4– 231(10)(k)(vii); (viii) except the phrase "to protect the hydrologic balance as necessary to support postmining land uses within the area affected and to prevent material damage to the hydrologic balance in adjacent areas": 82–4–232(1) through (10); 82–4–233; 82–4–234; 82–4–235(1)–(1)(c); 82–4–235(1)(e)–(f); 82–4–235(1)(g) except the phrase "are introduced species that have become naturalized"; 82–4–236; HB 373 Section 11; 82–4–252(2); HB 684 repeal of Sec. 5, Chapter 522, Laws of 2001; also all editorial and codification changes. We are taking no action on: MCA 82–4–202(1); 82–4–239.

[FR Doc. 05–2905 Filed 2–15–05; 8:45 am]
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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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LIST OF PUBLIC LAWS

This is the first in 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*.

A cumulative List of Public Laws for the second session of the 108th Congress will appear in the issue of January 31, 2005.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 241/P.L. 109-1

To accelerate the income tax benefits for charitable cash contributions for the relief of victims of the Indian Ocean tsunami. (Jan. 7, 2005; 119 Stat. 3)

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