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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Docket No. FV04–916/917–02 IFR]

Nectarines and Peaches Grown in California; Revision of Handling Requirements for Fresh Nectarines and Peaches

AGENCY: Agricultural Marketing Service, USDA

ACTION: Interim final rule with request for comments.

SUMMARY: This rule revises the handling requirements for California nectarines and peaches by reducing the minimum net weight for shipments of nectarines and peaches in bulk bins under the marketing orders. The marketing orders regulate the handling of nectarines and peaches grown in California and are administered locally by the Nectarine Administrative and Peach Commodity Committees (committees). This rule would enable packers to continue shipping fresh nectarines and peaches meeting customers' needs in the interests of producers, packers, and consumers of these fruits.

DATES: Effective April 15, 2004. Comments received by June 14, 2004, will be considered prior to issuance of any final rule.

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

FOR FURTHER INFORMATION CONTACT: Terry Vawter, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California, 93721; telephone (559) 487–5901, fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491; fax: (202) 720–8938.

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement Nos. 124 and 85, and Marketing Order Nos. 916 and 917 (7 CFR parts 916 and 917) regulating the handling of nectarines and peaches grown in California, respectively, hereinafter referred to as the "orders." The orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

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

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

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule in the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Under the orders, container and pack requirements are established for fresh shipments of California nectarines and peaches. Such requirements are in effect on a continuing basis. The Nectarine Administrative Committee (NAC) and the Peach Commodity Committee (PCC), which are responsible for local administration of the orders, met on February 25, 2004, and unanimously recommended that the handling requirements be further revised for the 2004 season, which begins in April. The committees unanimously recommended that the minimum net weight for loose-filled bulk bin containers be reduced from 400 pounds to 100 pounds.

The committees meet prior to and during each season to review the rules and regulations effective on a continuing basis for California nectarines and peaches under the orders. Committee meetings are open to the public and interested persons are encouraged to express their views at these meetings. The committees held such meetings on February 25, 2004.

USDA reviews committee recommendations and information, as well as information from other sources, and determines whether modification, suspension, or termination of the rules and regulations would tend to effectuate the declared policy of the Act.

No official crop estimate was available at the time of the committees' meetings because the nectarine and peach trees were dormant at the time. The committees will recommend a crop estimate at their meetings in April. However, preliminary estimates indicate that the 2004 crop will be similar in size and characteristics to the 2003 crop, which totaled 21,869,300 containers of nectarines and 22,306,300 containers of peaches.

Container and Pack Requirements

Sections 916.52 and 917.41 of the orders authorize establishment of container, pack, and container marking requirements for shipments of nectarines and peaches, respectively. Under §§ 916.350 and 917.442 of the orders' rules and regulations, container markings, net weights, well-filled requirements, weight-count standards for various sizes of nectarines and peaches, and standard containers are specified. Included in the container and pack requirements are minimum net weight requirements for several containers, such as the bulk bin.

Currently, the minimum net weight for bulk bin containers is 400 pounds. At the request of a handler, the committees unanimously recommended that the minimum net weight be reduced to 100 pounds for bulk bin containers of loose-filled nectarines and peaches.

The committees' recommendations resulted from a recommendation by the Tree Fruit Quality Subcommittee. At the subcommittee meeting on February 4, 2004, a handler requested that the current minimum net weight be reviewed and possibly modified. The handler noted that it had increased shipments of bulk peaches during the 2003 season, but found that the minimum net weight of 400 pounds too restrictive because the weight of the fruit in the bin damages the contents, especially the peaches at the bottom of the bin. The handler suggested that a minimum weight of 200 pounds might serve the industry better by ensuring the safe arrival of the fruit.

The subcommittee discussed shipments of nectarines and peaches in bulk bins, and reviewed the historical significance of the minimum net weight of 400 pounds. The subcommittee determined that the net weight was set in 1976 when there were few, if any, bulk bin shipments.

The subcommittee also deliberated the relative value of different minimum weights; *e.g.* 125 pounds, 200 pounds, or 100 pounds. They determined that since the weight constituted a minimum net weight rather than maximum net weight, it was prudent to use a weight that was lighter than currently established, but still heavy enough to constitute a bulk shipment. Since it would be difficult for a handler to pack a 100-pound box for anything other than a bulk bin shipment, the 100 minimum net weight was determined to be the optimum net weight and was unanimously recommended. The subcommittee further unanimously recommended that the 100-pound minimum net weight be in place for the 2004 season only, with a review of the success of the modification at the end of the season.

The committees discussed the Tree Fruit Quality subcommittee's recommendation at the February 25, 2004, meeting and reviewed the current industry practices regarding shipping in bulk bin containers. While use of bulk bins appears to be in its infancy, the committees appreciate that such shipments could constitute a new trend, and that relaxing the current minimum net weight for those containers provides yet another marketing opportunity for handlers. Moreover, the reduced minimum net weight will provide another container option for handlers and safeguard the fruit in the container from bruising. However, the committees disagreed with the subcommittee's recommendation that the change should be in place for the 2004 season only, and did not believe it necessary to review the use of these containers at the end of the 2004 season.

For the reasons stated above, the committees recommended that the minimum net weight for loose-filled bulk bin containers of nectarines and peaches be decreased from the current 400 pounds to 100 pounds.

Nectarines: 1 For the reasons stated above, paragraph (a)(9) of § 916.350 is revised to modify the minimum net weight of bulk bin containers of loose-filled nectarines from 400 pounds to 100 pounds. The required container markings shall be placed on one outside end of the container in plain sight and in plain letters.

Peaches: For the reasons stated above, paragraph (a)(10) of § 917.442 is revised to modify the minimum net weight of bulk bin containers of loose-filled peaches from 400 pounds to 100 pounds. The required container markings shall be placed on one outside end of the container in plain sight and in plain letters.

Initial Regulatory Flexibility Analysis

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

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

Industry Information

There are approximately 250 California nectarine and peach packers subject to regulation under the orders covering nectarines and peaches grown in California, and about 1,800 producers of these fruits in California. The Small Business Administration (13 CFR 121.201) defines small agricultural service firms as those whose annual receipts are less than $5,000,000. The Small Business Administration also defines small agricultural producers as those having annual receipts of less than $750,000. A majority of these packers and producers may be classified as small entities.

The committees' staff has estimated that there are less than 20 handlers in the industry who could be defined as other than small entities. In the 2003 season, the average handler price received was $7.00 per container or container equivalent of nectarines or peaches. A handler would have to ship at least 714,286 containers to have annual receipts of $5,000,000. Given data on shipments maintained by the committees' staff and the average handler price received during the 2003 season, the committees' staff estimates that small handlers represent approximately 94 percent of all the handlers within the industry.

The committees' staff has also estimated that less than 20 percent of the producers in the industry could be defined as other than small entities. In the 2003 season, the average producer price received was $4.00 per container or container equivalent for nectarines and peaches. A producer would have to produce at least 187,500 containers of nectarines and peaches to have annual receipts of $750,000. Given data maintained by the committees' staff and the average producer price received during the 2003 season, the committees' staff estimates that small producers represent more than 80 percent of the producers within the industry.

With an average producer price of $4.00 per container or container equivalent, and a combined packout of nectarines and peaches of 44,202,600 containers, the value of the 2003 packout level is estimated to be $176,810,400. Dividing this total estimated grower revenue figure by the estimated number of producers (1,800) yields an estimated average revenue per producer of approximately $98,228 from the sales of nectarines and peaches.

Discussion of the Change in Minimum Net Weight

Under §§ 916.52 and 917.41 of the orders, pack and container requirements are established for fresh shipments of California nectarines and peaches, respectively. Such requirements are in effect on a continuing basis. The NAC and PCC met on February 25, 2004, and unanimously recommended that the minimum net weight for loose-filled bulk bin containers be reduced from 400 to 100 pounds. This recommendation was presented to the committees by the Tree Fruit Quality Subcommittee after a thorough discussion at their February 4, 2004, meeting. A handler requested that the subcommittee review the current minimum net weight of bulk bin containers used for loose-filled shipments of nectarines and peaches.

The subcommittee discussed the historical significance of the current minimum net weight of 400 pounds and deliberated the relative value of recommending various lighter net weights, as well. They determined that the optimum net weight for bulk bin containers was 100 pounds. Until recently, they noted, there were few, if any, shipments of nectarines and peaches in bulk bins. However, changes in the industry, improvements in containers, shipments of increasingly more mature fruit, and the demands of their retail customers have apparently improved the prospects for such shipments.

In considering possible alternatives to this action, the subcommittee discussed varying minimum net weights, and the types and sizes of bulk bin containers currently available to the industry. While other alternatives were not rejected out of hand, the subcommittee reasoned that decreasing the current 400-pound minimum net weight to 100 pounds was a prudent option since the weight of the container constituted a minimum net weight rather than a maximum net weight. Such a weight afforded increased protection of the fruit in the bin while providing increased flexibility for handlers who might want to experiment with varying weights, as their customers demanded. If a handler had customer requests for 125 pounds, that option would be available under the recommendations. If another handler had a request for 250 pounds, that option would also be available.

The committees agreed with the Tree Fruit Quality Subcommittee's recommendation, except for establishing a trial period during the 2004 season. The committees voted unanimously to establish the revised minimum net weight of 100 pounds for bulk bin containers without the requirement for a trial during the 2004 season or an industry review at the end of the season.

The committees make recommendations regarding all the revisions in handling requirements after considering all available information, including recommendations by various subcommittees, comments of persons at subcommittee meetings, and comments received by committee staff. Such subcommittees include the Tree Fruit Quality and Research Subcommittees, and the Executive Committee.

At the meetings, the impact of and alternatives to these recommendations are deliberated. These subcommittees, like the committees themselves, frequently consist of individual producers and packers with many years' experience in the industry who are familiar with industry practices and trends. Like all committee meetings, subcommittee meetings are open to the public and comments are widely solicited. In the case of the Tree Fruit Quality Subcommittee, many growers and handlers who are affected by the issues discussed by the subcommittee attend and actively participate in the public deliberations. In fact, if a specific producer or handler is known to have an interest in one or more topics to be discussed, committee staff specifically invites him or her to the meetings to participate in the debate and provide information not already available to staff and the subcommittee, including information which may refute the staff's findings. In fact, this recommendation resulted from a request made by a handler who was specifically invited by staff to take his concerns to the Tree Fruit Quality Subcommittee.

In addition, minutes of all subcommittee and committee meetings are distributed to committee members and others who have requested them, thereby increasing the availability of information within the industry. The staff is currently surveying committee members and others in the industry to determine each person's preference in receiving committee communications. Each person has the opportunity to specify how he or she would like meeting agendas and other committee communications to be delivered: facsimile, electronic mail, and/or mailed hard copy. The staff is also preparing to make meeting minutes available on the committees' Web site, as well, where meeting agendas are currently available.

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

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

In addition, the committees' meetings are widely publicized throughout the nectarine and peach industry and all interested parties are encouraged to attend and participate in committee deliberations on all issues. These meetings are held annually during the fall, late winter, and early spring. Like all committee meetings, the February 25, 2004, meetings were public meetings, and all entities, large and small, were encouraged to express views on these issues. These regulations were also reviewed and thoroughly discussed at a subcommittee meeting held on February 4, 2004. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

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

This rule invites comments on this change to the handling requirements currently prescribed under the marketing orders for California fresh nectarines and peaches. All comments received will become a matter of public record and will be available for public inspection during regular business hours at the same address or at *http://www.ams.usda.gov/fv/moab.html*. Once the Web site page is opened, click on "nectarines" or "peaches," and find the docket number of this proposed rule. Any comments received regarding this rule will be found in the "Comments Received" link. If no comments are received in response to a rule, there will be no "Comments Received" link. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant matters presented, the information and recommendations submitted by the committees, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good cause, that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that

good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) California nectarine and peach shipments of 2004 crop began in April and producers and handlers should be allowed to take advantage of the bulk-bin net weight reduction as soon as possible; (2) this rule relaxes the container and pack requirements for nectarines and peaches; (3) the committees unanimously recommended the relaxation at public meetings and interested persons had opportunities to provide input at these meetings and other meetings; and (4) the rule provides a 60-day comment period, and any written comments timely received will be considered prior to any finalization of this interim final rule.

List of Subjects

7 CFR Part 916

Marketing agreements, Nectarines, Reporting and recordkeeping requirements.

7 CFR Part 917

Marketing agreements, Peaches, Pears, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR parts 916 and 917 are amended as follows:

PART 916—NECTARINES GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR parts 916 and 917 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. In § 916.350, the introductory text of paragraph (a)(9) is revised to read as follows:

§ 916.350 California nectarine container and pack regulation.

(a) * * *

(9) Each bulk bin container of loose-filled nectarines shall contain not less than 100 pounds net weight, and bear on one outside panel, in plain sight and in plain letters, the following information:

* * * * *

PART 917—FRESH PEARS AND PEACHES GROWN IN CALIFORNIA

■ 3. In § 917.442, the introductory text of paragraph (a)(10) is revised to read as follows:

§ 917.442 California peach container and pack regulation.

(a) * * *

(10) Each bulk bin container of loose-filled peaches shall contain not less than 100 pounds net weight, and bear on one outside panel, in plain sight and in plain letters, the following information:

* * * * *

Dated: April 9, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–8522 Filed 4–13–04; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–80–AD; Amendment 39–13572; AD 2004–08–03]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B4–600 and A300 C4–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A300 B4–600 and A300 C4–600 series airplanes, that requires a one-time inspection to detect damage of the pump diffuser guide slots (bayonet) of the center tank fuel pumps, the pump diffuser housings, and the pump canisters; repetitive inspections to detect damage of the fuel pumps and the fuel pump canisters; and corrective action, if necessary. This action is necessary to detect and correct damage of the center tank fuel pumps and fuel pump canisters, which could result in separation of a pump from its electrical motor housing, loss of flame trap capability, and a possible fuel ignition source in the center fuel tank. This action is intended to address the identified unsafe condition.

DATES: Effective May 19, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 19, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2797; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A300 B4–600 and A300 C4–600 series airplanes was published in the **Federal Register** on December 18, 2003 (68 FR 70473). That action proposed to require a one-time inspection to detect damage of the pump diffuser guide slots (bayonet) of the center tank fuel pumps, the pump diffuser housings, and the pump canisters; repetitive inspections to detect damage of the fuel pumps and the fuel pump canisters; and corrective action, if necessary.

Comments

We provided the public the opportunity to participate in the development of this AD. No comments have been submitted on the proposed AD or on the determination of the cost to the public.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Cost Impact

The FAA estimates that 2 airplanes of U.S. registry will be affected by this AD. The detailed inspections will take about 2 work hours per airplane, and the NDT inspection will take about 5 work hours per airplane, per inspection cycle. The average labor rate is $65 per work hour. Based on these figures, the cost per airplane is estimated to be $130 for the detailed inspections and $325 per NDT inspection.

The FAA has been advised that the one-time detailed inspections have already been accomplished for both of the U.S.-registered airplanes. Therefore, the future economic cost impact of this AD on U.S. is estimated to be only $325 per airplane, per each of the repetitive NDT inspections.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking

actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein 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. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (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. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2004–08–03 Airbus: Amendment 39–13572. Docket 2003–NM–80–AD.

Applicability: Model A300 B4–601, A300 B4–603, A300 B4–620, and A300 C4–605 Variant F series airplanes; certificated in any category; except those airplanes equipped with a fuel trim tank system (Airbus Modification 4801).

Compliance: Required as indicated, unless accomplished previously.

To detect and correct damage of the center tank fuel pumps and fuel pump canisters, which could result in separation of a pump from its electrical motor housing, loss of flame trap capability, and a possible fuel ignition source in the center fuel tank, accomplish the following:

Detailed Inspections

(a) Within 15 days after the effective date of this AD (unless accomplished previously), perform detailed inspections as specified in paragraphs (a)(1) and (a)(2) of this AD, in accordance with paragraph 4.2 of Airbus All Operators Telex (AOT) A300–600–28A6075, dated February 20, 2003.

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

(1) Inspect the lower part of the pump diffuser guide slots (bayonet) of the center tank fuel pumps and the bottom of the pump diffuser housings to detect cracks, fretting, and other damage. Replace any damaged pump and the corresponding fuel pump canister with new parts before further flight in accordance with the AOT.

(2) Inspect the center tank fuel pump canisters to detect cracks. Replace any cracked fuel pump canister and the corresponding fuel pump with new parts before further flight in accordance with the AOT.

Repetitive Inspections

(b) Within 600 flight hours after the effective date of this AD: Perform a detailed inspection of the fuel pumps, and an eddy current inspection of the fuel pump canisters, to detect damage. Do the inspections in accordance with paragraph 4.3 of Airbus AOT A300–600–28A6075, dated February 20, 2003. Replace any damaged part with a new part before further flight in accordance with the AOT. Repeat the inspections at intervals not to exceed 1,500 flight cycles.

(c) Within 7,000 flight cycles after canister replacement as specified in paragraph (b) of this AD: Perform an eddy current inspection of the fuel pump canisters to detect damage in accordance with Airbus AOT A300–600–28A6075, dated February 20, 2003. Replace any damaged part with a new part before further flight in accordance with the AOT. Thereafter repeat the inspection at intervals not to exceed 1,500 flight cycles.

Note 2: Airbus AOT A300–600–28A6075 refers to Airbus Alert Service Bulletin A300–28A6061, Revision 04, dated August 1, 2002, as an additional source of service information for accomplishment of the eddy current inspection required by paragraph (b)(2) of this AD.

Reporting Requirement

(d) At the applicable time specified in paragraph (d)(1) or (d)(2) of this AD: Submit a report of findings (both positive and negative) of each inspection required by this AD, in accordance with Airbus AOT A300–600–28A6075, dated February 20, 2003. Information collection requirements contained in this AD have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) For any inspection accomplished after the effective date of this AD: Submit the report within 10 days after performing that inspection.

(2) For any inspection accomplished before the effective date of this AD: Submit the report within 10 days after the effective date of this AD.

Alternative Methods of Compliance

(e) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, FAA, is authorized to approve alternative methods of compliance for this AD.

Incorporation by Reference

(f) Unless otherwise specified in this AD, the actions must be done in accordance with Airbus All Operators Telex A300–600–28A6075, dated February 20, 2003. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French telegraphic airworthiness directive 2003–085 (B), dated February 21, 2003.

Effective Date

(g) This amendment becomes effective on May 19, 2004.

Issued in Renton, Washington, on April 6, 2004.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–8300 Filed 4–13–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–212–AD; Amendment 39–13571; AD 2004–08–02]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model 717–200 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model 717–200 airplanes, that requires a general visual inspection to detect corrosion of the left- and right-hand horizontal stabilizer hinge fitting bolts, barrel nuts, and the associated holes in the horizontal stabilizer structure, and to detect corrosion of the left- and right-hand elevator sector pinch bolts and associated holes, as applicable; and corrective actions, if necessary. This action is necessary to detect and correct corrosion of the left- and right-hand horizontal stabilizer hinge fitting bolts, barrel nuts, and associated holes in the horizontal stabilizer structure, and the left- and right-hand elevator sector pinch bolts and associated holes, which could lead to loss of a hinge fitting and reduced structural integrity of the horizontal stabilizer. This action is intended to address the identified unsafe condition.

DATES: Effective May 19, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 19, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Maureen Moreland, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5238; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model 717–200 airplanes was published in the **Federal Register** on November 26, 2003 (68 FR 66382). That action proposed to require a general visual inspection to detect corrosion of the left- and right-hand horizontal stabilizer hinge fitting bolts, barrel nuts, and the associated holes in the horizontal stabilizer structure, and to detect corrosion of the left- and right-hand elevator sector pinch bolts and associated holes, as applicable; and corrective actions, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 84 airplanes of the affected design in the worldwide fleet. The FAA estimates that 67 airplanes of U.S. registry will be affected by this AD. The work hours vary according to the configuration group to which the affected airplane belongs.

The following table shows the estimated cost impact for airplanes affected by this AD:

TABLE—COST IMPACT

Airplane configuration group	Work hours per airplane (estimated)	Labor rate per work hour	Cost per airplane (estimated)
1	61	$65	$3,965
2	57	65	3,705

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. Manufacturer warranty remedies may be available for labor costs associated with this AD. As a result, the costs attributable to the AD may be less than stated above.

Regulatory Impact

The regulations adopted herein 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. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (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. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2004–08–02 McDonnell Douglas: Amendment 39–13571. Docket 2002–NM–212–AD.

Applicability: Model 717–200 airplanes, as listed in Boeing Service Bulletin 717–55–0003, dated June 18, 2002; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct corrosion of the left- and right-hand horizontal stabilizer hinge fitting bolts, barrel nuts, and associated holes in the horizontal stabilizer structure, and the left- and right-hand elevator sector pinch bolts and associated holes, which could lead to loss of a hinge fitting and reduced structural integrity of the horizontal stabilizer; accomplish the following:

Service Bulletin References

(a) The term "service bulletin," as used in this AD, means the Accomplishment Instructions of Boeing Service Bulletin 717–55–0003, dated June 18, 2002.

Initial Inspection

(b) Prior to the accumulation of 18,000 total flight cycles, or within 15 months after the effective date of this AD, whichever is later: Perform the general visual inspections specified in paragraphs (c) and (d) of this AD, as applicable, in accordance with the service bulletin.

Note 1: For the purposes of this AD, a general visual inspection is defined as: "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 enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally 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."

Horizontal Stabilizer Hinge Fitting Bolt Inspection

(c) For Group 1 and Group 2 airplanes identified in paragraph 1.A.1. of the service bulletin: Perform a general visual inspection of the left- and right-hand horizontal stabilizer hinge fitting bolts, barrel nuts, and the associated holes in the horizontal stabilizer for corrosion in accordance with the service bulletin.

(1) If no corrosion is found, before further flight, install bolts and barrel nuts with applicable corrosion protection, in accordance with the service bulletin.

(2) If any corrosion is found, before further flight, remove the corrosion and do the actions specified in paragraph (c)(2)(i) or (c)(2)(ii) of this AD, as applicable, in accordance with the service bulletin.

(i) If corrosion rework is within tolerance limits, before further flight, perform the corrective actions in accordance with the service bulletin, as applicable.

(ii) If corrosion rework exceeds the tolerance limits and the service bulletin specifies to contact Boeing for repair: Before further flight, repair in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Los Angeles ACO, to make such findings. For a repair method to be approved, the approval must specifically reference this AD.

Elevator Sector Pinch Bolt Inspection

(d) For Group 1 airplanes identified in paragraph 1.A.1. of the service bulletin: Perform a general visual inspection of the left- and right-hand elevator sector pinch bolts and associated holes for corrosion in accordance with the service bulletin.

(1) If no corrosion is found, before further flight, install bolts and barrel nuts with applicable corrosion protection in accordance with the service bulletin.

(2) If any corrosion is found, before further flight, remove the corrosion and do the actions specified in paragraph (d)(2)(i) or (d)(2)(ii) of this AD, as applicable, in accordance with the service bulletin.

(i) If corrosion rework is within tolerance limits, before further flight, perform the corrective actions in accordance with the service bulletin, as applicable.

(ii) If corrosion rework exceeds the tolerance limits and the service bulletin specifies to contact Boeing for repair: Before further flight, repair in accordance with a method approved by the Manager, Los Angeles ACO, FAA; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company DER who has been authorized by the Manager, Los Angeles ACO, to make such findings. For a repair method to be approved, the approval must specifically reference this AD.

Alternative Methods of Compliance

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

Incorporation by Reference

(f) Unless otherwise specified in this AD, the actions shall be done in accordance with Boeing Service Bulletin 717–55–0003, dated June 18, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(g) This amendment becomes effective on May 19, 2004.

Issued in Renton, Washington, on April 6, 2004.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–8299 Filed 4–13–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–256–AD; Amendment 39–13570; AD 2004–08–01]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F.28 Mark 0070 and 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F.28 Mark 0070 and 0100 series airplanes, that requires a magnetic inspection of the sliding members of the main landing gear (MLG) for cracking, and replacement of the sliding members with serviceable parts, if necessary. This action is necessary to prevent fatigue cracking of the sliding member, which could result in possible separation of the MLG from the airplane and consequent reduced controllability of the airplane upon landing and possible injury to passengers. This action is intended to address the identified unsafe condition.

DATES: Effective May 19, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director

of the Federal Register as of May 19, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Thomas Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Fokker Model F.28 Mark 0070 and 0100 series airplanes was published in the **Federal Register** on January 22, 2004 (69 FR 3039). That action proposed to require a magnetic inspection of the sliding members in the main landing gear (MLG) for cracking, and replacement of the sliding members with serviceable parts, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Explanation of Interim Action

We consider this AD interim action. If final action is later identified, we may consider further rulemaking then. The statement identifying this AD as interim action was inadvertently omitted from the proposal.

Conclusion

After careful review of the available data the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 110 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 or 12 work hours per airplane, depending on the airplane configuration, to accomplish the required inspection, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $28,600 or $85,800, or $260 or $780 per airplane, depending on the airplane configuration.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein 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. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (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. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2004–08–01 Fokker Services B.V.: Amendment 39–13570. Docket 2002–NM–256–AD.

Applicability: Model F.28 Mark 0070 and 0100 series airplanes, certificated in any category, equipped with any Dowty or Messier-Dowty main landing gear (MLG) listed in Table 1 of this AD.

TABLE 1.—AFFECTED MLG

MLG having part Number (P/N)—	Which have sliding member P/N—
201072011	201072301 or 201072305
201072012	201072301 or 201072305
201072013	201072301 or 201072305
201012014	201072301 or 201072305
201072015	201072301 or 201072305
201072016	201072301 or 201072305

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking of the sliding member, which could result in possible separation of the MLG from the airplane and consequent reduced controllability of the airplane upon landing and possible injury to passengers, accomplish the following:

Inspection and Replacement if Necessary

(a) Within 1,000 flight cycles or six months after the effective date of this AD, whichever occurs first, perform a magnetic inspection of the sliding members of the MLG for cracking, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–32–133, dated April 1, 2002. If any crack is found during the inspection, before further flight, replace the sliding members with serviceable parts in accordance with the Accomplishment Instructions of the service bulletin.

Note 1: Fokker Service Bulletin SBF100–32–133, dated April 1, 2002, refers to Messier-Dowty Service Bulletin F100–32–103, dated March 11, 2002, as an additional source of service information.

Parts Installation

(b) As of the effective date of this AD, no person may install a sliding member of the MLG, P/N 201072301 or P/N 201072305, on any airplane, unless it has been inspected in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–32–133, dated April 1, 2002, and found to be serviceable.

Reporting Requirement Difference

(c) Although the service bulletin referenced in this AD specifies to submit certain

information to the manufacturer, this AD does not include such a requirement.

Alternative Methods of Compliance

(d) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, is authorized to approve alternative methods of compliance for this AD.

Incorporation by Reference

(e) The actions shall be done in accordance with Fokker Service Bulletin SBF100–32–133, dated April 1, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 2: The subject of this AD is addressed in Dutch airworthiness directive 2002–060, dated April 29, 2002.

Effective Date

(f) This amendment becomes effective on May 19, 2004.

Issued in Renton, Washington, on April 1, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–8298 Filed 4–13–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. FAA–2000–7119; Amdt. Nos. 121–280 and 135–78]

RIN 2120–AG89

Emergency Medical Equipment

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; partial revised compliance date.

SUMMARY: The Federal Aviation Administration (FAA) is extending the compliance date for batteries installed in automated external defibrillators (AEDs) to meet the requirements of a Technical Standard Order (TSO). The primary manufacturer of AEDs has only recently applied for approval of its battery. Not enough approved batteries exist to equip the entire air carrier fleet by the original compliance date of April 12, 2004. Extension of the compliance date will have a negligible impact on safety, will allow AEDs to continue to be used, and will allow for further approval and production of batteries that meet the TSO requirements.

DATES: *Effective Date:* This amendment is effective May 12, 2004. *Compliance Date:* Power sources for automated external defibrillators must meet the standards of the applicable TSO by April 30, 2005.

FOR FURTHER INFORMATION CONTACT: David H. Rich, AIR–120, Aircraft Certification Service, Aircraft Engineering Division, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–7141.

SUPPLEMENTARY INFORMATION:

Background

On April 12, 2001 (66 FR 19028), the FAA amended the aircraft operating rules to require Part 121 air carriers to carry automated external defibrillators (AEDs) on their aircraft as of April 12, 2004. All required electronic equipment that uses lithium batteries as a separate power source must meet the requirements of Technical Standard Order (TSO) C97 or C142 when used onboard aircraft.

Despite several years' notice, the primary manufacturer of AEDs has only recently applied for TSO approval for its AED batteries. The application has not yet been approved and batteries that comply with the TSO have not been produced. Since the batteries for AEDs must be tailored for the specifications of a particular manufacturer's unit, the batteries are not interchangeable nor are they otherwise commercially available. One AED supplier has an approved battery, but information available to the FAA suggests that it has a much smaller market share for its product. The FAA does not have any reliable information on how many AEDs from different manufacturers are affected by this lack of approved batteries.

Although the regulation requiring the carriage of AEDs is not effective until May 12, 2004, air carriers have equipped their aircraft with them in recognition of their value as a potentially lifesaving device. Rather than delay the requirement to carry AEDs for the lack of an approved battery, the FAA has determined that it is better to allow the AEDs to continue to be used until the original batteries can be replaced.

There is no safety issue in allowing the original batteries to remain in operation for the interim period. The FAA added the requirement that the batteries meet the specifications of a TSO because all lithium power sources for electronic equipment used on aircraft are subject to agency oversight of their design and manufacture. The FAA is not aware of any particular problem with the original batteries, and does not believe that additional time in service on board commercial aircraft poses a particular risk to the flying public. While compliance with the Technical Standard Order is important over the long term, the FAA concludes that any short term risk posed by unapproved batteries is outweighed by the benefit of having the devices on board until approved batteries can be installed.

Accordingly, the FAA is amending 14 CFR Part 121, Appendix A, to include a compliance date of April 30, 2005, for the power source for required AEDs to meet the applicable TSO. This change in the compliance date does not affect the requirement to carry an approved AED, or the requirements for first aid kits, emergency medical kits, crew training in usage of any device, or any other provision of the Appendix.

Economic Summary

The FAA estimates that as many as 6,000 airplanes in the Part 121 fleet may be unable to comply with the regulation as of April 12 because of the unapproved battery issue. This rule extends the compliance time for operators to install a power source on automated external defibrillators that complies with the applicable TSO for that item. If the FAA left the original compliance date in place, approximately 80 operators of Part 121 aircraft, including many major air carriers, would be unable to comply for a lack of approved batteries. Those operators could be subject to fines or other enforcement action. The additional time provided by this extension will allow the AED manufacturers to complete the approvals necessary to get their batteries approved for use on aircraft and produce sufficient batteries for their air carrier customers.

The FAA is unable to provide a quantitative estimate of the costs that would result from a failure to relieve this requirement, though the agency believes they would be significant. Further, it would be a disservice to the flying public to delay the requirement to carry AEDs since they represent a significant benefit to commercial aircraft passengers. The risk of continuing to use unapproved batteries is considered less than the benefit of having the equipment available at all. A change in this compliance date will both relieve a burden beyond the control of the regulated carriers and continue to provide a benefit to the flying public.

Good Cause for "No Notice"

Sections 553(b)(3)(B) and 553(d)(3) of the Administrative Procedures Act (APA) (5 U.S.C. 553(b)(3)(B) and 553(d)(3)) authorize agencies to dispense with certain notice procedures for rules when they find good cause exists to do so. Under section 553(b)(3)(B), the requirements of notice and opportunity for comment do not apply when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." The FAA finds that notice and public comment on this change to the compliance date are both impracticable and contrary to the public interest. Notice and comment are impracticable in this instance because they would defeat the need for the rule change. Air carriers using certain equipment are unable to comply with the regulation because of a parts availability problem beyond their control. The FAA would not be able to accomplish notice and comment rulemaking until after the compliance date in the current regulation. Further, the FAA finds that the carriage of AEDs on commercial aircraft represent a significant benefit to the flying public, and delaying implementation of the rule for availability of an approved battery is contrary to that interest when little safety risk is involved for a short time.

Good Cause for Immediate Adoption

Section 553(d) of the APA requires that rules become effective no less than 30 days after their issuance. Paragraph (d)(1) allows an agency to make a rule effective immediately if it is relieving in nature. This final rule extends a compliance date, relieving the requirement to have equipment installed that may not be available. Accordingly, this rule is effective on issuance.

List of Subjects in 14 CFR Part 121

Air carriers, Aircraft, Airmen, Alcohol abuse, Aviation safety, Charter flights, Drug abuse, Drug testing, Reporting and recordkeeping requirements, Safety, Transportation.

The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends part 121 of Title 14, Code of Federal Regulations (14 CFR Part 121) as follows:

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

■ 1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

■ 2. Amend Appendix A, Automated External Defibrillators, paragraph 2, to read as follows:

Appendix A to Part 121—First Aid Kits and Emergency Medical Kits

* * * * *

Automated External Defibrillators

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2. On and after April 30, 2005, meet FAA Technical Standard Order requirements for power sources for electronic devices used in aviation as approved by the Administrator.

* * * * *

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

Marion C. Blakey,

Administrator.

[FR Doc. 04–8512 Filed 4–12–04; 10:16 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1210

Safety Standard for Cigarette Lighters; Adjusted Customs Value for Cigarette Lighters

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Commission has a safety standard requiring that disposable and novelty lighters meet specified requirements for child-resistance. The rule defines disposable lighters, in part, as refillable lighters that use butane or similar fuels and have a Customs Value or ex-factory price below a threshold value (initially set at $2.00). The standard provides that the initial $2.00 value adjusts every 5 years for inflation as measured by the percentage change since June 1993 in the appropriate Wholesale Price Index for which cigarette lighters are a part, as published by the Department of Labor's Bureau of Labor Statistics ("BLS") (now referred to as the Producer Price Index for Miscellaneous Fabricated Products). The adjustment is rounded to the nearest $0.25 increment. With this notice, the Commission adds to the rule a statement that the import value adjusted to $2.25 when the June 2003 Index was finalized by BLS in November 2003. This information was also conveyed to the public by a Commission press release issued January 5, 2004.

This notice also makes a technical correction to change the term "Wholesale Price Index" to "Producer Price Index for Miscellaneous Fabricated Products."

DATES: This rule is effective April 14, 2004.

FOR FURTHER INFORMATION CONTACT: Joe Vogel, Office of Compliance, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–7599; e-mail *jvogel@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

Background

In 1993, the Commission issued a standard that required disposable and novelty lighters to meet certain requirements for child-resistance. The standard defines disposable lighters as those that either are (1) non-refillable or (2) use butane or similar fuels and have "a Customs Valuation or ex-factory price under $2.00, as adjusted every 5 years, to the nearest $0.25, in accordance with the percentage changes in the monthly Wholesale Price Index from June 1993." 16 CFR 1210.2(b)(2)(ii).

Thus, the rule provides for the $2.00 threshold to adjust in accordance with inflation. The rule provides for adjustment to be rounded to the nearest twenty-five cents. Adjustment did not occur in 1998 because change in the Index since June 1993 was not sufficient to warrant an adjustment.

The name of the Wholesale Price Index has changed to the Producer Price Index. The Index that includes cigarette lighters is the Producer Price Index for Miscellaneous Fabricated Products (hereafter "the Index"). The Bureau of Labor Statistics generally releases the Index figures for the month of June in July, and the figures are subject to revision for four months.

Adjustment to $2.25 occurred as of November 2003. This figure is based on an 8% increase since June 1993 in the Index rounded to the nearest twenty-five cents.

The staff was concerned that there could be confusion about the exact amount and timing of the increase without specific notice from the Commission. So, on January 5, 2004, the Commission issued a press release notifying the public of the change in the price of lighters included in the cigarette lighter standard due to the adjustment and indicating that the adjustment would be enforced prospectively from March 1, 2004 (available on CPSC's Web site at *http://www.cpsc.gov/cpscpub/prerel/prhtm104/04060.html*). To provide enhanced notice to those subject to the standard of this and any future

adjustments, the Commission is adding a statement to the standard that states the adjusted $2.25 value.

This notice also makes a technical correction to change the term "Wholesale Price Index" to "Producer Price Index" and notes that the specific Producer Price Index currently applicable to cigarette lighters is the Producer Price Index for Miscellaneous Fabricated Products.

The Administrative Procedure Act

Section 553(b)(3)(B) of the Administrative Procedure Act ("APA") authorizes an agency to dispense with notice and comment procedures when the agency, for good cause, finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." This amendment adds a statement to inform the public of an adjustment that has occurred automatically according to the terms of the cigarette lighter regulation. Accordingly, the Commission finds that notice and comment is unnecessary.

The APA also authorizes an agency, "for good cause found and published with the rule," to dispense with the otherwise applicable requirement that a rule be published in the **Federal Register** at least 30 days before its effective date. 5 U.S.C. 553(d)(3). The Commission hereby finds that a 30 day delay of the effective date is unnecessary because this amendment informs the public of an adjustment that has occurred automatically in accordance with the requirements of the cigarette lighter standard.

List of Subjects in 16 CFR Part 1500

Cigarette lighters, Consumer protection, Fire prevention, Hazardous materials, Infants and children, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

■ Accordingly, 16 CFR part 1210 is amended as follows:

PART 1210—SAFETY STANDARD FOR CIGARETTE LIGHTERS

■ 1. The authority for part 1210 continues to read as follows:

Authority: 15 U.S.C. 2056, 2058, 2079(d).

■ 2. Revise § 1210.2(b)(2)(ii) to read as follows:

§ 1210.2 Definitions.

* * * * *

(b) * * *

(2) * * *

(ii) It has a Customs Valuation or ex-factory price under $2.00, as adjusted every 5 years, to the nearest $0.25, in accordance with the percentage changes in the appropriate monthly Producer Price Index (Producer Price Index for Miscellaneous Fabricated Products) from June 1993. The adjusted figure, based on the change in that Index since June 1993 as finalized in November 2003, is $2.25.

Dated: April 6, 2004.

Todd Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 04–8400 Filed 4–13–04; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1

[Docket No. 2002N–0278]

Prior Notice of Imported Food Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002; Reopening of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Interim final rule; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening for 30 days the comment period for FDA's prior notice interim final rule (IFR) that published in the **Federal Register** of October 10, 2003 (68 FR 58974). The prior notice interim final rule requires the submission to FDA of prior notice of food, including animal feed, that is imported or offered for import into the United States. FDA is taking this action consistent with its statement in the preamble of the prior notice IFR (68 FR 58974 at 59023) that it would reopen the comment period for an additional 30 days in March 2004, to ensure that those who comment on this interim final rule would have had the benefit of our outreach and education efforts and would have had some experience with the systems, timeframes, and data elements of the prior notice system.

DATES: Submit written or electronic comments by May 14, 2004.

ADDRESSES: Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.*

FOR FURTHER INFORMATION CONTACT: May D. Nelson, Center for Food Safety and Applied Nutrition (HFS–24), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1722.

SUPPLEMENTARY INFORMATION:

I. Background

On October 10, 2003, FDA issued an IFR to implement new section 801(m) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 381(m)), added by section 307 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Bioterrorism Act), which required prior notification of imported food to begin on December 12, 2003. The prior notice IFR requires the submission to FDA of prior notice of food, including animal feed, that is imported or offered for import into the United States (68 FR 58974). The interim final rule requires that the prior notice be submitted to FDA electronically via either the Customs and Border Protection (CBP) Automated Broker Interface (ABI) of the Automated Commercial System (ACS) or the FDA Prior Notice System Interface (FDA PN System Interface) (21 CFR 1.280). Food imported or offered for import without adequate prior notice is subject to refusal and, if refused, must be held (21 CFR 1.283).

Under section 801(m)(2)(A) of the FD&C Act, FDA is to choose timeframes that "shall be no less than the minimum amount of time necessary for the Secretary [of Health and Human Services] to receive, review, and appropriately respond to such notification* * *" Using this standard, the prior notice IFR requires that the information must be submitted and confirmed electronically as facially complete by FDA for review no more than 5 days and no less than 8 hours (for food arriving by water), 4 hours (for food arriving by air or land/rail), and 2 hours (for food arriving by land/road) before the food arrives at the port of arrival (21 CFR 1.279). However, when we issued the interim final rule, FDA committed to exploring ways to increase integration of advance electronic notification processes with CBP and to reduce prior notice timeframes. Indeed, we stated in the preamble to the interim final rule (68 FR 58974 at 58995) that, by March 12, 2004, FDA and CBP would publish a plan, including an implementation schedule, to achieve the goal of a uniform, integrated system and to coordinate timeframes for import prior notice information while fulfilling the Bioterrorism Act mandates for air and truck modes of transportation with timeframes finalized by CBP when they finalize their rule entitled "Required

Advance Electronic Presentation of Cargo Information."

For this reason, as well as to obtain comments on other aspects of the rule, we issued this rule as an interim final rule, with an opportunity for public comment for 75 days. Moreover, to ensure that those who comment on this interim final rule would have had the benefit of actual experience with the systems, timeframes, and data elements, FDA also stated it intended to reopen the comment period for an additional 30 days in March 2004, coinciding with the issuance of the plan by FDA and CBP relating to timeframes.

In light of the significance of the prior notice IFR, in December 2003 FDA and CBP issued a compliance policy guide (CPG) that describes our strategy for maintaining an uninterrupted flow of food imports while implementing the prior notice requirements of the Bioterrorism Act. (See Compliance Policy Guide Sec. 110.310—"Prior Notice of Imported Food Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002;" Availability (68 FR 69708, December 15, 2003), *http://www.cfsan.fda.gov/guidance.html*). The prior notice CPG states that until August 12, 2004, FDA and CBP intend to primarily emphasize educating the affected firms and individuals. During this period, the agencies intend to utilize communication and education initiatives, escalating imposition of civil monetary penalties, and ultimately refusal of imported food shipments. Upon issuance of the CPG, both agencies stated that they expected affected firms and individuals to demonstrate a good faith effort at compliance while the transitional policy was in place.

II. Comments

We previously issued this rule as an interim final rule, with an opportunity for public comment for 75 days. Moreover, to ensure that those who comment on this interim final rule would have had the benefit of actual experience with the systems, timeframes, and data elements, FDA also stated it intended to reopen the comment period for an additional 30 days in March 2004. Accordingly, we are seeking comments on all aspects of the prior notice IFR.

In the prior notice IFR, we expressed interest in exploring flexible alternatives for submission of prior notice for foods or firms covered by programs of other agencies, such as CBP's Customs-Trade Partnership Against Terrorism (C–TPAT) and the Free and Secure Trade (FAST) program, or food imported by other government agencies (68 FR 58974 at 58995).

C–TPAT is a government/business initiative to increase cargo security while improving the flow of trade. Under this program, businesses must conduct comprehensive self-assessments of their supply chain using the security guidelines developed jointly with CBP, and they must familiarize companies in their supply chain with the guidelines and the program. These businesses must provide CBP with specific and relevant information about their supply chains and security practices and procedures. As C–TPAT members, companies may become eligible for expedited processing and reduced inspections, but are not exempt from advance electronic information requirements. (See CBP's Required Advance Electronic Presentation of Cargo Information Final Rule (the advance electronic information rule) (68 FR 68140)).

FAST, an acronym for Free and Secure Trade between the United States and Canada, and the United States and Mexico, is an expedited-clearance system designed to improve border security without slowing the flow of legitimate trade across the northern and southern U.S. borders. FAST processing is available to importers, carriers and foreign manufacturers (southern border) who participate in C–TPAT and who use a FAST-registered driver. The initiative builds on the same concepts that drove the rapid, post-9/11 construction and implementation of C–TPAT.

FDA and CBP plan to assess the feasibility of including the FAST timeframes in FDA's prior notice final rule, as well as other flexible alternatives raised by comments. To assist in this assessment, FDA and CBP request comment on the following questions:

C–TPAT/FAST Questions:

1. Should food products subject to FDA's prior notice requirements be eligible for the full expedited processing and information transmission benefits allowed with C–TPAT and FAST? If so, how should this be accomplished?

2. If the timeframe for submitting prior notice for food arriving by land via road is reduced to 1 hour consistent with the timeframe in the advance electronic information rule, would a shorter timeframe be needed for members of FAST?

3. Should the security and verification processes in C–TPAT be modified in any way to handle food and animal feed shipments regulated by FDA? If so, how?

Any membership in C–TPAT or FAST, or any benefit received as a result of membership will not be affected by commenting in this rulemaking.

Flexible Alternative Questions:

1. If timeframes are reduced in FDA's prior notice final rule, would other flexible alternatives for participants in FAST or for food imported by other agencies be needed?

2. In considering flexible alternatives for food imported by other government agencies, what factors or criteria should FDA consider when examining alternatives? Should participation be voluntary? If so, should FDA consider inspection of companies in the supply chain from the manufacturer to those who may hold the product, including reviews of their security plans to determine what procedures are in place to prevent infiltration of their facilities as a condition of participation?

3. In considering flexible alternatives for submission of prior notice, should FDA consider additional means of ensuring that all companies subject to the registration of food facilities interim final rule ((68 FR 58894, October 10, 2003) (21 CFR part 1, subpart H)), have an updated registration on file with FDA that has been verified?

4. Are there conditions of participation that FDA should consider, e.g., inspections of companies in the supply chain from the manufacturer to those who may hold the product, reviews of their security plans to determine what procedures are in place to prevent infiltration of their facilities?

5. Should the food product category be considered as a criteria or element of expedited prior notice processing or other flexible alternatives? If so, should certain foods be excluded from expedited prior notice processing? If so, what should be the basis for determining which foods should be excluded?

6. If FDA adopts reduced timeframes in the prior notice final rule, should FDA phase in the shorter timeframes as CBP phases in the advance electronic information rule?

7. Should FDA offer a prior notice submission training program for submitters and transmitters, including brokers, to ensure the accuracy of the data being submitted?

To be timely, interested persons must submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on the prior notice IFR as indicated in the **DATES** section of this document. Two copies of any mailed comments are to be submitted by commenting entities; 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 may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

As noted, this regulation was effective on December 12, 2003. We will address comments received during this reopened comment period and the previous comment period that closed on December 24, 2003, and will confirm or amend the interim final rule in a final rule. We, however, will not address any comments that have been previously considered during this rulemaking.

Dated: March 24, 2004.

Lester M. Crawford,

Acting Commissioner for Food and Drugs.

Dated: April 6, 2004.

Robert C. Bonner,

Commissioner, Customs and Border Protection.

[FR Doc. 04–8517 Filed 4–9–04; 4:51 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1

[Docket No. 2002N–0278]

Prior Notice of Imported Food Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002; Joint Food and Drug Administration-Customs and Border Protection Plan for Increasing Integration and Assessing the Coordination of Prior Notice Timeframes; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Availability of joint plan.

SUMMARY: The Food and Drug Administration (FDA) and Customs and Border Protection (CBP) announce the availability of a plan entitled "Joint FDA-CBP Plan for Increasing Integration and Assessing the Coordination of Prior Notice Timeframes." The plan, which includes an assessment schedule, describes the process by which FDA and CBP intend to increase integration and examine whether we could amend the timeframe requirements in FDA's prior notice interim final rule (IFR) to have the same advanced notice timeframes for arrivals by land via road or rail, or arrival via air that are currently in CBP's advance electronic information rule.

DATES: Submit written or electronic comments by May 14, 2004.

ADDRESSES: Submit written requests for single copies of the plan to the Office of Regional Operations (HFC–100), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your request or include a fax number to which it may be sent. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the plan. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.*

FOR FURTHER INFORMATION CONTACT: Joseph McCallion, Division of Import Operations and Policy (HFC–170), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6553.

SUPPLEMENTARY INFORMATION:

I. Background

A. FDA Prior Notice Interim Final Rule

On October 10, 2003, FDA issued an IFR (the prior notice IFR) (68 FR 58974) to implement new section 801(m) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 381(m)), added by section 307 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the Bioterrorism Act), which required prior notification of imported food to begin on December 12, 2003. The prior notice IFR requires the submission to FDA of prior notice of food, including animal feed, that is imported or offered for import into the United States. The prior notice IFR requires that prior notice be submitted to FDA electronically via either CBP's Automated Broker Interface (ABI) of the Automated Commercial System (ACS) or the FDA Prior Notice System Interface (FDA PN System Interface) (21 CFR 1.280). Food imported or offered for import without adequate prior notice is subject to refusal and, if refused, must be held (21 CFR 1.283).

Under section 801(m)(2)(A) of the FD&C Act, FDA is to choose timeframes that "shall be no less than the minimum amount of time necessary for the Secretary [of Health and Human Services] to receive, review, and appropriately respond to such notification * * *." Using this standard, the prior notice IFR requires that the information must be submitted and confirmed electronically as facially complete by FDA for review no more than 5 days and no less than 8 hours (for food arriving by water), 4 hours (for food arriving by air or land/rail), and 2 hours (for food arriving by land/road) before the food arrives at the port of arrival (21 CFR 1.279). However, when we issued the prior notice IFR, FDA was committed to exploring ways to increase integration of advance electronic notification processes with CBP and reduce prior notice timeframes further. Indeed, we stated in the preamble of the prior notice IFR (68 FR 58974 at 58995) that, by March 12, 2004, FDA and CBP would publish a plan, including an implementation schedule, to achieve the goal of a uniform, integrated system, and to coordinate timeframes for import prior notice information while fulfilling the Bioterrorism Act mandates for air and truck modes of transportation with timeframes finalized by CBP when they finalize their rule entitled "Required Advance Electronic Presentation of Cargo Information" (the Advance Electronic Information Rule).

For this reason, as well as to obtain comments on other aspects of the prior notice rulemaking, we issued the IFR with an opportunity for public comment for 75 days. Moreover, to ensure that those who comment on the prior notice IFR would have had the benefit of our experience with the systems, timeframes, and data elements, FDA also stated that it intended to reopen the comment period for an additional 30 days in March 2004, coinciding with the issuance of the plan by FDA and CBP relating to timeframes.

B. CBP Advance Electronic Information Rule

On December 5, 2003, CBP issued the Advance Electronic Information Rule (68 FR 68140), which requires CBP to receive, by way of a CBP-approved electronic data interchange system, information pertaining to cargo before the cargo is either brought into or sent from the United States by any mode of commercial transportation (sea, air, rail, or truck). The cargo information required is that which is reasonably necessary to enable high-risk shipments to be identified for purposes of ensuring cargo safety and security and preventing smuggling under the laws enforced and administered by CBP. The Advance Electronic Information Rule implements the provisions of section 343(a) of the Trade Act of 2002, as amended by the Maritime Transportation Security Act of 2002.

The relevant timeframes provided in the Advance Electronic Information Rule are as follows:

- For arrival by land via road at ports that are fully equipped to accommodate CBP's Advance Electronic Information Rule, no later than 1 hour prior to the arrival of the truck at the border, or for

Free and Secure Trade/Customs-Trade Partnership Against Terrorism (FAST/C–TPAT) participants, 30 minutes;

- For arrival by land via rail at ports that are fully equipped to accommodate CBP's Advance Electronic Information Rule, no later than 2 hours prior to the arrival of the train at the border;
- For arrival by air, no later than the departure time ("wheels up") of the aircraft from any foreign port or place in North America, including locations in Mexico, Central America, South America (from north of the Equator only), the Caribbean, and Bermuda, and from other areas into ports that are fully equipped to accommodate CBP's Advance Electronic Information Rule no later than 4 hours prior to the arrival of the aircraft in the United States.

II. Joint FDA-CBP Plan for Increasing Integration and Assessing the Coordination of Prior Notice Timeframes

After consultation, FDA and CBP have developed a plan to increase integration and assess whether FDA can adopt reduced timeframes. As set out in the plan, the agencies intend to assess whether FDA can meet its statutory mandate under section 801(m)(2)(A) of the FD&C Act if prior notice is received and confirmed electronically by FDA for review with reduced timeframes, including those adopted by CBP by mode of transportation listed in the following paragraphs, no fewer than:

- 1 hour before arrival by land by road, or 30 minutes for participants in FAST/C–TPAT;
- 2 hours before arrival by land by rail;
- By "wheels up" for flights originating in North and Central America, South America (north of the Equator only), the Caribbean, and Bermuda; otherwise 4 hours before arrival by air.

As noted previously, section 801(m)(2)(A) of the FD&C Act states that FDA shall by regulation prescribe the time of submission of the notification in advance of importation or the offering of the food for import, which period shall be no less than the minimum amount of time necessary for the Secretary to receive, review, and appropriately respond to such notification, and any timeframe FDA adopts in the final rule must be justified under this standard.

III. Comments

Elsewhere in this issue of the **Federal Register**, we are reopening the comment period on the prior notice IFR. To be considered part of the rulemaking record, interested persons must submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on the plan as indicated in the **DATES** section of this document. Two copies of any mailed comments are to be submitted by commenting entities; individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The plan and comments FDA has received may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Interested persons who wish to submit general comments on the prior notice IFR should consult the document reopening the comment period that is published elsewhere in this issue of the **Federal Register**.

IV. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.fda.gov/oc/bioterrorism/bioact.html.*

Dated: March 24, 2004.

Lester M. Crawford,

Acting Commissioner for Food and Drugs.

Dated: April 6, 2004.

Robert C. Bonner,

Commissioner, Customs and Border Protection.

[FR Doc. 04–8515 Filed 4–9–04; 4:51 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 1 and 20

[Docket No. 2002N–0276]

Registration of Food Facilities Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002; Reopening of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Interim final rule; reopening of comment period

SUMMARY: The Food and Drug Administration (FDA) is reopening for 30 days, on a limited set of issues, the comment period on the registration of food facilities interim final rule (IFR) that appeared in the **Federal Register** of October 10, 2003 (68 FR 58894). The IFR requires domestic and foreign facilities that manufacture/process, pack, or hold food for human or animal consumption in the United States to register with FDA by December 12, 2003. FDA is taking this action consistent with its statement in the IFR that it would reopen the comment period for 30 days in March 2004 to ensure that those commenting on the IFR have had the benefit of FDA's outreach and educational efforts and have had experience with the systems, timeframes, and data elements of the registration program.

DATES: Submit written or electronic comments on the identified set of issues for the IFR by May 14, 2004.

ADDRESSES: Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.*

FOR FURTHER INFORMATION CONTACT: Melissa S. Scales, Center for Food Safety and Applied Nutrition (HFS–24), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2378.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of October 10, 2003 (68 FR 58894), FDA issued an IFR to implement section 305 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Bioterrorism Act). The registration regulation requires facilities that manufacture/process, pack, or hold food (including animal feed) for consumption in the United States to register with FDA by December 12, 2003. In the "Request for Comments" section of the IFR, FDA requested comments on specific issues in order to improve the assumptions used in its economic analysis. The IFR stated that its comment period would coincide with that of the prior notice IFR, given the relatedness of the two rules. Therefore, the registration IFR was open for comments for 75 days following the publication of the IFR. The IFR also stated that "to ensure that those commenting on this interim final rule have had the benefit of FDA's outreach and educational efforts and have had experience with the systems, timeframes, and data elements of this interim final rule," FDA would reopen the comment period for an additional 30 days in March 2004.

II. Comments

Consistent with the intent expressed in the preamble to the IFR, we are seeking comments on the following issues in order to improve FDA's economic analysis:

1. The cost to foreign facilities of hiring and retaining a U.S. agent.

Specifically, FDA invites comment, and the submission of data or other information, on the following:

a. The costs to a foreign facility of hiring a U.S. agent;

b. The number of foreign facilities that have hired a U.S. agent or negotiated additional duties from someone with whom they have an existing relationship, in response to the IFR, instead of relying on an existing relationship with a person who qualifies as a U.S. agent;

c. The number of foreign facilities that have ceased exporting to the United States because they have decided not to hire/retain a U.S. agent for registration purposes;

d. The distribution of costs between submitting registrations and other services offered by the U.S. agent; and

e. The assumptions underlying FDA's estimates of the costs of hiring and retaining a U.S. agent.

2. The effects on domestic small businesses, if any, if some foreign facilities cease exporting to the United States due to the U.S. agent requirement for registration. Specifically, FDA invites comment, and the submission of data or other information, on the following:

a. The number of domestic small businesses that have been adversely affected by trading partners that have ceased exporting to the United States due to the U.S. agent requirement for foreign facility registration; and

b. The costs incurred by these domestic small businesses due to the loss of these trading partners.

To be timely, interested persons must submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding the above issues as indicated in the **DATES** section of this document. Two copies of any comments are to be submitted by commenting entities; individuals may submit one copy. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

As noted, the IFR was effective on December 12, 2003. The agency will address comments on the identified set of issues that are received during this reopened comment period and were received during the previous comment period that closed on December 24, 2003, and will confirm or amend the IFR in a final rule. The agency, however, will not address any comments that have been previously considered during this rulemaking.

Dated: March 24, 2004.

Lester M. Crawford,

Acting Commissioner for Food and Drugs.

Dated: April 6, 2004.

Robert C. Bonner,

Commissioner, Customs and Border Protection.

[FR Doc. 04–8516 Filed 4–9–04; 4:51 pm]

BILLING CODE 4160–01–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2004–0083; FRL–7351–9]

Thifensulfuron-methyl; Withdrawal of Tolerance Actions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Because EPA received relevant adverse comment, the Agency is withdrawing the direct final rule for the reinstatement of corn tolerances for the herbicide thifensulfuron-methyl. EPA published the direct final rule on February 13, 2004 which would have reinstated corn tolerances for the herbicide thifensulfuron-methyl that were previously established but inadvertently removed shortly thereafter. EPA stated in that direct final rule that if relevant adverse comment were received by April 13, 2004, the Agency would publish a timely withdrawal in the **Federal Register**. EPA subsequently received relevant adverse comment on that direct final rule. EPA will therefore publish a notice of proposed rulemaking in a future edition of the **Federal Register**. The Agency will address the comments on the direct final rule as part of that proposed rulemaking.

DATES: As of April 14, 2004, EPA withdraws the direct final rule published at 69 FR 7161, on February 13, 2004.

FOR FURTHER INFORMATION CONTACT: Joseph Nevola, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460–0001; telephone number: (703) 308–8037; e-mail address:*nevola.joseph@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA received a relevant adverse comment during the comment period for the February 13, 2004 (69 FR 7161) (FRL–7338–6) direct final rule in which the Agency stated that it would reinstate corn tolerances for residues of the herbicide thifensulfuron-methyl that were previously established by rulemaking in the **Federal Register** and that were inadvertently removed from 40 CFR 180.439. Because of a relevant adverse comment, EPA is withdrawing the direct final rule so that it will not take effect. EPA will publish a notice of proposed rulemaking in a future issue of the **Federal Register** and address the comments on the direct final rule as part of that notice of proposed rulemaking.

Currently, there are active products registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) which list corn as a use site for thifensulfuron-methyl application. These registrations have existed since 1994 with associated tolerances established in May 1994. In the direct final rule of February 13, 2004 (69 FR 7161), EPA stated that the deletion of the corn tolerances from the 40 CFR was both inadvertent and improper.

List of Subjects in 40 CFR Part 180

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

Dated: March 26, 2004.

James Jones,

Director, Office of Pesticide Programs.

■ Accordingly, the direct final rule for thifensulfuron-methyl published in the **Federal Register** of February, 13, 2004 at 69 FR 7161 is withdrawn.

[FR Doc. 04–8103 Filed 4–13–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2004–0075; FRL–7353–1]

Boscalid; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of boscalid, 3-pyridinecarboxamide, 2-chloro-N-(4'-chloro[1,1'-biphenyl]-2-yl) in or on certain commodities and establishes a tolerance for the residues of boscalid in or on pome fruit crop group, group 11 at 3.0 ppm, apple pomace, wet at 10.0 ppm, hops cones, dried at 35.0 ppm, soybean, vegetable at 2.0 ppm, soybean seed at 0.1 ppm, soybean hulls at 0.2 ppm and aspirated grain fractions at 3.0

ppm. BASF 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 April 14, 2004. Objections and requests for hearings, identified by docket ID number OPP–2004–0075, must be received on or before June 14, 2004.

ADDRESSES: Written objections and hearing requests may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Cynthia Giles-Parker, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460–0001; telephone number: (703) 305–7740; e-mail address: *giles-parker.cynthia@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 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–2004–0075. 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, 1921 Jefferson Davis Hwy., 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/.* A frequently updated electronic version of 40 CFR part 180 is available at *http://www.gpoaccess.gov/ecfr/,* a beta site currently under development. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at *http://www.epa.gov/opptsfrs/home/guidelin.htm/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Background and Statutory Findings

In the **Federal Register** of November 6, 2003 (68 FR 215) (FRL–7321–1), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petitions (PP 2F6434 and 3F6580) by BASF Corporation, P.O. Box 13528, Research Triangle Park, North Carolina 27708–2000. That notice included a summary of the petitions prepared by BASF Corporation, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.589 be amended by establishing a tolerance for residues of the fungicide boscalid in or on pome fruit crop group, group 11 at 3.0 ppm, apple pomace, wet at 20.0 ppm, hops cones, dried at 35.0 ppm, soybean, vegetable at 2.2 ppm, soybean seed at 0.1 ppm, soybean hulls at 0.2 ppm and soybean aspirated grain fractions at 2.5 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 boscalid. EPA's assessment of exposures and risks associated with establishing the tolerance follows. This assessment involves adding tolerances for commodities of pome fruit crop group, group 11 at 3.0 ppm, apple pomace, wet at 10.0 ppm, hops cones, dried at 35.0 ppm, soybean, vegetable at 2.0 ppm,

soybean seed at 0.1 ppm, soybean hulls at 0.2 ppm and soybean aspirated grain fractions at 3.0 ppm.

A. Toxicological Profile

EPA previously 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 boscalid 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 July 30, 2003 (68 FR 44640) (FRL–7319–6). No new information which would change the toxicological profile has been submitted or reviewed since the analysis.

B. Toxicological Endpoints

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

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

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

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10× 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 boscalid used for human risk assessment is discussed in Unit III.B. of the final rule published in the **Federal Register** of July 30, 2003 (68 FR 44640) (FRL–7319–6).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.589) for the residues of boscalid, in or on a variety of raw agricultural commodities. Risk assessments were conducted by EPA to assess dietary exposures from boscalid 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. There were no toxic effects attributable to a single dose. An endpoint of concern was not identified to quantitate acute dietary risk to the general population, including infants and children, or to the subpopulation females 13–50 years old. Therefore, there is no acute reference dose (aRfD) or acute population-adjusted dose (aPAD).

ii. *Chronic exposure.* In conducting the chronic 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 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:

The chronic dietary exposure analysis was performed using two separate models: DEEM- FCID™ and Lifeline™. The analysis was based on tolerance-level residues (in some cases modified by DEEM™ (Version 7.81) default processing factors), and assume 100% crop treated. In both cases, the risk estimates are well below the Agency's level of concern for the general U.S. population and all population subgroups. The results of the DEEM-FCID™ and Lifeline™ analyses are comparable. The most highly exposed population subgroup from DEEM™ is children 1–2 years, which has an exposure estimate of 0.057 mg/kg/day, and utilizes 26% of the cPAD. The most highly exposed population subgroup from Lifeline™ is also children 1–2 years, which has an exposure estimate of 0.053 mg/kg/day, and utilizes 24% of the cPAD.

TABLE 1.—SUMMARY OF DIETARY EXPOSURE AND RISK FOR BOSCALID

Population Subgroup	Acute Analysis	DEEM: Chronic Analysis		Lifeline: Chronic Analysis	
		Dietary Exposure (mg/kg/day)	% cPAD	Mean Exposure (mg/kg/day)	% cPAD
General U.S. Population	Not applicable: No acute dietary endpoint	0.014597	6.7	0.01378	6.3
All Infants (<1 year old)	Not applicable: No acute dietary endpoint	0.03509	16	0.03421	16
Children 1–2 years old	Not applicable: No acute dietary endpoint	0.056809	26	0.0525	24
Children 3–5 years old	Not applicable: No acute dietary endpoint	0.039112	18	0.03983	18
Children 6–12 years old	Not applicable: No acute dietary endpoint	0.019162	8.8	0.01806	8.3
Youth 13–19 years old	Not applicable: No acute dietary endpoint	0.01046	4.8	0.00975	4.5
Adults 20–49 years old	Not applicable: No acute dietary endpoint	0.010351	4.7	0.01094	5
Adults 50+ years old	Not applicable: No acute dietary endpoint	0.010935	5	0.01121	5.1
Females 13–49 years old	Not applicable: No acute dietary endpoint	0.010349	4.7	0.01191	5.5

iii. *Cancer.* The Agency determined that boscalid produced suggestive evidence of carcinogenicity, but not sufficient to assess human carcinogenic potential. This cancer classification was based on the following weight of evidence considerations. First, in male Wistar rats, there was a significant trend (but not pairwise comparison) for the combined thyroid adenomas and carcinomas. This trend was driven by the increase in adenomas. Second, in the female rats, there was only a borderline significant trend for thyroid adenomas (there were no carcinomas). Third, the mouse study was negative as were all of the mutagenic tests. Consistent with this weak evidence of carcinogenic effects, the Agency concluded that a dose-response assessment for cancer (either linear low-dose extrapolation or margin of exposure calculation) was not needed because boscalid was not expected to pose a carcinogenic risk.

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

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

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

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

Based on the FIRST and SCI-GROW models, the EECs of boscalid for acute and chronic exposures for surface water are estimated to be 87.53 parts per billion (ppb) and 25.77 ppb, respectively, and the ground water EEC is 0.63 ppb. Since the completion of the previous risk assessment for boscalid, the aerobic soil metabolism half lives used as input parameters for the FIRST and SCI-GROW models have been revised.

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).

No new residental uses of boscalid are currently being registered that would increase non-dietary exposure. A non-occupational dermal post-application exposure/risk assessment for individuals golfing and harvesting fruit at "U-pick" farms and orchards was conducted in the previous occupational and residential exposure (ORE) assessment.

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 boscalid and any other substances and boscalid 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 boscalid 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 10-fold 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 an 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.* A complete discussion of the prenatal/postnatal sensitivity study was recently discussed in our final rule dated July 30, 2003 (68 FR 44640) (FRL–7319–6). No new information has been received to change this information. The Agency does restate the basic conclusion from that analysis. The Agency concluded that there are no residual uncertainties for pre- and post-natal toxicity as the degree of concern is low for the susceptibility seen in the above studies, and the dose and endpoints selected for the overall risk assessments will address the concerns for the body weight effects seen in the offspring. Although the dose selected for overall risk assessments (21.8 mg/kg/day) is higher than the NOAELs in the 2-generation reproduction study (10.1 mg/kg/day) and the developmental neurotoxicity study (14 mg/kg/day), these differences are considered to be an artifact of the dose selection process in these studies. For example, there is a 10-fold difference between the LOAEL (106.8 mg/kg/ day) and the NOAEL (10.1 mg/kg/day) in the 2-generation reproduction study. A similar pattern was seen with regard to the developmental neurotoxicity study, where there is also a 10-fold difference between the LOAEL (147 mg/kg/day) and the NOAEL (14 mg/kg/day). There is only a 2–3 fold difference between the LOAEL (57 mg/kg/day) and the NOAEL (21.8 mg/kg/day) in the critical study used for risk assessment. Because the gap between the NOAEL and LOAEL in the 2-generation reproduction and developmental neurotoxicity studies was large and the effects at the LOAELs were minimal, the true no-observed-adverse- effect-level was probably considerably higher. Therefore, the selection of the NOAEL of 21.8 mg/kg/day from the 1-year dog study is conservative and appropriate for the overall risk assessments. In addition, the endpoints for risk assessment are based on thyroid effects seen in multiple species (mice, rats and dogs) and after various exposure durations (subchronic and chronic exposures) which were not observed at the LOAELs in either the 2-generation reproduction or the developmental neurotoxicity studies. Based on these data, the Agency concluded that there are no residual uncertainties for pre- and post-natal toxicity.

3. *Conclusion.* There is a complete toxicity data base for boscalid and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. The submitted field trials performed on hops, pome fruit, and soybeans are adequate to support the recommended tolerances: Hops cones, dried (35 ppm), pome fruit (3.0 ppm), apple pomace, wet (10 ppm), soybean vegetable (2.0 ppm), soybean seed (0.1 ppm), soybean hulls (0.2 ppm), soybean aspirated grain fractions (3.0 ppm). There is no evidence of susceptibility following *in utero* exposure to rats and there is low concern and no residual uncertainties in the developmental toxicity study in rabbits, in the 2-generation reproduction study or in the developmental neurotoxicity study after establishing toxicity endpoints and traditional uncertainty factors to be used in the risk assessment. Based on these data and conclusions, EPA reduced the FQPA safety factor to 1X.

E. Aggregate Risks and Determination of Safety

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

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the EPA's Office of Water are used to calculate DWLOCs: 2 liter (L)/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is

calculated for each type of risk assessment used: Acute, short-term, intermediate-term, chronic, and cancer.

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

1. *Acute risk.* As there were no toxic effects attributable to a single dose, an endpoint of concern was not identified to quantitate acute-dietary risk to the general population or to the subpopulation females 13–50 years old. Therefore, there is no acute reference dose (aRfD) or acute population-adjusted dose (aPAD) for the general population or females 13–50 years old. No acute risk is expected from exposure to boscalid.

2. *Chronic risk.* The chronic dietary exposure analysis was based on tolerance-level residues (in some cases modified by DEEM (Version 7.81) default processing factors), and assume 100% crop treated. Even with these highly conservative assumptions, the risk estimates are well below the Agency's level of concern. The most highly exposed population subgroup from DEEM™ is children 1–2 years, which has an exposure estimate of 0.057 mg/kg/day, and utilizes 26% of the cPAD. The most highly exposed population subgroup from Lifeline™ is also children 1–2 years, which has an exposure estimate of 0.053 mg/kg/day, and utilizes 24% of the cPAD.

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

Senario/Population Subgroup	cPAD mg/kg/day	Chronic Food Exposure, mg/kg/day	Maximum Chronic Water Exposure[1], mg/kg/day	Ground Water EDWC[2], (ppb)	Surface Water EDWC[2], (ppb)	Chronic DWLOC[3] (ppb)
General U.S. Population	0.218	0.014597	0.2034	0.63	26	7,100
All infants (< 1 year old)	0.218	0.03509	0.18291	0.63	26	1,800
Children 1–2 years old	0.218	0.056809	0.16119	0.63	26	1,600
Females 13–49 years old	0.218	0.010349	0.20765	0.63	26	6,200

[1]Maximum chronic water exposure (mg/kg/day) = cPAD (mg/kg/day) - chronic food exposure from dietary exposure analysis (mg/kg/day).
[2]EDWCs from EFED studies.
[3]Chronic DWLOCs were calculated as follows:
Chronic DWLOC(µg/L) = [maximum chronic water exposure (mg/kg/day) x body weight (kg)]/[water consumption (L) x 10^{-3} mg/µg]

3. *Short-term risk.* The short-term aggregate risk assessment takes into account average exposure estimates from dietary consumption of boscalid (food and drinking water) and non-occupational uses (golf courses). Postapplication exposures from the proposed use on golf courses is considered short- term, and applies to adults and youth. Therefore, a short-term aggregate risk assessment was conducted. Since all endpoints are from the same study, exposures from different routes can be aggregated. Table 3 summarizes the results. The MOE from food and non-occupational uses is 1400, and the calculated short-term DWLOC is 6,100 ppb. Compared to the surface and ground water EDWCs, the DWLOCs are considerably greater. Therefore, short-term aggregate risk does not exceed HED=s level of concern.

The MOE and DWLOC are considered to be representative for youth because youth and adults possess similar body surface area to weight ratios, and because the dietary exposure for youth (13–19 years old) is less than that of the general U.S. population.

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR SHORT-TERM EXPOSURE TO BOSCALID

Population	Short-Term Scenario									
	NOAEL mg/kg/day	Target MOE[1]	Max Exposure[2] mg/kg/day	Average Food Exposure mg/kg/day	Residential Exposure[3] mg/kg/day	Aggregate MOE[4] (food and residential)	Max Water Exposure[5] mg/kg/day	Ground Water EDWC[6](units)	Surface Water EDWC[6] (units)	Short-Term DWLOC[7,8] (µg/L)
U.S.	21.8	100	0.218	0.014597	0.0008	1400	0.2026	0.63	25.77	6,100

[1]The target MOE for dermal is 100.
[2]Maximum Exposure (mg/kg/day) = NOAEL/Target MOE
[3]Residential Exposure = Dermal exposure from golf course only
[4]Aggregate MOE = [NOAEL) (Avg Food Exposure + Residential Exposure)]
[5]Maximum Water Exposure (mg/kg/day) = Target Maximum Exposure - (Food Exposure + Residential Exposure)
[6]The crop producing the highest level was used.
[7] DWLOC(Fg/L) = [maximum water exposure (mg/kg/day) x body weight (kg)]/ [water consumption (L) x 10^{-3} mg/µg]
[8]Adult female body weight was used, which covers adult male risk. The dietary exposure for the U. S. population is higher than that of groups having residential (golf) exposure (i.e., adults, youth 13–19).

4. *Aggregate cancer risk for U.S. population.* For the reason stated above, EPA does not expect boscalid to pose a 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 boscalid residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (example—gas chromotography) 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

Boscalid is a relatively new fungicide. There are currently no pending or established Codex maximum residue limits (MRLs) for boscalid. There are also no Mexican MRLs. The previous risk assessment was performed as a joint review with PMRA/Canada. The tolerances were harmonized with respect to the residue of concern and tolerance level.

V. Conclusion

Therefore, the tolerances are established for residues of boscalid in or on apple pomace, aspirated grain fractions at 3.0 ppm, wet at 10.0 ppm, hops cones, dried at 35.0 ppm, pome fruit crop group, group 11 at 3.0 ppm, soybean hulls at 0.2 ppm, soybean seed at 0.1 ppm, and soybean, vegetable at 2.0 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–2004–0075 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 June 14, 2004.

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

Mail your written request to: Office of the Hearing Clerk (1900C), 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 Rm.104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. 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 (703) 603–0061.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *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 Unit I.B.1. Mail your copies, identified by docket ID number OPP–2004–0075, 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 Unit I.B.1. 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: March 31, 2004.

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 180.589 is amended by alphabetically adding commodities to the table in paragraph (a)(1) to read as follows:

§ 180.589 Boscalid; tolerances for residues.

(a) *General.* (1) * * *

Commodity	Parts per million
* * *	* *
Apple, wet, pomace	10
Aspirated grain fractions	3.0
* * *	* *
Fruit, pome, crop group, group 11	3.0
* * *	* *
Hops, cones, dried	35
* * *	* *
Soybean, hulls	0.2
Soybean, seed	0.1
Soybean, vegetable	2.0
* * *	* *

* * * * *

■ 3. Section 180.589 paragraph (d) is amended by removing tolerances for "Soybean, hulls," and "Soybean, seed" from the table.

[FR Doc. 04–8316 Filed 4–13–04; 8:45 am]

BILLING CODE 6560–50–S

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Part 2552

RIN 3045–AA29

Foster Grandparent Program; Amendments

AGENCY: Corporation for National and Community Service.

ACTION: Final rule.

SUMMARY: These amendments to the regulations governing the Foster Grandparent Program (FGP) modify provisions concerning deductions for medical expenses and the allowability of certain volunteer expense items.

The specific amendments are as follows: Section 2552.42(c) is modified to increase the ceiling on medical expenses that may be deducted for determining income for eligibility purposes from 15 percent to 50 percent of the applicable income guideline; and §§ 2552.45 and 2552.93(d) are modified to allow project funds, including the required non-federal share, to be used to reimburse volunteers for expenses, including transportation costs, incurred while performing volunteer assignments, and for purchase of equipment or supplies for volunteers on assignment.

DATES: These amendments are effective as of April 14, 2004.

FOR FURTHER INFORMATION CONTACT: Peter L. Boynton, 202–606–5000, ext. 499.

SUPPLEMENTARY INFORMATION: The Corporation published a notice of proposed rulemaking (NPRM) for the Foster Grandparent Program, 45 CFR part 2552, in the **Federal Register** at 69 FR 6227, dated February 10, 2004.

Summary of Main Comments

In response to the Corporation's invitation in the notice of proposed rulemaking, the Corporation received 37 responses addressing the proposed amendments to the Foster Grandparent Program rules. All 37 supported the proposed amendments modifying the medical expense deduction. Those who provided explanations for why they favored these amendments generally noted that it would permit a larger number of individuals with high medical expenses to serve, thus increasing the number of income-eligible volunteers and broadening their recruitment potential. Several noted that they have had to turn away volunteers who were only slightly over income, and this change would have enabled them to be enrolled. Concerning the amendments that would allow project funds to be used to reimburse volunteers for certain expenses that now may be paid only by the volunteer station, 21 responses expressed support, 1 was undecided due to concern about budgetary implications, and 15 did not comment. Reasons cited for supporting the amendment included: (a) The value of increased flexibility to manage funds in accordance with local needs, (b) the special circumstances of rural areas, (c) the desire to provide Foster Grandparents with certain supplies that they can use on any assignment, regardless of the volunteer station they are assigned to, and (d) the flexibility may be needed at some future time. Other specific comments and the Corporation's responses follow:

Comment: In addition to increasing the medical expense deduction, the income eligibility guidelines for Foster Grandparents should be increased or eliminated.

Response: The Domestic Volunteer Service Act currently stipulates that volunteers receiving stipends must have incomes at or below 125% of the poverty level. This provision may not be changed by regulation. In "Principles and Reforms for a Citizen Service Act," issued by President Bush April 9, 2002, the Administration proposed to eliminate the limits on income of Foster Grandparents receiving stipends. This continues to be the position of the Administration.

Comment: Expressed concern about how a project would meet any additional costs associated with paying for assignment-related volunteer expenses.

Response: Under the modified regulation, grantees are free to establish their own policies regarding which assignment-related expenses volunteer stations must be responsible for under the memorandum of understanding between the grantee and the volunteer station. For example, a grantee may, if it wishes, decide to continue to require its volunteer stations to be responsible for all such costs. However, the modifications give a grantee the flexibility to raise cash or in-kind contributions specifically to offset assignment-related costs, if it chooses to do so.

Impact of Various Acts and Executive Orders

After carefully reviewing the changes implemented by this amendment, and after coordination with the Office of Management and Budget, it was determined that:

(1) This was a significant regulatory action under section 3(f)(4) of Executive Order 12866 "Regulatory Planning and Review", and required a review by the Office of Management and Budget;

(2) The Corporation hereby certifies that the Regulatory Flexibility Act does not apply because there is no "significant economic impact on a substantial number of small entities";

(3) That the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 25, subchapter II) does not apply because the amendment does not result in any annual expenditures of $100 million by State, local, Indian Tribal governments or the private sector;

(4) That the Paperwork Reduction Act does not apply because the amendments do not impose any additional reporting or record-keeping requirements;

(5) That the Small Business Regulatory Enforcement Fairness Act of 1996 does not apply because it is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, and would not result in an annual effect on the economy of $100 million or more; result in an increase in cost or prices; or have 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 export markets; and

(6) That Executive Order 13132, "Federalism" does not apply because it would not have substantial direct effects on the States or the relationship between the national government and the States.

List of Subjects in 45 CFR Part 2552

Aged, Grant programs—social programs, Volunteers.

■ For the reasons set forth in the preamble, the Corporation for National and Community Service amends 45 CFR part 2552 as follows:

PART 2552—FOSTER GRANDPARENT PROGRAM

■ 1. The authority citation for part 2552 continues to read as follows:

Authority: 42 U.S.C. 4950 *et seq.*

§ 2552.42 [Amended]

■ 2. In § 2552.42(c), remove the phrase "15 percent" and add in its place the phrase "50 percent".

■ 3. In § 2552.45, add a new paragraph (f), as follows:

§ 2552.45 What cost reimbursements are provided to Foster Grandparents?

* * * * *

(f) *Other Volunteer Expenses.* Foster Grandparents may be reimbursed for expenses incurred while performing their volunteer assignments provided these expenses are described in the Memorandum of Understanding negotiated with the volunteer station to which the volunteer is assigned and meet all other requirements identified in the notice of grant award.

§ 2552.93 [Amended]

■ 4. In § 2552.93, remove paragraph (d) and redesignate paragraphs (e) through (i) as (d) through (h) accordingly.

Dated: April 7, 2004.

Tess Scannell,

Director, National Senior Service Corps.

[FR Doc. 04–8405 Filed 4–13–04; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 031124287–4060–02; I.D. 040804B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels Using Trawl Gear in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Modification of a closure.

SUMMARY: NMFS is reopening directed fishing for Pacific cod by catcher vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI) for 72 hours. This action is necessary to fully use the B season allowance of the total allowable catch (TAC) of Pacific cod specified for catcher vessels using trawl gear in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), April 10, 2004, through 1200 hrs, A.l.t., April 13, 2004.

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

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

The 2004 final harvest specifications for groundfish of the BSAI (69 FR 9242, February 27, 2004), established the Pacific cod TAC allocated to catcher vessels using trawl gear in the BSAI for the period 1200 hrs, A.l.t., April 1, 2004, through 1200 hrs, A.l.t., June 10, 2004, as 4,684 metric tons (mt). See § 679.20(c)(3)(iii), § 679.20(c)(5), and § 679.20(a)(7)(i)(A) and (B). In accordance with § 679.20(d)(1)(iii), the directed fishery for Pacific cod by catcher vessels using trawl gear was closed, effective 1200 hrs, A.l.t., April 4, 2004 (69 FR 17982, April 6, 2004), because it was determined that the B season allocation of the 2004 Pacific cod TAC specified for catcher vessels using trawl gear had been caught.

NMFS has determined, based on updated information as of April 6, 2004, that the B season allocation of the 2004 Pacific cod TAC for catcher vessels using trawl gear has not been fully caught and that 1,500 mt remain. Therefore, NMFS is terminating the previous closure and is reopening directed fishing for Pacific cod by catcher vessels using trawl gear in the BSAI effective 1200 hrs, A.l.t., April 10, 2004.

In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will be reached after 72 hours. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher vessels using trawl gear in the BSAI effective 1200 hrs, A.l.t., April 13, 2004.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the reopening of the B season allocation of Pacific cod TAC specified for catcher vessels using trawl 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: April 9, 2004.

Alan D. Risenhoover,

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

[FR Doc. 04–8487 Filed 4–9–04; 2:50 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 69, No. 72
Wednesday, April 14, 2004

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–53–AD]

RIN 2120–AA64

Airworthiness Directives; Alexander Schleicher Model ASW 27 Sailplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Alexander Schleicher Model ASW 27 sailplanes equipped with integrated (wet inner surface) water ballast tanks in the wings, which could put the center of gravity (CG) of the sailplane out of the acceptable range. This proposed AD would require you to install a warning placard requiring pilots weighing more than 105 kg (231.5 lbs) to use the rearmost backrest hinge position; and require you to determine the forward empty CG and make any necessary adjustments. This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. We are issuing this proposed AD to correct the CG to the acceptable range when integrated ballast water tanks are installed. Failure of the sailplane to be within the acceptable CG range could result in loss of sailplane control.

DATES: We must receive any comments on this proposed AD by May 14, 2004.

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

- *By mail:* FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–53–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.
- *By fax:* (816) 329–3771.
- *By e-mail:* 9-ACE-7-Docket@faa.gov. Comments sent electronically must contain "Docket No. 2003–CE–53–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII.

You may get the service information identified in this proposed AD from Alexander Schleicher GmbH & Co., Segelflugzeugbau, D–36163 Poppenhausen, Germany.

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–53–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Office hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Gregory Davison, Aerospace Engineer, Small Airplane Directorate, ACE–112, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: 816–329–4130; facsimile: 816–329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include "AD Docket No. 2003–CE–53–AD" in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it. We will date-stamp your postcard and mail it back to you.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention To?

We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. If you contact us through a nonwritten communication and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend this proposed AD in light of those comments and contacts.

Discussion

What Events Have Caused This Proposed AD?

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified FAA that an unsafe condition may exist on certain Alexander Schleicher Model ASW 27 sailplanes with wings equipped with integrated (wet inner surface) water ballast tanks. The LBA reports that water ballast in the integral wing water ballast tanks causes a stronger nose heavy moment than the soft water ballast bags, putting the CG out of acceptable range. To compensate for this, pilots over a certain weight must only use the rearmost backrest position.

What Are the Consequences if the Condition Is Not Corrected?

Failure of the sailplane to be within the acceptable CG range could result in loss of sailplane control.

Is There Service Information That Applies to This Subject?

Alexander Schleicher has issued Technical Note No. 9, dated February 27, 2002.

What Are the Provisions of This Service Information?

The service bulletin includes procedures for: installing a warning placard, amending the manual pages, and checking forward empty weight CG.

What Action Did the LBA Take?

The LBA classified this service bulletin as mandatory and issued German AD Number 2002–086, dated March 7, 2002, to ensure the continued airworthiness of these sailplanes in Germany.

Did the LBA Inform the United States Under the Bilateral Airworthiness Agreement?

These Alexander Schleicher Model ASW 27 sailplanes are manufactured in Germany and are type-certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Under this bilateral airworthiness agreement, the LBA has kept us informed of the situation described above.

FAA's Determination and Requirements of This Proposed AD

What Has FAA Decided?

We have examined the LBA's findings, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the unsafe condition described previously is likely to exist or develop on other Alexander Schleicher Model ASW 27 sailplanes of the same type design that are registered in the United States, we are proposing AD action to prevent the sailplane from being outside of the acceptable CG range, which could result in loss of sailplane control.

What Would This Proposed AD Require?

This proposed AD would require you to install a warning placard requiring pilots weighing more than 105 kg (231.5 lbs) to use the rearmost backrest hinge position; and require you to determine the forward empty weight CG and make any necessary adjustments.

How Does the Revision To 14 CFR Part 39 Affect This Proposed AD?

On July 10, 2002, we published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Costs of Compliance

How Many Sailplanes Would This Proposed AD Impact?

We estimate that this proposed AD affects 31 sailplanes in the U.S. registry.

What Would be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Sailplanes?

We estimate the following costs to accomplish this proposed modification:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 work hour est. $60 per hour = $60	$7	$67 per airplane	$2,077

Regulatory Findings

Would This Proposed AD Impact Various Entities?

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

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

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

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 summary of the costs to comply with this proposed AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include "AD Docket No. 2003–CE–53–AD" in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Alexander Schleicher GmbH & Co.: Docket No. 2003–CE–53–AD.

When Is the Last Date I Can Submit Comments on This Proposed AD?

(a) We must receive comments on this proposed airworthiness directive (AD) by May 14, 2004.

What Other ADs Are Affected by This Action?

(b) None.

What Sailplanes Are Affected by This AD?

(c) This AD affects the following Alexander Schleicher Model ASW 27 sailplanes that are certificated in any category:

Serial numbers	Condition
(1) 27105, 27109, 27110, 27113, 27115, 27116, and 27119 through 27177.	Equipped with integrated (wet inner surface) water ballast tanks on the wing at manufacture.
(2) 27001 and up	Equipped with integrated (wet inner surface) water ballast tanks through wing replacement per Technical Note No. 2.

What is The Unsafe Condition Presented in This AD?

(d) This AD is the result of water ballast in the integral wing water ballast tanks that may cause a stronger nose heavy moment than the soft water ballast bags, putting the center-of-gravity (CG) out of acceptable range. To compensate for this, pilots over a certain weight must only use the rearmost backrest position. The actions specified in this AD are intended to correct the forward empty weight CG and prevent loss of sailplane control.

What Must I Do to Address This Problem?

(e) To address this problem, you must do the following:

Actions	Compliance	Procedures
(1) Fabricate (using letters at least 1/8-inch in height) a warning placard with the following language and install this placard in the cockpit in full view of the pilot: "When water ballast is used, pilots weighing 105 kg (231.5 lbs) or more including parachute must use the rearmost back rest hinge position!".	Warning placard must be installed within 25 hours time in service (TIS) after the effective date of this AD.	Install placard following Alexander Schleicher Technical Note No. 9, dated February 27, 2002.
(2) Determine the forward empty weight CG ..... (i) If the CG is out of acceptable range, prior to further flight, contact the manufacturer at Alexander Schleicher GmbH & Co., Segelflugzeugbau, D–36163 Poppenhausen, Germany for corrective action and perform the corrective action. (ii) If CG is within acceptable range, no further action is necessary.	Within the next 50 hours TIS after the effective date of this AD.	Check forward empty weight of CG following Alexander Schleicher Technical Note No. 9, dated February 27, 2002.

Note: Alexander Schleicher Technical Note No. 9, dated February 27, 2002, changes some pages to the maintenance manual. We recommend that you review those changes.

May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.13. The principal inspector may add comments and will send your request to the Manager, Standards Office, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, MO 64106. For information on any already approved alternative methods of compliance, contact Gregory Davison, Aerospace Engineer, Small Airplane Directorate, ACE–112, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: 816–329–4130; facsimile: 816–329–4090.

May I Get Copies of the Documents Referenced in This AD?

(g) You may get copies of the documents referenced in this AD from Alexander Schleicher GmbH & Co., Segelflugzeugbau, D–36163 Poppenhausen, Germany. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Is There Other Information That Relates to This Subject?

(h) LBA AD 2002–086, dated March 7, 2002, and Alexander Schleicher Technical Note No. 9, dated February 27, 2002 also address the subject of this AD.

Issued in Kansas City, Missouri, on April 2, 2004.

Dorenda D. Baker,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–8453 Filed 4–13–04; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MD Docket No. 04–73; FCC 04–66]

Assessment and Collection of Regulatory Fees for Fiscal Year 2004

AGENCY: Federal Communications Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Commission will revise its Schedule of Regulatory Fees in order to recover the amount of regulatory fees that Congress has required it to collect for fiscal year 2004. Section 9 of the Communications Act of 1934, as amended, provides for the annual assessment and collection of regulatory fees under sections 9(b)(2) and 9(b)(3), respectively, for annual "Mandatory Adjustments" and "Permitted Amendments" to the Schedule of Regulatory Fees.

DATES: Comments are due April 21, 2004, and reply comments are due April 30, 2004.

ADDRESSES: Federal Communications Commission, 445 12th St. SW., Washington, DC 20554.

See paragraphs 30 through 33 of the **SUPPLEMENTARY INFORMATION** for specific filing instructions.

FOR FURTHER INFORMATION CONTACT: Roland Helvajian, Office of Managing Director at (202) 418–0444 or Rob Fream, Office of Managing Director at (202) 418–0408.

SUPPLEMENTARY INFORMATION:

Adopted: March 17, 2004.
Released: March 29, 2004.
By the Commission:

1. Table of Contents

I. Introduction

1. In this Notice of Proposed Rulemaking, we propose to collect $272,958,000 in regulatory fees for Fiscal Year (FY) 2004. These fees are mandated by Congress and are collected to recover the regulatory costs associated with the Commission's

enforcement, policy and rulemaking, user information, and international activities.[1]

II. Discussion

A. Development of FY 2004 Fees

1. Calculation of Revenue and Fee Requirements

2. Each fiscal year, the Commission proportionally allocates the total amount that must be collected via regulatory fees (Attachment C).[2] For FY 2004, this allocation was done using FY 2003 revenues as a base. From this base, a revenue amount for each fee category was calculated. Each fee category was then adjusted upward by 1.5 percent to reflect the increase in regulatory fees from FY 2003 to FY 2004. These FY 2004 amounts were then divided by the number of payment units in each fee category to determine the unit fee.[3] In instances of small fees, such as licenses that are renewed over a multiyear term, the resulting unit fee was also divided by the term of the license. These unit fees were then rounded in accordance with 47 U.S.C. 159(b)(2).

2. Additional Adjustments to Payment Units

3. In calculating the FY 2004 regulatory fees proposed in Attachment D, we further adjusted the FY 2003 list of payment units (Attachment B) based upon licensee databases and industry and trade group projections. Whenever possible, we verified these estimates from multiple sources to ensure accuracy of these estimates. In some instances, Commission licensee databases were used, while in other instances, actual prior year payment records and/or industry and trade association projections were used in determining the payment unit counts.[4] Where appropriate, we adjusted and/or rounded our final estimates to take into consideration variables that may impact the number of payment units, such as waivers and/or exemptions that may be filed in FY 2004, and fluctuations in the number of licensees or station operators due to economic, technical or other reasons. Therefore, for example, when we note that our estimated FY 2004 payment units are based on FY 2003 actual payment units, we do not necessarily imply that our FY 2004 projection is exactly the same number as in FY 2003, but that we have either rounded the FY 2004 number or adjusted it slightly to account for these variables.

4. With regards to regulatory fees for AM and FM radio stations, additional factors are considered in determining the fees paid by these stations. These factors are facility attributes and the population served by the radio station. The calculation of the population served is determined by coupling current U.S. Census Bureau data with technical and engineering data, as detailed in Attachment E. Consequently, the population served, as well as the class and type of service (AM or FM), determines the regulatory fee amount to be paid.

3. Local Multipoint Distribution Service (LMDS)

5. In both 2001,[5] and in 2002,[6] the Commission denied requests to move the Local Multipoint Distribution Service (LMDS) from the Multipoint Distribution Service (MDS) fee category to the microwave fee category. In our FY 2003 *Notice of Proposed Rulemaking*,[7] we sought comment on the appropriate fee classification of LMDS. Parties commenting on this issue suggested that LMDS be classified in the microwave fee category because LMDS was more similar to services in the microwave fee category than MDS.[8] We noted certain distinctions between MDS and LMDS, and we declined to place LMDS in the microwave fee category because recent technological developments and emerging commercial applications suggested that LMDS may develop on a different track than other microwave services.[9] To better track the development of LMDS, therefore, we created a separate LMDS fee category.[10] We note that we still have under advisement a broader proceeding that addresses the policies and fee structures governing LMDS and other wireless services. Therefore, we again seek comment on the appropriate fee classification of LMDS.

B. Commercial Mobile Radio Service (CMRS) Messaging

6. In our FY 2003 Report & Order,[11] we noted that there has been a significant decline in CMRS Messaging units—from 40.8 million in FY 1997 to 19.7 million in FY 2003—a decline of 51.7 percent. In fact, in the FY 2003 regulatory fee cycle, the number of CMRS Messaging units that paid regulatory fees declined to less than 16 million. This is consistent with our Eighth Annual CMRS Competition Report, which estimates the number of paging-only subscribers at the end of 2002 to be 14.1 million units.[12] In addition, between the FY 2003 and FY 2004 regulatory fee cycle, there were no significant changes in the level of regulatory oversight for this fee category. Therefore, for the reasons outlined in our FY 2003 Report and

[1] 47 U.S.C. 159(a).

[2] The costs assigned to each service category are based upon the regulatory activities (enforcement, policy and rulemaking, user information, and international activities) undertaken by the Commission on behalf of units in each service category. It is important to note that the required increase in regulatory fee payments of aproximately 1.5 percent in FY 2004 is reflected in the revenue that is expected to be collected from each service category. Because this expected revenue is adjusted each year by the number of units in a service category, the actual fee itself is sometimes increased by a number other than 1.5 percent. For example, in industries where the number of units is declining and the expected revenue is increasing, the impact of the fee increase may be greater.

[3] In most instances, the fire amount is a flat fee per licensee or regulatee. However, in some instances the fee amount represents a unit subscriber fee (such as for Cable, Commercial Mobile Radio Service (CMRS) Cellular/Mobile and CMRS Messaging), a per unit fee (such as for International Bearer Circuits), or a fee factor per revenue dollar (Interstate Telecommunications Service Provider fee).

[4] The databases we consulted include, but are not limited to, the Commission's Universal Licensing System (ULS), International Bureau Filing System (IBFS), and Consolidated Database System (CDBS). We also consulted industry sources including but not limited to *Television & Cable Factbook* by Warren Publishing, Inc. and the *Broadcasting and Cable Yearbook* by Reed Elsevier, Inc., as well as reports generated within the Commission such as the Wireline Competition Bureau's *Trends in Telephone Service* and the Wireless Telecommunications Bureau's *Numbering Resource Utilization Forecast*. For additional information on source material, see Attachment B.

[5] *See* Assessment and Collection of Regulatory Fees for Fiscal Year 2001, *Report and Order*, 16 FCC Rcd 13525 (2001).

[6] *See* Assessment and Collection of Regulatory Fees for Fiscal year 2001, *Memorandum Opinion and Order*, 17 FCC Rcd 24920 (2002).

[7] *See* Assessment and Collection of Regulatory Fees for Fiscal Year 2003, *Notice of Proposed Rulemaking*, 18 FCC Rcd 6088–89 paragraphs 6–9 (2003) (*FY 2003 Notice of Proposed Rulemaking*).

[8] The Commission recently initiated a proceeding to facilitate the provision of high-speed mobile and fixed broadband and other advanced wireless services and to consider the possibility of merging MDS and the Instructional Television Fixed Service (ITFS) into a single Broadband Communications Service. *See* Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150–2162 and 2500–2690 MHz Bands, *Notice of Proposed Rule Making and Memorandum Opinion and Order*. 18 FCC Rcd 6722, 6797 (2003).

[9] *See* Assessment and Collection of Regulatory Fees for Fiscal Year 2003, *Report and Order*, 18 FCC Rcd 15988 paragraph 9 (2003) (*FY 2003 Report and Order*).

[10] *Id.*

[11] *See* Assessment and Collection of Regulatory Fees for Fiscal Year 2003, *Report and Order*, 18 FCC Rcd 15985 paragraph 21 (2003).

[12] Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, *Eighth Report*. 18 FCC Rcd 14783 paragraph 151 (2003) (*Eighth Annual CMRS Competition Report*).

Order[13], and because the level of regulatory oversight remained relatively the same between FY 2003 and FY 2004, we propose to maintain the CMRS Messaging subscriber regulatory fee rate at the FY 2003 level to avoid further contributing to the financial hardships associated with a declining subscriber base.

C. Proposed Procedural Changes for Notification, Assessment and Collection of Regulatory Fees

7. As was the case last year, we again propose that we will not disseminate public notices to regulatees through surface mail informing them of when regulatory fees are due. With the widespread use of the Internet, we believe we can better serve the public by providing the necessary information on its Web site. To that end, we propose to provide public notices, fact sheets and all necessary regulatory fee payment procedure information on our Web site at *http://www.fcc.gov/fees* as we have for the past several years. In the event that regulatees do not have access to the Internet, hardcopies of public notices and other relevant materials will be mailed upon request to anyone who contacts the FCC Consumer Center at (888) 225–5322. We also will continue to publish official notice of regulatory fee assessments in the **Federal Register**.

8. While we propose to make general regulatory fee information available at our Web site, rather than disseminating it to all licensees through surface mail, we propose to disseminate fee-assessment notifications to licensees in five categories through surface mail. We propose to notify the following five categories of licensees by surface mail because these licensees experienced confusion about fees and the fee-collection process in the past, or are likely to need to respond to changed collection practices in the future.

1. Media Services Licensees

9. In FY2003, the Commission mailed fee assessment notifications to media services licensees for the first time.[14] We propose to repeat this endeavor this year in a similar fashion. At this time, we are unsure of the exact postcard or letter format for assessment notifications. However, regardless of format, the content of each assessment notification would identify each licensed facility by its facility identification number, station call sign, station type and class, regulatory fee amount owed, licensee contact information and licensee federal registration number.

10. We emphasize that media services licensees would still be required to complete the Remittance Advice FCC Form 159 when submitting their fee payment. Last year, many media services licensees erroneously submitted their fee payments with an attached copy of the assessment notification that they received, rather than a completed FCC Form 159. Many licensees also submitted their payment to FCC Headquarters in Washington, DC rather than to the Mellon Bank in Pittsburgh, PA. These mistakes resulted in the delayed processing of payments and hence some became subject to the Commission's 25 percent late-payment penalty. Therefore, on this year's fee assessment notifications, we propose to include a specific notice that payments submitted to the wrong address or submitted without an FCC Form 159 will likely incur a 25 percent late-payment penalty.

2. Satellite Space Station Licensees

11. In FY 2003, the Commission mailed regulatory fee assessment letters for the first time to satellite space station licensees. We propose to repeat this endeavor this year in an identical or similar fashion. As with media services licensees, we reiterate that satellite space station licensees are still required to complete a Remittance Advice FCC Form 159 and submit their payment to the appropriate Mellon Bank Pittsburgh, PA mailing address.

3. Interstate Telecommunications Service Providers

12. As in previous years, we propose to continue to generate and mail customized Interstate Telecommunications Service Provider Worksheets (FCC Form 159–W) to Interstate Telecommunications Service Providers ("ITSPs"). The customized FCC Form 159–W serves as a regulatory fee assessment for ITSPs. Recipients of the customized FCC Form 159–W would need only sign the form and submit it along with payment to the appropriate Mellon Bank Pittsburgh, PA mailing address, in lieu of the FCC Form 159. Recipients who disagree with the assessed fee amount or other information relating to the calculation of the assessment on their customized FCC Form 159–W would complete a blank FCC Form 159–W and complete a FCC Form 159, and then submit both of these forms along with payment to the appropriate Mellon Bank Pittsburgh, PA mailing address.

4. Cable Television System Operators

13. Beginning this year, we propose to modify our payment unit assessment methodology and our fee collection procedures for the cable industry by assessing regulatory fees for individual cable operators based on cable subscriber counts that the operators themselves have reported in publicly available data sources. The primary data sources we propose to reference this year are the *Broadcasting and Cable Yearbook 2003–2004 ("Yearbook")*[15] and industry statistics publicized by the National Cable and Telecommunications Association ("NCTA").[16]

14. Under this methodology, cable operators and multiple system operators ("MSOs") would simply base their regulatory fee obligations upon their respective basic subscriber counts as reported in the data sources. Cable operators and MSOs would still be required to complete a Remittance Advice FCC Form 159 and submit their payment to the appropriate Mellon Bank Pittsburgh, PA mailing address; but they would only have to report their aggregate subscriber count on a single line entry on FCC Form 159, rather than report the counts for every community unit identifier ("CUID") that they serve.

15. In using the data sources, we propose that cable operators would first refer to NCTA's list of the 25 largest multiple-system operators ("MSOs"). Entities appearing on the list would base their fee obligations on their subscriber counts as reported on the list. MSOs and other cable operators not listed by NCTA next would refer to the Yearbook and base their fee obligations upon their aggregate system(s) basic subscriber counts as reported in the Yearbook. Any MSOs and operators not appearing on the NCTA list or in the Yearbook would then certify their aggregate basic subscriber counts as of December 31, 2003 on the Remittance Advice FCC Form 159 with the understanding that we would corroborate the certified counts with other publicly available data sources.[17]

[13] *See FY 2003 Report and Order*, 18 FCC Rcd 15985 paragraph 21 (2003).

[14] Fee assessments were issued for AM and FM Radio Stations, AM and FM Construction Permits, FM Translators/Booster, VHF and UHF Television Stations, VHF and UHF Television Construction Permits, Satellite Television Stations, Low Power Television (LPTV) Stations, and LPTV Translators/Boosters. We did not issue fee assessments for broadcast auxiliary stations in FY2003, nor will we do so this year.

[15] *Broadcasting and Cable Yearbook 2003–2004*, by Reed Elsevier, Inc., Newton, MA, 2003. Subscriber counts reported in Seciton C, "Multiple System Operators, Independent Owners and Cable Systems," page C–3.

[16] NCTA maintains an updated list of the 25 largest multiple-system operators at its web site located at *http://www.ncta.com*.

[17] Sources consulted by the Commission may include but not be limited to *Cable TV Investor* by

Continued

Cable operators that do not have access to the Internet to obtain the NCTA list or have access to the *Yearbook* would be able to contact the FCC Consumer Center at (888) 225–5322 to obtain their publicized subscriber count, if available in either data source.

16. Under this assessment methodology, the per-subscriber regulatory fee would be the same for all cable operators, regardless of company or system size, as is presently the case. Beginning this year, we would also set a *de minimis* payment exemption for operators serving less than 250 basic service subscribers throughout their entire system(s). Operators fitting into this category would not be required to submit payment, but would still be required to submit a Remittance Advice FCC Form 159 on which they certify their aggregate subscriber count.

17. We also note that beginning this year we propose to mail assessment letters to all of the MSOs and cable operators in the *Yearbook* or on the NCTA list of 25 largest MSOs. Operators not appearing in either data source would not receive an assessment; however, they would still expected to make a fee payment based on their certified basic cable subscriber counts.

18. Our proposed assessment methodology for the cable subscriber service category reduces administrative burdens for cable operators and the Commission. Each cable operator would only have to provide one payment line on FCC Form 159 rather than the dozens or even hundreds that currently must be provided by some of the larger MSOs when reporting subscriber counts for each CUID that they serve. This year's assessment model would also provide predictability for cable operators and the Commission. The precise fee obligations of cable operators and MSOs would be easily determined and would be known well in advance by both the regulatees and the Commission.

19. We solicit comment on the feasibility of this assessment proposal. Specifically, we seek comment regarding the accuracy of basic subscriber counts as furnished by NCTA and as reported in the *Yearbook* and other publicly available data sources. If the number of basic subscribers certified to be served by operators differs considerably with the numbers reported in publicly available data sources, we invite comment that would provide possible explanations for any such discrepancies. We also seek recommendations for alternative data sources that the Commission could consult with a high degree of reliability.

5. Commercial Mobile Radio Service Operators

20. Beginning this year, we propose to mail assessments to Commercial Mobile Radio Services (CMRS) cellular and mobile service providers using information provided in the *Numbering Resource Utilization Forecast* (NRUF) report.[18] Data from the NRUF report would be used to determine the amount of each regulatory fee obligation, and assessments would be mailed accordingly to cellular and other mobile service providers. The providers would still be required to submit their payment with Remittance Advice FCC Form 159 to the designated address in Pittsburgh, PA. We solicit comment on the feasibility of this assessment proposal. Specifically, we seek comment regarding the use of NRUF data as it relates to the subscriber basis upon which wireless cellular/mobile regulatory fees are calculated. We also seek comment on other data sources that would be pertinent for us to consult for calculating wireless cellular/mobile regulatory fees.

21. With the exception of the changes noted in the preceding sections, we propose to retain the procedures that we have established for the payment of regulatory fees.[19]

D. Future Streamlining of the Regulatory Fee Assessment and Collection Process

22. As an agency, we are committed to reviewing, streamlining and modernizing our statutorily required fee-assessment and collection procedures. We welcome comments on a broad range of options in this regard. As discussed briefly below, our areas of particular interest include: (1) The process for notifying licensees about changes in the annual regulatory fee schedule and how it can be improved; (2) the most effective way to disseminate regulatory fee assessments and bills, *i.e.* through surface mail, email, or some other mechanism; (3) the fee payment process, including how the agency's electronic payment system can be improved; and (4) the timing of fee payments, including whether we should alter the existing fee payment "window" in any way. Commenters should bear in mind that proposed improvements must comport with the provisions of section 9 of the Communications Act of 1934, as amended.[20]

23. With respect to disseminating assessments or bills through surface mail, we note that many licensees have multiple mailing addresses on file in the Commission's licensing databases and our Commission Registration System (CORES). We seek comment regarding to which address licensees would prefer to have bills or assessments mailed.

24. With respect to the fee payment process, we seek comment on migrating licensees to the Commission's electronic payment process known as Fee Filer, particularly in instances by which slow mail delivery may result in receiving the payment beyond the fee due date, thereby resulting in a 25 percent late-payment penalty. Should the Commission make use of Fee Filer mandatory for fees over a certain monetary level, or for licensees holding a certain number of licenses? For licensees who choose to continue to submit fee payments through surface mail to Mellon Bank in Pittsburgh, PA, we seek comment on ways to streamline the Remittance Advice Form 159. We also seek comment on ways in which we could employ information technology on the fee assessments or bills that we generate so as to enable licensees to submit their fee payments with a copy of their fee assessment or bill, in lieu of a Remittance Advice Form 159.

25. With respect to the current filing-fee window, we seek comment on whether the current time period for filing regulatory fee payments provides licensees with sufficient time to submit their filings to the Commission. In particular, we seek comment on the public benefits that might accrue from lengthening the time period for filing fee payments.

E. Procedures for Payment of Regulatory Fees

1. De Minimis Fee Payment Liability

26. As in the past, we propose that regulatees whose total regulatory fee liability, including all categories of fees for which payment is due by an entity, amounts to less than $10 will be exempted from fee payment in FY 2003. Also, per the terms of the revised cable subscriber fee assessment methodology proposed above, cable television operators serving in the aggregate less than 250 basic service subscribers would be exempted from fee payment in the cable subscriber service category.

Kagan World Media and *Television and Cable Factbook* by Warren Communications.

[18] *Numbering Resource Utilization in the United States as of June 30, 2003*, prepared by the Industry Analysis and Technology Division, Federal Communications Commission (December 2003).

[19] *See* 47 U.S.C. 159(f).

[20] *See* id. 159.

2. Standard Fee Calculations and Payment Dates

27. Consistent with past practice, the specific time for payment of standard fees will be announced in the Report and Order terminating this proceeding and will be published in the **Federal Register**. Licensees are reminded that, under our current rules, the responsibility for payment of fees by service category is as follows:

(a) *Media Services:* The responsibility for the payment of regulatory fees rests with the holder of the permit or license on October 1, 2003. However, in instances where a license or permit is transferred or assigned after October 1, 2003, responsibility for payment rests with the holder of the license or permit at the time payment is due.

(b) *Wireline (Common Carrier) Services:* Fees are not based on a subscriber, unit, or circuit count. Fees must be paid for any authorization issued on or before October 1, 2003.

(c) *Wireless Services:* Commercial Mobile Radio Service (CMRS) cellular, mobile, and messaging services (fees based upon a subscriber, unit or circuit count): The number of subscribers, units or circuits on December 31, 2003 will be used as the basis from which to calculate the fee payment. For small multi-year wireless services, the regulatory fee will be due at the time of authorization or renewal of the license, which is generally for a period of five or ten-years and paid throughout the year.

(d) *Cable Services* (fees based upon a subscriber count): To coincide with this year's proposed assessment methodology, the basic subscriber counts in NCTA's list of Top 25 MSO or in the *Broadcasting and Cable Yearbook 2003–2004* will be used as the basis from which to calculate the fee payment. For operators not on the NCTA list and not appearing in the Yearbook, the number of subscribers, units or circuits on December 31, 2003 will be used as the basis from which to calculate the fee payment.[21] CARS licensees: Fees must be paid for any authorization issued on or before October 1, 2003.

(e) *International Services:* Earth stations, geostationary orbit space stations, international public fixed radio services and international broadcast stations: Payment is calculated per operational station. Non-geostationary orbit satellite systems: Payment is calculated per operational system. The responsibility for the payment of regulatory fees rests with the holder of the permit or license on October 1, 2003. However, in instances where a license or permit is transferred or assigned after October 1, 2003, responsibility for payment rests with the holder of the license or permit at the time payment is due. International bearer circuits: Payment is calculated per active circuit as of December 31, 2003.

28. We strongly recommend that entities submitting more than twenty-five (25) Form 159–Cs use the electronic-fee-filer program when submitting their regulatory fee payment. We will accept fee payments made in advance of the normal formal window for the payment of regulatory fees for the convenience of payers.

F. Enforcement

29. Finally, as a reminder to all licensees, section 159(c) of the Communications Act requires us to impose an additional charge as a penalty for late payment of any regulatory fee. As in years past, a late payment penalty of 25 percent of the amount of the required regulatory fee will be assessed on the first day following the deadline date for filing of these fees. Failure to pay regulatory fees and/or any late penalty will subject regulatees to sanctions, including the provisions set forth in the Debt Collection Improvement Act of 1996 ("DCIA"). We also assess administrative processing charges on delinquent debts to recover additional costs incurred in processing and handling the related debt pursuant to the DCIA and section 1.1940(d) of the Commission's rules. These administrative processing charges will be assessed on any delinquent regulatory fee, in addition to the 25 percent late charge penalty. Partial underpayments of regulatory fees are treated in the following manner. The licensee will be given credit for the amount paid, but if it is later determined that the fee paid is incorrect or was submitted after the deadline date, the 25 percent late charge penalty will be assessed on the portion that is submitted after the filing window. Failure to pay regulatory fees can result in the initiation of a proceeding to revoke any and all authorizations held by the delinquent payer.[22]

III. Procedural Matters

A. Comment Period and Procedures

30. Pursuant to 47 CFR 1.415, 1.419, interested parties may file comments on or before April 21, 2004, and reply comments on or before April 30, 2004. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.[23]

31. Comments filed through the ECFS are sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must submit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen. commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To receive filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, "get form <your e-mail address.>" A sample form and directions will be sent in reply.

32. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be hand delivered or by messenger delivery, sent by commercial overnight courier, or mailed by first-class mail through the U.S. Postal Service (please note that the Commission continues to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial

[21] Cable system operators and MSOs that are not listed in any of the data sources indicated in this item are to compute their subscribers as follows: Number of single family dwellings + number of individual households in multiple dwelling unit (apartments, condominiums, mobile home parks, etc.) paying at the basic subscriber rate + bulk rate customers + courtesy and free service. Note: Bulk-Rate Customers = Total annual bulk-rate charge divided by basic annual subscription rate for individual households. Operators may base their count on "a typical day in the last full week" of December 2003, rather than on a count as of December 31, 2003.

[22] See 47 CFR 1.1164.

[23] See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121, May 1, 1998, available at *http://www.fcc.gov/Bureaus/OGC/Orders/1998/fcc98056.pdf*.

overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission.

33. Parties who choose to file by paper must also submit their comments on diskette. Two copies of the diskettes must be submitted. One copy is to be sent to Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The other copy is to be sent to Office of Managing Director, Federal Communications Commission, 445 12th Street, SW., 1–C848, Washington, DC 20554. These submissions must be in a Microsoft Windows™-compatible format on a 3.5″ floppy diskette. The diskette should be clearly labeled with the commenter's name, proceeding (including the lead docket number MD Docket No. 04–73), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Copy—Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file.

34. The public may view the documents filed in this proceeding during regular business hours in the FCC Reference Center, Federal Communications Commission, Room CY–A257, 445 12th Street, SW., Washington, DC 20554, and through the Commission's Electronic Comment Filing System (ECFS) *http://www.gullfoss2.fcc.gov/prod/ecfs/comsrch_v2.cgi*. Those seeking materials in alternative formats (computer diskette, large print, audio recording, and Braille) should contact Brian Millin at (202) 418–7426 voice, (202) 418–7365 TTY, or *bmillin@fcc.gov*.

B. Ex Parte Rules

35. This is a permit-but-disclose notice and comment rulemaking proceeding. *Ex Parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed pursuant to the Commission's rules.[24]

C. Initial Regulatory Flexibility Analysis

36. As required by the Regulatory Flexibility Act,[25] we have prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible impact on small entities of the proposals suggested in this document. The IRFA is set forth as Attachment A. Written public comments are requested with respect to the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the rest of the NPRM, and must have a separate and distinct heading, designating the comments as responses to the IRFA. The Consumer Information Bureau, Reference Information Center, shall send a copy of this NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act.

D. Authority and Further Information

37. Authority for this proceeding is contained in section 4(i) and (j), 8, 9, and 303(r) of the Communications Act of 1934, as amended. It is ordered that this NPRM is adopted.[26] It is further ordered that the Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this NPRM, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration. Further information about this proceeding may be obtained by contacting the FCC Consumer Center at (888) 225–5322.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Attachment A—Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act (RFA),[27] the Commission prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules in the present *Notice of Proposed Rulemaking, In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2004*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the IRFA provided in paragraph 30. The Commission will send a copy of the *NPRM*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.[28] In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.[29]

I. Need for, and Objectives of, the Proposed Rules

2. This rulemaking proceeding is initiated to obtain comments concerning the Commission's proposed amendment of its Schedule of Regulatory Fees in the amount of $272,958,000, the amount that Congress has required the Commission to recover. The Commission seeks to collect the necessary amount through its proposed Schedule of Regulatory Fees in the most efficient manner possible and without undue public burden.

II. Legal Basis

3. This action, including publication of proposed rules, is authorized under sections (4)(i) and (j), 9, and 303(r) of the Communications Act of 1934, as amended.[30]

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

4. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[31] The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[32] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[33] A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[34] Nationwide, there are approximately 22.4 million small organizations.[35] In addition, a small organization is generally "any not-for-profit enterprise which is independently owned and operated and

[24] 47 CFR 1.1203 and 1.1206(b).

[25] *See* 5 U.S.C. 603.

[26] 47 U.S.C. 154(i)–(j), 159, and 303(r).

[27] 5 U.S.C. 603. The RFA, 5 U.S.C. 601–612 has been amended by the Contract With America Advancement Act of 1996, Pub. L. 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[28] 5 U.S.C. 603(a).

[29] *Id.*

[30] 47 U.S.C 154(i) and (j), 159, and 303(r).

[31] 5 U.S.C. 603(b)(3).

[32] U.S.C. 601(6).

[33] 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**." 5 U.S.C. 601(3).

[34] Small Business Act, 15 U.S.C. 632 (1996).

[35] *See* SBA, *Programs and Services*, SBA Pamphlet No. CO–0028, at page 40 (July 2002).

is not dominant in its field."[36] Nationwide, as of 1992, there were approximately 275,801 small organizations.[37] The term "small governmental jurisdiction" is defined as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."[38] As of 1997, there were about 87,453 governmental jurisdictions in the United States.[39] This number includes 39,044 county governments, municipalities, and townships, of which 37,546 (approximately 96.2%) have populations of fewer than 50,000, and of which 1,498 have populations of 50,000 or more. Thus, we estimate the number of small governmental jurisdictions overall to be 84,098 or fewer.

Cable Services or Systems

5. Cable and Other Program Distribution. The SBA has developed a small business size standard for cable and other program distribution services, which includes all such companies generating $12.5 million or less in revenue annually.[40] This category includes, among others, cable operators, direct broadcast satellite ("DBS") services, home satellite dish ("HSD") services, multipoint distribution services ("MDS"), multichannel multipoint distribution service ("MMDS"), Instructional Television Fixed Service ("ITFS"), local multipoint distribution service ("LMDS"), satellite master antenna television ("SMATV") systems, and open video systems ("OVS"). According to the Census Bureau data, there are 1,311 total cable and other pay television service firms that operate throughout the year of which 1,180 have less than $10 million in revenue.[41] We address below each service individually to provide a more precise estimate of small entities.

6. Cable Operators. The Commission has developed, with SBA's approval, our own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide.[42] We last estimated that there were 1,439 cable operators that qualified as small cable companies.[43] Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators that may be affected by our action.

7. The Communications Act, as amended, also contains a size standard for a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000."[44] The Commission has determined that there are 65,000,000 subscribers in the United States. Therefore, an operator serving fewer than 650,000 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate.[45] Based on available data, we find that the number of cable operators serving 650,000 subscribers or less totals approximately 1,450.[46] Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

8. Direct Broadcast Satellite ("DBS") Service. Because DBS provides subscription services, DBS falls within the SBA-recognized definition of cable and other program distribution services.[47] This definition provides that a small entity is one with $12.5 million or less in annual receipts.[48] There are four licensees of DBS services under part 100 of the Commission's rules. Three of those licensees are currently operational. Two of the licensees that are operational have annual revenues that may be in excess of the threshold for a small business.[49] The Commission, however, does not collect annual revenue data for DBS and, therefore, is unable to ascertain the number of small DBS licensees that could be impacted by these proposed rules. DBS service requires a great investment of capital for operation, and we acknowledge, despite the absence of specific data on this point, that there are entrants in this field that may not yet have generated $12.5 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated.

9. Home Satellite Dish ("HSD") Service. Because HSD provides subscription services, HSD falls within the SBA-recognized definition of cable and other program distribution services.[50] This definition provides that a small entity is one with $12.5 million or less in annual receipts.[51] The market for HSD service is difficult to quantify.[52] Indeed, the service itself bears little resemblance to other MVPDs. HSD owners have access to more than 265 channels of programming placed on C-band satellites by programmers for receipt and distribution by MVPDs, of which 115 channels are scrambled and approximately 150 are unscrambled.[53] HSD owners can watch unscrambled channels without paying a subscription fee. To receive scrambled channels, however, an HSD owner must purchase an integrated receiver-decoder from an equipment dealer and pay a subscription fee to an HSD programming package. Thus, HSD users include: (1) Viewers who subscribe to a packaged programming service, which affords them access to most of the same programming provided to subscribers of other MVPDs; (2) viewers who receive only non-subscription programming; and (3) viewers who receive satellite programming services illegally without subscribing. Because scrambled packages of programming are most specifically intended for retail

[36] 5 U.S.C. 601(4).

[37] U.S. Bureau of the Census, 1992 Economic Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

[38] 5 U.S.C. 601(5).

[39] U.S. Census Bureau, Statistical Abstract of the United States: 2000, section 9, pages 299–300, Tables 490 and 492.

[40] 13 CFR 121.201, NAICS code 517510 (formerly 513220). This NAICS code applies to all services listed in this paragraph.

[41] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1997 Economic Census, Subject Series—Establishment and Firm Size, Information Sector 51, Table 4 at 50 (2000). The amount of $10 million was used to estimate the number of small business firms because the relevant Census categories stopped at $9,999,999 and began at $10,000,000. No category for $12.5 million existed. Thus, the number is as accurate as it is possible to calculate with the available information.

[42] 47 CFR 76.901(e). The Commission developed this definition based on its determinations that a small cable system operator is one with annual revenues of $100 million or less. Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd. 7393 (1995).

[43] Paul Kagan Associates, Inc., *Cable TV Investor*, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

[44] 47 U.S.C. 543(m)(2).

[45] 47 CFR 76.1403(b).

[46] Paul Kagan Associates, Inc., *Cable TV Investor*, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

[47] 13 CFR 121.201, NAICS code 517510 (formerly 513220).

[48] Id.

[49] Id.

[50] 13 CFR 121.201, NAICS code 517510 (formerly 513220).

[51] Id.

[52] See, however, the census data for Cable and Other Program Distribution, supra.

[53] Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming, 12 FCC Rcd 4358, 4385 (1996) ("Third Annual Report").

consumers, these are the services most relevant to this discussion.[54]

10. Satellite Master Antenna Television ("SMATV") Systems. The SBA definition of small entities for cable and other program distribution services includes SMATV services and, thus, small entities are defined as all such companies generating $12.5 million or less in annual receipts.[55] Industry sources estimate that approximately 5,200 SMATV operators were providing service as of December 1995.[56][56] Other estimates indicate that SMATV operators serve approximately 1.5 million residential subscribers as of July 2001.[57] The best available estimates indicate that the largest SMATV operators serve between 15,000 and 55,000 subscribers each. Most SMATV operators serve approximately 3,000–4,000 customers. Because these operators are not rate regulated, they are not required to file financial data with the Commission. Furthermore, we are not aware of any privately published financial information regarding these operators. Based on the estimated number of operators and the estimated number of units served by the largest ten SMATVs, we believe that a substantial number of SMATV operators qualify as small entities.

11. Open Video Systems ("OVS"). Because OVS operators provide subscription services,[58] OVS falls within the SBA-recognized definition of cable and other program distribution services.[59] This definition provides that a small entity is one with $12.5 million or less in annual receipts.[60] The Commission has certified 25 OVS operators with some now providing service. Affiliates of Residential Communications Network, Inc. ("RCN") received approval to operate OVS systems in New York City, Boston, Washington, DC and other areas. RCN has sufficient revenues to assure us that they do not qualify as small business entities. Little financial information is available for the other entities authorized to provide OVS that are not yet operational. Given that other entities have been authorized to provide OVS service but have not yet begun to generate revenues, we conclude that at least some of the OVS operators qualify as small entities.

12. Electronics Equipment Manufacturers. Rules adopted in this proceeding could apply to manufacturers of DTV receiving equipment and other types of consumer electronics equipment. The SBA has developed definitions of small entity for manufacturers of audio and video equipment[61] as well as radio and television broadcasting and wireless communications equipment.[62] These categories both include all such companies employing 750 or fewer employees. The Commission has not developed a definition of small entities applicable to manufacturers of electronic equipment used by consumers, as compared to industrial use by television licensees and related businesses. Therefore, we will utilize the SBA definitions applicable to manufacturers of audio and visual equipment and radio and television broadcasting and wireless communications equipment, since these are the two closest NAICS Codes applicable to the consumer electronics equipment manufacturing industry. However, these NAICS categories are broad and specific figures are not available as to how many of these establishments manufacture consumer equipment. According to the SBA's regulations, an audio and visual equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern.[63] Census Bureau data indicates that there are 554 U.S. establishments that manufacture audio and visual equipment, and that 542 of these establishments have fewer than 500 employees and would be classified as small entities.[64] The remaining 12 establishments have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees and therefore, also qualify as small entities under the SBA definition. Under the SBA's regulations, a radio and television broadcasting and wireless communications equipment manufacturer must also have 750 or fewer employees in order to qualify as a small business concern.[65] Census Bureau data indicates that there 1,215 U.S. establishments that manufacture radio and television broadcasting and wireless communications equipment, and that 1,150 of these establishments have fewer than 500 employees and would be classified as small entities.[66] The remaining 65 establishments have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees and therefore, also qualify as small entities under the SBA definition. We therefore conclude that there are no more than 542 small manufacturers of audio and visual electronics equipment and no more than 1,150 small manufacturers of radio and television broadcasting and wireless communications equipment for consumer/household use.

Wireline Competition Services and Related Entities

13. In this section, we further describe and estimate the number of small entity licensees and regulatees that may be affected by rules adopted herein. The most reliable source of information regarding the total number of certain common carriers and related providers nationwide, as well as the number of commercial wireless entities, appears to be the data that the Commission publishes in its Trends in Telephone Service report.[67] The SBA has developed small business size standards for wireline and wireless small businesses with three commercial census categories of Wired Telecommunications Carriers,[68] Paging,[69] and Cellular and Other Wireless Telecommunications.[70] Under these categories, a business is small if it has 1,500 or fewer employees. Below, using the above size standards and others, we discuss the total estimate

[54] Id. at 4385.

[55] 13 CFR 121.201, NAICS code 517510 (formerly 513220).

[56] *See* Third Annual Report, 12 FCC Rcd at 4403–4.

[57] *See* Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming, 17 FCC Rcd 1244, 1281 (2001) ("Eighth Annual Report").

[58] 58 See 47 U.S.C. 573.

[59] 59 13 CFR 121.201, NAICS code 517510 (formerly 513220).

[60] Id.

[61] 13 CFR 121.201, NAICS code 334310.

[62] 13 CFR 121.201, NAICS code 334220.

[63] 13 CFR 121.201, NAICS code 334310.

[64] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1997 Economic Census, Industry Series—Manufacturing, Audio and Video Equipment Manufacturing, Table 4 at 9 (1999). The amount of 500 employees was used to estimate the number of small business firms because the relevant Census categories stopped at 499 employees and began at 500 employees. No category for 750 employees existed. Thus, the number is as accurate as it is possible to calculate with the available information.

[65] 13 CFR 121.201, NAICS code 334220.

[66] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1997 Economic Census, Industry Series—Manufacturing, Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, Table 4 at 9 (1999). The amount of 500 employees was used to estimate the number of small business firms because the relevant Census categories stopped at 499 employees and began at 500 employees. No category for 750 employees existed. Thus, the number is as accurate as it is possible to calculate with the available information.

[67] FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, Trends in Telephone Service, Table 5.3 (August 2003) (hereinafter Telephone Trends Report).

[68] 13 CFR 121.201, North American Industry Classification System (NAICS) code 513310 (changed to 517110 in October of 2002).

[69] 13 CFR 121.201, NAICS code 513321 (changed to 517211 in October of 2002).

[70] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October of 2002).

numbers of small businesses that might be affected by our actions.

14. We have included small incumbent local exchange carriers (LECs) in this present RFA analysis. As noted above, a "small business" under the RFA is one that, inter alia, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation." [71] The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope.[72] We have therefore included small incumbent LECs in this present RFA analysis, although we emphasize that this RFA action has no effect on the Commission's analyses and determinations in other, non-RFA contexts.

15. Wired Telecommunications Carriers. The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.[73] According to Census Bureau data for 1997, there were 2,225 firms in this category, total, that operated for the entire year.[74] Of this total, 2,201 firms had employment of 999 or fewer employees, and an additional 24 firms had employment of 1,000 employees or more.[75] Thus, under this size standard, the majority of firms can be considered small.

16. Incumbent Local Exchange Carriers (ILECs). Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent local exchange services. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[76] According to Commission data, 1,337 carriers reported that they were engaged in the provision of local exchange services.[77] Of these 1,337 carriers, an estimated 1,032 have 1,500 or fewer employees and 305 have more than 1,500 employees.[78] Consequently, the Commission estimates that most providers of local exchange service are small businesses that may be affected by the rules and policies adopted herein.

17. Competitive Local Exchange Carriers (CLECs). Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to providers of competitive local exchange services or to competitive access providers or to "Other Local Exchange Carriers," all of which are discrete categories under which Telecommunications Relay Service (TRS) data are collected. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[79] According to Commission data,[80] 609 companies reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 609 companies, an estimated 458 have 1,500 or fewer employees and 151 have more than 1,500 employees.[81] In addition, 51 carriers reported that they were "Other Local Exchange Carriers." Of the 51 "Other Local Exchange Carriers," an estimated 50 have 1,500 or fewer employees and one has more than 1.500 employees.[82] Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, and "Other Local Exchange Carriers" are small entities that may be affected by the rules and policies adopted herein.

18. Local Resellers. The SBA has developed a size standard for small businesses within the category of Telecommunications Resellers. Under that SBA size standard, such a business is small if it has 1,500 or fewer employees.[83] According to Commission data, 133 companies reported that they were engaged in the provision of local resale services.[84] Of these 133 companies, an estimated 127 have 1,500 or fewer employees and six, alone or in combination with affiliates, have more than 1,500 employees.[85] Consequently, the Commission estimates that there are 127 or fewer local resellers that are small entities that may be affected by the rules and policies proposed herein.

19. Toll Resellers. The SBA has developed a size standard for small businesses within the category of Telecommunications Resellers. Under that SBA size standard, such a business is small if it has 1,500 or fewer employees.[86] According to Commission data, 625 companies reported that they were engaged in the provision of toll resale services.[87] Of these 625 companies, an estimated 590 have 1,500 or fewer employees and 35, alone or in combination with affiliates, have more than 1,500 employees.[88] Consequently, the Commission estimates that there are 590 or fewer toll resellers that are small entities that may be affected by the rules and policies proposed herein.

20. Interexchange Carriers (IXCs). Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to interexchange services. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[89] According to Commission data, 261 companies reported that their primary telecommunications service activity was the provision of interexchange services.[90] Of these 261 companies, an estimated 223 have 1,500 or fewer employees and 38 have more than 1,500 employees.[91] Consequently, the Commission estimates that the majority of interexchange carriers are small entities that may be affected by the rules and policies adopted herein.

21. Payphone Service Providers (PSPs). Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to payphone service providers. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer

[71] 5 U.S.C. 601(3).

[72] *See* Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to Chairman William E. Kennard, FCC (May 27, 1999). The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." See 5 U.S.C. 632(a) (Small Business Act); 5 U.S.C. 601(3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 CFR 121.102(b).

[73] 13 CFR 121.201, NAICS code 513310 (changed to 517110 in October 2002).

[74] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 5, NAICS code 513310 (issued October 2000).

[75] Id. The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1,000 employees or more."

[76] 13 CFR 121.201, NAICS code 513310 (changed to 517110 in October of 2002).

[77] *Telephone Trends Report* at Table 5.3.

[78] Id.

[79] 13 CFR 121.201, NAICS code 513310 (changed to 517110 in October of 2002).

[80] *Telephone Trends Report* at Table 5.3.

[81] Id.

[82] Id.

[83] 13 CFR 121.201, NAICS code 513330 (changed to 517310 in October of 2002).

[84] *Telephone Trends Report* at Table 5.3.

[85] Id.

[86] 13 CFR 121.201, NAICS code 513330 (changed to 517310 in October of 2002).

[87] *Telephone Trends Report* at Table 5.3.

[88] Id.

[89] 13 CFR 121.201, NAICS code 513310 (changed to 517110 in October of 2002).

[90] *Telephone Trends Report* at Table 5.3.

[91] Id.

employees.[92] According to Commission data, 761 companies reported that they were engaged in the provision of payphone services.[93] Of these 761 payphone service providers, an estimated 757 have 1,500 or fewer employees and four have more than 1,500 employees.[94] Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by the rules and policies adopted herein.

22. Operator Service Providers (OSPs). Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to operator service providers. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[95] According to Commission data, 23 companies reported that they were engaged in the provision of operator services.[96] Of these 23 companies, an estimated 22 have 1,500 or fewer employees and one has more than 1,500 employees.[97] Consequently, the Commission estimates that the majority of operator service providers are small entities that may be affected by the rules and policies adopted herein.

23. Prepaid Calling Card Providers. The SBA has developed a size standard for a small business within the category of Telecommunications Resellers. Under that SBA size standard, such a business is small if it has 1,500 or fewer employees.[98] According to Commission data, 37 companies reported that they were engaged in the provision of prepaid calling cards.[99] Of these 37 companies, an estimated 36 have 1,500 or fewer employees and one had more than 1,500 employees.[100] Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by the rules and policies adopted herein.

24. Satellite Service Carriers. The SBA has developed a size standard for small businesses within the category of Satellite Telecommunications. Under that SBA size standard, such a business is small if it has 1,500 or fewer employees.[101] According to Commission data, 34 carriers reported that they were engaged in the provision of satellite services.[102] Of these 34 carriers, an estimated 29 have 1,500 or fewer employees and five, alone or in combination with affiliates, have more than 1,500 employees.[103] Consequently, the Commission estimates that there are 34 or fewer satellite service carriers which are small businesses that may be affected by the rules and policies proposed herein.

25. Other Toll Carriers. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to "Other Toll Carriers." This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[104] According to Commission data, 92 companies reported that their primary telecommunications service activity was the provision of "Other Toll Services."[105] Of these 92 companies, an estimated 82 have 1,500 or fewer employees and two have more than 1,500 employees.[106] Consequently, the Commission estimates that most "Other Toll Carriers" are small entities that may be affected by the rules and policies adopted herein.

International Services

26. The Commission has not developed a definition of small entities applicable to licensees in the international services. Therefore, the applicable definition of small entity is generally the definition under the SBA rules applicable to Communications Services, Not Elsewhere Classified (NEC).[107] This definition provides that a small entity is expressed as one with $11.0 million or less in annual receipts.[108] According to the Census Bureau, there were a total of 848 communications services providers, NEC, in operation in 1992, and a total of 775 had annual receipts of less than $10.0 million.[109] The Census report does not provide more precise data.

27. International Broadcast Stations. Commission records show that there are approximately 19 international high frequency broadcast station authorizations. We do not request nor collect annual revenue information, and are unable to estimate the number of international high frequency broadcast stations that would constitute a small business under the SBA definition. However, the Commission estimates that only six international high frequency broadcast stations are subject to regulatory fee payments.

28. International Public Fixed Radio (Public and Control Stations). There is one licensee in this service subject to payment of regulatory fees, and the licensee does not constitute a small business under the SBA definition.

29. Fixed Satellite Transmit/Receive Earth Stations. There are approximately 3,400 earth station authorizations, a portion of which are Fixed Satellite Transmit/Receive Earth Stations. We do not request nor collect annual revenue information, and are unable to estimate the number of the earth stations that would constitute a small business under the SBA definition.

30. Fixed Satellite Small Transmit/Receive Earth Stations. There are approximately 3,400 earth station authorizations, a portion of which are Fixed Satellite Small Transmit/Receive Earth Stations. We do not request nor collect annual revenue information, and are unable to estimate the number of fixed small satellite transmit/receive earth stations that would constitute a small business under the SBA definition.

31. Fixed Satellite Very Small Aperture Terminal (VSAT) Systems. These stations operate on a primary basis, and frequency coordination with terrestrial microwave systems is not required. Thus, a single "blanket" application may be filed for a specified number of small antennas and one or more hub stations. There are 485 current VSAT System authorizations. We do not request nor collect annual revenue information, and are unable to estimate the number of VSAT systems that would constitute a small business under the SBA definition.

32. Mobile Satellite Earth Stations. There are 21 licensees. We do not

[92] 13 CFR 121.201, NAICS code 513310 (changed to 517110 in October of 2002).

[93] *Telephone Trends Report* at Table 5.3.

[94] Id.

[95] 13 CFR 121.201, NAICS code 513310 (changed to 517110 in October of 2002).

[96] *Telephone Trends Report* at Table 5.3.

[97] Id.

[98] 13 CFR 121.201, NAICS code 513330 (changed to 517310 in October of 2002).

[99] *Telephone Trends Report* at Table 5.3.

[100] Id.

[101] CFR 121.201, NAICS code 513340 (changed to 517410 in October of 2002).

[102] *Telephone Trends Report* at Table 5.3.

[103] Id.

[104] 13 CFR 121.201, NAICS code 513310 (changed to 517110 in October of 2002).

[105] *Telephone Trends Report* at Table 5.3.

[106] *Id.*

[107] An exception is the Direct Broadcast Satellite (DBS) Service, *infra*.

[108] 13 CFR 121.201, NAICS codes 48531, 513322, 51334, and 51339.

[109] *1992 Economic Census Industry and Enterprise Receipts Size Report*, Table 2D, NAICS codes 48531, 513322, 51334, and 513391 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration).

request nor collect annual revenue information, and are unable to estimate the number of mobile satellite earth stations that would constitute a small business under the SBA definition.

33. Radio Determination Satellite Earth Stations. There are four licensees. We do not request nor collect annual revenue information, and are unable to estimate the number of radio determination satellite earth stations that would constitute a small business under the SBA definition.

34. Space Stations (Geostationary). There are presently an estimated 77 Geostationary Space Station authorizations. We do not request nor collect annual revenue information, and are unable to estimate the number of geostationary space stations that would constitute a small business under the SBA definition.

35. Space Stations (Non-Geostationary). There are presently five Non-Geostationary Space Station authorizations. We do not request nor collect annual revenue information, and are unable to estimate the number of non-geostationary space stations that would constitute a small business under the SBA definition.

36. Direct Broadcast Satellites. Because DBS provides subscription services, DBS falls within the SBA-recognized definition of "Cable and Other Pay Television Services." [110] This definition provides that a small entity is one with $11.0 million or less in annual receipts.[111] Currently, there are nine DBS authorizations, though there are only two DBS companies in operation at this time. We do not request nor collect annual revenue information for DBS services, and are unable to determine the number of DBS operators that would constitute a small business under the SBA definition.

Media Services

37. Television Broadcasting. The Small Business Administration defines a television broadcasting station that has no more than $12 million in annual receipts as a small business.[112] Business concerns included in this industry are those "primarily engaged in broadcasting images together with sound." [113] According to Commission staff review of the BIA Publications, Inc. Master Access Television Analyzer Database as of May 16, 2003, about 814 of the 1,220 commercial television stations in the United States have revenues of $12 million or less. We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations [114] must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. There are also 2,127 low power television stations (LPTV).[115] Given the nature of this service, we will presume that all LPTV licensees qualify as small entities under the SBA definition.

38. In addition, an element of the definition of "small business" is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. Also as noted, an additional element of the definition of "small business" is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

39. Radio Broadcasting. The SBA defines a radio broadcast entity that has $6 million or less in annual receipts as a small business.[116] Business concerns included in this industry are those "primarily engaged in broadcasting aural programs by radio to the public.[117] According to Commission staff review of the BIA Publications, Inc., Master Access Radio Analyzer Database, as of May 16, 2003, about 10,427 of the 10,945 commercial radio stations in the United States have revenue of $6 million or less. We note, however, that many radio stations are affiliated with much larger corporations with much higher revenue, and that in assessing whether a business concern qualifies as small under the above definition, such business (control) affiliations [118] are included.[119] Our estimate, therefore likely overstates the number of small businesses that might be affected by our action.

40. Auxiliary, Special Broadcast and Other Program Distribution Services. This service involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit back to the station). The Commission has not developed a definition of small entities applicable to broadcast auxiliary licensees. The applicable definitions of small entities are those, noted previously, under the SBA rules applicable to radio broadcasting stations and television broadcasting stations.[120]

41. The Commission estimates that there are approximately 3,790 translators and boosters. The Commission does not collect financial information on any broadcast facility, and the Department of Commerce does not collect financial information on these auxiliary broadcast facilities. We believe that most, if not all, of these auxiliary facilities could be classified as small businesses by themselves. We also recognize that most commercial translators and boosters are owned by a parent station which, in some cases, would be covered by the revenue definition of small business entity discussed above. These stations would likely have annual revenues that exceed the SBA maximum to be designated as a small business ($5 million for a radio

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[110] 13 CFR 121.201, NAICS codes 51321 and 51322.

[111] *Id.*

[112] *See* OMB, North American Industry Classification System: United States, 1997 at 509 (1997) (NAICS code 513120, which was changed to code 515120 in October 2002).

[113] OMB, North American Industry Classification System: United States, 1997, at 509 (1997) (NAICS code 513120, which was changed to code 51520 in October 2002). This category description continues, "These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studios, from an affiliated network, or from external sources." Separate census categories pertain to businesses primarily engaged in producing programming. *See id.* at 502–05, NAICS code 51210. Motion Picture and Video Production: code 512120, Motion Picture and Video Distribution, code 512191, Teleproduction and Other Post-Production Services, and code 512199, Other Motion Picture and Video Industries.

[114] "Concerns are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has the power to control both." 13 CFR 121.103(a)(1).

[115] FCC News Release, "Broadcast Station Totals as of September 30, 2002."

[116] *See* OMB, North American Industry Classification System: United States, 1997, at 509 (1997) (Radio Stations) (NAICS code 513111, which was changed to code 515112 in October 2002).

[117] *Id.*

[118] "Concerns are affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both." 13 CFR 121.103(a)(1).

[119] "SBA counts the receipts or employees of the concern whose size is at issue and those of all its domestic and foreign affiliates, regardless of whether the affiliates are organized for profit, in determining the concern's size." 13 CFR 121(a)(4).

[120] 13 CFR 121.201, NAICS codes 513111 and 513112.

station or $10.5 million for a TV station). Furthermore, they do not meet the Small Business Act's definition of a "small business concern" because they are not independently owned and operated.[121]

Wireless and Commercial Mobile Services

42. Wireless Service Providers. The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of Paging[122] or Cellular and Other Wireless Telecommunications.[123] Under both of those SBA size standards, such a business is small if it has 1,500 or fewer employees.[124] For the census category of Paging, Census Bureau data for 1997 show that there were 1,320 firms in this category, total, that operated for the entire year.[125] Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional 17 firms had employment of 1,000 employees or more.[126] Thus, under this category and associated small business size standard, the great majority of firms can be considered small. For the census category of Cellular and Other Wireless Telecommunications firms, Census Bureau data for 1997 show that there were 977 firms in this category, total, that operated for the entire year.[127] Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more.[128] Thus, under this second category and size standard, the great majority of firms can, again, be considered small.

43. Broadband Personal Communications Service. The Broadband Personal Communications Service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of $40 million or less in the three previous calendar years.[129] For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[130] These standards defining "small entity" in the context of broadband PCS auctions have been approved by the SBA.[131] No small businesses within the SBA-approved small business size standard bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F.[132] On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses. There were 48 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as "small" or "very small" businesses. Based on this information, the Commission concludes that the number of small broadband PCS licensees will include the 90 winning C Block bidders, the 93 qualifying bidders in the D, E, and F Block auctions, the 48 winning bidders in the 1999 re-auction, and the 29 winning bidders in the 2001 re-auction, for a total of 260 small entity broadband PCS providers, as defined by the SBA small business size standards and the Commission's auction rules. Consequently, the Commission estimates that 260 broadband PCS providers are small entities that may be affected by the rules and policies adopted herein.

44. Narrowband Personal Communications Services. To date, five auctions of narrowband personal communications services (PCS) licenses have been conducted. The first two auctions, Auction No. 1 ("Nationwide Narrowband PCS Auction") and Auction No. 3 ("Regional Narrowband PCS Auction"), were held in 1994 and had only a one-tiered small business size standard. "Small businesses" were entities with average gross revenues for the prior three calendar years of $40 million or less. Through these first two auctions, the Commission awarded 40 licenses,[133] of which 11 were obtained by small businesses. To ensure meaningful participation of small business entities in future auctions, the Commission adopted a two-tiered small business size standard in the Narrowband PCS Second Report and Order.[134] A "small business" is an entity that, together with affiliates and controlling interests, has average annual gross revenues for the three preceding years of not more than $40 million. A "very small business" is an entity that, together with affiliates and controlling interests, has average annual gross revenues for the three preceding years of not more than $15 million. In 1998, the SBA approved these small business size standards.[135] In October of 2001, the Commission held a narrowband PCS auction, Auction No. 41, and in September of 2003, the Commission held two narrowband PCS auctions, Auction No. 50 and Auction No. 51. Through these three auctions, 370 licenses were won, of which 364 were won by very small businesses. Twelve of the 25 winning bidders in the five auctions were either small or very small businesses (four of the fifteen winning bidders in the two narrowband PCS auctions held in 1994 were small businesses, and eight of the ten winning bidders in the three narrowband PCS auctions held after 1998 were very small

[121] 15 U.S.C. 632.

[122] 13 CFR 121.201, NAICS code 513321 (changed to 517211 in October of 2002).

[123] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October of 2002).

[124] *Id.*

[125] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Employment Size of Firms Subject to Federal Income Tax: 1997," Table 5, NAICS code 513321 (issued Oct. 2000).

[126] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1,000 employees or more."

[127] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Employment Size of Firms Subject to Federal Income Tax: 1997," Table 5, NAICS code 513322 (issued Oct. 2000).

[128] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1,000 employees or more."

[129] See Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, WT Docket No. 96–59, *Report ond Order*, 11 FCC Rcd 7824 paragraphs 57–60 (1996); See also 47 CFR 24.720(b).

[130] See Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, WT Docket No. 96–59, *Report ond Order*, 11 FCC Rcd 7824 paragraphs 57–60 (1996).

[131] See, e.g., Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PP Docket No. 93–253, Fifth Report and Order, 9 FCC Rcd 5532, 5581–84 paragraphs 115–17 (1994), 59 FR 37566 (July 22, 1994).

[132] FCC News, Broadband PCS, D, E and F Block Auction Closes, No. 71744 (rel. Jan. 14, 1997). See also Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses, WT Docket No. 97–82, *Second Report and Order*, 12 FCC Rcd 16436 (1997), 62 FR 55348 (Oct. 24,1997).

[133] An additional nationwide narrowband PCS license was awarded pursuant to the Commission's pioneer's preference program, which has expired. See *In re Application of Notionwide Wireless Network Corporotion*, 13 FCC Rcd 12914 (1998); *In re Application of Nationwide Wireless Network Corp., Memorondum Opinion ond Order*, 9 FCC Rcd 3635 (1994).

[134] Amendment of the Commission's Rules to Establish New Personal Communications Services, Narrowband PCS, Docket No. ET 92–100, Docket No. PP 93–253, *Second Report and Order* and *Second Further Notice of Proposed Rulemoking*, 15 FCC RCD 10456 (2000), 65 FR 35875 (June 6, 2000).

[135] See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Dec. 2, 1998).

businesses, as those terms were defined under the Commission's Rules).

45. 220 MHz Radio Service—Phase I Licensees. The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a small business size standard for small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the small business size standard under the SBA rules applicable to "Cellular and Other Wireless Telecommunications" companies. This standard provides that such a company is small if it employs no more than 1,500 persons.[136] According to Census Bureau data for 1997, there were 977 firms in this category, total, that operated for the entire year.[137] Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more.[138] If this general ratio continues in the context of Phase I 220 MHz licensees, the Commission estimates that nearly all such licensees are small businesses under the SBA's small business size standard.

46. 220 MHz Radio Service—Phase II Licensees. The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the 220 MHz Third Report and Order, we adopted a small business size standard for "small" and "very small" businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[139] This small business size standard indicates that a "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years.[140] A "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed $3 million for the preceding three years. The SBA has approved these small business size standards.[141] Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.[142] In the first auction, 908 licenses were auctioned in three different-sized geographic areas: Three nationwide licenses, 30 Regional Economic Area Group (EAG) licenses, and 875 Economic Area (EA) licenses. Of the 908 licenses auctioned, 693 were sold. Thirty-nine small businesses won licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.[143]

47. 800 MHz and 900 MHz Specialized Mobile Radio Licensees. The Commission awards "small entity" and "very small entity" bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than $15 million in each of the three previous calendar years, or that had revenues of no more than $3 million in each of the previous calendar years, respectively.[144] These bidding credits apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. The Commission assumes, for purposes here, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz SMR bands. There were 60 winning bidders that qualified as small or very small entities in the 900 MHz SMR auctions. Of the 1,020 licenses won in the 900 MHz auction, bidders qualifying as small or very small entities won 263 licenses. In the 800 MHz auction, 38 of the 524 licenses won were won by small and very small entities. Consequently, the Commission estimates that there are 301 or fewer small entity SMR licensees in the 800 MHz and 900 MHz bands that may be affected by the rules and policies adopted.

48. Common Carrier Paging. In the Paging Third Report and Order, we developed a small business size standard for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[145] A "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000.[146] Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won. At present, there are approximately 24,000 Private-Paging site-specific licenses and 74,000 Common Carrier Paging licenses. According to Commission data, 433 carriers reported that they were engaged in the provision of either paging and messaging services or other mobile services.[147] Of those, the Commission estimates that 423 are small, under the SBA business size standard specifying that firms are small if they have 1,500 or fewer employees.[148]

49. 700 MHz Guard Band Licensees. In the 700 MHz Guard Band Order, we adopted a small business size standard for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[149] A "small business" is an

[136] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October of 2002).

[137] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Employment Size of Firms Subject to Federal Income Tax: 1997," Table 5, NAICS code 513322 (issued Oct. 2000).

[138] Id. The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1,000 employees or more."

[139] *220 MHz Third Report and Order*, 12 FCC Rcd 10943, 11068–70, at paragraphs 291–295 (1997), 62 FR 16004 (Apr. 3, 1997).

[140] Id., 12 FCC Rcd 10943, 11068–70, at paragraphs 291.

[141] *See* letter to D. Phythyon, Chief, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Jan. 6, 1998).

[142] *See* generally Public Notice, "220 MHz Service Auction Closes," 14 FCC Rcd 605 (1998).

[143] Public Notice, "Phase II 220 MHz Service Spectrum Auction Closes," 14 FCC Rcd 11218 (1999).

[144] 47 CFR 90.814(b)(1).

[145] *220 MHz Third Report and Order*, 12 FCC Rcd 10943, 11068–70, at paragraphs 291–295 (1997).

[146] Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, WT Docket No. 96–18, *Memorandum Opinion and Order on Reconsideration* and *Third Report and Order*, 14 FCC Rcd 10030, at paragraphs 98 (1999).

[147] *Trends in Telephone Service* at Table 5.3.

[148] Id. The SBA size standard is that of Paging, 13 CFR 121.201, NAICS code 517211.

[149] *See* Service Rules for the 746–764 MHz Bands, and Revisions to part 27 of the Commission's rules, WT Docket No. 99–168, *Second Report and Order*, 15 FCC Rcd 5299 (2000), 65 FR 17599, April 4, 2000.

entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000.[150] Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.[151]

50. Rural Radiotelephone Service. The Commission has not adopted a size standard for small entities specific to the Rural Radiotelephone Service.[152] A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS).[153] The Commission uses the SBA's size standard applicable to "Cellular and Other Wireless Telecommunications," *i.e.*, an entity employing no more than 1,500 persons.[154] There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that almost all of them qualify as small entities under the SBA's size standard. Consequently, we estimate that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies adopted herein.

51. Air-Ground Radiotelephone Service. The Commission has not adopted a small business size standard specific to the Air-Ground Radiotelephone Service.[155] We will use SBA's small business size standard applicable to "Cellular and Other Wireless Telecommunications," *i.e.*, an entity employing no more than 1,500 persons.[156] There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA small business size standard.

52. Aviation and Marine Radio Services. Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category "Cellular and Other Telecommunications," which is 1,500 or fewer employees.[157] Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a "small" business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $15 million dollars. In addition, a "very small" business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $3 million dollars.[158] There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as "small" businesses under the above special small business size standards.

53. Fixed Microwave Services. Microwave services include common carrier,[159] private-operational fixed,[160] and broadcast auxiliary radio services.[161] At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA size standard for the category "Cellular and Other Telecommunications," which is 1,500 or fewer employees.[162] The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are up to 22,015 common carrier fixed microwave licensees and up to 61,670 private operational-fixed microwave licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies adopted herein. We note, however, that the common carrier microwave fixed licensee category includes some large entities.

54. Offshore Radiotelephone Service. This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico.[163] There are presently approximately 55 licensees in this service. We are unable to estimate at this time the number of licensees that

[150] *See* generally Public Notice, "220 MHz Service Auction Closes," Report No. WT 98–36 (Wireless Telecommunications Bureau, Oct. 23, 1998).

[151] Public Notice, "700 MHz Guard Band Auction Closes," DA 01–478 (released Feb. 22, 2001).

[152] The service is defined in section 22.99 of the Commission's rules, 47 CFR 22.99.

[153] BETRS is defined at 47 CFR 22.757, 22.759.

[154] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October of 2002).

[155] The service is defined in section 22.99 of the Commission's rules, 47 CFR 22.99.

[156] 13 CFR 121.201, NAICS codes 513322 (changed to 517212 in October of 2002).

[157] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October of 2002).

[158] Amendment of the Commission's rules Concerning Maritime Communications, PR Docket No. 92–257, *Third Report and Order* and *Memorandum Opinion and Order*, 13 FCC Rcd 19853 (1998).

[159] *See* 47 CFR 101, *et seq.* (formerly Part 21 of the Commission's Rules) for common carrier fixed microwave services (except Multipoint Distribution Service).

[160] Persons eligible under parts 80 and 90 of the Commission's rules can use Private Operational-Fixed Microwave services. *See* 47 CFR parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

[161] Auxiliary Microwave Service is governed by 47 CFR part 74. This service is available to licensees of broadcast stations and to broadcast and cable network entities. Broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile television pickups, which relay signals from a remote location back to the studio.

[162] 13 CFR 121.201, NAICS codes 513322 (changed to 517212 in October of 2002).

[163] This service is governed by 47 CFR 22.1001–22.1037.

would qualify as small under the SBA's small business size standard for "Cellular and Other Wireless Telecommunications" services.[164] Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.[165]

55. Wireless Communications Services. This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission established small business size standards for the wireless communications services (WCS) auction. A "small business" is an entity with average gross revenues of $40 million for each of the three preceding years, and a "very small business" is an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these small business size standards.[166]

The Commission auctioned geographic area licenses in the WCS service: In the auction, there were seven winning bidders that qualified as "very small business" entities, and one that qualified as a "small business" entity. We conclude that the number of geographic area WCS licensees affected by this analysis includes these eight entities.

56. 39 GHz Service. The Commission created a special small business size standard for 39 GHz licenses—an entity that has average gross revenues of $40 million or less in the three previous calendar years.[167] An additional size standard for "very small business" is: An entity that, together with affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[168] The SBA has approved these small business size standards.[169] The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by the rules and polices adopted herein.

57. Multipoint Distribution Service and Instructional Television Fixed Service. Multipoint Distribution Service (MDS) systems, often referred to as "wireless cable," transmit video programming to subscribers using the microwave frequencies of the Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS).[170] In connection with the 1996 MDS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of less than $40 million in the previous three calendar years.[171] The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. MDS also includes licensees of stations authorized prior to the auction. In addition, the SBA has developed a small business size standard for Cable and Other Program Distribution, which includes all such companies generating $12.5 million or less in annual receipts.[172] According to Census Bureau data for 1997, there were a total of 1,311 firms in this category, total, that had operated for the entire year.[173] Of this total, 1,180 firms had annual receipts of under $10 million and an additional 52 firms had receipts of $10 million or more but less than $25 million. Consequently, we estimate that the majority of providers in this service category are small businesses that may be affected by the rules and policies adopted herein. This SBA small business size standard also appears applicable to ITFS. There are presently 2,032 ITFS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities.[174] Thus, we tentatively conclude that at least 1,932 licensees are small businesses.

58. Local Multipoint Distribution Service. Local Multipoint Distribution Service (LMDS) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications.[175] The auction of the 1,030 Local Multipoint Distribution Service (LMDS) licenses began on February 18, 1998 and closed on March 25, 1998. The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[176] An additional small business size standard for "very small business" was added as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[177] The SBA has approved these small business size standards in the context of LMDS auctions.[178] There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 40 winning bidders. Based on this information, we conclude that the number of small LMDS licenses consists of the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers.

59. 218–219 MHz Service. The first auction of 218–219 MHz spectrum resulted in 170 entities winning licenses for 594 Metropolitan Statistical Area (MSA) licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, the small business size standard was an entity that, together with its affiliates, has no more than a $6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than $2 million in annual profits each year for the previous two years.[179] In the 218–219 MHz Report and Order and Memorandum Opinion and Order, we established a small business size standard for a "small business" as an entity that, together with its affiliates

[164] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October of 2002).

[165] Id.

[166] *See* Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Dec. 2, 1998).

[167] *See* Amendment of the Commission's Rules Regarding the 37.0–38.6 GHz and 38.6–40.0 GHz Bands, ET Docket No. 95–183, *Report and Order*, 12 FCC Rcd 18600 (1997).

[168] Id.

[169] *See* Letter to Kathleen O'Brien Ham, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Feb. 4, 1998).

[170] Amendment of parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding, MM Docket No. 94–131 and PP Docket No. 93–253, *Report and Order*, 10 FCC Rcd 9589, 9593 paragraph 7 (1995).

[171] 47 CFR 21.961(b)(1).

[172] 13 CFR 121.201, NAICS code 513220 (changed to 517510 in October of 2002).

[173] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)", Table 4, NAICS code 513220 (issued October 2000).

[174] In addition, the term "small entity" within SBREFA applies to small organizations (nonprofits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of less than 50,000). 5 U.S.C. 601(4)–(6). We do not collect annual revenue data on ITFS licensees.

[175] See Local Multipoint Distribution Service, *Second Report and Order*, 12 FCC Rcd 12545 (1997).

[176] Id.

[177] Id.

[178] *See* Letter to Dan Phythyon, Chief, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Jan. 6, 1998).

[179] Implementation of section 309(j) of the Communications Act—Competitive Bidding, PP Docket No. 93–253, *Fourth Report and Order*, 9 FCC Rcd 2330 (1994), 59 FR 24947 (May 13, 1994).

and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed $15 million for the preceding three years.[180] A "very small business" is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not to exceed $3 million for the preceding three years.[181] We cannot estimate, however, the number of licenses that will be won by entities qualifying as small or very small businesses under our rules in future auctions of 218–219 MHz spectrum.

60. 24 GHz—Incumbent Licensees. This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The applicable SBA small business size standard is that of "Cellular and Other Wireless Telecommunications" companies. This category provides that such a company is small if it employs no more than 1,500 persons.[182] According to Census Bureau data for 1997, there were 977 firms in this category, total, that operated for the entire year.[183] Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more.[184] Thus, under this size standard, the great majority of firms can be considered small. These broader census data notwithstanding, we believe that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent[185] and TRW, Inc. It is our understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

61. 24 GHz—Future Licensees. With respect to new applicants in the 24 GHz band, the small business size standard for "small business" is an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not in excess of $15 million.[186] "Very small business" in the 24 GHz band is an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding $3 million for the preceding three years.[187] The SBA has approved these small business size standards.[188] These size standards will apply to the future auction, if held.

62. Internet Service Providers. While internet service providers (ISPs) are only indirectly affected by our present actions, and ISPs are therefore not formally included within this present RFA, we have addressed them informally to create a fuller record and to recognize their participation in this proceeding. The SBA has developed a small business size standard for Online Information Services, which consists of all such companies having $21 million or less in annual receipts.[189] According to Census Bureau data for 1997, there were 2,751 firms in this category, total, that operated for the entire year.[190] Of this total, 2,659 firms had annual receipts of $9,999,999 or less, and an additional 67 had receipts of $10 million to $24,999,999.[191] Thus, under this size standard, the great majority of firms can be considered small.

IV. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

63. With certain exceptions, the Commission's Schedule of Regulatory Fees applies to all Commission licensees and regulatees. Most licensees will be required to count the number of licenses or call signs authorized, complete and submit an FCC Form 159 ("FCC Remittance Advice"), and pay a regulatory fee based on the number of licenses or call signs.[192] Interstate telephone service providers must compute their annual regulatory fee based on their interstate and international end-user revenue using information they already supply to the Commission in compliance with the Form 499–A, Telecommunications Reporting Worksheet, and they must complete and submit the FCC Form 159. Compliance with the fee schedule will require some licensees to tabulate the number of units (*e.g.*, cellular telephones, pagers, cable TV subscribers) they have in service, and complete and submit an FCC Form 159. Licensees ordinarily will keep a list of the number of units they have in service as part of their normal business practices. No additional outside professional skills are required to complete the FCC Form 159, and it can be completed by the employees responsible for an entity's business records.

64. Each licensee must submit the FCC Form 159 to the Commission's lockbox bank after computing the number of units subject to the fee. Licensees may also file electronically to minimize the burden of submitting multiple copies of the FCC Form 159. Applicants who pay small fees in advance and provide fee information as part of their application must use FCC Form 159.

65. Licensees and regulatees are advised that failure to submit the required regulatory fee in a timely manner will subject the licensee or regulatee to a late payment penalty of 25

[180] Amendment of part 95 of the Commission's rules to Provide Regulatory Flexibility in the 218–219 MHz Service, WT Docket No. 98–169, *Report and Order* and *Memorandum Opinion and Order*, 15 FCC Rcd 1497 (1999), 64 FR 59656 (Nov. 3, 1999).

[181] Id.

[182] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October of 2002).

[183] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Employment Size of Firms Subject to Federal Income Tax: 1997," Table 5, NAICS code 513322 (issued Oct. 2000).

[184] Id. The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1,000 employees or more."

[185] Teligent acquired the DEMS licenses of FirstMark, the only licensee other than TRW in the 24 GHz band whose license has been modified to require relocation to the 24 GHz band.

[186] Amendments to parts 1, 2, 87 and 1001 of the Commission's rules to License Fixed Services at 24 GHz, *Report and Order*, 15 FCC Rcd 16934, 16967 (2000), 65 FR 59350 (Oct. 5, 2000); see also 47 CFR 101.538(a)(2).

[187] Id.

[188] *See* Letter to Margaret W. Wiener, Deputy Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Gary M. Jackson, Assistant Administrator, SBA (July 28, 2000).

[189] 13 CFR 121.201, NAICS code 514191 (changed to 518111 in October of 2002).

[190] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Receipts Size of Firms Subject to Federal Income Tax: 1997," Table 4, NAICS code 514191 (issued October 2000).

[191] Id.

[192] The following categories are exempt from the Commission's Schedule of Regulatory Fees: Amateur radio licensees (except applicants for vanity call signs) and operators in other non-licensed services (*e.g.*, Personal Radio, part 15, ship and aircraft). Governments and non-profit (exempt under section 501(c) of the Internal Revenue Code) entities are exempt from payment of regulatory fees and need not submit payment. Non-commercial educational broadcast licensees are exempt from regulatory fees as are licensees of auxiliary broadcast services such as low power auxiliary stations, television auxiliary service stations, remote pickup stations and aural broadcast auxiliary stations where such licenses are used in conjunction with commonly owned non-commercial educational stations. Emergency Alert System licenses for auxiliary service facilities are also exempt as are instructional television fixed service licensees. Regulatory fees are automatically waived for the licensee of any translator station that: (1) Is not licensed to, in whole or in part, and does not have common ownership with, the licensee of a commercial broadcast station; (2) does not derive income from advertising; and (3) is dependent on subscriptions or contributions from members of the community served for support. Receive only earth station permittees are exempt from payment of regulatory fees. A regulatee will be relieved of its fee payment requirement if its total fee due, including all categories of fees for which payment is due by the entity, amounts to less than $10.

percent in addition to the required fee.[193] If payment is not received, new or pending applications may be dismissed, and existing authorizations may be subject to rescission.[194] Further, in accordance with the Debt Collection Improvement Act of 1996, federal agencies may bar a person or entity from obtaining a federal loan or loan insurance guarantee if that person or entity fails to pay a delinquent debt owed to any federal agency.[195] Nonpayment of regulatory fees is a debt owed the United States pursuant to 31 U.S.C. 3711 *et seq.*, and the *Debt Collection Improvement Act of 1996,* Public Law 194–134. Appropriate enforcement measures as well as administrative and judicial remedies, may be exercised by the Commission. Debts owed to the Commission may result in a person or entity being denied a federal loan or loan guarantee pending before another federal agency until such obligations are paid.[196]

66. The Commission's rules currently provide for relief in exceptional circumstances. Persons or entities may request a waiver, reduction or deferment of payment of the regulatory fee.[197] However, timely submission of the required regulatory fee must accompany requests for waivers or reductions. This will avoid any late payment penalty if the request is denied. The fee will be refunded if the request is granted. In exceptional and compelling instances (where payment of the regulatory fee along with the waiver or reduction request could result in reduction of service to a community or other financial hardship to the licensee), the Commission will defer payment in response to a request filed with the appropriate supporting documentation.

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

67. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. As described in Section III of this FRFA, *supra,* we have created procedures in which all fee-filing licensees and regulatees use a single form, FCC Form 159, and have described in plain language the general filing requirements. We have sought comment on other alternatives that might simplify our fee procedures or otherwise benefit small entities, while remaining consistent with our statutory responsibilities in this proceeding.

68. *The Omnibus Appropriations Act for FY 2003,* Public Law 108–7, requires the Commission to revise its Schedule of Regulatory Fees in order to recover the amount of regulatory fees that Congress, pursuant to section 9(a) of the Communications Act, as amended, has required the Commission to collect for Fiscal Year (FY) 2004.[198] As noted, we seek comment on the proposed methodology for implementing these statutory requirements and any other potential impact of these proposals on small entities.

69. We have previously used cost accounting data for computation of regulatory fees, but found that some fees which were very small in previous years would have increased dramatically and would have a disproportionate impact on smaller entities. The methodology we are proposing in this *Notice of Proposed Rulemaking* minimizes this impact by limiting the amount of increase and shifting costs to other services which, for the most part, are larger entities.

70. Several categories of licensees and regulatees are exempt from payment of regulatory fees. *See, e.g.,* footnote 199, *supra.*

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

71. None.

[193] 47 CFR 1.1164.
[194] 47 CFR 1.1164(c).
[195] Public Law 104–134, 110 Stat. 1321 (1996).
[196] 31 U.S.C. 7701(c)(2)(B).
[197] 47 CFR 1.1166.
[198] 47 U.S.C. 159(a).

Attachment B—Sources of Payment Unit Estimates for FY 2004

In order to calculate individual service fees for FY 2004, we adjusted FY 2003 payment units for each service to more accurately reflect expected FY 2004 payment liabilities. We obtained our updated estimates through a variety of means. For example, we used Commission licensee data bases, actual prior year payment records and industry and trade association projections when available. The databases we consulted include the Commission's Universal Licensing System (ULS), International Bureau Filing System (IBFS), and Consolidated Database System. The industry sources we consulted include, but are not limited to, *Television & Cable Factbook* by Warren Publishing, Inc. and the *Broadcasting and Cable Yearbook* by Reed Elsevier, Inc, as well as reports generated within the Commission such as the Wireline Competition Bureau's *Trends in Telephone Service* and the Wireless Telecommunications Bureau's *Numbering Resource Utilization Forecast.*

We tried to obtain verification for these estimates from multiple sources and, in all cases; we compared FY 2004 estimates with actual FY 2003 payment units to ensure that our revised estimates were reasonable. Where appropriate, we adjusted and/or rounded our final estimates to take into consideration the fact that certain variables that impact on the number of payment units cannot yet be estimated exactly. These include an unknown number of waivers and/or exemptions that may occur in FY 2004 and the fact that, in many services, the number of actual licensees or station operators fluctuates from time to time due to economic, technical or other reasons. Therefore, when we note, for example, that our estimated FY 2004 payment units are based on FY 2003 actual payment units, it does not necessarily mean that our FY 2004 projection is *exactly* the same number as FY 2003. It means that we have either rounded the FY 2004 number or adjusted it slightly to account for these variables.

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FEE CATEGORY	SOURCES OF PAYMENT UNIT ESTIMATES
Land Mobile (All), Microwave, 218-219 MHz, Marine (Ship & Coast), Aviation (Aircraft & Ground), GMRS, Amateur Vanity Call Signs, Domestic Public Fixed	Based on Wireless Telecommunications Bureau (WTB) projections of new applications and renewals taking into consideration existing Commission licensee data bases. Aviation (Aircraft) and Marine (Ship) estimates have been adjusted to take into consideration the licensing of portions of these services on a voluntary basis.
CMRS Mobile Services	Based on Wireless Telecommunications Bureau estimates.
CMRS Messaging Services	Based on Wireless Telecommunications Bureau estimates.
AM/FM Radio Stations	Based on estimates from Media Services Bureau estimates and actual FY 2003 payment units.
UHF/VHF Television Stations	Based on Media Services Bureau estimates and actual FY 2003 payment units.
AM/FM/TV Construction Permits	Based on Media Services Bureau estimates and actual FY 2003 payment units.
LPTV, Translators and Boosters	Based on actual FY 2003 payment units.
Broadcast Auxiliaries	Based on actual FY 2003 payment units.
MDS/LMDS/MMDS	Based on Wireless Telecommunications Bureau estimates and actual FY 2003 payment units.
Cable Television Relay Service (CARS) Stations	Based on actual FY 2003 payment units.
Cable Television System Subscribers	Based on Media Services Bureau (previously Cable Services Bureau), industry estimates of subscribership, and actual FY 2003 payment units.
Interstate Telecommunication Service Providers	Based on actual FY 2003 interstate revenues reported on Telecommunications Reporting Worksheet, adjusted for FY 2004 revenue growth/decline for industry, and estimations by the Wireline Competition Bureau.
Earth Stations	Based on actual FY 2003 payment estimates and projected FY 2004 units.
Space Stations (GSOs & NGSOs)	Based on International Bureau licensee data base estimates.
International Bearer Circuits	Based on International Bureau estimates.
International HF Broadcast Stations, International Public Fixed Radio Service	Based on International Bureau estimates.

Fee Category	FY 2004 Payment Units	Years	FY 2003 Revenue Estimate	Pro-Rated FY 2004 Revenue Requirement**	Computed New FY 2004 Regulatory Fee	Rounded New FY 2004 Regulatory Fee	Expected FY 2004 Revenue
PLMRS (Exclusive Use)	3,400	10	330,000	334,916	10	10	340,000
PLMRS (Shared use)	46,000	10	2,665,000	2,704,697	6	5	2,300,000
Microwave	3,000	10	1,525,000	1,547,716	52	50	1,500,000
218-219 MHz (Formerly IVDS)	3	10	1,500	1,522	51	50	1,500
Marine (Ship)	3,900	10	660,000	669,831	17	15	585,000
GMRS	15,000	5	265,000	268,947	4	5	375,000
Aviation (Aircraft)	3,100	10	155,000	157,309	5	5	155,000
Marine (Coast)	962	10	100,000	101,490	11	10	96,200
Aviation (Ground)	1,600	5	127,500	129,399	16	15	120,000
Amateur Vanity Call Signs	7,800	10	159,740	162,119	2.08	2.08	162,119
AM Class A	69	1	195,008	198,474	2,876	2,875	198,375
AM Class B	1,699	1	2,384,800	2,427,290	1,429	1,425	2,421,075
AM Class C	990	1	828,300	843,058	852	850	841,500
AM Class D	1,888	1	2,728,350	2,776,961	1,471	1,475	2,784,800
FM Classes A, B1 & C3	3,220	1	5,544,000	5,698,823	1,770	1,775	5,715,500
FM Classes B, C, C0, C1 & C2	3,022	1	6,875,050	7,053,588	2,334	2,325	7,026,150
AM Construction Permits	73	1	21,840	33,845	464	465	33,945
FM Construction Permits	162	1	373,700	268,266	1,656	1,650	267,300
Satellite TV	122	1	126,000	129,314	1,060	1,050	128,100
Satellite TV Construction Permit	3	1	2,575	1,552	517	515	1,545

Fee Category	FY 2004 Payment Units	Years	FY 2003 Revenue Estimate	Pro-Rated FY 2004 Revenue Requirement**	Computed New FY 2004 Regulatory Fee	Rounded New FY 2004 Regulatory Fee	Expected FY 2004 Revenue
VHF Markets 1-10	43	1	2,536,600	2,594,832	60,345	60,350	2,595,050
VHF Markets 11-25	64	1	2,593,500	2,652,746	41,449	41,450	2,652,800
VHF Markets 26-50	77	1	2,199,125	2,245,407	29,161	29,150	2,244,550
VHF Markets 51-100	123	1	2,114,775	2,159,554	17,557	17,550	2,158,650
VHF Remaining Markets	235	1	930,050	953,721	4,058	4,050	951,750
VHF Construction Permits	6	1	74,000	27,941	4,657	4,650	27,900
UHF Markets 1-10	90	1	1,521,600	1,600,135	17,779	17,775	1,599,750
UHF Markets 11-25	81	1	1,236,000	1,309,447	16,166	16,175	1,310,175
UHF Markets 26-50	117	1	1,041,675	1,088,284	9,302	9,300	1,088,100
UHF Markets 51-100	170	1	900,475	944,569	5,556	5,550	943,500
UHF Remaining Markets	183	1	270,750	303,624	1,659	1,650	301,950
UHF Construction Permits	34	1	373,500	193,155	5,681	5,675	192,950
Broadcast Auxiliaries	25,000	1	250,000	254,454	10	10	250,000
LPTV/Translators/Boosters	2,900	1	1,092,445	1,111,909	383	385	1,116,500
CARS Stations	1,000	1	130,500	132,825	133	135	135,000
Cable Television Systems	65,000,000	1	44,550,000	45,343,744	0.70	0.70	45,500,000
Interstate Telecommunication Service Providers	58,500,000,000	1	125,370,000	127,603,708	0.00218126	0.00218	127,530,000
CMRS Mobile Services (Cellular/Public Mobile)	151,000,000	1	36,868,000	38,678,954	0.256	0.26	39,260,000

Fee Category	FY 2004 Payment Units	Years	FY 2003 Revenue Estimate	Pro-Rated FY 2004 Revenue Requirement**	Computed New FY 2004 Regulatory Fee	Rounded New FY 2004 Regulatory Fee	Expected FY 2004 Revenue
CMRS Messaging Services	14,500,000	1	1,576,000	1,160,000	0.08	0.08	1,160,000
MDS/MMDS	1,600	1	956,915	434,474	272	270	432,000
LMDS	340	1	258,375	92,468	272	270	91,800
International Bearer Circuits	2,800,000	1	6,942,000	7,065,685	2.52	2.52	7,056,000
International Public Fixed	1	1	1,725	1,756	1,756	1,750	1,750
Earth Stations	3,400	1	661,290	673,072	198	200	680,000
International HF Broadcast	5	1	3,650	3,715	743	745	3,725
Space Stations (Geostationary)	77	1	8,671,875	8,826,381	114,628	114,625	8,826,125
Space Stations (Non-Geostationary	5	1	758,625	772,141	154,428	154,425	772,125
****** Total Estimated Revenue to be Collected			268,951,805	273,737,820			273,935,259
****** Total Revenue Requirement				272,958,000			272,958,000
Difference				779,820			977,259

** 1.01471 factor applied based on the amount Congress designated for recovery through regulatory fees (Public Law 108-7 and 47 U.S.C. 159(a)(2)).

Fee Category	Annual Regulatory Fee (U.S. $'s)
PLMRS (per license) (Exclusive Use) (47 CFR part 90)	10
Microwave (per license) (47 CFR part 101)	50
218-219 MHz (Formerly Interactive Video Data Service) (per license) (47 CFR part 95)	50
Marine (Ship) (per station) (47 CFR part 80)	15
Marine (Coast) (per license) (47 CFR part 80)	10
General Mobile Radio Service (per license) (47 CFR part 95)	5
Rural Radio (47 CFR part 22) (previously listed under the Land Mobile category)	5
PLMRS (Shared Use) (per license) (47 CFR part 90)	5
Aviation (Aircraft) (per station) (47 CFR part 87)	5
Aviation (Ground) (per license) (47 CFR part 87)	15
Amateur Vanity Call Signs (per call sign) (47 CFR part 97)	2.08
CMRS Mobile/Cellular Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90)	.26
CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90)	.08
Multipoint Distribution Services (MMDS/ MDS) (per call sign) (47 CFR part 21)	270
Local Multipoint Distribution Service (per call sign) (47 CFR, part 101)	270
AM Radio Construction Permits	465
FM Radio Construction Permits	1,650
TV (47 CFR part 73) VHF Commercial	
Markets 1-10	60,350
Markets 11-25	41,450
Markets 26-50	29,150
Markets 51-100	17,550
Remaining Markets	4,050
Construction Permits	4,650
TV (47 CFR part 73) UHF Commercial	

Fee Category	Annual Regulatory Fee (U.S. $'s)
Markets 1-10	17,775
Markets 11-25	16,175
Markets 26-50	9,300
Markets 51-100	5,550
Remaining Markets	1,650
Construction Permits	5,675
Satellite Television Stations (All Markets)	1,050
Construction Permits – Satellite Television Stations	515
Low Power TV, TV/FM Translators & Boosters (47 CFR part 74)	385
Broadcast Auxiliaries (47 CFR part 74)	10
CARS (47 CFR part 78)	135
Cable Television Systems (per subscriber) (47 CFR part 76)	.70
Interstate Telecommunication Service Providers (per revenue dollar)	.00218
Earth Stations (47 CFR part 25)	200
Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes DBS Service (per operational station) (47 CFR part 100)	114,625
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25)	154,425
International Bearer Circuits (per active 64KB circuit)	2.52
International Public Fixed (per call sign) (47 CFR part 23)	1,750
International (HF) Broadcast (47 CFR part 73)	745

FY 2004 SCHEDULE OF REGULATORY FEES (continued)

FY 2004 RADIO STATION REGULATORY FEES						
Population Served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C0, C1 & C2
<=25,000	600	450	350	425	525	675
25,001 – 75,000	1,200	900	525	625	1,050	1,175
75,001 – 150,000	1,800	1,125	700	1,075	1,450	2,200
150,001 – 500,000	2,700	1,925	1,050	1,275	2,225	2,875
500,001 – 1,200,000	3,900	2,925	1,750	2,125	3,550	4,225
1,200,001 – 3,000,00	6,000	4,500	2,625	3,400	5,775	6,750
>3,000,000	7,200	5,400	3,325	4,250	7,350	8,775

Attachment E—Factors, Measurements and Calculations That Go Into Determining Station Signal Contours and Associated Population Coverages

AM Stations

For stations with nondirectional daytime antennas, the theoretical radiation was used at all azimuths. For stations with directional daytime antennas, specific information on each day tower, including field ratio, phasing, spacing and orientation was retrieved, as well as the theoretical pattern root-mean-square of the radiation in all directions in the horizontal plane (RMS) figure milliVolt per meter (mV/m) @ 1 km) for the antenna system. The standard, or modified standard if pertinent, horizontal plane radiation pattern was calculated using techniques and methods specified in sections 73.150 and 73.152 of the Commission's rules.[199] Radiation values were calculated for each of 360 radials around the transmitter site. Next, estimated soil conductivity data was retrieved from a database representing the information in FCC Figure R3.[200] Using the calculated horizontal radiation values, and the retrieved soil conductivity data, the distance to the city grade (5 mV/m) contour was predicted for each of the 360 radials. The resulting distance to city grade contours were used to form a geographical polygon. Population counting was accomplished by determining which 2000 block centroids were contained in the polygon. (A block centroid is the center point of a small area containing population as computed by the U.S. Census Bureau.) The sum of the population figures for all enclosed blocks represents the total population for the predicted city grade coverage area.

FM Stations

The greater of the horizontal or vertical effective radiated power (ERP) (kW) and respective height above average terrain (HAAT) (m) combination was used. Where the antenna height above mean sea level (HAMSL) was available, it was used in lieu of the average HAAT figure to calculate specific HAAT figures for each of 360 radials under study. Any available directional pattern information was applied as well, to produce a radial-specific ERP figure. The HAAT and ERP figures were used in conjunction with the Field Strength (50–50) propagation curves specified in 47 CFR 73.313 of the Commission's rules to predict the distance to the city grade (70 dBu (decibel above 1 microVolt per meter) or 3.17 mV/m) contour for each of the 360 radials.[201] The resulting distance to city grade contours were used to form a geographical polygon. Population counting was accomplished by determining which 2000 block centroids were contained in the polygon. The sum of the population figures for all enclosed blocks represents the total population for the predicted city grade coverage area.

Attachment F—FY 2003 Schedule of Regulatory Fees

[199] 47 CFR 73.150 and 73.152.

[200] *See Mop of Estimated Effective Ground Conductivity in the United Stotes,* 47 CFR 73.190 Figure R3.

[201] 47 CFR 73.313.

Fee Category	Annual Regulatory Fee (U.S. $'s)
PLMRS (per license) (Exclusive Use) (47 CFR part 90)	10
Microwave (per license) (47 CFR part 101)	25
218-219 MHz (Formerly Interactive Video Data Service) (per license) (47 CFR part 95)	30
Marine (Ship) (per station) (47 CFR part 80)	15
Marine (Coast) (per license) (47 CFR part 80)	10
General Mobile Radio Service (per license) (47 CFR part 95)	5
Rural Radio (47 CFR part 22) (previously listed under the Land Mobile category)	5
PLMRS (Shared Use) (per license) (47 CFR part 90)	5
Aviation (Aircraft) (per station) (47 CFR part 87)	5
Aviation (Ground) (per license) (47 CFR part 87)	15
Amateur Vanity Call Signs (per call sign) (47 CFR part 97)	1.63
CMRS Mobile/Cellular Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90)	.26
CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90)	.08
Multipoint Distribution Services (MMDS/ MDS) (per call sign) (47 CFR part 21)	265
Local Multipoint Distribution Service (per call sign) (47 CFR, part 101)	265
AM Radio Construction Permits	455
FM Radio Construction Permits	1,850
TV (47 CFR part 73) VHF Commercial	
Markets 1-10	57,650
Markets 11-25	43,225
Markets 26-50	30,125
Markets 51-100	18,075
Remaining Markets	4,450
Construction Permits	4,625
TV (47 CFR part 73) UHF Commercial	
Markets 1-10	15,850

Fee Category	Annual Regulatory Fee (U.S. $'s)
Markets 11-25	12,875
Markets 26-50	8,075
Markets 51-100	4,975
Remaining Markets	1,425
Construction Permits	8,300
Satellite Television Stations (All Markets)	1,000
Construction Permits – Satellite Television Stations	515
Low Power TV, TV/FM Translators & Boosters (47 CFR part 74)	365
Broadcast Auxiliary (47 CFR part 74)	10
CARS (47 CFR part 78)	90
Cable Television Systems (per subscriber) (47 CFR part 76)	.66
Interstate Telecommunication Service Providers (per revenue dollar)	.00199
Earth Stations (47 CFR part 25)	210
Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes Direct Broadcast Satellite Service (per operational station) (47 CFR part 100)	115,625
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25)	108,375
International Bearer Circuits (per active 64KB circuit)	2.67
International Public Fixed (per call sign) (47 CFR part 23)	1,725
International (HF) Broadcast (47 CFR part 73)	730

FY 2003 SCHEDULE OF REGULATORY FEES (continued)

FY 2003 RADIO STATION REGULATORY FEES						
Population Served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C0, C1 & C2
<=25,000	600	450	325	400	475	625
25,001 – 75,000	1,200	900	475	600	950	1,100
75,001 – 150,000	1,800	1,125	650	1,000	1,300	2,025
150,001 – 500,000	2,700	1,925	975	1,200	2,025	2,650
500,001 – 1,200,000	3,900	2,925	1,625	2,000	3,200	3,900
1,200,001 – 3,000,00	6,000	4,500	2,450	3,200	5,225	6,250
>3,000,000	7,200	5,400	3,100	4,000	6,650	8,125

[FR Doc. 04–8260 Filed 4–13–04; 8:45 am]
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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No.040326103–4103–01; I.D. 031504A]

RIN 0648–AQ82

Fisheries of the Northeastern United States; Recreational Measures for the Summer Flounder, Scup, and Black Sea Bass Fisheries; Fishing Year 2004

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes recreational measures for the 2004 summer flounder, scup, and black sea bass fisheries. The implementing regulations for these fisheries require NMFS to publish recreational measures for the upcoming fishing year and to provide an opportunity for public comment. The intent of these measures is to prevent overfishing of the summer flounder, scup, and black sea bass resources.

DATES: Comments must be received on or before April 29, 2004.

ADDRESSES: Comments on the proposed recreational measures should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on Recreational Specifications." Comments may also be submitted via facsimile (fax) to 978–281–9135, and via e-mail to the following address: *FSBREC04@noaa.gov*. Comments may also submitted electronically through the Federal e-Rulemaking portal: *http://www.regulations.gov*.

Copies of supporting documents used by the Summer Flounder, Scup, and Black Sea Bass Monitoring Committees and of the Environmental Assessment, Regulatory Impact Review, Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South Street, Dover, DE 19901–6790, and are accessible via the Internet at *http://www.nero.noaa.gov/ro/doc/com.htm*.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin, Fishery Policy Analyst, (978) 281–9279, fax (978) 281–9135, e-mail *sarah.mclaughlin@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The summer flounder, scup, and black sea bass fisheries are managed cooperatively by the Atlantic States Marine Fisheries Commission (Commission) and the Mid-Atlantic Fishery Management Council (Council), in consultation with the New England and South Atlantic Fishery Management Councils.

The management units specified in the Fishery Management Plan (FMP) for the Summer Flounder, Scup, and Black Sea Bass Fisheries include summer flounder (*Paralichthys dentatus*) in U.S. waters of the Atlantic Ocean from the southern border of North Carolina (NC) northward to the U.S./Canada border, and scup (*Stenotomus chrysops*) and black sea bass (*Centropristis striata*) in U.S. waters of the Atlantic Ocean from 35°13.3′ N. lat. (the latitude of Cape Hatteras Lighthouse, Buxton, NC) northward to the U.S./Canada border.

The FMP and its implementing regulations, which are found at 50 CFR part 648, subparts A, G (summer flounder), H (scup), and I (black sea bass), describe the process for specifying annual recreational measures that apply in the Exclusive Economic Zone (EEZ). The states manage these fisheries within 3 miles of their coasts, under the Commission's Interstate Summer Flounder, Scup, and Black Sea Bass FMP. The Federal regulations govern vessels fishing in the EEZ, as well as vessels possessing a Federal fisheries permit, regardless of where they fish.

The Council's FMP established Monitoring Committees (Committees) for the three fisheries, consisting of representatives from the Commission, the Mid-Atlantic, New England, and

South Atlantic Councils, and NMFS. The FMP and its implementing regulations require the Committees to review scientific and other relevant information annually and to recommend management measures necessary to achieve the recreational harvest limits established for the summer flounder, scup, and black sea bass fisheries for the upcoming fishing year. The FMP limits these measures to minimum fish size, possession limit, and fishing season.

The Council's Demersal Species Committee and the Commission's Summer Flounder, Scup, and Black Sea Bass Management Board (Board) then consider the Committees' recommendations and any public comment in making their recommendations to the Council and the Commission, respectively. The Council then reviews the recommendations of the Demersal Species Committee, makes its own recommendations, and forwards them to NMFS for review. The Commission similarly adopts recommendations for the states. NMFS is required to review the Council's recommendations to ensure that they are consistent with the targets specified for each species in the FMP.

Final quota specifications for the 2004 summer flounder, scup, and black sea bass fisheries were published on January 14, 2004 (69 FR 2074). These specifications were determined to be consistent with the 2004 target fishing mortality rate (F) (for summer flounder) and target exploitation rates (for scup and black sea bass). The 2004 coastwide recreational harvest limits are 11.21 million lb (5,085 mt) for summer flounder, 3.99 million lb (1,810 mt) for scup, and 4.01 million lb (1,819 mt) for black sea bass. The specifications did not establish recreational measures, since final recreational catch data for 2003 were not available when the Council made its recreational harvest limit recommendation to NMFS.

All minimum fish sizes discussed below are total length measurements of the fish, i.e., the straight-line distance from the tip of the snout to the end of the tail while the fish is lying on its side.

Summer Flounder

Recreational landings for 2003 were estimated to be 11.565 million lb (5,246 mt), 25 percent greater than the 2003 recreational harvest limit (by weight). However, all states are estimated to be below their 2003 targets when their allocations are converted to number of fish using the average weight of summer flounder harvested during 2002 and 2003. The only exceptions are NY (110 percent over), NJ (9 percent over), and CT (6 percent over). The 2004 coastwide harvest limit is 11.21 million lb (5,085 mt), a 21–percent increase over the 2003 harvest limit, and 3 percent less than the estimated 2003 landings. Assuming the same level of fishing effort in 2004 as in 2003, a 3–percent reduction in landings coastwide would be required for summer flounder. As described below, under conservation equivalency, as recommended by the Council, NY and NJ would be required to reduce summer flounder landings in 2004, by 48.5 percent and 1.3 percent, respectively.

NMFS implemented Framework Adjustment 2 to the FMP on July 29, 2001 (66 FR 36208), which established a process that makes conservation equivalency an option for the summer flounder recreational fishery. Conservation equivalency allows each state to establish its own recreational management measures (possession limits, minimum fish size, and fishing seasons), as long as the combined effect of all of the states' management measures achieves the same level of conservation as would Federal coastwide measures developed to achieve the recreational harvest limit, if implemented by all of the states. Conservation equivalency was approved for the 2003 summer flounder recreational fishery.

The Council and Board recommend annually that either state-specific recreational measures be developed (conservation equivalency) or coastwide management measures be implemented by all states to ensure that the recreational harvest limit will not be exceeded. Even when the Council and Board recommend conservation equivalency, the Council must specify a set of coastwide measures that would apply if conservation equivalency is not approved. If conservation equivalency is recommended and, following confirmation that the proposed state measures would achieve conservation equivalency, NMFS may waive the permit condition found at § 648.4(b), which requires federally permitted vessels to comply with the more restrictive management measures when state and Federal measures differ. Federally permitted charter/party permit holders and recreational vessels fishing for summer flounder in the EEZ then would be subject to the recreational fishing measures implemented by the state in which they land summer flounder rather than the coastwide measures. In addition, the Council and the Board must recommend precautionary default measures. The Commission would require adoption of the precautionary default measures by any state that either does not submit a summer flounder management proposal to the Council's Summer Flounder Technical Committee, or that submits measures that are determined by the Board not to achieve the required reduction. The precautionary default measures are defined as the measures that would achieve at least the overall required reduction in landings for each state.

In December 2003, the Council and Board voted to recommend conservation equivalency to achieve the 2004 recreational harvest limit. The Commission's conservation equivalency guidelines require each state, using state-specific equivalency tables, to determine and implement an appropriate possession limit, minimum fish size, and closed season to achieve the landings reduction necessary for each state. The state-specific tables are adjusted to account for the past effectiveness of the regulations in each state. Landings projections for 2003 indicate that NY and NJ will be the only states required to reduce recreational summer flounder landings in 2004, by 48.5 percent and 1.3 percent, respectively. States other than NY and NJ (from ME to NC) would not require any reductions in recreational summer flounder landings if their current regulations are maintained.

The Board required that each state submit its conservation equivalency proposal to the Commission by February 17, 2004. The Commission's Summer Flounder Technical Committee then evaluated the proposals and advised the Board of each proposal's consistency with respect to achieving the coastwide recreational harvest limit. The Commission has invited public participation in its review process by holding public meetings and offering the public the opportunity to comment on the state proposals. The Board met on March 11, 2004, and approved all of the state management proposals. For some states, the Board approved multiple management options. Once these states select and submit their final summer flounder management measures to the Commission, the Commission officially will notify NMFS as to which state proposals have been approved or disapproved. NMFS retains the final authority to either approve or disapprove using conservation equivalency in place of the coastwide measures and will publish its determination in the final rule, establishing the 2004 recreational measures for these fisheries.

States that do not submit conservation equivalency proposals, or for which

proposals were disapproved by the Commission, would be required by the Commission to adopt the precautionary default measures. In the case of states that are initially assigned precautionary default measures, but subsequently receive Commission approval of revised state measures, NMFS will publish a notice in the **Federal Register** announcing a waiver of the permit condition at § 648.4(b).

The coastwide measures recommended by the Council and Board consist of a 17–inch (43.2–cm) minimum fish size, a possession limit of four fish per person, and no closed season. In this action, NMFS proposes to maintain the coastwide measures in the EEZ. The coastwide measures would reduce recreational landings by 11 percent, based on 2001 data, assuming the coastwide regulations are implemented by all states. State-specific reductions in landings would range from 0 percent in MD to 63 percent in NC. These measures would be waived if conservation equivalency is approved.

The precautionary default measures specified by the Council and Board are the same as specified for 2003 and consist of an 18–inch (45.7–cm) minimum fish size, a possession limit of one fish per person, and no closed season.

Scup

For 2004, the Total Allowable Landings of scup was maintained at the 2003 level. As a result of a slightly larger research set-aside amount for 2004 than for 2003, the 2004 scup recreational harvest limit is 3.99 million lb (1,812 mt), a less than 1–percent decrease from the 2003 harvest limit of 4.01 million lb (1,819 mt). Recreational landings in 2003 were estimated to be 9.6 million lb (4,354 mt), more than twice the 2003 harvest limit. To achieve the 2004 target, a 58–percent reduction in landings relative to landings in 2003 is necessary.

The 2004 scup recreational fishery will be managed under separate regulations for state and Federal waters; the Federal measures would apply to party/charter boats with Federal permits and other vessels subject to the possession limit that fish in the EEZ. In Federal waters, to achieve the 2004 target, the Council recommended coastwide management measures of a 10–inch (25.4–cm) minimum fish size, a 50–fish possession limit, and open seasons of January 1 through February 29, and August 15 through November 30. However, additional analysis indicates that these recommended measures would achieve only a 48–percent reduction in landings relative to landings in 2003. In order to achieve the required 58–percent reduction, NMFS proposes to implement coastwide management measures of a 10–inch (25.4–cm) minimum fish size, a 50–fish possession limit, and open seasons of January 1 through the last day of February, and September 8 through November 30. For comparative purposes, the current (status quo) scup recreational measures in the EEZ are a 10–inch (25.4–cm) minimum fish size, a 50–fish possession limit, and open seasons of January 1 through February 28, and July 1 through November 30.

As in the past 2 years, the scup fishery in state waters will be managed under a regional conservation equivalency system developed through the Commission. Addendum XI to the Interstate FMP (Addendum XI), approved by the Board at the January 2004 Council/Commission meeting, requires that the states of MA through NY each develop state-specific management measures to reduce their landings by 57 percent relative to their landings in 2003, through a combination of minimum fish size, possession limits, and seasonal closures. In February 2004, the Commission revised the required reduction of landings for MA through NY to 53.2 percent, based on Marine Recreational Fisheries Statistical Survey (MRFSS) landings estimates through December 2003. At the March 11, 2004, meeting, the Board approved the status quo measures for NJ, i.e., a 10–inch (25.4–cm) minimum size, a 50–fish possession limit, and an open season of July 1 through December 31. Due to low scup landings in the southern states, DE through NC, the Board approved the retention of status quo management measures, i.e., an 8–inch (20.3–cm) minimum fish size, a 50–fish possession limit, and no closed season. The northern states are expected to submit management measures to the Commission for technical review in the next few weeks. Because the Federal FMP does not contain provisions for conservation equivalency, and states may adopt their own unique measures under Addendum XI, it is likely that state and Federal recreational scup measures will differ for the 2004 season.

Black Sea Bass

The 2004 black sea bass recreational harvest limit is 4.01 million lb (1,819 mt), a 17–percent increase from the 2003 harvest limit. Recreational landings in 2003 were estimated to be 3.995 million lb (1,812 mt), 16 percent over the 2003 target. Assuming the same level of fishing effort in 2004, no coastwide reduction in landings is required.

Currently, the Federal coastwide black sea bass recreational measures are: a 25–fish per person possession limit; a minimum size of 12 inches (30.5 cm); and open seasons of January 1 through September 1, and September 16 through November 30. State regulations vary. Although no reduction in landings is required relative to 2003 landings, the Council and Board decided to take a precautionary approach to maintain the status quo measures. The Council recommended open seasons from January 1 through September 7, and September 22 through November 30. These measures are expected to constrain recreational black sea bass landings to the 2004 target.

Classification

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

The Council prepared an IRFA that describes the economic impact this proposed rule, if adopted, would have on small entities.

A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble to this proposed rule. This proposed rule does not duplicate, overlap, or conflict with other Federal rules. A copy of the complete IRFA is available from the Council (see **ADDRESSES**). A summary of the analysis follows.

The proposed action could affect any recreational angler who fishes for summer flounder, scup, or black sea bass. However, the IRFA focuses upon the impacts on party/charter vessels issued a Federal permit for summer flounder, scup, and/or black sea bass because these vessels are considered small business entities for the purposes of the Regulatory Flexibility Analysis (RFA), i.e., businesses with receipts (gross revenues) of up to $3.5 million. These small entities can be specifically identified in the Federal vessel permit database and would be impacted by the recreational measures, regardless of whether they fish in Federal or state waters. Although individual recreational anglers are likely to be impacted, they are not considered small entities under the RFA. Also, there is no permit requirement to participate in these fisheries, thus, it would be difficult to quantify any impacts on recreational anglers in general.

In the EA/IRFA, the no-action alternative (i.e., maintenance of the regulations as codified) is defined as implementation of the following: (1) for summer flounder, coastwide measures of a 17–inch (43.2–cm) minimum fish size, a 4–fish possession limit, and no

closed season, i.e., the measure that would be implemented if conservation equivalency is not implemented in the final rule; (2) for scup, a 10–inch (25.4–cm) minimum fish size, a 50–fish possession limit, and open seasons of January 1 through February 28, and July 1 through November 30; and (3) for black sea bass, a 12–inch (30.5–cm) minimum size, a 25–fish per person possession limit, and an open season of January 1 through September 1, and September 16 through November 30.

The implications of the no-action alternative are substantial. For summer flounder, reductions in landings would range from 0 percent in MD to 63 percent in NC. The no-action alternative (i.e., maintenance of the regulations as codified) would not be restrictive enough to effect the recommended 58–percent reduction in scup landings relative to 2003, but would constrain black sea bass landings to the harvest limit for 2004. In consideration of the recreational harvest limits established for the 2004 fishing year, taking no action in the summer flounder and scup fisheries would be inconsistent with the goals and objectives of the FMP and its implementing regulations, and, because it could result in overfishing of the scup fishery, also would be inconsistent with National Standard 1 of the Magnuson-Stevens Act. Therefore, the no-action alternative was not considered to be an acceptable alternative to the preferred action.

The Council estimated that the proposed measures could affect any of the 775 vessels possessing a Federal charter/party permit for summer flounder, scup, and/or black sea bass in 2002, the most recent year for which complete permit data are available. Only 327 of these vessels reported active participation in the recreational summer flounder, scup, and/or black sea bass fisheries in 2002.

Effects of the various management measures were analyzed by employing quantitative approaches, to the extent possible. Where quantitative data were not available, the Council conducted qualitative analyses. Although NMFS's Regulatory Flexibility Act guidance recommends assessing changes in profitability as a result of proposed measures, the quantitative impacts were instead evaluated using changes in party/charter vessel revenues as a proxy for profitability. This is because reliable cost data are not available for these fisheries. Without reliable cost data, profits cannot be discriminated from gross revenues. As reliable cost data become available, impacts to profitability can be more accurately forecast. Similarly, changes to long-term solvency were not assessed due both to the absence of cost data and because the recreational management measures change annually according to the specification-setting process.

Assessments of potential changes in gross revenues for all 18 combinations of alternatives proposed in this action were conducted for federally permitted party/charter vessels in each state in the Northeast Region (NE). Management measures proposed under the summer flounder conservation equivalency alternative have yet to be adopted; therefore, potential losses under this alternative could not be analyzed in conjunction with alternatives proposed for scup and black sea bass. Since conservation equivalency allows each state to tailor specific recreational fishing measures to the needs of that state, while still achieving conservation goals, it is likely that the measures developed under this alternative, when considered in combination with the measures proposed for scup and black sea bass, would have fewer overall adverse effects than any of the other combinations that were analyzed.

Impacts were examined by first estimating the number of angler trips aboard party/charter vessels in each state in 2003 that would have been affected by the proposed 2004 management measures. All 2003 party/charter fishing trips that would have been constrained by the proposed 2004 measures in each state were considered to be affected trips.

There is very little information available to estimate empirically how sensitive the affected party/charter vessel anglers might be to the proposed fishing regulations, with the exception of states for which the contribution of summer flounder, scup, and black sea bass to the total catch by party/charter vessels is negligible (ME and NH) and DE, for which results are suppressed for confidentiality purposes. If the proposed measures discourage trip-taking behavior among some of the affected anglers, economic losses may accrue to the party/charter vessel industry in the form of reduced access fees. On the other hand, if the proposed measures do not have a negative impact on the value or satisfaction the affected anglers derive from their fishing trips, party/charter revenues would remain unaffected by this action. In an attempt to estimate the potential changes in gross revenues to the party/charter vessel industry in each state, two hypothetical scenarios were considered: A 25–percent reduction, and a 50–percent reduction, in the number of fishing trips that are predicted to be affected by implementation of the management measures in the NE (ME through NC) in 2004.

Total economic losses to party/charter vessels were then estimated by multiplying the number of potentially affected trips in each state in 2004, under the two hypothetical scenarios, by the estimated average access fee paid by party/charter anglers in the NE in 2003. Finally, total economic losses were divided by the number of federally permitted party/charter vessels that participated in the summer flounder, scup, and/or, black sea bass fisheries in 2002 in each state (according to homeport state in the NE database) to obtain an estimate of the average projected gross revenue loss per party/charter vessel in 2004.

The MRFSS data indicate that anglers fished 34.66 million days in 2003 in the NE. In the NE, party/charter anglers comprised about 5 percent of the angler fishing days. The number of trips in each state ranged from approximately 14,000 in ME to approximately 457,000 in NJ. The number of trips that targeted summer flounder, scup, and/or black sea bass was identified, as appropriate, for each measure, and the number of trips that would be impacted by the proposed measures was estimated. Finally, the revenue impacts were estimated by calculating the average fee paid by anglers on party/charter vessels in the NE in 2003 ($37.70 per angler), and the revenue impacts on individual vessels were estimated. The analysis assumed that angler effort and catch rates in 2004 will be similar to 2003.

The Council noted that this method is likely to result in overestimation of the potential revenue losses that would result from implementation of the proposed coastwide measures in these three fisheries for several reasons. First, the analysis likely overestimates the potential revenue impacts of these measures because some anglers would continue to take party/charter vessel trips, even if the restrictions limit their landings. Also, some anglers may engage in catch and release fishing and/or target other species. It was not possible to estimate the sensitivity of anglers to specific management measures. Second, the universe of party/charter vessels that participate in the fisheries is likely to be even larger than presented in these analyses, as party/charter vessels that do not possess a Federal summer flounder, scup, or black sea bass permit because they fish only in state waters are not represented in the analyses. Considering the large proportion of landings from state waters (approximately 90 percent of summer flounder and scup landings in 2002), it is probable that some party/charter

vessels fish only in state waters and, thus, do not hold Federal permits for these fisheries. Third, vessels that hold only state permits likely will be fishing under different, potentially less restrictive, recreational measures for summer flounder and scup in state waters under the Commission's conservation equivalency programs.

Impacts of Summer Flounder Alternatives

The proposed action for the summer flounder recreational fishery would limit coastwide catch to 11.21 million lb (5,085 mt) by either waiving the permit condition at § 648.4(b) and requiring Federal permit holders to comply with management measures set by the states (conservation equivalency) or imposing coastwide Federal measures throughout the EEZ.

The impact of the proposed summer flounder conservation equivalency alternative (in Alternative 1) among states is likely to be similar to the level of landings reductions that are required of each state. As indicated above, only NY and NJ would be required to reduce summer flounder landings in 2004, relative to their 2003 landings (by 48.5 percent and 1.3 percent, respectively). If the preferred conservation equivalency alternative is effective at achieving the recreational harvest limit, then it is likely to be the only alternative that minimizes adverse economic impacts, to the extent practicable, yet achieves the biological objectives of the FMP. Because states have a choice, it is more rational for the states to adopt conservation equivalent measures that result in fewer adverse economic impacts than to adopt the much more restrictive precautionary default measures (i.e., only one fish measuring at least 18 inches (45.7 cm)).

The impacts of the non-preferred summer flounder coastwide alternative (in Alternative 2), i.e., a 17–inch (43.2–cm) minimum fish size, a four-fish possession limit, and no closed season, were evaluated using the quantitative method described above. Impacted trips were defined as individual angler trips taken aboard party/charter vessels in 2003 that landed at least one summer flounder smaller than 17 inches (43.2 cm), or that landed more than four summer flounder. The analysis concluded that the measures would affect 1.1 percent of the party/charter vessel trips in the NE.

The state-specific landings reductions associated with the precautionary default measures, consisting of an 18–inch (45.7–cm) minimum fish size, a one-fish possession limit, and no closed season, would reduce state specific landings by a range of 41 percent (DE) to 88 percent (NC), relative to landings in these states in 2003. The state-specific landings reductions associated with the precautionary default measures are substantially higher than the reductions that would be implemented using conservation equivalency. As such, it is expected that states will avoid the impacts of precautionary default measures by establishing conservation equivalent management measures. Therefore, the precautionary default provision that is included in the conservation equivalency proposal was not analyzed as a separate provision.

Impacts of Scup Alternatives

The proposed action for scup would limit coastwide landings to 3.99 million lb (1,812 mt) and reduce landings by at least 58 percent compared to 2003.

For the preferred scup alternative (in Alternative 1), impacted trips were defined as individual angler trips taken aboard party/charter vessels in 2003 that landed at least 1 scup smaller than 10 inches (25.4 cm), that landed more than 50 scup, or that landed at least 1 scup during the proposed closed seasons of March 1 through August 14, and December 1 through December 31. The analysis concluded that the measures would affect 2.4 percent of party/charter vessel trips in the NE.

For the scup no action alternative (in Alternative 2), impacted trips were defined as individual angler trips taken aboard party/charter vessels in 2003 that landed at least 1 scup smaller than 10 inches (25.4 cm), that landed more than 50 scup, or that landed at least 1 scup during the periods of March 1 through June 30, and December 1 through December 31. The analysis concluded that the measures would affect 1.2 percent of party/charter vessel trips in the NE.

For the scup measures considered in Alternative 3, impacted trips were defined as individual angler trips taken aboard party/charter vessels in 2003 that landed at least 1 scup smaller than 10 inches (25.4 cm), that landed more than 50 scup, or that landed at least 1 scup during the period March 1 through September 7, and December 1 through December 31. The analysis concluded that the measures in this alternative would affect 3.2 percent of party/charter vessel trips in the NE.

Impacts of Black Sea Bass Alternatives

The proposed action for black sea bass would limit coastwide landings to 4.01 million lb (1,819 mt). For the preferred black sea bass alternative (in Alternative 1), impacted trips were defined as individual angler trips taken aboard party/charter vessels in 2003 that landed at least 1 black sea bass smaller than 12 inches (30.5 cm), that landed more than 25 black sea bass, or that landed at least 1 black sea bass during the proposed closed seasons of September 8 through September 21, and December 1 through December 31. The analysis concluded that the measures would affect less than 1 percent of party/charter vessel trips in the NE.

For the non-preferred black sea bass measures considered in Alternative 2, impacted trips were defined as individual angler trips taken aboard party/charter vessels in 2003 that landed at least 1 black sea bass smaller than 11.5 inches (29.2 cm), that landed more than 25 black sea bass, or that landed at least 1 black sea bass during the period of September 2 through September 15, and December 1 through December 31. The analysis concluded that the proposed alternative would affect less than 1 percent of party/charter vessel trips in the NE.

For the non-preferred black sea bass measures considered in Alternative 3, impacted trips were defined as individual angler trips taken aboard party/charter vessels in 2003 that landed at least 1 black sea bass smaller than 12 inches (30.5 cm) or that landed more than 20 black sea bass. The analysis concluded that the measures would affect 1.4 percent of party/charter trips.

Combined Impacts of Summer Flounder, Scup, and Black Sea Bass Alternatives

Since the management measures under summer flounder Alternative 1 (i.e., conservation equivalency) have yet to be adopted, the effort effects of this alternative could not be analyzed in conjunction with the alternatives proposed for scup and black sea bass. The percent of total party/charter vessel trips in the NE that were estimated to be affected by the other alternatives ranged from a low of 3 percent for the combination of measures proposed under summer flounder Alternative 2, scup Alternative 2, and black sea bass Alternative 2 to 10.5 percent for the precautionary default measures for summer flounder combined with the measures proposed under scup Alternative 3 and black sea bass Alternative 3.

Potential revenue losses in 2004 could differ for party/charter vessels that land more than one of the regulated species. The cumulative maximum gross revenue loss per vessel varies by the combination of permits held and by state. All 18 potential combinations of management alternatives proposed for

summer flounder, scup, and black sea bass are predicted to affect party/charter vessel revenues to some extent in 9 of the 11 NE coastal states. Angler effort aboard party/charter vessels in 2004 in ME and NH is not predicted to be constrained (i.e, affected) by the proposed measures, thus party/charter revenues for vessels operating in these states are not estimated to be impacted. In addition, although potential losses were estimated for party/charter vessels operating out of DE, these results are suppressed for confidentiality purposes. Average party/charter losses for federally permitted vessels operating in the remaining states are estimated to vary considerably across the 18 combinations of alternatives. For instance, in CT, average losses are predicted to range from only $13 per vessel under the combined effects of summer flounder Alternative 2, scup Alternative 1, and black sea bass Alternative 1, to $6,456 for the combination of alternatives proposed for summer flounder Alternative 2, scup Alternative 3, and black sea bass Alternative 1 (assuming a 25–percent reduction in affected effort).

There are no new reporting or recordkeeping requirements contained in any of the alternatives considered for this action.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 8, 2004.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.122, paragraph (g) is revised to read as follows:

§ 648.122 Time and area restrictions.

* * * * *

(g) *Time restrictions.* Vessels that are not eligible for a moratorium permit under § 648.4(a)(6), and fishermen subject to the possession limit, may not possess scup, except from January 1 through the last day of February, and from September 8 through November 30. This time period may be adjusted pursuant to the procedures in § 648.120.

* * * * *

■ 3. Section 648.142 is revised to read as follows:

§ 648.142 Time restrictions.

Vessels that are not eligible for a moratorium permit under § 648.4(a)(7), and fishermen subject to the possession limit, may not possess black sea bass, except from January 1 through September 7, and September 22 through November 30. This time period may be adjusted pursuant to the procedures in § 648.140.

[FR Doc. 04–8488 Filed 4–13–04; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
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Wednesday, April 14, 2004

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

April 9, 2004.

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), *Pamela_Beverly_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.

Agricultural Research Service

Title: Evaluation of User Satisfaction with NAL Internet Sites.

OMB Control Number: 0518–NEW.

Summary of Collection: There is a need to measure user satisfaction with the National Agricultural Library (NAL) Internet sites in order for NAL to comply with Executive Order 12862, which directs federal agencies that provide significant services directly to the public to survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services. In accordance with Executive Branch and Congressional mandates to provide information dissemination, and under its mission, NAL has rapidly expanded availability of vital agricultural information. The project aims to evaluate user satisfaction with the content and usefulness of Web-based delivery methods. NAL Internet sites are a vast collection of Web pages created and maintained by component organizations of NAL, and are visited by 3.4 million people per month on average. All seven of NAL Information Centers and dozen special interest collections have established a Web presence with a home page and links to sub-pages that provide information to their respective audiences.

Need and Use of the Information: The purpose of the proposed research is to ensure that intended audiences find the information provided on the Internet sites easy to access, clear, informative, and useful. The research will also provide a means by which to classify visitors to the NAL Internet sites, to better understand how to serve them. If the information is not collected, NAL will be hindered from advancing its mandate to provide accurate, timely information to its user community.

Description of Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions; Farms; Federal Government; State, local or tribal government.

Number of Respondents: 12,000.

Frequency of Responses: Reporting: Monthly.

Total Burden Hours: 1,003.

Animal and Plant Health Inspection Service

Title: Citrus Canker: Commercial Citrus Tree Replacement Program.

OMB Control Number: 0579–0163.

Summary of Collection: Under the Plant Protection Act (7 U.S.C. 7701–7772), the Secretary of Agriculture, either independently or in cooperation with the States, is authorized to carry out operations or measures to detect, eradicate, suppress, control, prevent, or retard the spread of plant pests (such as citrus canker) new to or widely distributed throughout the United States. The Plant Protection & Quarantine Division of USDA's Animal and Plant Health Inspection Service (APHIS) has regulations in place to prevent the interstate spread of citrus canker. APHIS will collect information using form PPQ 652, Application for Citrus Canker Tree Replacement Payment.

Need and Use of the Information: APHIS will collect the owner's name, address, and a description of the owner's property, and certification statements that the trees removed from the owner's property were commercial citrus trees. The information will be used to verify the location and number of citrus trees for which the owner is requesting replacement funds. If the information were not collected APHIS would be unable to reimburse eligible grove owners for the loss of their trees.

Description of Respondents: Business or other for-profit.

Number of Respondents: 20.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 7.

Animal and Plant Health Inspection Service

Title: Importation of Unshu Oranges.

OMB Control Number: 0579–0173.

Summary of Collection: The Plant Protection Act (7 U.S.C. 7701–7772) authorizes the Secretary of Agriculture to regulate the importation of plants, plant products, and other articles into the United States to prevent the introduction of plant pest and noxious weeds. The regulations in "Subpart-Citrus Fruit" (7 CFR 319.26) allow the importation of unshu oranges from Kyushu Island and Honshu Island, Japan, into the United States under certain conditions. A certificate must accompany the unshu oranges from the

Japanese plant protection service certifying that the fruit is apparently free of citrus canker.

Need and Use of the Information: The Animal and Plant Health Inspection (APHIS) will collect information using form PPQ 203, Foreign Site Certificate of Inspection and/or Treatment. The information from the form will be used to certify that unshu oranges from Japan are free of citrus canker and to also ensure that the oranges are not imported into citrus-producing areas of the United States such as Florida and California.

Description of Respondents: State, local or tribal government.

Number of Respondents: 10.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 10.

Animal and Plant Health Inspection Service

Title: Ongoing Monitoring.

OMB Control Number: 0579–NEW.

Summary of Collection: The United States Department of Agriculture is responsible for protecting the health of our Nation's livestock and poultry populations by preventing the introduction and interstate spread of contagious, infectious, or communicable diseases of livestock and poultry and for eradicating such diseases when feasible. In connection with this mission, the Centers for Epidemiology and Animal Health (CEAH), Veterinary Services, Animal and Plant Health Inspection Service (APHIS), plans to initiate as part of the National Animal Health Monitoring System (NAHMS) an information collection to gather data for the ongoing monitoring systems. Collection, analysis, and dissemination of animal and poultry health information are consistent with the APHIS mission of protecting and improving American agriculture's productivity and competitiveness.

Need and Use of the Information: APHIS will collect information using several forms and questionnaires. The data collected will be used to identify baseline trends, determine the economic consequences of animal disease, management, environmental practices, and meet international trade reporting requirements for animal health. If the information were not collected the ability to respond to international trade issues involving the health status of animal commodities could be severely reduced, jeopardizing the marketability of meat and byproducts.

Description Of Respondents: Farms; Individuals or households; Federal Government.

Number of Respondents: 160.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 2,029.

Risk Management Agency

Title: Request for Applications for Research Partnerships.

OMB Control Number: 0563–NEW.

Summary of Collection: The Federal Crop Insurance Act of 2002 authorizes the Federal Crop Insurance Corporation to enter into partnerships with public and private entities for the purpose of increasing the availability of risk management tools for producers of agricultural commodities. The Risk Management Agency (RMA) had developed procedures for the preparation, submission and evaluation of applications.

Need and Use of the Information: RMA will use the information to determine applicant eligibility and to evaluate the applications. The qualifying applicants are ranked and the scores are used for the final decision on awards. If the information were not collected, the consequences would be missed opportunity to improve and/or develop new risk management tools for agricultural producers. The impact would affect those segments of agriculture lacking access to existing risk management tools.

Description of Respondents: Business or other for-profit; Farms; Federal Government.

Number of Respondents: 100.

Frequency of Responses: Reporting: Occasion.

Total Burden Hours: 3,467.

Risk Management Agency

Title: Risk Management and Crop insurance Education; Request for Applications.

OMB Control Number: 0563–NEW.

Summary of Collection: The Federal Crop Insurance Act, Title 7 U.S.C. Chapter 36 Section 1508(k) authorizes the Federal Crop Insurance Corporation (FCIC) to provide reinsurance to insurers approved by FCIC that insure producers of any agricultural commodity under one or more plans acceptable to FCIC. FCIC operating through the Risk Management Agency (RMA) has two application programs to carryout certain risk management education provisions of the Federal Crop Insurance Act. The two educational programs requiring application are: to establish crop insurance education and information programs in States that have been historically underserved by the Federal Crop Insurance Program; and to provide agricultural producers with training opportunities in risk management with a priority given to producers of specialty crops and underserved commodities. Funds are available to fund parties willing to assist RMA in carrying out local and regional risk management and crop insurance education programs.

Need and Use of the Information: Applicants are required to submit completed application packages in hard copy to RMA. RMA and a review panel will evaluate and rank applications as well as use the information to properly document and protect the integrity of the process used to select applications for funding. For applicants that are selected, the information will be used to create the terms of cooperative agreements between the applicant and the agency and will not be shared outside of RMA.

Description of Respondents: Not-for-profit institutions; Business or other for-profit; State, Local, or Tribal Government.

Number of Respondents: 110.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 1732.

Risk Management Agency

Title: Notice of Funds availability—Community Outreach and Assistance Partnership Program.

OMB Control Number: 0563–NEW.

Summary of Collection: The Federal Crop Insurance Act of 2002 authorizes the Federal Crop Insurance Corporation (FCIC) to enter into partnerships with public and private entities for the purpose of increasing the availability of risk management tools for producers of agricultural commodities. The Risk Management Agency (RMA) has developed procedures for the preparation, submission and evaluation of applications for partnership agreements that will be used to provide outreach and assistance to under served producers, farmers, ranchers and women, limited resource, socially disadvantaged.

Need and Use of the Information: Applicants are required to submit materials and information necessary to evaluate and rate the merit of proposed projects and evaluate the capacity and qualification of the organization to complete the project. The application package should include: a project summary and narrative, a statement of work, a budget narrative and OMB grant forms. RMA and a review panel will evaluate and rank applicants as well as use the information to properly document and protect the integrity of the process used to select applications for funding.

Description of Respondents: Not-for-profit institutions; Business or other for-profit; State, local, or tribal government.

Number of Respondents: 100.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 967.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 04–8461 Filed 4–13–04; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Request for Approval of a New Information Collection; Qualification Requirement

AGENCY: Farm Service Agency, Agriculture.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the United States Department of Agriculture (USDA), Farm Service Agency (FSA), Kansas City Commodity Office (KCCO) is seeking comments from all interested individuals and organizations regarding an information collection needed by KCCO to qualify potential new vendors prior to allowing a vendor to submit an offer for Invitations for Bids. The qualification is a one-time collection for each new potential vendor. The qualification requirement is a reexamination and revalidation of established qualifications as required by the Federal Acquisition Regulation (FAR), and is necessary for KCCO to carry out its procurement mission. This information is needed by KCCO for compliance with FAR Responsible Prospective Contractors and Qualification Requirement.

DATES: Comments on this notice must be received on or before June 14, 2004, to be assured consideration.

FOR FURTHER INFORMATION CONTACT: Comments regarding this information collection requirement may be directed to Donna Ryles, Chief, Planning and Analysis Division, Kansas City Commodity Office (KCCO), 6501 Beacon Drive, Kansas City, Missouri 64133–4676, telephone (816) 926–6509 or fax (816) 926–1648; e-mail *DGRYLES@KCC.FSA.USDA.GOV.*

SUPPLEMENTARY INFORMATION:

Title: Qualification Requirement.

OMB Control Number: 0560–NEW.

Type of Request: Approval of a New Information Collection.

Abstract: KCCO issues Invitations for Bids for the purchase of various commodities on a daily, monthly, multi-month, quarterly and yearly basis. Vendors respond by making offers. In order for KCCO to carry out its procurement mission, all new prospective bidders that want to submit a bid on contracts procured under USDA or CCC authorities, must be qualified prior to submitting any offers for Invitations for Bid. This collection of qualification information is mandatory from all interested potential vendors. New vendors must fully complete and provide all of the required qualification information. Qualification of vendors allows for more timely awards, since bid acceptance periods are very short and food safety issues are addressed in advance of bidding. The qualification package includes a review of the vendor's financial statements, credit report, and past activity and experience with the commodity that they are proposing to offer.

KCCO contracting officers will review the information and make a determination if the vendor is a qualified bidder. After a vendor has been qualified by KCCO, they will be included on the Qualified Bidders List. No bid will be accepted from a potential vendor that has failed to comply with the requirements. New potential vendors who submit a complete qualification package will be notified in writing of their status along with any necessary explanation or action that is deemed necessary.

Estimate of Burden: Public reporting burden for this collection is estimated to average 40 minutes per response.

Respondents: New Potential Vendors.

Estimated Number of Respondents: 45.

Estimated Number of Responses per Respondent: 2.

Estimated Total Annual Burden on Respondents: 78.

Proposed topics for comment include: (a) Whether the continued 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 FSA's estimate of burden including the validity of the methodology and assumptions used; (c) enhancing the quality, utility, and clarity of the information collected; or (d) minimizing 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 should be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USDA, Washington, DC 20503, and to Donna Ryles, Chief, Planning and Analysis Division, Kansas City Commodity Office, 6501 Beacon Drive, Kansas City, Missouri 64133–4676. All comments will become a matter of public record.

OMB is required to make a decision concerning the collection(s) of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Signed at Washington, DC, on April 5, 2004.

Verle E. Lanier,

Acting Administrator, Farm Service Agency.

[FR Doc. 04–8447 Filed 4–13–04; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Deschutes Provincial Advisory Committee (DPAC) Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Deschutes Provincial Advisory Committee will meet on May 19–20, 2004. The first day will be a field trip to the Sisters Ranger District to discuss the Metolius Basin Forest Management Project. The second day will be a business meeting starting at 9 am at the Bend-Ft. Rock Ranger District in Red Oaks Square at 1230 NE 3rd St., Suite A254, Bend, Oregon. Agenda items will include final recommendations for the Upper Deschutes Resource Management Plan, FERC Relicensing, Northwest Forest Plan Monitoring, Davis Fire Recovery Update, and an open public forum from 4 til 4:30. All Deschutes Province Advisory Committee Meetings are open to the public.

FOR FURTHER INFORMATION CONTACT: Chris Mickle, Province Liaison, Deschutes NF, Crescent RD, P.O. Box 208, Crescent, OR, 97754, Phone (541) 433–3216.

Dated: April 6, 2004.

Leslie A.C. Weldon,

Forest Supervisor.

[FR Doc. 04–8452 Filed 4–13–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Industry and Security (BIS).

Title: International Import Certificate.

Agency Form Number: BIS–645P.

OMB Approval Number: 0694–0017.

Type of Request: Extension of a currently approved collection of information.

Burden: 85 hours.

Average Time Per Response: 16 minutes per response.

Number of Respondents: 316 respondents.

Needs and Uses: The United States and several other countries have undertaken to increase the effectiveness of their respective controls over international trade in strategic commodities by means of an Import Certificate procedure. For the U.S. importer, this procedure provides that, where required by the exporting country with respect to a specific transaction, the importer certifies to the U.S. Government that he/she will import specific commodities into the United States and will not reexport such commodities except in accordance with the export control regulations of the United States. The U.S. Government, in turn, certifies that such representations have been made.

Affected Public: Individuals, businesses or other for-profit institutions.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: David Rostker.

Copies of the above information collection proposal can be obtained by calling or writing Gwellnar Banks, Department Forms Clearance Officer, (202) 482–3781, Department of Commerce, Room 6066, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20230.

Dated: April 8, 2004.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–8387 Filed 4–13–04; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Foreign Availability Procedures and Criteria

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before June 14, 2004.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Office of the Chief Information Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Stephen Baker, BIS ICB Liaison, Office of the Chief Information Officer, Projects and Planning Division, Department of Commerce, Room 6622, 14th & Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

This information is collected in order to respond to requests by Congress and industry to make foreign availability determinations. Exporters are urged to submit data regarding the foreign product's technical characteristics and the availability of these products in foreign markets to determine if similar U.S. products should be decontrolled.

II. Method of Collection

Written submission.

III. Data

OMB Number: 0694–0004.

Form Number: Not Applicable.

Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 2.

Estimated Time Per Response: 255 hours per response.

Estimated Total Annual Burden Hours: 510.

Estimated Total Annual Cost: No start-up capital expenditures.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: April 8, 2004.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–8386 Filed 4–13–04; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–863]

Notice of Extension of Time Limit of Final Results of New Shipper Review: Honey From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit of final results of antidumping Duty New Shipper Review.

SUMMARY: The Department of Commerce is extending the time limit of the final results of the new shipper review of the antidumping duty order on honey from the People's Republic of China until no later than April 26, 2004. The period of

review is February 10, 2001 through November 30, 2002. This extension is made pursuant to section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended.

EFFECTIVE DATE: April 14, 2004.

FOR FURTHER INFORMATION CONTACT: Brandon Farlander at (202) 482–0182 or Dena Aliadinov at (202) 482–3362; Antidumping and Countervailing Duty Enforcement Group III, Office Eight, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Statutory Time Limits

Section 751(a)(2)(B)(iv) of the Act requires the Department to issue the final results of a new shipper review within 90 days after the date on which the preliminary results were issued. However, if the Department determines the issues are extraordinarily complicated, section 751(a)(2)(B)(iv) of the Act allows the Department to extend the deadline for the final results to up to 150 days after the date on which the preliminary results were issued.

Background

On December 31, 2002, the Department received properly filed requests from Shanghai Xiuwei International Trading Co., Ltd. ("Shanghai Xiuwei") and Sichuan-Dujiangyan Dubao Bee Industrial Co., Ltd. ("Sichuan Dubao"), in accordance with section 751(a)(2)(B) of the Act and section 351.214(c) of the Department's regulations, for a new shipper review of the antidumping duty order on honey from the People's Republic of China (PRC), which has a December anniversary date, and a June semiannual anniversary date. Shanghai Xiuwei identified itself as an exporter of processed honey produced by its supplier, Henan Oriental Bee Products Co., Ltd. ("Henan Oriental"). Sichuan Dubao identified itself as the producer of the processed honey that it exports.

On February 5, 2003, the Department initiated this new shipper review for the period February 10, 2001 through November 30, 2002. *See Honey from the People's Republic of China: Initiation of New Shipper Antidumping Duty Reviews* (68 FR 5868, February 5, 2003). On July 21, 2003, the Department extended the preliminary results of this new shipper review by 180 days until November 26, 2003. *See Honey from the People's Republic of China: Extension of Time Limits for Preliminary Results of New Shipper Antidumping Duty Review*, 68 FR 43086 (July 21, 2003). On December 4, 2003, the Department published its preliminary results of this review. *See Notice of Preliminary Results of Antidumping Duty New Shipper Review: Honey from the People's Republic of China*, 68 FR 67832 (December 4, 2003) (*Preliminary Results*). In the preliminary results of this review, we indicated that we were unable to complete our analysis of all factors relevant to the bona fides of Shanghai Xiuwei's and Sichuan Dubao's U.S. sales. We described our research and contact efforts in the Memorandum from Brandon Farlander and Dena Aliadinov to the File, dated November 26, 2003. We also indicated that additional time was needed to research the appropriate surrogate values to value raw honey. On February 25, 2004, the Department extended the final results of this new shipper review 30 days until March 25, 2004. *See Notice of Extension of Time Limit of Final Results of New Shipper Review: Honey from the People's Republic of China*, 69 FR 8625 (February 25, 2004). On March 31, 2004, the Department extended the final results of this new shipper review by an additional 14 days until April 8, 2004. *See Notice of Extension of Time Limit of Final Results of New Shipper Review: Honey from the People's Republic of China*, 69 FR 16892 (March 31, 2004).

Extension of Time Limits for Preliminary Results

Pursuant to section 751(a)(2)(B)(iv) of the Act, the Department may extend the deadline for completion of the final results of a new shipper review by 60 days if it determines that the case is extraordinarily complicated. The Department has determined that this case is extraordinarily complicated because of the issues pertaining to the bona fides of Shanghai Xiuwei's and Sichuan Dubao's U.S. sales. Therefore, in accordance with section 751(a)(2)(B)(iv) of the Act and section 351.214(i)(2) of the regulations, the Department is extending the time limit for the completion of the final results by an additional 16 days. The final results will now be due no later than April 26, 2004.

This notice is published pursuant to sections 751(a)(2)(B) and 777(i)(1) of the Act.

Dated: April 8, 2004.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 04–8480 Filed 4–13–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–850]

Notice of Initiation of Antidumping Investigation: Live Swine From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce

ACTION: Initiation of Antidumping Investigation.

SUMMARY: The Department of Commerce is initiating an antidumping investigation to determine whether producers and exporters of live swine from Canada are selling live swine to the United States at less than fair value.

EFFECTIVE DATE: April 14, 2004.

FOR FURTHER INFORMATION CONTACT: Judith Wey Rudman at (202) 482–0192, Cole Kyle at (202) 482–0192, or Andrew Smith at (202) 482–1276; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Initiation of Investigation

The Petition

Between March 5 and 30, 2004, the Department of Commerce ("the Department") received a petition, and amendments to the petition, filed in proper form by the Illinois Pork Producers Association, the Indiana Pork Advocacy Coalition, the Iowa Pork Producers Association, the Minnesota Pork Producers Association, the Missouri Pork Association, the Nebraska Pork Producers Association, Inc., the North Carolina Pork Council, Inc., the Ohio Pork Producers Council, and 119 individual producers of live swine [1]

[1] Alan Christensen, Alicia Prill-Adams, Aulis Farms, Baarsch Pork Farm, Inc., Bailey Terra Nova Farms, Bartling Brothers Inc., Belstra Milling Co. Inc., Berend Bros. Hog Farm LLC, Bill Tempel, BK Pork Inc., Blue Wing Farm, Bornhorst Bros, Brandt Bros., Bredehoeft Farms, Inc., Bruce Samson, Bryant Premium Pork LLC, Buhl's Ridge View Farm, Charles Rossow, Cheney Farms, Chinn Hog Farm, Circle K Family Farms LLC, Cleland Farm, Clougherty Packing Company, Coharie Hog Farm, County Line Swine Inc., Craig Mensick, Daniel J. Pung, David Hansen, De Young Hog Farm LLC, Dean Schrag, Dean Vantiger, Dennis Geinger, Double "M" Inc., Dykhuis Farms, Inc., E & L Harrison Enterprises, Inc., Erle Lockhart, Ernest Smith, F & D Farms, Fisher Hog Farm, Fitzke Farm, Fultz Farms, Gary and Warren Oberdiek Partnership, Geneseo Pork, Inc., GLM Farms, Greenway Farms, H & H Feed and Grain, H & K Enterprises, LTD, Ham Hill Farms, Inc., Harrison Creek Farm, Harty Hog Farms, Heartland Pork LLC, Heritage Swine, High Lean Pork, Inc., Hilman Schroeder, Holden Farms Inc., Huron Pork, LLC, Hurst AgriQuest, J D Howerton and Sons, J.L. Ledger, Inc., Jack Rodibaugh & Sons, Inc., JC

Continued

(hereinafter "the petitioners"). The Department received information supplementing the March 5, 2004, petition on March 18, 22, and 30, 2004. On March 25, 2004, the Department announced that it was extending the deadline for the initiation determination to not later than April 14, 2004, in order to establish whether the antidumping and countervailing duty petitions were filed by or on behalf of the domestic industry. *See* March 25, 2004, memorandum from Jeffrey May, Deputy Assistant Secretary for Import Administration, Group I, to James J. Jochum, Assistant Secretary for Import Administration, entitled "Antidumping and Countervailing Duty Petitions on Live Swine from Canada: Extension of Deadline for Determining Industry Support" ("*Initiation Extension Memo*"), which is on file in the Department's Central Records Unit ("CRU") in Room B–099 of the main Department building.

In accordance with section 732(b) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act ("URAA") effective January 1, 1995 ("the Act"), the petitioners allege that imports of live swine from Canada are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, an industry in the United States.

The Department finds that the petitioners filed this petition on behalf of the domestic industry because they are interested parties, as defined in section 771(9)(E) and (F) of the Act, and have demonstrated sufficient industry support in accordance with section 732(c)(4)(A). *See infra*, "Determination of Industry Support for the Petition."

Howard Farms, Jesina Farms, Inc., Jim Kemper, Jorgensen Pork, Keith Berry Farms, Kellogg Farms, Kendale Farm, Kessler Farms, L.L. Murphrey Company, Lange Farms LLC, Larson Bros Dairy Inc., Levelue Pork Shop, Long Ranch Inc., Lou Stoller & Sons, Inc., Luckey Farm, Mac-O-Cheek, Inc., Martin Gingerich, Marvin Larrick, Max Schmidt, Maxwell Foods, Inc., Mckenzie-Reed Farms, Meier Family Farms Inc., MFA Inc., Michael Farm, Mike Bayes, Mike Wehler, Murphy Brown LLC, Ned Black and Sons, Ness Farms, Next Generation Pork, Inc., Noecker Farms, Oaklane Colony, Orangeburg Foods, Oregon Pork, Pitstick Pork Farms Inc., Prairie Lake Farms, Inc., Premium Standard Farms, Inc., Prestage Farms, Inc., R Hogs LLC, Rehmeier Farms, Rodger Schamberg, Scott W. Tapper, Sheets Farm, Smith-Healy Farms, Inc., Square Butte Farm, Steven A. Gay, Sunnycrest Inc., Trails End Far, Inc., TruLine Genetics, Two Mile Pork, Valley View Farm, Van Dell Farms, Inc., Vollmer Farms, Walters Farms LLP, Watertown Weaners, Inc., Wen Mar Farms, Inc., William Walter Farm, Willow Ridge Farm LLC, Wolf Farms, Wondraful Pork Systems, Inc., Wooden Purebred Swine Farms, Woodlawn Farms, and Zimmerman Hog Farms.

Scope of Investigation

The products covered by this investigation are all live swine from Canada except U.S. Department of Agriculture ("USDA") certified purebred breeding swine. Live swine are defined as four-legged, monogastric (single-chambered stomach), litter-bearing (litters typically range from 8 to 12 animals), of the species sus scrofa domesticus. This merchandise is currently classifiable under *Harmonized Tariff Schedule of the United States* ("*HTSUS*") subheadings 0103.91.0010, 0103.91.0020, 0103.91.0030, 0103.92.0010, 0103.92.0090.[2]

Although the *HTSUS* subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

As discussed in the preamble to the Department's regulations (*see Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments within 20 days of publication of this notice. Comments should be addressed to Import Administration's Central Records Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of our preliminary determination.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that the Department's industry support determination, which is to be made before the initiation of an investigation, be based on whether a minimum percentage of the relevant industry supports the petition. A petition meets this requirement if the domestic producers or workers who support the petition account for: (1) at least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (1) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A), or (2) determine industry support using a statistically valid sample.

Section 771(4)(A) of the Act defines the "industry" as the producers of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the Act directs the Department to look to producers and workers who account for production of the domestic like product. The International Trade Commission ("ITC"), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (*see* section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the domestic like product, such differences do not render the decision of either agency contrary to the law.[3]

Section 771(10) of the Act defines the domestic like product as "a product that is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation" (*i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

The domestic like product referred to in the petition is the domestic like product defined in the "Scope of Investigation" section above. No party has commented on the petition's definition of the domestic like product, and there is nothing on the record to indicate that this definition is inaccurate. The Department, therefore, has adopted the domestic like product definition set forth in the petition.

[2] Prior to June 30, 2003, *HTSUS* subheadings 0103.91.0010, 0103.91.0020, and 0103.91.0030 were all included under one heading, *HTSUS* 0103.91.0000.

[3] *See USEC, Inc.* v. *United States*, 132 F. Supp. 2d 1 (CIT 2001), citing *Algoma Steel Corp. Ltd.* v. *United States*, 688 F. Supp. 639, 642–44 (CIT 1988).

As noted above, on March 25, 2004, the Department announced that it was extending the deadline for the initiation determination to not later than April 14, 2004, in order to establish whether the antidumping and countervailing duty petitions were filed by or on behalf of the domestic industry. *See Initiation Extension Memo.* The Department has determined that, pursuant to section 732(c)(4)(A) of the Act, the petition contains adequate evidence of industry support (*see*, April 7, 2004, "Office of AD/CVD Enforcement Initiation Checklist" ("*Initiation Checklist*") on file in the CRU). We determine that the petitioners have demonstrated industry support representing over 50 percent of total production of the domestic like product, requiring no further action by the Department pursuant to section 732(c)(4)(D) of the Act. Therefore, the domestic producers or workers who support the petition account for at least 25 percent of the total production of the domestic like product, and the requirements of section 732(c)(4)(A)(i) of the Act are met. Furthermore, the domestic producers or workers who support the petition account for more than 50 percent of the production of domestic like product produced by that portion of the industry expressing support for or opposition to the petition. Thus, the requirements of section 732(c)(4)(A)(ii) are met. The Department received no opposition to the petition. Accordingly, we determine that the petition is filed on behalf of the respective domestic industry within the meaning of section 732(b)(1) of the Act.

Allegations and Evidence of Material Injury and Causation

The petitioners allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at less than normal value ("NV"). The petitioners contend that the industry's injured condition is evident in the declining trends in financial indicators, depression of prices, declining profitability, production volume and value, lost market share, and lost jobs. The petitioners further allege threat of injury due to excess production in Canada and increased import volumes and market penetration, causing further price depression. The allegations of injury and causation are supported by relevant evidence including U.S. Census Bureau import data, USDA and University of Iowa data, hog statistics from Statistics Canada, and a report by the Chicago Mercantile Exchange. We have assessed the allegations and supporting evidence regarding material injury and causation and have determined that these allegations are properly supported by accurate and adequate evidence and meet the statutory requirements for initiation (*see Initiation Checklist*).

Initiation Standard for Cost Investigations

Pursuant to section 773(b) of the Act, the petitioner submitted information providing reasonable grounds to believe or suspect that sales made by Canadian producers/exporters in the home market were at prices below the cost of production ("COP") and, accordingly, requested that the Department initiate a country-wide sales-below-COP investigation in connection with this investigation. The Statement of Administrative Action ("SAA"), submitted to the Congress in connection with the interpretation and application of the URAA, states that an allegation of sales below COP needs not be specific to individual exporters or producers. *See* SAA, H.R. Doc. No. 103–316 at 833 (1994). The SAA, at 833, states that "Commerce will consider allegations of below-cost sales in the aggregate for a foreign country, just as Commerce currently considers allegations of sales at less than fair value on a country-wide basis for purposes of initiating an antidumping investigation."

Further, the SAA provides that section 773(b)(2)(A) of the Act requires that the Department have "reasonable grounds to believe or suspect" that below-cost sales have occurred before initiating such an investigation. Reasonable grounds exist when an interested party provides specific factual information on costs and prices, observed or constructed, indicating that sales in the foreign market in question are at below-cost prices. *Id.* We have analyzed the country-specific allegation as described below (*see infra*, "Normal Value").

Export Price and Normal Value

The following are descriptions of the allegations of sales at less than fair value upon which the Department based its decision to initiate this investigation. A more detailed description of these allegations is provided in the *Initiation Checklist*. Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determinations, we may re-examine the information and revise the margin calculations, as appropriate.

Export Price

The petitioners calculated export price ("EP"), based on January through December 2003 average unit values ("AUVs") from import data contained on the U.S. ITC's Dataweb, for comparison to NV. The petitioners calculated two separate EPs, one based on imports of live swine weighing less than 50 kilograms ("feeder") and the other based on imports of live swine weighing 50 kilograms or more ("finish"). We note that the petitioners calculated EP for finish animals based on imports of live swine classifiable only under *HTSUS* 0103.92.0010. *HTSUS* 0103.92.0090 also includes imports of lives swine weighing 50 kilograms or more. Therefore, we revised EP for finish animals to also include imports of live swine classifiable under *HTSUS* 0103.92.0090. The petitioners made no deductions to EP. For further discussion, *see* the *Initiation Checklist*.

Normal Value

Price-to-Price Comparisons

To determine NV based on home market prices, the petitioners used monthly pricing information from "Swine Enterprise Budgets," published by the Government of Ontario's Ministry of Agriculture and Food, for the period January through December 2003. The petitioners took an average of the farrow-to-feeder and an average of the finish prices listed in this source to compare to the two calculated EPs, as described above (*see supra*, "Export Price"). As with EP, the petitioners made no deductions to NV. For further discussion, *see* the *Initiation Checklist*.

We made one minor adjustment to the petitioners' calculations. The petitioners used the incorrect farrow-to-feeder unit prices for October, November, and December 2003 in their calculation of the NV average price for the period. Accordingly, we revised the farrow-to-feeder NV unit prices for October, November, and December 2003 and recalculated the NV average price for the period. For further discussion, *see* the *Initiation Checklist*.

Based on the price-to-price comparisons described above, the margins in the petition, as adjusted by the Department, range from 0.00 to 18.87 percent.

EP-to-CV Comparisons

The petitioners provided information demonstrating reasonable grounds to believe or suspect that sales of live swine from Canada were made at prices below the fully absorbed COP in the home market, within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation of such sales.

Pursuant to section 773(b)(3) of the Act, the COP consists of cost of manufacture plus amounts for selling, general, and administrative expenses and packing costs. The petitioners calculated the COP based on the same publicly available data as the NV price calculation, "Swine Enterprise Budgets," published by the Government of Ontario's Ministry of Agriculture and Food. The "Swine Enterprise Budgets" provides estimates for the COP for a swine enterprise for the year 2003. Because the provincial government is the source for the information, we found this information reasonable for use in the COP calculation. We relied on the COP calculations submitted by the petitioners except as follows. Petitioners in their calculations used the cost of "finished pig" as shown in the "Swine Enterprise Budgets" based on the cost of a finishing barn which purchases feeder pigs rather than raising pigs from farrow to finish. We revised the petitioners' calculation of the COP for "finished pig" by substituting the COP of "farrow-to finish pig", also shown in the "Swine Enterprise Budgets," which more accurately reflects the total cost of producing a finished pig.

Based upon a comparison of the prices of the foreign like product in the home market to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product in the home market were made below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation for the Canadian home market.

Pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the petitioners also based NV for sales in the home market on CV. The petitioners calculated CV starting with the same COP figure used to compute home market costs. Consistent with section 773(e)(2) of the Act, the petitioners also included in CV an amount for profit. For profit, the petitioners state that they were unable to obtain financial statements from any Canadian swine farming operation. As a result, they based CV profit on a company in a related field of production, pork processing. However, we revised the petitioners' CV profit calculation. Instead of basing CV profit on a pork processor, we based our profit calculation on the "Swine Enterprise Budgets" because it represents the profit for the "same general category of products" as the merchandise listed in the scope of this initiation, consistent with Section 773(e)(2)(B) of the Act. For further discussion, *see* the *Initiation Checklist.*

Based upon the comparison of EP to CV, after adjustments by the Department, the petitioners calculated estimated dumping margins ranging from 13.22 to 66.48 percent.

Fair Value Comparisons

Based on the data provided by the petitioners, there is reason to believe that imports of live swine from Canada are being, or are likely to be, sold at less than fair value.

Initiation of Antidumping Investigation

Based upon our examination of the petition on live swine from Canada, we have found that it meets the requirements of section 732 of the Act. Therefore, we are initiating an antidumping investigation to determine whether imports of live swine from Canada are being, or are likely to be, sold in the United States at less than fair value. Unless this deadline is extended pursuant to section 773(c)(1) of the Act, we will make our preliminary determination no later than 140 days after the date of this initiation.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the petition has been provided to the representatives of the Government of Canada. We will attempt to provide a copy of the public version of the petition to each exporter named in the petition, as provided for under 19 CFR 351.203(c)(2) (2004).

International Trade Commission Notification

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, within 25 days after the date on which it receives notice of this initiation, whether there is a reasonable indication that imports of live swine from Canada are causing material injury, or threatening to cause material injury, to a U.S. industry.

See section 733(a)(2) of the Act. A negative ITC determination will result in the investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: April 7, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–8478 Filed 4–13–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

The Manufacturing Council: Establishment of The Manufacturing Council

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of establishment.

SUMMARY: The Department of Commerce, having determined that it is in the public interest in connection with the performance of duties imposed on the Department by law, and with the concurrence of the General Services Administration, announces establishment of The Manufacturing Council. This advisory committee will provide oversight and advice regarding implementation of the "President's Manufacturing Initiative," announced January 16, 2004.

FOR FURTHER INFORMATION CONTACT: J. Marc Chittum, Room 2015B, Washington, DC, 20230 (Phone: 202–482–1124).

Dated: April 6, 2004.

J. Marc Chittum,

Designated Federal Officer, Office of Advisory Committees.

[FR Doc. 04–8415 Filed 4–13–04; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–851]

Notice of Initiation of Countervailing Duty Investigation: Live Swine From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Initiation of countervailing duty investigation.

SUMMARY: The Department of Commerce is initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters of live swine from Canada receive countervailable subsidies.

EFFECTIVE DATE: April 14, 2004.

FOR FURTHER INFORMATION CONTACT: Melani Miller, Blanche Ziv, or S. Anthony Grasso, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0116, (202) 482–4207, and (202) 482–3853, respectively.

Initiation of Investigation

The Petition

Between March 5 and 31, 2004, the Department of Commerce ("the Department") received a petition, and amendments to the petition, filed in proper form by the Illinois Pork Producers Association, the Indiana Pork Advocacy Coalition, the Iowa Pork Producers Association, the Minnesota Pork Producers Association, the Missouri Pork Association, the Nebraska Pork Producers Association, Inc., the North Carolina Pork Council, Inc., the Ohio Pork Producers Council, and 119 individual producers of live swine [1] (collectively, "the petitioners"). The Department received supplements to the March 5, 2004 petition on March 18, 22, 30, and 31, 2004. On March 25, 2004, the Department announced that it was extending the deadline for the initiation determination to not later than April 14, 2004 in order to establish whether the antidumping and countervailing duty petitions were filed by or on behalf of the domestic industry. *See* March 25, 2004 memorandum from Jeffrey May, Deputy Assistant Secretary for Import Administration, Group I, to James J. Jochum, Assistant Secretary for Import Administration, entitled "Antidumping and Countervailing Duty Petitions on Live Swine from Canada: Extension of Deadline for Determining Industry Support" ("*Initiation Extension Memo*"), which is on file in the Department's Central Records Unit ("CRU") in Room B–099 of the main Department building.

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act effective January 1, 1995 ("the Act"), the petitioners allege that manufacturers, producers, or exporters of live swine ("swine" or "subject merchandise") from Canada receive countervailable subsidies within the meaning of section 701 of the Act, and that such imports are materially injuring, or threatening material injury to, an industry in the United States.

The Department finds that the petitioners filed this petition on behalf of the domestic industry because they are interested parties, as defined in sections 771(9)(E) and (F) of the Act, and have demonstrated sufficient industry support in accordance with section 702(c)(4)(A) of the Act. *See infra*, "Determination of Industry Support for the Petition."

Scope of Investigation

The products covered by this investigation are all live swine from Canada except U.S. Department of Agriculture ("USDA") certified purebred breeding swine. Live swine are defined as four-legged, monogastric (single-chambered stomach), litter-bearing (litters typically range from 8 to 12 animals), of the species *sus scrofa domesticus*. This merchandise is currently classifiable under *Harmonized Tariff Schedule of the United States* ("*HTSUS*") subheadings 0103.91.0010, 0103.91.0020, 0103.91.0030, 0103.92.0010, 0103.92.0090.[2]

Although the *HTSUS* subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

As discussed in the preamble to the Department's regulations (*see Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments within 20 days of publication of this notice. Comments should be addressed to Import Administration's Central Records Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of our preliminary determination.

Consultations

Pursuant to section 702(b)(4)(A)(ii) of the Act, the Department invited representatives of the Government of Canada ("GOC") for consultations with respect to the petition filed. The Department held consultations with the GOC on March 19, 2004. The points raised in the consultations are described in the consultation memorandum to the file dated March 19, 2004 and in the GOC's March 23, 2004 submission to the Department, both of which are on file in the Department's CRU.

Determination of Industry Support for the Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) At least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (1) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A), or (2) determine industry support using a statistically valid sample.

[1] Alan Christensen, Alicia Prill-Adams, Aulis Farms, Baarsch Pork Farm, Inc., Bailey Terra Nova Farms, Bartling Brothers Inc., Belstra Milling Co. Inc., Berend Bros. Hog Farm LLC, Bill Tempel, BK Pork Inc., Blue Wing Farm, Bornhorst Bros. Brandt Bros., Bredehoeft Farms, Inc., Bruce Samson, Bryant Premium Pork LLC, Buhl's Ridge View Farm, Charles Rossow, Cheney Farms, Chinn Hog Farm, Circle K Family Farms LLC, Cleland Farm, Clougherty Packing Company, Coharie Hog Farm, County Line Swine Inc., Craig Mensick, Daniel J. Pung, David Hansen, De Young Hog Farm LLC, Dean Schrag, Dean Vantiger, Dennis Geinger, Double "M" Inc., Dykhuis Farms, Inc., E & L Harrison Enterprises, Inc., Erle Lockhart, Ernest Smith, F & D Farms, Fisher Hog Farm, Fitzke Farm, Fultz Farms, Gary and Warren Oberdiek Partnership, Geneseo Pork, Inc., GLM Farms, Greenway Farms, H & H Feed and Grain, H & K Enterprises, LTD, Ham Hill Farms, Inc., Harrison Creek Farm, Harty Hog Farms, Heartland Pork LLC, Heritage Swine, High Lean Pork, Inc., Hilman Schroeder, Holden Farms Inc., Huron Pork, LLC, Hurst AgriQuest, J D Howerton and Sons, J. L. Ledger, Inc., Jack Rodibaugh & Sons, Inc., JC Howard Farms, Jesina Farms, Inc., Jim Kemper, Jorgensen Pork, Keith Berry Farms, Kellogg Farms, Kendale Farm, Kessler Farms, L.L. Murphrey Company, Lange Farms LLC, Larson Bros Dairy Inc., Levelvue Pork Shop, Long Ranch Inc., Lou Stoller & Sons, Inc., Luckey Farm, Mac-O-Cheek, Inc., Martin Gingerich, Marvin Larrick, Max Schmidt, Maxwell Foods, Inc., Mckenzie-Reed Farms, Meier Family Farms Inc., MFA Inc., Michael Farm, Mike Bayes, Mike Wehler, Murphy Brown LLC, Ned Black and Sons, Ness Farms, Next Generation Pork, Inc., Noecker Farms, Oaklane Colony, Orangeburg Foods, Oregon Pork, Pitstick Pork Farms Inc., Prairie Lake Farms, Inc., Premium Standard Farms, Inc., Prestage Farms, Inc., R Hogs LLC, Rehmeier Farms, Rodger Schamberg, Scott W. Tapper, Sheets Farm, Smith-Healy Farms, Inc., Square Butte Farm, Steven A. Gay, Sunnycrest Inc., Trails End Far, Inc., TruLine Genetics, Two Mile Pork, Valley View Farm, Van Dell Farms, Inc., Vollmer Farms, Walters Farms LLP, Watertown Weaners, Inc., Wen Mar Farms, Inc., William Walter Farm, Willow Ridge Farm LLC, Wolf Farms, Wondraful Pork Systems, Inc., Wooden Purebred Swine Farms, Woodlawn Farms, and Zimmerman Hog Farms.

[2] Prior to June 30, 2003, *HTSUS* subheadings 0103.91.0010, 0103.91.0020, and 0103.91.0030 were all included under one heading, *HTSUS* 0103.91.0000.

Section 771(4)(A) of the Act defines the "industry" as the producers of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the Act directs the Department to look to producers and workers who account for production of the domestic like product. The International Trade Commission ("ITC"), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (*see* section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the domestic like product, such differences do not render the decision of either agency contrary to the law. *See USEC, Inc.* v. *United States,* 132 F. Supp 2d 1 (CIT 2001), citing *Algoma Steel Corp. Ltd.* v. *United States,* 688 F. Supp. 639, 642–44 (CIT 1988).

Section 771(10) of the Act defines the domestic like product as "a product that is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation" (*i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

The domestic like product referred to in the petition is the domestic like product defined in the "Scope of Investigation" section above. No party has commented on the petition's definition of the domestic like product, and there is nothing on the record to indicate that this definition is inaccurate. The Department, therefore, has adopted the domestic like product definition set forth in the petition.

As noted above, on March 25, 2004, the Department announced that it was extending the deadline for the initiation determination to not later than April 14, 2004 in order to establish whether the antidumping and countervailing duty petitions were filed by or on behalf of the domestic industry. *See Initiation Extension Memo.* The Department has determined that, pursuant to section 702(c)(4)(A) of the Act, the petition contains adequate evidence of industry support. *See* April 7, 2004 memorandum "Office of AD/CVD Enforcement Initiation Checklist" ("*Initiation Checklist*"), which is on file in the CRU. We determine that the petitioners have demonstrated industry support representing over 50 percent of total production of the domestic like product, requiring no further action by the Department pursuant to section 702(c)(4)(D) of the Act. Therefore, the domestic producers or workers who support the petition account for at least 25 percent of the total production of the domestic like product, and the requirements of section 702(c)(4)(A)(i) of the Act are met. Furthermore, the domestic producers or workers who support the petition account for more than 50 percent of the production of domestic like product produced by that portion of the industry expressing support for or opposition to the petition. Thus, the requirements of section 702(c)(4)(A)(ii) are met. The Department received no opposition to the petition. Accordingly, we determine that the petition is filed on behalf of the respective domestic industry within the meaning of section 702(b)(1) of the Act.

Injury Test

Because Canada is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from Canada materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

The petitioners allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise. The petitioners contend that the industry's injured condition is evident in the declining trends in financial indicators, depression of prices, declining profitability, production volume and value, lost market share, and lost jobs. The petitioners further allege threat of injury due to excess production in Canada and increased import volumes and market penetration, causing further price depression. The allegations of injury and causation are supported by relevant evidence including U.S. Census Bureau import data, USDA and University of Iowa data, hog statistics from *Statistics Canada,* and a report by the Chicago Mercantile Exchange. We have assessed the allegations and supporting evidence regarding material injury and causation and have determined that these allegations are properly supported by accurate and adequate evidence and meet the statutory requirements for initiation (*see Initiation Checklist*).

Initiation of Countervailing Duty Investigation

Section 702(b) of the Act requires the Department to initiate a countervailing duty proceeding whenever an interested party files a petition on behalf of an industry that (1) alleges the elements necessary for an imposition of a duty under section 701(a) of the Act and (2) is accompanied by information reasonably available to the petitioners supporting the allegations.

The Department has examined the countervailing duty petition on live swine from Canada and found that it complies with the requirements of section 702(b) of the Act. Therefore, in accordance with section 702(b) of the Act, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters of live swine from Canada receive countervailable subsidies. For a discussion of evidence supporting our initiation determination, *see* also *Initiation Checklist.*

We are including in our investigation the following programs alleged in the petition to have provided countervailable subsidies to producers and exporters of the subject merchandise in Canada:

A. Canadian Farm Income Program
B. Producer Assistance 2003/Transitional Funding Program
C. Canadian Agricultural Income Stabilization Program
D. Farm Credit Canada Financing
   1. Flexi-Hog Loan Program
   2. Enviro-Loan Program
E. Quebec Farm Income Stabilization Insurance/Agricultural Revenue Stabilization Insurance Program
F. La Financiere Agricole du Quebec Loans
   1. Preferred Rate Loans
   2. Secure Rate Development Loans
   3. Advantage Rate Loans
G. Farm Improvement and Marketing Cooperatives Guaranteed Loans
H. Alberta Agricultural Financial Services Corporation ("AFSC") Financing: Developing Farmer Loan Program
I. Alberta Disaster Assistance Loan Program
J. Alberta Hog Industry Development Fund Program
K. Alberta Livestock Industry Development Fund Program
L. Manitoba Agricultural Credit Corporation ("MACC") Financing: Diversification Loan and Enhanced Diversification Loan Guarantee Programs
M. Saskatchewan Short-Term Hog Loan Program
N. Saskatchewan Livestock and Horticultural Facilities Incentives Program
O. New Brunswick Livestock Incentive Program
P. Prince Edward Island ("PEI") Hog Loan

Programs
1. Bridge Financing Program
2. Expansion Loan Program
3. Depop-Repop Loan Program
Q. PEI Swine Quality Improvement Program

We are not including in our investigation the following programs alleged to benefit producers and exporters of the subject merchandise in Canada:

A. Alberta Agricultural Financial Services Corporation Financing: Farm Development Loan Program

According to the petition, the Farm Development Loan program is a Government of Alberta program that offers short, medium, and long-term loans to farmers in amounts up to C$250,000 at a "reasonable cost."

The information relied upon by the petitioners in making this allegation related only to the Developing Farmer Loan Program (included above) and not to this program. We find that the petitioners did not provide sufficient evidence, as required by section 702(b) of the Act, that (1) this program was designed for the benefit of live swine producers, (2) swine producers were predominant users of the program, or (3) swine producers received disproportionate benefits under this program. Therefore, because the evidence provided is not sufficient to support the allegations of the elements necessary for the imposition of a countervailing duty imposed by section 701(a) of the Act, we are not investigating this program.

B. Manitoba Agricultural Credit Corporation Financing

1. Direct Lending Program

The MACC Direct Lending Program is intended for the purchase of land or buildings, construction or renovation of farm buildings, breeding stock, debt consolidation, supply-managed quota, and share financing. Manitoba farmers whose annual off-farm income does not exceed C$70,000 and whose net worth is C$650,000 or less are eligible to obtain these loans. The maximum amount of the loans are C$400,000 for individuals and joint farm units and C$800,000 for partnerships, corporations, or cooperatives.

As we noted in the *Initiation Checklist*, the petitioners withdrew their allegation in regard to this program. *See* Memorandum from Team to File dated March 29, 2004, "Ex-Parte Meeting with Counsel for Petitioners: Antidumping and Countervailing Duty Petitions on Live Swine from Canada." Moreover, the petitioners did not provide sufficient evidence to support the allegation. Therefore, we are not initiating an investigation of this program.

2. Bovine Spongiform Encephalopathy ("BSE") Recovery Program

The BSE Recovery Program provides financing to Manitoba cattle and other ruminant producers to address feed purchase requirements and accounts payable which may otherwise jeopardize the continuity of the operation due to the impact of the detection of BSE in Canada. Qualified applicants must be ruminant producers and must demonstrate an agricultural-related financial setback as a consequence of BSE. Loans under this program are capped at C$50,000 or C$75,000 depending on whether a shorter or a longer-term loan is needed.

According to the program description, loans issued under this program are limited to ruminant producers only (*e.g.*, cattle or sheep producers). Because swine producers are not ruminant producers, this program would not benefit subject merchandise production. Although the petitioners contend that, because Manitoba's hog producers have been adversely impacted by BSE, this program may have been extended to swine producers, the petitioners do not provide sufficient evidence, beyond mere speculation, to support this allegation. Therefore, because the petitioners have not met the requirements of section 702(b) of the Act, we are not initiating an investigation of this program.

C. Saskatchewan Farm Fuel Program

Under this program, farmers in Saskatchewan are eligible to purchase farm gasoline and propane, as well as marked diesel fuel, tax free from bulk dealers. To qualify for the fuel tax exemption, an individual must have a Fuel Tax Exemption Permit number issued by the Farm Fuel Program and must present that number when making a purchase. Farmers can also obtain the fuel tax rebate on farm gasoline and propane purchased from a retail outlet by applying for the rebate at the end of each year and submitting their fuel purchase receipts.

The petitioners claim that this program is *de facto* specific according to sections 771(5A)(D)(iii)(II) and (III) of the Act because live swine producers are the predominant users of this program and receive a disproportionate share of the program's benefits. According to record information and the description of the program itself, it appears that benefits through this program are available to all farmers in Saskatchewan. The petitioners have not adequately supported their claims that swine producers received a disproportionate share of the farm fuel tax exemptions or that swine producers are the predominant users of the program. Because the petitioners have not sufficiently supported their claims regarding the specificity of this program, we are not including this program in our investigation.

Distribution of Copies of the Petition

In accordance with section 702(b)(4)(A)(i) of the Act, a copy of the public version of the petition has been provided to the GOC. We will attempt to provide a copy of the public version of the petition to each exporter named in the petition, as provided for under 19 CFR 351.203(c)(2).

ITC Notification

We have notified the ITC of our initiation, as required by section 702(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, within 25 days after the date on which it receives notice of this initiation, whether there is a reasonable indication that imports of live swine from Canada are causing material injury, or threatening to cause material injury, to a U.S. industry. *See* section 703(a)(2) of the Act. A negative ITC determination will result in the investigation being terminated; otherwise, these investigations will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: April 7, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–8479 Filed 4–13–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

United States and Foreign Commercial Service; United States Commercial Center in Shanghai. Notice of Availability of Office Space on a User-Fee Basis for the Period May 2004 to June 2005

AGENCY: United States and Foreign Commercial Service (the US&FCS).

ACTION: Notice.

Authority: 15 U.S.C. 4723a.

SUMMARY: The US&FCS operates a United States Commercial Center in Shanghai, China (the Shanghai USCC).

The US&FCS encourages U.S. Government agencies, U.S. state and local agencies, and U.S. private organizations which seek to promote U.S. exports, especially U.S. Market Development Cooperator entities, to inquire about available office space at the Shanghai USCC for the period May 2004 to June 2005.

DATES: Submit inquiries on or before April 19, 2004.

ADDRESSES: Send inquiries to the attention of Mr. Alain de Sarran, or of Ms. Ann Bacher, U.S. Department of Commerce, by e-mail: *Alain.DeSarran@mail.doc.gov* or *Ann.Bacher@mail.doc.gov*, or by facsimile: (202) 501–6165.

FOR FURTHER INFORMATION CONTACT: Mr. Alain de Sarran, (202) 482–3971.

SUPPLEMENTARY INFORMATION: The US&FCS operates a United States Commercial Center in Shanghai, China, located in the Portman Center, a modern facility in one of Shanghai's main business districts. The US&FCS is authorized to provide business facilities, including office space, in the Shanghai USCC on a cost-recovery basis to promote U.S. exports. Cost recovery is achieved through execution of Memoranda of Understanding containing programmatic and space usage terms between the US&FCS and co-locating entities. The average office size in the Shanghai USCC is approximately 20 square meters. The US&FCS encourages U.S. Government agencies, U.S. state and local agencies, and U.S. private organizations which promote U.S. exports, especially U.S. Market Development Cooperator entities, to inquire about available office space at the Shanghai USCC for the period May 2004 to June 2005.

Carlos Poza,

Assistant Secretary and Director General (acting), United States and Foreign Commercial Service.

[FR Doc. 04–8408 Filed 4–13–04; 8:45 am]

BILLING CODE 3510–DR–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 040704C]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene public meetings of the Reef Fish Advisory Panel (AP)and the Standing and Special Reef Fish Scientific and Statistical Committee (SSC) on April 28–29, 2004.

DATES: The Council's Reef Fish AP and SSC will convene jointly at 10 a.m. on Wednesday, April 28, 2004 to receive presentations and will meet separately on Thursday, April 29, 2004 for discussions on the presentations beginning at 8:30 a.m. and will conclude by 5 p.m.

ADDRESSES: The meetings will be held at the Wyndham Westshore Hotel, 4860 West Kennedy Boulevard, Tampa, FL; telephone: (813) 286–4400.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Mr. Steven Atran, Population Dynamics Statistician, or Mr. Stu Kennedy, Biologist, Gulf of Mexico Fishery Management Council; telephone: (813) 228–2815.

SUPPLEMENTARY INFORMATION: The AP and SSC will meet jointly on Wednesday, April 28 to receive a presentation on the Public Hearing Draft for Amendment 23 of the Reef Fish Fishery Management Plan to set vermilion snapper Sustainable Fisheries Act targets and thresholds and to establish a plan to end overfishing and rebuild the stock. NOAA Fisheries notified the Council on October 30, 2003 that the vermilion snapper stock is overfished and undergoing overfishing. The Council has until October, 2004 to submit a plan to rebuild the vermilion snapper stock to NOAA Fisheries. Draft Amendment 23 develops a rebuilding plan that is in compliance by establishing status determination criteria (minimum stock size threshold, maximum fishing mortality rate, maximum sustainable yield, and optimum yield) and contains alternatives for a rebuilding strategy and harvest reductions that will restore the vermilion snapper stock within ten years, the time frame allowed under Sustainable Fisheries Act.

The AP and SSC will also receive presentations on the Southeast Data and Review (SEDAR) reports for hogfish and goliath grouper. These reports provide independent review of the scientific information and stock assessments critical to management of species within the Council's jurisdiction and form the basis for future management actions.

On Thursday April 29, the AP and SSC will convene separately to discuss Draft Reef Fish Amendment 23 and the SEDAR reports. The AP and SSC will be asked to review the draft plan and provide recommendations to the Council as to the appropriateness of the preferred alternatives. The SSC will also be asked to evaluate the scientific validity of the biological and economic analyses in the plan. Additionally, the AP and SSC will be asked to review the two SEDAR reports and provide recommendations to the Council on the validity of the conclusions of those reports and future directions.

The recommendations of the AP and SSC will be presented to the Gulf Council at its May 17–20, 2004 meeting in Key Largo, FL. At that meeting, the Council will review and revise as appropriate the Final Public Hearing Draft of Amendment 23, the public hearings will be held in June and the Council will make their final decisions on preferred alternatives at the July, 12–15 meeting in Houston, TX.

Copies of the Draft Reef Fish Amendment 23 and the two SEDAR reports can be obtained by calling the Council office at 813–228–2815 (toll-free 888–833–1844).

Although other non-emergency issues not on the agendas may come before the AP and SSC for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during these meetings. Actions of the AP and SSC will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency. The established times for addressing items on the agenda may be adjusted as necessary to accommodate the untimely completion of discussion relevant to other agenda items. In order to further allow for such adjustments and completion of all items on the agenda, the meeting may be extended from or completed prior to the date established in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Trish Kennedy at the Council (see **ADDRESSES**) by April 21, 2004.

Dated: April 8, 2004.

Alan D. Risenhoover,

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

[FR Doc. E4–832 Filed 4–13–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Department of the Army

Jordanian Training for Iraqi Armed Forces

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: An Agreement under 10 U.S.C. 2341 was entered into informally between the Jordanian Armed Forces and the Coalition Military Assistance Training Team on November 11, 2003, in the amount is $71,921,459, and sill be formalized soon. The purpose is to provide for training of Iraqi Armed Forces (IAF) officers and noncommissioned officers (NCOs). The Jordanian Armed Forces will deliver training courses, logistic support, and equipment to IAF officer and NCO candidates. The agency did not seek any other sources. These types of acquisition are excepted from the requirement for full and open competition or a Justification and Approval (J&A) document in lieu thereof (*See* 10 U.S.C. 2343). This notice is required by, and fulfills the requirements of, Section 2203 of the Emergency Supplemental Appropriations Act for Defense and the Reconstruction of Iraq and Afghanistan, 2004 (Pub. L. 108–106).

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Smith, 703–692–9916.

SUPPLEMENTARY INFORMATION: None.

Brenda S. Bowen,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 04–8463 Filed 4–13–04; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Advisory Committee Meeting

AGENCY: Department of the Army, DoD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following meeting:

Name of Committee: Distance Learning/Training Technology Subcommittee of the Army Education Advisory Committee.

Dates of Meeting: May 5–6, 2004.

Place of Meeting: Massachusetts Institute of Technology, 77 Massachusetts Avenue, Bldg 10, Cambridge, MA 02139.

Time of Meeting: 8 a.m. to 4:30 p.m. (May 5, 2004); 8 a.m. to 4:30 p.m. (May 6, 2004).

Proposed Agenda: Initial starting point of meeting will include updates on The Army Distance Learning Program (TADLP) and infrastructure, followed by discussions that focus on learning and technology.

Purpose of the Meeting: To provide for the continuous exchange of information and ideas for distance learning between the U.S. Army Training and Doctrine Command (TRADOC), HQ Department of the Army, and the academic and business communities.

FOR FURTHER INFORMATION CONTACT: All communications regarding this subcommittee should be addressed to Mr. Mike Faughnan, at Commander, Headquarters TRADOC, ATTN: ATTG–CF, Fort Monroe, VA 23651–5000; e-mail: *faughnanm@monroe.army.mil.*

SUPPLEMENTARY INFORMATION: Meeting of the Advisory Committee is open to the public. Because of restricted meeting space, attendance will be limited to those persons who have notified the Advisory Committee Management Office in writing (*see* address above) at least five days prior to the meeting of their intention to attend. Contact Mr. Faughnan for meeting agenda and specific locations.

Any member of the public may file a written statement with the committee before, during, or after the meeting. To the extent that time permits, the committee chairman may allow public presentations or oral statements at the meeting.

Brenda S. Bowen,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 04–8462 Filed 4–13–04; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 14, 2004.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: April 8, 2004.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title: Report of Infants and Toddlers Receiving Early Intervention Services and of Program Settings Where Services are Provided in Accordance with Part C, and Report on Infants and Toddlers Exiting Part C (SC).

Frequency: Annually.

Affected Public: State, local, or tribal gov't; SEAs or LEAs (primary).

Reporting and Recordkeeping Hour Burden:

Responses: 56.

Burden Hours: 5,040.

Abstract: This package provides instructions and forms necessary for States to report, by race and ethnicity, the number of infants and toddlers with disabilities who: (a) Are served under IDEA, Part C; (b) are served in different program settings; and (c) exit Part C because of program completion and for other reasons. Data are obtained from state and local service agencies and are used to assess and monitor the implementation of IDEA and for Congressional reporting.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2498. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov*. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at her e-mail address *Sheila_Carey@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 04–8454 Filed 4–13–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. chapter 3507(j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by April 13, 2004. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before June 14, 2004.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: ED Desk Officer: Department of Education, Office of Management and Budget; 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.*, new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. ED invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: April 9, 2004.

Jeanne Van Vlandren,

Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of Innovation and Improvements

Type of Review: Revision.

Title: DC School Choice Incentive Program.

Abstract: This Program provides low-income parents that reside in DC with expanded options for acquiring a high quality education for their children. To be eligible for scholarships, participating students are DC residents and their household income does not exceed 185% of the poverty line.

Additional Information: This request for an emergency clearance is to collect time critical information from parents who are interested in participating in the vitally important new initiative, the DC School Choice Incentive Program. This Program will give low-income parents in the District of Columbia more options for the education of their children and will provide the Nation with a unique opportunity to test and evaluate the impact of enhanced education choices. The statute calls for the Secretary of Education to carry out the Program in cooperation with the Mayor of the District of Columbia. Because the Program was just enacted in late January, the Department of Education conducted an expedited application process that awarded a grant in late March to the Washington Scholarship Fund, an organization that will actually administer the scholarship program. The grantee must immediately distribute scholarship applications to interested parents, collect preliminary information for the required evaluation, and design and conduct a lottery that will select the scholarship recipients—all before June. Because of the urgency of distributing this scholarship form and collecting information from interested participants, we are requesting emergency clearance by April 13, 2004.

Frequency: Annually.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 3,000.

Burden Hours: 1,000.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2468. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese,

Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov*. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements, contact Kathy Axt at her e-mail address *Kathy.Axt@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 04–8455 Filed 4–13–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Agency Information Collection Extension

AGENCY: Department of Energy.

ACTION: Notice and request for comments.

SUMMARY: The Department of Energy (DOE), pursuant to the Paperwork Reduction Act of 1995, intends to extend for three years, an information collection package with the Office of Management and Budget (OMB) concerning the mandatory Certification of Compliance whereby a manufacturer or private labeler reports on and certifies its compliance energy efficiency standards for certain 1 through 200 horsepower electric motors under Title 10 Code of Federal Regulations Part 431—Energy Efficiency Program for Certain Commercial and Industrial Equipment: Appendix A to Subpart G of Part 431: Certification of Compliance with Energy Efficiency Standards for Electric Motors. Comments are invited on: (a) Whether the extended collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments regarding this proposed information collection must be received on or before June 14, 2004. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Written comments may be sent to Mr. James Raba, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121 or by fax at (202) 586–4617 or by e-mail at *jim.raba@ee.doe.gov* and to Susan L. Frey, Director, Records Management Division IM–11/Germantown Bldg., Office of the Chief Information Officer, U.S. Department of Energy, 1000 Independence Ave, SW., Washington, DC 10585–1290, or by fax at 301–903–9061 or by e-mail at *susan.frey@hq.doe.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Ms. Brenda Edwards-Jones, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC, 20585-0121. Telephone: (202) 586–2945.

SUPPLEMENTARY INFORMATION: This package contains: *(1) OMB No.:* 1910–5104; *(2) Package Title:* 10 CFR Part 431—Energy Efficiency Program for Certain Commercial and Industrial Equipment: Test Procedures, Labeling, and Certification Requirements for Electric Motors; *(3) Type of Review:* Renewal; *(4) Purpose:* The Compliance Certification set forth in appendix A to subpart G of 10 CFR part 431 provides a format for a manufacturer or private labeler to certify compliance with the energy efficiency standards prescribed at section 342(b)(1) of EPCA, 42 U.S.C. 6313(b)(1), through an independent testing or certification program nationally recognized in the United States (EPCA 345(c), 42 U.S.C. 6316(c)). Compliance Certification information is used by the Department of Energy and United States Customs Service officials, and facilitates voluntary compliance with and enforcement of the energy efficiency standards established for electric motors under EPCA sections 342(b)(1), 42 U.S.C. 6313(b)(1); *(5) Respondents:* Approximately 56 manufacturers or private labelers of certain through 200 horsepower electric motors; *(6) Estimated Number of Burden Hours:* 16800 total annual hours requested (approximately 300 hours per manufacturer or private labeler).

Statutory Authority: Part C of Title III of the Energy Policy and Conservation Act, Pub. L. 94-163, as amended, (EPCA) and prescribed at sections 342(b) (1) of EPCA, 42 U.S.C. 6313(b)(1), and (EPCA 345(c), 42 U.S.C. 6316(c)).

Issued in Washington, DC, on April 7, 2004.

Susan L. Frey,

Director, Records Management Division, Office of the Chief Information Officer.

[FR Doc. 04–8441 Filed 4–13–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket No. 04–28–NG]

The Berkshire Gas Company; Order Granting Long-Term Authority To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy (FE) gives notice that on April 1, 2004, it issued DOE/FE Order No. 1971 granting The Berkshire Gas Company authority to import the following volumes of natural gas from Canada, in accordance with its February 4, 2004, gas sales agreement with Nexen Marketing from April 1, 2004, to April 1, 2007, up to 25,451 million cubic feet (Mcf) per day of natural gas and from November 1, 2004, to April 1, 2005, and from November 1, 2005, to April 1, 2007, up to 27,508 Mcf per day of natural gas.

This Order may be found on the FE Web site at *http://www.fe.doe.gov* (select gas regulation). It is also available for inspection and copying in the Office of Natural Gas & Petroleum Import & Export Activities Docket Room, 3E–033, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0334, (202) 586–9478. The Docket Room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, April 8, 2004.

Yvonne Caudillo,

Acting Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import & Export Activities, Office of Fossil Energy.

[FR Doc. 04–8432 Filed 4–13–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[FE Docket No. 04–24–NG]

Office of Fossil Energy; Boston Gas Company; Order Granting Long-Term Authority To Import Natural Gas from Canada

AGENCY: Office of Fossil Energy, DOE.
ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy (FE) gives notice that on March 30, 2004, it issued DOE/FE Order No. 1959 granting Boston Gas Company authority to import up to 24,369 million cubic feet (Mcf) per day of natural gas from Canada, from April 1, 2004, to April 1, 2005, and up to 37,225 Mcf per day from April 1, 2005, to April 1, 2007, in accordance with its February 4, 2004, gas sales agreement with BP Canada Energy Company.

This Order may be found on the FE Web site at *http://www.fe.doe.gov* (select gas regulation). It is also available for inspection and copying in the Office of Natural Gas & Petroleum Import & Export Activities Docket Room, 3E–033, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0334, (202) 586–9478. The Docket Room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, April 6, 2004.

Yvonne Caudillo,

Acting Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import & Export Activities, Office of Fossil Energy.

[FR Doc. 04–8436 Filed 4–13–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[FE Docket No. 04–22–NG]

Office of Fossil Energy; Boston Gas Company; Order Granting Long-Term Authority To Import Natural Gas from Canada

AGENCY: Office of Fossil Energy; DOE.
ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy (FE) gives notice that on April 1, 2004, it issued DOE/FE Order No. 1959 granting Boston Gas Company authority to import the following volumes of natural gas from Canada, in accordance with its February 4, 2004, gas sales agreement with Nexen Marketing from April 1, 2004, to April 1, 2007, up to 25,451 million cubic feet (Mcf) per day of natural gas and from November 1, 2004, to April 1, 2005, and from November 1, 2005, to April 1, 2007, up to 27,508 Mcf per day of natural gas.

This Order may be found on the FE Web site at *http://www.fe.doe.gov* (select gas regulation). It is also available for inspection and copying in the Office of Natural Gas & Petroleum Import & Export Activities Docket Room, 3E–033, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0334, (202) 586–9478. The Docket Room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, April 8, 2004.

Yvonne Caudillo,

Acting Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import & Export Activities, Office of Fossil Energy.

[FR Doc. 04–8437 Filed 4–13–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket No. 04–29–NG]

The Brooklyn Union Gas Company; Order Granting Long-Term Authority To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.
ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy (FE) gives notice that on April 1, 2004, it issued DOE/FE Order No. 1969 granting the Brooklyn Union Gas Company authority to import the following volumes of natural gas from Canada, in accordance with its February 4, 2004, gas sales agreement with Nexen Marketing from April 1, 2004, to April 1, 2007, up to 25,451 million cubic feet (Mcf) per day of natural gas and from November 1, 2004, to April 1, 2005, and from November 1, 2005, to April 1, 2007, up to 27,508 Mcf per day of natural gas.

This Order may be found on the FE Web site at *http://www.fe.doe.gov* (select gas regulation). It is also available for inspection and copying in the Office of Natural Gas & Petroleum Import & Export Activities Docket Room, 3E–033, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0334, (202) 586–9478. The Docket Room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, April 8, 2004.

Yvonne Caudillo,

Acting Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import & Export Activities, Office of Fossil Energy.

[FR Doc. 04–8431 Filed 4–13–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket No. 04–26–NG]

The Brooklyn Union Gas Company; Order Granting Long-Term Authority To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.
ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy (FE) gives notice that on March 30, 2004, it issued DOE/FE Order No. 1960 granting the Brooklyn Union Gas Company authority to import up to 24,369 million cubic feet (Mcf) per day of natural gas from Canada, from April 1, 2004, to April 1, 2005, and up to 37,225 Mcf per day from April 1, 2005, to April 1, 2007, in accordance with its February 4, 2004, gas sales agreement with BP Canada Energy Company.

This Order may be found on the FE Web site at *http://www.fe.doe.gov* (select gas regulation). It is also available for inspection and copying in the Office of Natural Gas & Petroleum Import & Export Activities Docket Room, 3E–033, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0334, (202) 586–9478. The Docket Room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, April 6, 2004.

Yvonne Caudillo,

Acting Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import & Export Activities, Office of Fossil Energy.

[FR Doc. 04–8434 Filed 4–13–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket No. 04–32–NG]

EnergyNorth Natural Gas, Inc.; Order Granting Long-Term Authority To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.
ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy (FE) gives notice that on April 1, 2004, it issued DOE/FE Order No. 1968 granting EnergyNorth Natural Gas, Inc. authority to import the following volumes of natural gas from Canada, in accordance with its February 4, 2004, gas sales agreement with Nexen Marketing from April 1, 2004, to April 1, 2007, up to 25,451 million cubic feet (Mcf) per day of natural gas and from November 1, 2004, to April 1, 2005, and

from November 1, 2005, to April 1, 2007, up to 27,508 Mcf per day of natural gas.

This Order may be found on the FE Web site at *http://www.fe.doe.gov* (select gas regulation). It is also available for inspection and copying in the Office of Natural Gas & Petroleum Import & Export Activities Docket Room, 3E–033, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0334, (202) 586–9478. The Docket Room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, April 8, 2004.

Yvonne Caudillo,

Acting Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import & Export Activities, Office of Fossil Energy.

[FR Doc. 04–8439 Filed 4–13–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket No. 04–33–NG]

EnergyNorth Natural Gas, Inc.; Order Granting Long-Term Authority To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy (FE) gives notice that on March 30, 2004, it issued DOE/FE Order No. 1962 granting EnergyNorth Natural Gas, Inc. authority to import up to 24,369 million cubic feet (Mcf) per day of natural gas from Canada, from April 1, 2004, to April 1, 2005, and up to 37,225 Mcf per day from April 1, 2005, to April 1, 2007, in accordance with its February 4, 2004, gas sales agreement with BP Canada Energy Company.

This Order may be found on the FE Web site at *http://www.fe.doe.gov* (select gas regulation). It is also available for inspection and copying in the Office of Natural Gas & Petroleum Import & Export Activities Docket Room, 3E–033, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0334, (202) 586–9478. The Docket Room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, April 6, 2004.

Yvonne Caudillo,

Acting Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import & Export Activities, Office of Fossil Energy.

[FR Doc. 04–8440 Filed 4–13–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket No. 04–25–NG]

Essex Gas Co.; Order Granting Long-Term Authority To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy (FE) gives notice that on April 1, 2004, it issued DOE/FE Order No. 1966 granting Essex Gas Company authority to import the following volumes of natural gas from Canada, in accordance with its February 4, 2004, gas sales agreement with Nexen Marketing from April 1, 2004, to April 1, 2007, up to 25,451 million cubic feet (Mcf) per day of natural gas and from November 1, 2004, to April 1, 2005, and from November 1, 2005, to April 1, 2007, up to 27,508 Mcf per day of natural gas.

This Order may be found on the FE Web site at *http://www.fe.doe.gov* (select gas regulation). It is also available for inspection and copying in the Office of Natural Gas & Petroleum Import & Export Activities Docket Room, 3E–033, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0334, (202) 586–9478. The Docket Room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, April 8, 2004.

Yvonne Caudillo,

Acting Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import & Export Activities, Office of Fossil Energy.

[FR Doc. 04–8435 Filed 4–13–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket No. 04–23–NG]

Essex Gas Company; Order Granting Long-Term Authority To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy (FE) gives notice that on March 30, 2004, it issued DOE/FE Order No. 1958 granting Essex Gas Company authority to import up to 24,369 million cubic feet (Mcf) per day of natural gas from Canada, from April 1, 2004, to April 1, 2005, and up to 37,225 Mcf per day from April 1, 2005, to April 1, 2007, in accordance with its February 4, 2004, gas sales agreement with BP Canada Energy Company.

This Order may be found on the FE Web site at *http://www.fe.doe.gov* (select gas regulation). It is also available for inspection and copying in the Office of Natural Gas & Petroleum Import & Export Activities Docket Room, 3E–033, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0334, (202) 586–9478. The Docket Room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, April 6, 2004.

Yvonne Caudillo,

Acting Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import & Export Activities, Office of Fossil Energy.

[FR Doc. 04–8438 Filed 4–13–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket No. 04–27–NG]

Keyspan Gas East Corporation; Order Granting Long-Term Authority To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy (FE) gives notice that on March 30, 2004, it issued DOE/FE Order No. 1961 granting KeySpan Gas East Corporation authority to import up to 24,369 million cubic feet (Mcf) per day of natural gas from Canada, from April 1, 2004, to April 1, 2005, and up to 37,225 Mcf per day from April 1, 2005, to April 1, 2007, in accordance with its February 4, 2004, gas sales agreement with BP Canada Energy Company.

This Order may be found on the FE Web site at *http://www.fe.doe.gov* (select gas regulation). It is also available for inspection and copying in the Office of Natural Gas & Petroleum Import & Export Activities Docket Room, 3E–033, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0334, (202) 586–9478. The Docket Room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, April 6, 2004.

Yvonne Caudillo,

Acting Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import & Export Activities, Office of Fossil Energy.

[FR Doc. 04–8433 Filed 4–13–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC04–723–000, FERC–723]

Proposed Information Collection and Request for Comments

April 9, 2004.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Request for Office of Management and Budget Emergency Processing of proposed information collection and request for comments.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is providing notice of its request to the Office of Management and Budget (OMB) for emergency processing of a proposed collection of information in connection with the vegetation management programs of the electric industry, and is soliciting public comment on that information collection.

DATES: The Commission and OMB must receive comments on or before April 14, 2004.

ADDRESSES: Send comments to:

(1) Ruth Solomon, FERC Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget. Ms. Solomon may be reached by telephone at (202) 395–7856 or by fax at (202) 395–7285; and

(2) Michael Miller, Office of the Executive Director, ED–30, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Mr. Miller may be reached by telephone at (202) 502–8415 and by e-mail at *michael.miller@ferc.gov*.

FOR FURTHER INFORMATION CONTACT: William Longenecker, Office of Markets, Tariffs and Rates, Federal Energy Regulatory Commission. Mr. Longenecker may be reached by telephone at (202) 502–8570 and by e-mail at *william.longenecker@ferc.gov*.

SUPPLEMENTARY INFORMATION: On April 5, 2004, the Joint United States-Canada Power System Outage Task Force issued the Final Blackout Report. The report found that a major cause of the August 14, 2003, electric power blackout was the failure to adequately maintain vegetation within transmission line rights-of-way. This failure has been a common factor that has contributed to the August 14, 2003, blackout and many previous regional electric system outages.

The Commission intends to immediately issue a directive that requires all entities that own, control or operate designated transmission facilities in the contiguous 48 States, whether or not they are otherwise subject to the Commission's jurisdiction as a public utility, to report on the vegetation management practices they now use for those lines and rights-of-ways.

On August 14, 2003, an electric power blackout occurred over large portions of the Northeast and Midwest United States and Ontario, Canada. The power blackout lasted up to two days in some areas of the United States and for a longer period of time in some areas of Canada. It affected an area with over 50 million people and 61,800 megawatts of electric load. In the wake of the blackout, a joint United States-Canada Task Force (Task Force) undertook a study of the causes of that blackout and possible solutions to avoid future such blackouts.

In November 2003, the Task Force issued an interim report, describing its investigation and findings and identifying the causes of the blackout. The Interim Blackout Report also compared the August 2003 blackout with seven previous major outages and concluded that conductor contact with trees was a common factor among the outages. The Task Force emphasized that vegetation management is critical and that many outages can be mitigated or prevented by managing the vegetation before it becomes a problem.

In March 2004, the Commission made available to the public, a final vegetation management report prepared to support the blackout investigation. The report detailed problems with vegetation management relating to the August 2003 blackout and recommended specific practices that would reduce the likelihood of tree and power line conflicts. The Task Force followed with its final blackout report on April 5, 2004, and verified and supplemented its earlier finding in the Interim Blackout Report.

Each of these reports has suggested that a higher standard of performance of vegetation management is critical to minimizing the risk of regional power outages and ensuring the uninterrupted flow of electricity in the Nation's interconnected bulk electric systems. The Commission believes that a comprehensive inquiry is necessary to further the Commission's oversight over the business of transmitting and selling electricity in interstate commerce and protecting the public interest.

Section 201(a) of the Federal Power Act declares that the business of transmitting and selling electricity in interstate commerce is affected with the public interest and charges the Commission with oversight over these matters. The unanticipated August 14, 2003, blackout had a detrimental impact on the business of transmitting and selling electricity in interstate commerce over a large portion of the United States. Vegetation-caused service interruptions in smaller regions of the Nation are more common and less publicized, but they also have a detrimental impact on the business of transmitting and selling electricity in interstate commerce. Section 311 of the Federal Power Act (16 U.S.C. 825j (2000)) authorizes the Commission to conduct investigations in order to secure information necessary or appropriate as a basis for recommending legislation. Section 311 of the Federal Power Act makes clear that the Commission's authority in conducting an investigation extends to entities that are otherwise not subject to the Commission's jurisdiction "including the generation, transmission, distribution and sale of electric energy by any agency, authority or instrumentality of the United States, or of any State or municipality * * *" The information collected from this reporting requirement will be reflected in a Commission report to Congress on reliability of the Nation's interstate bulk electric systems, consistent with section 311 of the Federal Power Act.

The possibility of a reoccurrence of a vegetation induced blackout this summer warrants an immediate assessment of the electric industry's vegetation management programs to enable the Commission to inform the Congress and the industry about improvements that might be necessary. The Commission believes the vegetation management report will provide it, the States, the North American Electric reliability Council, reliability coordinators and the Congress with valuable information regarding vegetation management problems. In coordination with the National Association Regulatory Utility Commissioners (NARUC) Critical Infrastructure Protection Ad-Hoc Committee, the Commission will use the information to identify appropriate ways to assure effective vegetation management for electric transmission facilities. Therefore, the ability to collect this information prior to the expiration of the normal OMB 60-day review time frame is essential to the mission of the Commission and as such, the Commission has requested emergency processing of this proposed information collection. The Commission will refer to the reports being requested as FERC–723 "Vegetation Management Reports." Respondents would provide a one-time-

only Report no later than June 17, 2004. The Reports would contain the following information:

Describe in detail the vegetation management practices and standards that the transmission provider uses for control of vegetation near designated transmission lines, and indicate the source of any standard utilized (State law or regulation, historical practice, etc.). Describe the clearance assumptions or definition used for appropriate distance between the vegetation and the line. Indicate how the vegetation management practices treat vegetation that encroaches or might reasonably be expected to encroach due to growth prior to the next inspection in the line clearance zone from below, beside and above the line.

"Designated transmission facilities" are defined, for the purposes of this report only, as lines with a rating of 230 kV or higher as well as tie-line interconnection facilities between control areas or balancing areas (regardless of kV rating), "critical" lines as designated by the regional reliability council and associated transformers. List the facilities under transmission provider control that meet this definition. For each facility identified in item (b) above, indicate how often the transmission provider inspects that facility for vegetation management purposes. Indicate when the most recent survey of that facility was performed, what kind of survey was used (*e.g.* helicopter overflight, or foot patrol), and further indicate what findings of that survey showed. If the survey led to further action, indicate what action was taken and the date(s) it was performed, and for the facilities identified in item (b) above, indicate whether the identified corrective actions have been completed as of June 14, 2004.

The Commission estimates that it would take each respondent no more than 5 hours to generate the Report. Therefore, the total number of hours it would take to comply with the reporting requirement would be 1,000. The Commission estimates a total cost of $40,000 to respondents at $40 per hour, based on salaries for professional and clerical staff, as well as direct and indirect overhead costs. The Commission has submitted this reporting requirement to OMB for approval. OMB's regulations describe the process that Federal agencies must follow in order to obtain OMB approval of reporting requirement. *See* 5 CFR part 1320. The standards for emergency processing of information collections appear at 5 CFR 1320.13. If OMB approves a reporting requirement, then it will assign an information collection control number to that requirement. If a request for information subject to OMB review has not been given a valid control number, then the recipient is not required to respond.

OMB requires Federal agencies seeking approval of reporting requirements to allow the public an opportunity to comment on the proposed reporting requirement. 5 CFR 1320.5(a)(1)(iv). Therefore, the Commission is soliciting comment on:

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

(2) The accuracy of the Commission's estimate of the burden of the collection of this 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 the collection of this information on respondents, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Linda Mitry,

Acting Secretary.

[FR Doc. 04–8519 Filed 4–13–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC04–582–000, FERC–582]

Commission Information Collection Activities, Proposed Collection; Comment Request; Extension

April 6, 2004.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specifics of the information collection described below.

DATES: Comments on the collection of information are due by June 7, 2004.

ADDRESSES: Copies of the proposed collection of information can be obtained from Michael Miller, Office of the Executive Director, ED–30, 888 First Street, NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those parties filing electronically do not need to make a paper filing. For paper filings, the original and 14 copies of such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and refer to Docket No. IC04–582–000.

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at *http://www.ferc.gov* and click on "Make an E-filing," and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's e-mail address upon receipt of comments.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the *eLibrary* link. For user assistance, contact *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676 or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 502–8415, by fax at (202) 273–0873, and by e-mail at *michael.miller@ferc.gov.*

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC–582 "Electric Fees and Annual Charges" (OMB Control No. 1902–0132) is used by the Commission to implement the statutory provisions of the Independent Offices Appropriation Act of 1952 (IOAA) (31 U.S.C. 9701) which authorizes the Commission to establish fees for its services. In addition, the Omnibus Budget Reconciliation Act of 1986 (OBRA) (42 U.S.C. 7178) authorizes the Commission "to assess and collect fees and annual charges in any fiscal year in amounts equal to all the costs incurred by the Commission in that fiscal year." In calculating annual charges, the Commission first determines the total costs of its electric regulatory program and then subtracts all electric regulatory program filing fee collections to determine the total collectible electric regulatory program costs. It then uses the data submitted under FERC information collection requirement FERC–582 to determine the total megawatt-hours of transmission of electric energy in interstate commerce. This is measured by the sum of the megawatt-hours of all unbundled transmission (including MWh delivered in wheeling transactions and MWh delivered in exchange transactions) and the megawatt-hours of all bundled wholesale power sales (to the extent these later megawatt-hours were not separately reported as unbundled transmission). This information must be reported to three (3) decimal places. Public utilities and power marketers subject to these annual charges must

submit FERC–582 to the Commission's Office of the Secretary by April 30 of each year. The Commission issues bills for annual charges, and public utilities and power marketers then must pay the charges within 45 days of the Commission's issuance of the bill.

The Commission's staff uses companies' financial information filed under waiver provisions to evaluate requests for a waiver or exemption of the obligation to pay a fee for an annual charge. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR part 381, sections 381.108 and 381.302 and part 382, section 382.201(c).

Action: The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1) × (2) × (3)
192	1	4	768

Estimated Cost Burden to Respondents: 768 hours / 2,080 hours per year x $107,185 per year = $39,576. The cost per respondent is equal to $206.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–816 Filed 4–13–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC04–580–001, FERC Form–580]

Commission Information Collection Activities, Proposed Collection; Comment Request; Submitted for OMB Review

April 6, 2004.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the Federal Energy Regulatory Commission (Commission) has submitted the information collection described below to the Office of Management and Budget (OMB) for review and reinstatement of this information collection requirement. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received comments from one entity in response to an earlier **Federal Register** notice of January 30, 2004 (69 FR 4498–49), and has responded to their comments in its submission to OMB.

DATES: Comments on the collection of information are due by June 30, 2004.

ADDRESSES: Address comments on the collection of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission Desk Officer. Comments to OMB should be filed electronically, c/o *Pamela_L._Beverly@omb.eop.gov* and include the OMB Control No. as a point of reference. The Desk Officer may be reached by telephone at 202–395–7856. A copy of the comments should also be sent to the Federal Energy Regulatory Commission, Office of the Executive Director, ED–30, Attention: Michael Miller, 888 First Street, NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those persons filing electronically do not need to make a paper filing. For paper filings, such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and should refer to Docket No. IC04–580–001.

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at *http://www.ferc.gov* and click on "Make an E-filing," and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's e-mail address upon receipt of comments. User assistance for electronic filings is available at 202–502–8258 or by e-mail to *efiling@ferc.gov*. Comments should not be submitted to the e-mail address.

All comments are available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "eLibrary" link.

Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 502–8415, by fax at (202) 273–0873, and by e-mail at *michael.miller@ferc.gov*.

SUPPLEMENTARY INFORMATION:

Description

The information collection submitted for OMB review contains the following:

1. Collection of Information: FERC Form 580 "Interrogatory on Fuel and Energy Purchases Practices, Docket No. IN79–6."

2. Sponsor: Federal Energy Regulatory Commission.

3. Control No.: 1902–0137.

The Commission is now requesting that OMB approve with a three-year extension of the expiration date, with no changes to the existing collection. The information filed with the Commission is mandatory.

4. Necessity of the Collection of Information: Submission of the information is necessary to enable the Commission to carry out its responsibilities in implementing the statutory provisions of sections 205–206 of the Federal Power Act as amended by section 208 of the Public Utility Regulatory Policies Act (PURPA). The Commission is required to review "not less frequently than every two (2) years * * * of practices * * * to ensure the efficient use of resources (including economical purchase and use of fuel and electric energy) * * *." The information is used to: (1) Review as mandated by statute, fuel purchase and cost recovery practices to insure efficient use of resources, including economical purchase and use of fuel and electric energy, under fuel adjustment clauses on file with the Commission; (2) evaluate fuel costs in individual rate filings; (3) to supplement periodic utility audits; and (4) to monitor changes and trends in the electric wholesale market. Electric market participants and the public are using the information to track market changes and trends in the electric wholesale market. The data has helped to identify market conditions. The Commission implements the filing requirements in the Code of Regulations (CFR) under 18 CFR parts 35.14.

5. Respondent Description: The respondent universe currently comprises 114 companies (on average per year) subject to the Commission's jurisdiction.

6. Estimated Burden: 3,600 total hours, 114 respondents (57 average per year), .5 responses per respondent, and 63 hours per response (average) (1 hour for those respondents without fuel adjustment clauses and 110 hours for those respondents with fuel adjustment clauses).

7. Estimated Cost Burden to Respondents: 3,600 hours / 2080 hours per year × $107,185 per year = $185,512.

Statutory Authority: Sections 205–206 of the FPA (16 U.S.C. 824d and e) and section 208 of the Public Utility Regulatory Policies Act (PURPA), (16 U.S.C. 2601 *et al.*).

Linda Mitry,

Acting Secretary.

[FR Doc. E4–817 Filed 4–13–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Regulatory Energy Commission

[Docket No. CP02–92–002]

AES Ocean Express LLC; Notice of Compliance Filing

April 7, 2004.

Take notice that on March 29, 2004, AES Ocean Express LLC (Ocean Express), tendered for filing revised pro forma tariff sheets to its FERC Gas Tariff, Original Volume No. 1, as listed on Appendix A attached to the filing, and revised rates.

Ocean Express states that the purpose of this filing is to comply with Ordering Paragraph (I) of the Commission's Preliminary Determination on Non-Environmental Issues, 103 FERC (CCH) ¶ 61,030 (2003) (PD).

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed on or before the protest date as shown below. 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 proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Protest Date: April 19, 2004.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–819 Filed 4–13–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–241–000]

Algonquin Gas Transmission Company; Notice of Tariff Filing

April 6, 2004.

Take notice that on March 31, 2004, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, First Revised Sheet No. 612, to be effective May 1, 2004:

Algonquin states that the purpose of this filing is to modify section 2.5 of the General Terms and Conditions of Algonquin's Tariff to update the address to which the Service Request Form should be sent.

Algonquin states that copies of its filing have served upon affected customers and interested State commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. 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 proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last

three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–834 Filed 4–13–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–109]

ANR Pipeline Company; Notice of Negotiated Rate Filing

April 7, 2004.

Take notice that, on April 1, 2004, ANR Pipeline Company (ANR) tendered for filing and approval two (2) amendments to existing negotiated rate service agreements between ANR and Wisconsin Gas Company.

ANR requests that the Commission accept and approve the subject negotiated rate agreement amendments to be effective April 1, 2004.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. 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 proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–828 Filed 4–13–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–110]

ANR Pipeline Company; Notice of Negotiated Rate Filing

April 7, 2004.

Take notice that, on April 1, 2004, ANR Pipeline Company (ANR) tendered for filing and approval four amendments to existing negotiated rate service agreements between ANR and Wisconsin Electric Power Company.

ANR requests that the Commission accept and approve the subject negotiated rate agreement amendments to be effective April 1, 2004.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. 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 proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–829 Filed 4–13–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–242–000]

Canyon Creek Compression Company; Notice of Filing

April 6, 2004.

Take notice that on March 31, 2004, Canyon Creek Compression Company (Canyon) tendered for filing its revenue crediting report for the calendar year 2003 pursuant to section 36 of the General Terms and Conditions of its FERC Gas Tariff, Third Revised Volume No. 1.

Canyon states that copies of the filing are being mailed to its customers and state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed on or before the date indicated below. 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 proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Intervention and Protest Date: April 13, 2004.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–808 Filed 4–13–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–246–000]

CenterPoint Energy Gas Transmission Company; Notice of Revenue Crediting Report

April 6, 2004.

Take notice that on April 1, 2004, CenterPoint Energy Gas Transmission Company (CEGT) submitted its Annual Revenue Crediting Filing pursuant to its FERC Gas Tariff, Sixth Revised Volume No. 1, section 5.7(c)(ii)(2)B (Imbalance Cash Out), section 23.2(b)(iv) (IT, SBS and PHS Revenue Crediting) and section 23.5 (IT Revenue Credit).

CEGT states that its filing addresses the period from February 1, 2003, through January 31, 2004. The IT and FT Cash Balancing Revenue Credits and the IT Revenue Credit for the period reflected in this filing are zero. Since CEGT's current tariff sheets already reflect zero Cash Balancing and IT Revenue Credits, no tariff revisions are necessary.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed on or before the date as indicated below. 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 proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Intervention and Protest Date: April 13, 2004.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–812 Filed 4–13–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–119–002]

Dominion Transmission, Inc.; Notice of Compliance Filing

April 7, 2004.

Take notice that on March 31, 2004, Dominion Transmission, Inc. (DTI) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Second Substitute Original Sheet No. 1504, to be effective January 22, 2004.

DTI states that the purpose of this filing is to comply with the Commission's Letter Order dated March 25, 2003, which required DTI to report its operational sales of gas on June 30 for the preceding April 1 through March 31 period.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. 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 proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–823 Filed 4–13–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–248–000]

El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

April 6, 2004.

Take notice that on April 1, 2004, El Paso Natural Gas Company (El Paso) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1A, the tariff sheets listed in Appendix A to the filing, with an effective date of May 1, 2005.

El Paso states that the tariff sheets are being filed to propose a new portfolio of Imbalance Management Services. This filing is being filed concurrently with El Paso's Order No. 637 compliance filing; El Paso requests that the Commission treat this Imbalance Management Service filing under its section 5 authority.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. 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 proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–814 Filed 4–13–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–251–000]

El Paso Natural Gas Company; Notice of Tariff Filing

April 7, 2004.

Take notice that on April 1, 2004, El Paso Natural Gas Company (El Paso) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1A, the pro forma tariff sheets listed in the attached Appendix A to the filing.

El Paso states that the pro forma tariff sheets are being filed in compliance with the Commission's Order Nos. 637, 637–A, and 637–B. El Paso states it is concurrently filing a section 4 Imbalance Management Services tariff filing and El Paso requests the two proceedings be consolidated.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. 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 proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–824 Filed 4–13–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03-75-000]

In Reply Refer To: OEP/DG2E/Gas Branch 2 Freeport LNG Development, L.P.

April 6, 2004.

To the Party Addressed: The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared this Draft General Conformity Determination to assess the potential air quality impacts associated with the construction and operation of a liquefied natural gas (LNG) import terminal and natural gas pipeline proposed by Freeport LNG Development, L.P. (Freeport LNG), referred to as the Freeport LNG Project, in the above-referenced docket.

This Draft General Conformity Determination was prepared to satisfy the requirements of the Clean Air Act.

Comment Procedures

Any person wishing to comment on this Draft General Conformity Determination may do so. To ensure consideration of your comments in the Final General Conformity Determination, it is important that we receive your comments before the date specified below. 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 comments to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;
- Reference Docket No. CP03–75–000;
- Label one copy of your comments for the attention of Gas Branch 2; PJ11.2; and;
- Mail your comments so that they will be received in Washington, DC on or before May 12, 2004.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. The Commission strongly encourages electronic filing of any comments on this Draft General Conformity Determination. *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 online.

After all comments are reviewed, the staff will publish and distribute a Final General Conformity Determination for the Project.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–815 Filed 4–13–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–518–057]

Gas Transmission Northwest Corporation; Notice of Negotiated Rate

April 7, 2004.

Take notice that on March 31, 2004, Gas Transmission Northwest Corporation (GTN) tendered for filing to be part of its FERC Gas Tariff, Third Revised Volume No. 1–A, Seventh Revised Sheet No. 15 and Third Revised Sheet No. 17, to become effective April 1, 2004.

GTN states that these sheets are being filed to update GTN's reporting of negotiated rate transactions that it has entered into.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. 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 proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the

instructions on the Commission's Web site under the e-Filing link.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–818 Filed 4–13–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–81–016]

Kinder Morgan Interstate Gas Transmission LLC; Notice of Negotiated Rate

April 7, 2004.

Take notice that on March 31, 2004, Kinder Morgan Interstate Gas Transmission LLC (KMIGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1–A, the following tariff sheets, to be effective April 1, 2004:

Eleventh Revised Sheet No. 4G
Original Sheet No. 4G.01
Third Revised Sheet No. 4J

KMIGT states that the above-referenced tariff sheets reflect negotiated rate contracts effective April 1, 2004. The tariff sheets are being filed pursuant to section 36 of KMIGT's FERC Gas Tariff Fourth Revised Volume No. 1–B, and the procedures prescribed by the Commission in its December 31, 1996, "Order Accepting Tariff Filing Subject to Conditions", in Docket No. RP97–81 (77 FERC § 61,350) and the Commission's Letter Orders dated March 28, 1997, and November 30, 2000, in Docket Nos. RP97–81–001 and RP01–70–000, respectively.

KMIGT states that a copy of this filing has been served upon all parties to this proceeding, KMIGT's customers and affected State commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. 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 proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–827 Filed 4–13–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–404–012]

Northern Natural Gas Company; Notice of Compliance Filing

April 7, 2004.

Take notice that on April 1, 2004, Northern Natural Gas Company (Northern), tendered for filing in its FERC Gas Tariff, Fifth Revised Volume No. 1 the following tariff sheets to address Northern's plan for implementation of segmentation in its Field Area:

First Revised Sheet No. 305A (Phase 1)
First Revised Sheet No. 305B (Phase 1)
Second Revised Sheet No. 305A (Phase 2)

Northern states that it is filing the above-referenced tariff sheets to address its plan for a phased-in approach to implementation of segmentation in the Field Area.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. 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 proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–822 Filed 4–13–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–247–000]

Overthrust Pipeline Company; Notice of Cost and Revenue Study

April 6, 2004.

Take notice that on April 1, 2004, Overthrust Pipeline Company, (Overthrust) submitted its Cost and Revenue Study (C&R) for the 12 months ended December 31, 2003.

Overthrust states that the filing is made in compliance with the Settlement approved by a Commission order issued July 13, 2000, in Docket No. RP00–2–000.

Overthrust states that a copy of this filing has been served upon Overthrust's jurisdictional customers, the Wyoming Public Service Commission, and the Utah Division of Public Utilities.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed on or before the date as indicated below. 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 proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-

free at (866) 208-3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Intervention and Protest Date: April 13, 2004.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–813 Filed 4–13–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–240–000]

Panhandle Eastern Pipe Line Company, LLC; Notice of Proposed Changes in FERC Gas Tariff

April 6, 2004.

Take notice that on March 31, 2004, Panhandle Eastern Pipe Line Company, LLC (Panhandle) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the revised tariff sheets listed in Appendix A, attached to the filing to become effective May 1, 2004.

Panhandle states that this filing is made in accordance with section 25.1 (Flow Through of Cash-Out Revenues in Excess of Costs) of the General Terms and Conditions in Panhandle's FERC Gas Tariff, Second Revised Volume No. 1.

Panhandle further states that copies of this filing are being served on all affected customers and applicable State regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. 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 proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–833 Filed 4–13–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–243–000]

Pine Needle LNG Company, LLC; Notice of Tariff Filing

April 6, 2004.

Take notice that on March 31, 2004 Pine Needle LNG Company, LLC (Pine Needle) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Fifth Revised Sheet No. 4, to become effective May 1, 2004.

Pine Needle states that the instant filing is being submitted pursuant to section 18 and section 19 of the General Terms and Conditions (GT&C) of Pine Needle's FERC Gas Tariff. Section 18 of the GT&C of Pine Needle's Tariff states that Pine Needle will file, to be effective each May 1, a redetermination of its fuel retention percentage applicable to storage services. Section 19 of the GT&C of Pine Needle's Tariff provides that Pine Needle will file, also to be effective each May 1, to reflect net changes in the Electric Power (EP) rates.

Pine Needle states that it is serving copies of the instant filing to its affected customers, interested State Commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. 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 proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–809 Filed 4–13–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 637]

Public Utility District No. 1 of Chelan County; Notice Of Authorization For Continued Project Operation

April 7, 2004.

On March 28, 2002, Public Utility District No. 1 of Chelan County, licensee for the Lake Chelan Project No. 637, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 637 is located on the Chelan River in Chelan County, Washington.

The license for Project No. 637 was issued for a period ending March 31, 2004. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be

required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 637 is issued to Public Utility District No. 1 of Chelan County for a period effective April 1, 2004, through March 31, 2005, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before April 1, 2005, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that Public Utility District No. 1 of Chelan County is authorized to continue operation of the Lake Chelan Project No. 637 until such time as the Commission acts on its application for subsequent license.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–821 Filed 4–13–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2984]

S.D. Warren Company; Notice of Authorization for Continued Project Operation

April 7, 2004.

On March 29, 2002, the S.D. Warren Company, licensee for the Eel Weir Project No. 2984, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2984 is located on the Presumpscot River in Cumberland County, Maine.

The license for Project No. 2984 was issued for a period ending March 31, 2004. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2984 is issued to the S.D. Warren Company for a period effective April 1, 2004, through March 31, 2005, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before April 1, 2005, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that the S.D. Warren Company is authorized to continue operation of the Eel Weir Project No. 2984 until such time as the Commission acts on its application for subsequent license.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–820 Filed 4–13–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–245–000]

Southern Star Central Gas Pipeline, Inc.; Notice of Tariff Filing

April 6, 2004.

Take notice that on March 31, 2004, Southern Star Central Gas Pipeline, Inc. (Southern Star) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2, Original Sheet No. 0 through Original Sheet No. 328, to become effective May 1, 2004.

Southern Star states that the purpose of this filing is to restate Southern Star's FERC Gas Tariff, Original Volume No. 2 to reflect its name change to Southern Star Central Gas Pipeline, Inc. rather than Williams Natural Gas Pipeline as currently on file with the Commission. The instant filing reflects the change to Southern Star, reservation and repagination of tariff sheets and cancellation of terminated Service Agreement. Original Volume No. 2 as filed will contain the title page, a Table of Contents and Original Sheet No. 327 stating the applicable rate for Rate Schedule X–23, the only remaining rate schedule.

Southern Star further states that copies of this filing are being mailed to the applicable party regarding Rate Schedule X–23.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. 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 proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–811 Filed 4–13–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–134]

Tennessee Gas Pipeline Company; Notice of Amendments to Negotiated Rate Agreements

April 7, 2004.

Take notice that on March 31, 2004, Tennessee Gas Pipeline Company (Tennessee), tendered for filing two amendments to Gas Transportation Agreements, dated November 1, 2002, between Tennessee and Calpine Energy Services L.P. pursuant to Tennessee's Rate Schedule FT–A (Negotiated Agreements) that have been previously accepted as negotiated rate agreements. Tennessee requests that the Commission accept and approve the amendments to the Negotiated Rate Agreements to be effective on April 1, 2004.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. 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 proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–825 Filed 4–13–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–135]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate

April 7, 2004.

Take notice that on March 31, 2004, Tennessee Gas Pipeline Company (Tennessee) tendered for filing its Negotiated Rate Agreement between Dominion East Ohio (East Ohio).

Tennessee requests that the Commission approve a negotiated rate arrangement between Tennessee and East Ohio. Tennessee requests that the Commission grant such approval effective April 1, 2004.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. 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 proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–826 Filed 4–13–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–480–008]

Texas Eastern Transmission, LP; Notice of Negotiated Rate Filing

April 7, 2004.

Take notice that on March 31, 2004, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, Original Sheet No. 108 and Sheet Nos. 109–125, to be effective May 1, 2004.

Texas Eastern states that Original Sheet No. 108 filed herewith lists Carolina Power & Light Company d/b/a Progress Energy Carolinas, Inc. (CP&L) as a party to a negotiated rate arrangement. Texas Eastern also states that, by this filing, Texas Eastern proposes to implement a negotiated rate agreement between Texas Eastern and CP&L for firm transportation service under Rate Schedule FT–1 on facilities constructed as part of Texas Eastern's M–1 Expansion Project (Docket No. CP02–381).

Texas Eastern states that copies of its filing have been served upon all affected customers of Texas Eastern and interested State commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. 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 proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the

instructions on the Commission's Web site under the e-Filing link.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–830 Filed 4–13–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–381–001]

Texas Eastern Transmission, LP; Notice of Compliance Filing

April 7, 2004.

Take notice that on March 31, 2004, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the tariff sheets listed in Appendix A of the filing proposed to be effective on May 1, 2004.

Texas Eastern states that the purpose of this filing is to comply with the Commission's Orders issued in Docket No. CP02–381–000, on October 31, 2002, and February 28, 2003, in which the Commission approved Texas Eastern's application for a certificate of public convenience and necessity authorizing the construction of certain pipeline facilities referred to as the M–1 Expansion Project. Texas Eastern states that the revised tariff sheets reflect the recourse rate for the M–1 Expansion Project service, and incorporate references to the new incremental M–1 Expansion Project service into Rate Schedule FT–1 and the General Terms and Conditions of the Tariff.

Texas Eastern states that copies of its filing have been served upon all affected customers and interested State commissions, as well as on all parties on the official service list in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed on or before the protest date as shown below. 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 proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Protest Date: April 19, 2004.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–831 Filed 4–13–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–244–000]

Vector Pipeline L.P.; Notice Of Annual Fuel Use Report

April 6, 2004.

Take notice that on March 31, 2004, Vector Pipeline L.P. (Vector) tendered for filing an annual report of its monthly fuel use ratios for the period January 1, 2003, through December 31, 2003.

Vector states that this filing is made pursuant to section 11.4 of the General Terms and Conditions of the Vector Gas Tariff and section 154.502 of the Commission's regulations.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed on or before the date has indicated below. 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 proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208-3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Intervention and Protest Date: April 13, 2004.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–810 Filed 4–13–04; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0083; FRL–7647–2]

Agency Information Collection Activities; Submission to OMB; Comment Request; EPA ICR No. 0616.08/OMB Control No. 2070–0052; Compliance Requirement for Child-Resistant Packaging

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on April 30, 2004. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before May 14, 2004.

FOR FURTHER INFORMATION CONTACT: Nancy Vogel, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–6475; fax number: (703) 305–5884; e-mail address: *vogel.nancy@epa.gov.*

ADDRESSES: Submit your comments, referencing docket ID number OPP–2003–0083, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *opp-docket@epa.gov*, or by mail to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Mail Code: 7502C, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2)

OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

SUPPLEMENTARY INFORMATION:

EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. The **Federal Register** document, required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on April 18, 2003 (68 FR 19201). EPA received no comments on this ICR during the 60-day comment period.

EPA has established a public docket for this ICR under Docket ID No. OPP–2003–0083, which is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., 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. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. Please note, EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *www.epa.gov/edocket.*

ICR Title: Compliance Requirement for Child-Resistant Packaging.

ICR Status: This is a request for extension of an existing approved collection that is currently scheduled to expire on April 30, 2004. EPA is asking OMB to approve this ICR for three years. Under 5 CFR 1320.12(b)(2), the Agency may continue to conduct or sponsor the collection of information while the submission is pending at OMB.

Abstract: This information collection program is designed to provide the Environmental Protection Agency (EPA) with assurances that the packaging of pesticide products sold and distributed to the general public in the United States meets standards set forth by the Agency pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Registrants must certify to the Agency that the packaging or device meets these standards. Responses to this collection are required in order to obtain pesticide registration. The authority for this information collection is pursuant to section 25 (c)(3) of FIFRA. Compliance regulations are contained in Title 40 of the Code of Federal Regulations (CFR) part 157. CBI submitted to EPA in response to this information collection is protected from disclosure under FIFRA section 10.

Burden Statement: The annual "respondent" burden for this ICR is estimated to be 2,109 hours, or 3 hours per response. According to the Paperwork Reduction Act, "burden" means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For this collection, it is the time spent reading instructions, planning activities, creating information, reviewing data for reliability and accuracy, preparing and submitting the necessary certification statement, and storing, filing, and maintaining the data. The agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this information collection appears at the beginning and the end of this document. In addition OMB control numbers for EPA's regulations, after initial display in the final rule, are listed in 40 CFR part 9.

The following is a summary of the burden estimates taken from the ICR:

Respondents/affected entities: Pesticide registrants.

Estimated total number of potential respondents: 1,900.

Frequency of response: On occasion.

Estimated total/average number of responses for each respondent: 2.

Estimated total annual burden hours: 2,109.

Estimated total annual burden costs: $155,222.

Changes in the ICR Since the Last Approval: The total estimated annual respondent cost for this ICR has increased 1,256 hours (from 853 to 2,109), due mainly to an increase in the number of responses expected. Estimated costs have increased $100,203 (from $55,019 to $155,222) due to an increase in labor rates. These increases are explained more fully in the ICR.

According to the procedures prescribed in 5 CFR 1320.12, EPA has submitted this ICR to OMB for review and approval. Any comments related to the renewal of this ICR should be submitted within 30 days of this notice, as described above.

Dated: April 2, 2004.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 04–8450 Filed 4–13–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2003–0066; FRL–7647–3]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Chemical-Specific Rules, Toxic Substances Control Act Section 8(a), EPA ICR No. 1198.07, OMB No. 2070–0067

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Chemical-Specific Rules, Toxic Substances Control Act Section 8(a) (EPA ICR No. 1198.07, OMB No. 2070–0067). This is a request to renew an existing approved collection. This ICR is scheduled to expire on April 30, 2004. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated cost.

DATES: Additional comments may be submitted on or before May 14, 2004.

ADDRESSES: Submit your comments, referencing docket ID Number OPPT–2003–0066, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *oppt.ncic@epa.gov* or by mail to: Document Control Office (DCO), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, Mailcode: 7407T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Barbara Cunningham, Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, Mailcode: 7408, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–554–1404; e-mail address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On December 15, 2003, EPA sought comments on this renewal ICR (68 FR 69680) pursuant to 5 CFR 1320.8(d). EPA received no comments during the comment period. Any additional comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice using the methods described under the **ADDRESSES** section of this document.

EPA has established a public docket for this ICR under Docket ID No. OPPT–2003–0066, which is available for public viewing at the Pollution Prevention and Toxics (OPPT) Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the OPPT Docket is 202–566–0280. An electronic version of the public docket is available through EDOCKET at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *www.epa.gov/edocket.*

ICR Title: Chemical-Specific Rules, Toxic Substances Control Act Section 8(a).

Abstract: Section 8(a) of the Toxic Substances Control Act (TSCA) authorizes the Administrator of the EPA to promulgate rules that require persons who manufacture, import or process chemical substances and mixtures, or who propose to manufacture, import, or process chemical substances and mixtures, to maintain such records and submit such reports to EPA as may be reasonably required. Any chemical covered by TSCA for which EPA or another Federal agency has a reasonable need for information and which cannot be satisfied via other sources is a proper potential subject for a chemical-specific TSCA section 8(a) rulemaking. Information that may be collected under TSCA section 8(a) includes, but is not limited to, chemical names, categories of use, production volume, byproducts of chemical production, existing data on deaths and environmental effects, exposure data, and disposal information. Generally, EPA uses chemical-specific information under TSCA section 8(a) to evaluate the potential for adverse human health and environmental effects caused by the manufacture, importation, processing, use or disposal of identified chemical substances and mixtures. Additionally, EPA may use TSCA section 8(a) information to assess the need or set priorities for testing and/or further regulatory action. To the extent that reported information is not considered confidential, environmental groups, environmental justice advocates, state and local government entities and other members of the public will also have access to this information for their own use.

Responses to the collection of information are mandatory (*see* 40 CFR part 704). Respondents may claim all or part of a notice as CBI. EPA will disclose information that is covered by a CBI claim only to the extent permitted by, and in accordance with, the procedures in 40 CFR part 2.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9 and included on the related collection instrument or form, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 68.8 hour per response. Burden means the total time, effort or financial resources expended by persons to generate, maintain, retain or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Companies that manufacture, process or import, or propose to manufacture, process or import, chemical substances and mixtures.

Frequency of Collection: On occasion.

Estimated No. of Respondents: 4.

Estimated Total Annual Burden on Respondents: 275 hours.

Estimated Total Annual Burden Costs: $11,702.

Changes in Burden Estimates: There are no changes in burden estimates from the last approval.

Dated: April 2, 2004.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 04–8456 Filed 4–13–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2003–0004; FRL–7354–5]

Access to Confidential Business Information by Syracuse Research Corporation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor Syracuse Research Corporation (SRC), of Syracuse, NY, access to information which has been submitted to EPA under sections 4, 5, 6, 8, and 21 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 April 21, 2004.

FOR FURTHER INFORMATION CONTACT: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: *TSCA–Hotline@.epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Notice Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those persons who are or may be required to conduct testing of chemical substances under TSCA. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Documents?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2003–0004. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include CBI or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. What Action is the Agency Taking?

Under Contract Number EP–W–04–019, SRC of 301 Plainfield Road, Suite 350, Syracuse, NY, will assist EPA in by providing expertise in the health and environmental sciences, including biotechnology and biostatistics; performing hazard and exposure assessments at the screening level; performing hazard assessments, risk assessments and characteristics of new and existing chemicals; performing expert analysis of science issues and questions; organizing review panels/workgroups/workshop/symposia; assisting in developing test guidelines/standards; providing automatic data processing, information management support, and literature and translation support.

In accordance with 40 CFR 2.306(j), EPA has determined that under Contract Number EP–W–04–019, SRC will require access to CBI submitted to EPA under sections 4, 5, 6, 8, and 21 of TSCA, to perform successfully the duties specified under the contract.

SRC personnel will be given information submitted to EPA under sections 4, 5, 6, 8, and 21 of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under sections 4, 5, 6, 8, and 21 of TSCA, that the Agency may provide SRC 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 SRC's Syracuse, NY and Arlington, VA facilities. SRC personnel will be required to adhere to all provisions of EPA's *TSCA Confidential Business Information Protection Manual.*

Clearance for access to TSCA CBI under Contract Number EP–W–04–019 may continue until March 31, 2009. Access will commence no sooner than April 21, 2004.

SRC personnel have signed nondisclosure 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: April 5, 2004.

Brion Cook,

Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 04–8317 Filed 4–13–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7647–4]

EPA National Advisory Council for Environmental Policy and Technology; Notification of Public Advisory Committee Teleconference Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of Public Advisory Committee teleconference meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the National Advisory Council for Environmental Policy and Technology (NACEPT) will meet in a public teleconference on Friday, April 30, 2004, from 11 a.m. to 1 p.m. eastern time. The meeting will be hosted out of the main conference room, U.S. EPA, 655 15th Street, NW., Suite 800, Washington, DC 20005. The meeting is open to the public, however, due to limited space, seating will be on a registration-only basis. For further information regarding the teleconference meeting, or how to register and obtain the phone number, please contact the individual listed below.

Background: NACEPT is a Federal advisory committee under the Federal Advisory Committee Act, Public Law 92463. NACEPT provides advice and recommendations to the Administrator and other EPA officials on a broad range of domestic and international environmental policy issues. NACEPT consists of a representative cross-section of EPA's partners and principle constituents who provide advice and recommendations on policy issues and serves as a sounding board for new strategies that the Agency is developing. The Superfund Committee is one of the subcommittees under the auspices of NACEPT.

Purpose of Meeting: The NACEPT Superfund Committee has submitted a draft report to the NACEPT Council for its review and approval. The purpose of this teleconference is for the NACEPT Council to review, discuss, and decide whether to approve the NACEPT Superfund Committee Draft Report.

Availability of Review Materials: The NACEPT Superfund Committee Draft Report is available electronically from EPA's Office of Solid Waste and Emergency Response, at *http://www.epa.gov/oswer/SFsub.htm.*

SUPPLEMENTARY INFORMATION: Members of the public wishing to gain access to the conference room on the day of the meeting must contact Ms. Sonia Altieri, Designated Federal Officer for NACEPT, U.S. Environmental Protection Agency (1601E), Office of Cooperative Environmental Management, 655 15th Street, NW., Suite 800, Washington, DC 20005; telephone/voice mail at (202) 233–0061 or via e-mail at *altieri.sonia@epa.gov.* The agenda will be available to the public upon request. Requests to make oral or written comments to the Council should be sent to Sonia Altieri by Friday, April 23, 2004.

General Information: Additional information concerning the National Advisory Council for Environmental Policy and Technology (NACEPT) can be found on our Web site (*http://www.epa.gov/ocem*).

Meeting Access: Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact Ms. Altieri at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: April 7, 2004.

Sonia Altieri,

Designated Federal Officer.

[FR Doc. 04–8458 Filed 4–13–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0060; FRL–7353–2]

Pesticides; Fees and Decision Times for Registration Applications; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; correction.

SUMMARY: EPA issued a notice in the **Federal Register** of March 17, 2004, concerning pesticide fees and decision times for registration applications. This document is being issued to correct typographical errors.

FOR FURTHER INFORMATION CONTACT: Jean M. Frane, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5944; fax number: (703) 305–5884; e-mail address: *frane.jean@epa.gov*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

The Agency included in the notice a list of those who may be potentially affected by this action. If you have 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–2004–0060. 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, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically.

Once in the system, select "search," then key in the appropriate docket ID number.

II. What Does this Correction Do?

The typographical errors being corrected in this notice appear in the Congressional Record tables, and were inadvertently presented incorrectly in the March 17 notice.

FR Doc. 04–6001 published in the **Federal Register** of March 17, 2004 (69 FR 12771) (FRL–7348–2) is corrected as follows:

1. On page 12776, in Table 5, in the entry for EPA No. R35, in the third column, insert a comma after "PHI."

2. On page 12777, in Table 6, in the entry for EPA No. A41, in the last column, "150,0000" should read "150,000."

List of Subjects

Environmental protection, Administrative practice and procedures, Pesticides and pests.

Dated: April 2, 2004.

James Jones,

Director, Office of Pesticide Programs.

[FR Doc. 04–8100 Filed 4–13–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0405; FRL–7352–4]

Pesticide Products; Registration Approval

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of applications to register the pesticide products VWX-42 Technology Glycerol Monocaprylate, VWX-42 Technology Glycerol Monocaprate, VWX-42 Technology Glycerol Monolaurate, VWX-42 Technology Propylene Glycol Monocaprylate, VWX-42 Technology Propylene Glycol Monocaprate and VWX-42 Technology Propylene Glycol Monolaurate containing active ingredients not included in any previously registered product pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: Carol E. Frazer, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8810; e-mail address: *frazer.carol@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

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

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

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0405. 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, 1921 Jefferson Davis Hwy., 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.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label, the list of data references, the data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are also available for public inspection. Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. The request should: Identify the product name and registration number and specify the data or information desired.

A paper copy of the fact sheet, which provides more detail on this registration, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22161.

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. Did EPA Approve the Application?

The Agency approved the application after considering all required data on risks associated with the proposed use of VWX-42 Technology Glycerol Monocaprylate, VWX-42 Technology Glycerol Monocaprate, VWX-42 Technology Glycerol Monolaurate, VWX-42 Technology Propylene Glycol Monocaprylate, VWX-42 Technology Propylene Glycol Monocaprate and VWX-42 Technology Propylene Glycol Monolaurate, and information on social, economic, and environmental benefits to be derived from use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of these products when used in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects to the environment.

III. Approved Application

EPA issued a notice, published in the **Federal Register** of November 1, 2001

(66 FR 55174)(FRL–6803–6), which announced that 3M/St. Paul MN 55144–1000, had submitted an application to register VWX-42 Technology, (EPA File Symbol 10350–AN), a family of biocides C8, C10, and C12 straight chain fatty acid monoesters of glycerol and propylene glycol, containing the active ingredients glycerol monocaprate, glycerol monocaprylate, glycerol monolaurate, propylene glycol monocaprate, propylene glycol monocaprylate, and propylene glycol monolaurate at 86.68%, 88.21%, 93.50%, 71.37%, 68.62%, and 75.85% respectively; as a manufacturing use product for products that control plant diseases and microbial contamination.

Subsequently, 3M submitted applications for each of the biocides separately, under the EPA File symbols 10350–AI, 10350–AU, 10350–AL, 10350–AN, 10350–AA, and 10350–AT. These products were not previously registered.

The products VWX-42 Glycerol Monocaprylate, VWX-42 Technology Glycerol Monocaprate, VWX-42 Technology Glycerol Monolaurate, VWX-42 Technology Propylene Glycol Monocaprylate, VWX-42 Technology Propylene Glycol Monocaprate, and VWX-42 Technology Propylene Glycol Monolaurate (EPA File Symbol 10350–AN), contain the active ingredients 88.21% glycerol monocaprylate, 86.68% glycerol monocaprate, 93.50% glycerol monolaurate, 71.37% propylene glycol monocaprate, 68.82% propylene glycol monocaprylate and 75.85% propylene glycol monolaurate respectively.

The applications listed below were approved for manufacturing use only on September 30, 2003 for these biocides containing 88.21% glycerol monocaprylate, 1.43% glycerol monocaprate and 10.36% other ingredients; 86.68% glycerol monocaprate, 0.68% glycerol monocaprylate and 12.64% other ingredients; 93.50% glycerol monolaurate, 0.23% glycerol monocaprate and 6.27% other ingredients; 68.82 propylene glycol monocaprylate, 0.15% propylene glycol monocaprate and 31.23% other ingredients; 71.37% propylene glycol monocaprate, 0.77% propylene glycol monocaprylate, 0.59% propylene glycol monolaurate and 27.86% other ingredients; and 75.85% propylene glycol monolaurate and 24.15% other ingredients respectively.

1. VWX-42 Technology Glycerol Monocaprylate (EPA registration number 10350–68);

2. VWX-42 Technology Glycerol Monocaprate (EPA registration number 10350–64)

3. VWX-42 Technology Glycerol Monolaurate (EPA registration number 10350–65)

4. VWX-42 Technology Propylene Glycol Monocaprylate (EPA registration number 10350–60)

5. VWX-42 Technology Propylene Glycol Monocaprate (EPA registration number 10350–66)

6. VWX-42 Technology Propylene Glycol Monolaurate (EPA registration number 10350–67)

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: April 1, 2004.

Phil Hutton,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 04–8101 Filed 4–13–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0059; FRL–7352–7]

Pesticide Product; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments, identified by the docket ID number OPP–2004–0059, must be received on or before May 14, 2004.

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

FOR FURTHER INFORMATION CONTACT: Shanaz Bacchus, Regulatory Action Leader, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8097; e-mail address: *bacchus.shanaz@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions. 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–2004–0059. 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, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA

Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2004–0059. 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–2004–0059. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency (7502C), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2004–0059.

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, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2004–0059. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be

included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

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

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the registration activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Registration Applications

EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients not Included in any Previously Registered Products

1. *File Symbol:* 75624–R. *Applicant:* Circle One Global, Inc., One Arthur Street, P.O. Box 28, Shellman, GA 39886–0028. *Product name: Aspergillus flavus* NRRL 21882. Antifungal agent. *Active ingredient: Aspergillus flavus* NRRL 21882 at 100%. *Proposed classification/Use:* A microbial pesticide; a manufacturing use product to be formulated into end-use products to displace aflatoxin-producing *Aspergillus flavus* from peanuts.

2. *File Symbol:* 75624–E. *Applicant:* Circle One Global, Inc. *Product name:* Afla Guard. Antifungal agent. *Active ingredient: Aspergillus flavus* NRRL 21882 at 0.002%. *Proposed classification/Use:* A microbial pesticide; end-use product to displace aflatoxin-producing *Aspergillus flavus* from peanuts.

3. *File Symbol:* 69592–RU. *Applicant:* AgraQuest, Inc., 1530 Drew Avenue, Davis, CA 95616. *Product name: Muscodor albus* strain QST 20799. Fungicide, nematicide, and bacteriocide. *Active ingredient: Muscodor albus* strain QST 20799 at 2.1%. *Proposed classification/Use:* Manufacturing use product for formulating into end-use products.

4. *File Symbol:* 69592–RI. *Applicant:* AgraQuest, Inc. *Product name*: Glissade. Antifungal agent. *Active ingredient: Muscodor albus* strain QST 20799 at 0.35%. *Proposed classification/Use:* For control of soil diseases for food and non-food commodities.

5. *File Symbol:* 69592–RL. *Applicant:* AgraQuest, Inc. *Product name:* Arabesque. Antifungal agent. *Active ingredient: Muscodor albus* strain QST 20799 at 0.35%. *Proposed classification/Use:* For control of post harvest diseases of food and non-food commodities, and preplant control of seed, bulb, and tuber borne diseases of food and non-food commodities.

6. *File Symbol*: 69592–RT. *Applicant:* AgraQuest, Inc., 1530 Drew Avenue, Davis, CA 95616 *Product name:* Andante. Antifungal agent. *Active ingredient: Muscodor albus* strain QST 20799 at 0.35%. *Proposed classification/Use:* For use as a methyl bromide replacement to control soil fungi and nematodes.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: April 1, 2004.

Phil Hutton,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 04–8102 Filed 4–13–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0103; FRL–7353–9]

Issuance of an Experimental Use Permit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted an experimental use permit (EUP) to the following pesticide applicant. An EUP permits use of a pesticide for experimental or research purposes only in accordance with the limitations in the permit.

FOR FURTHER INFORMATION CONTACT: Denise Greenway, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8263; e-mail address: *greenway.denise@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to those persons who conduct or sponsor research on pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this action, 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–2004–0103. 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, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket

facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. EUP

EPA has issued the following EUP:

75108–EUP–2. Issuance. HBB Partnership, 5151 N. Palm Ave., Ste. 820, Fresno, CA 93704–2221. This EUP allows the use of 3.528 pounds of the California red scale pheromone on 10,000 acres of citrus to evaluate the control of California red scale. The program is authorized only in the States of Arizona, California, Florida, and Texas. The EUP is effective from March 12, 2004 to September 30, 2004.

Authority: 7 U.S.C. 136c.

List of Subjects

Environmental protection, Experimental use permits.

Dated: April 5, 2004.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 04–8460 Filed 4–13–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7647–5]

Proposed Settlement Under Section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act Regarding the Atlantic Resources Corporation and Horseshoe Road Superfund Sites, Middlesex County, NJ

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed administrative settlement and opportunity for public comment.

SUMMARY: The United States Environmental Protection ("EPA") is proposing to enter into an administrative settlement to resolve claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"). In accordance with section 122(h)(i)(1) of CERCLA, notice is hereby given of a proposed administrative settlement concerning the Atlantic Resources Corporation and Horseshoe Road Sites (collectively "the Sites"). Section 122(h) of CERCLA provides EPA with the authority to consider, compromise and settle certain claims for costs incurred by the United States. Notice is being published to inform the public of the proposed settlement and of the opportunity to comment. The administrative settlement is contained in the Administrative Order on Consent for Supplemental Field Investigation ("SFI"), Baseline Ecological Risk Assessment ("BERA") and Feasibility Study ("FS"), U.S. EPA Index No. CERCLA–02–2003–2033 (the "Order"). The administrative settlement provides that after Advanced Environmental Technology Corp.; Chevron Environmental Management Co.; Essex Chemical Corp.; General Motors Corp.; ICI Americas Inc.; Johnson & Johnson; Kewanee Industries, Inc.; Novartis Pharmaceuticals Corp.; 3M Co.; and Union Carbide Corp. (collectively, "Settling Parties") perform the SFI, BERA, and FS for the Sites pursuant to the Order, they will receive a partial credit for that work which can be applied toward EPA's unreimbursed response costs at the Sites, should EPA attempt to recover those costs from the Settling Parties in the future.

Pursuant to the administrative settlement, the Settling Parties are to be provided a credit of fifty percent (50%) of the costs incurred by them for work performed under the Order (excluding oversight costs claimed by EPA and any of Settling Parties' attorneys fees), up to a maximum amount of $350,000.00, provided that EPA has accepted the applicable Order deliverables for which credit is sought. The credit applies only to any future claim made by EPA for unreimbursed costs incurred or to be incurred by EPA concerning the Sites.

EPA will consider any comments received during the comment period and may withdraw or withhold consent to the proposed settlement if comments disclose facts or considerations that indicate the proposed settlement is inappropriate, improper, or inadequate. EPA's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, Office of Regional Counsel, 290 Broadway—17th floor, New York, New York 10007–1866. Telephone: (212) 637–3111.

DATES: Comments must be provided by May 14, 2004.

ADDRESSES: Comments should be sent to the U.S. Environmental Protection Agency, Office of Regional Counsel, 290 Broadway—17th Floor, New York, NY 10007 and should refer to: In the Matter of the Atlantic Resources Corporation and Horseshoe Road Superfund Sites, U.S. EPA Index No. CERCLA–02–2003–2033.

FOR FURTHER INFORMATION CONTACT: U.S. Environmental Protection Agency, Office of Regional Counsel, 290 Broadway—17th Floor, New York, NY 10007, (212) 637–3142.

SUPPLEMENTARY INFORMATION: A copy of the proposed administrative settlement, as well as background information relating to the settlement, may be obtained in person or by mail from Clay Monroe, U.S. Environmental Protection Agency, Office of Regional Counsel, 290 Broadway—17th Floor, New York, NY 10007. Telephone: (212) 637–3142.

Dated: February 9, 2004.

Jane M. Kenny,

Regional Administrator, Region 2.

[FR Doc. 04–8457 Filed 4–13–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7647–7]

Water Pollution Control; State Program Requirements; Approval of Program Modification To Administer the Sewage Sludge (Biosolids) Management Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; approval of application.

SUMMARY: On March 31, 2004, pursuant to section 402(b) of the Clean Water Act (CWA), the Regional Administrator for EPA, Region 9, approved the State of Arizona's application to administer a state sewage sludge (biosolids) management program where it has jurisdiction.

FOR FURTHER INFORMATION CONTACT: Matthew Mitchell, (415) 972–3508, WTR–5, EPA, Region 9, 75 Hawthorne St., San Francisco, CA 94707, or John Calkins, (602) 771–4651, Water Quality Compliance Assurance Unit, Arizona Department of Environmental Quality, 1110 W. Washington, Phoenix, AZ 85007. The State's program submission is available electronically at the following Internet address: *http://www.adeq.state.az.us/environ/water/permits/bio.html#to.*

SUPPLEMENTARY INFORMATION: Throughout this document "we," "us," or "our" means EPA.

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B. National Historic Preservation Act
C. Other Provisions

I. Background

Section 405 of the Clean Water Act (CWA), 33 U.S.C. 1345, created the sewage sludge management program, requiring EPA to set standards for the use and disposal of sewage sludge and requiring EPA to include sewage sludge conditions in the National Pollutant Discharge Elimination System (NPDES) permits which it issues to treatment works treating domestic sewage. The rules developed under section 405(d) are also self-implementing, and the standards are enforceable whether or not a permit has been issued. Pursuant to regulations promulgated in accordance with

Section 405(f) of the CWA, a state may apply to EPA for authority to administer the sewage sludge program within its jurisdiction. EPA is required to approve each such submitted state program application unless EPA determines that the program does not meet the requirements of those regulations, set forth at 40 CFR part 501.

On June 11, 2002, Arizona submitted an application to EPA for approval of a state-administered NPDES permit program pursuant to CWA section 402(b) of the CWA. The Arizona NPDES program (known as AZPDES) was approved by EPA on December 5, 2002. Approval of Arizona's application for its sewage sludge program is a program modification since ADEQ intends to administer its sewage sludge program in conjunction with the AZPDES program.

EPA received the sewage sludge program submittal from Arizona on November 29, 2002. Arizona's application for the sewage sludge management program approval contains a letter from the Governor requesting program approval, an Attorney General's Statement, copies of pertinent State statutes and regulations, a Program Description, and a Memorandum of Agreement (MOA) to be executed by the Regional Administrator of EPA, Region 9 and the Director of ADEQ. The State submitted a modification of its Attorney General's Statement, which EPA received on October 10, 2003.

Sewage sludge, also known as "biosolids," is the solid separated from liquids during treatment at a domestic or municipal wastewater treatment plant and treated to stabilize and reduce pathogens. In 1993, EPA adopted standards for management of sewage sludge generated during the process of treating domestic sewage. 40 CFR part 503. The part 503 regulations establish standards under which sewage sludge may be applied to land as a soil amendment, disposed in a surface disposal site, or incinerated. The regulations also allow for disposal in a municipal solid waste landfill that meets the requirements of 40 CFR part 258. The standards in part 503, designed to protect public health and the environment, include pollutant limits, pathogen reduction requirements, vector attraction reduction requirements, and management practices specific to the use or disposal option selected.

The Arizona biosolids management program has standards for land application, surface disposal, and placement of sewage sludge in a municipal landfill. It imposes requirements on wastewater treatment plants, biosolids land appliers, and surface disposal site operators. It also provides for the issuance of permits under certain conditions, enforcing the standards as necessary, and providing guidance and technical assistance to members of the regulated community. The program also includes a state-specific feature requiring a land applier to register an application site with ADEQ before biosolids are applied to the site. State rules prohibit incineration of sewage sludge.

II. Was Notice Provided Seeking Public Comments on Arizona's Program Submittal?

Arizona's application was described in the November 21, 2003, **Federal Register** (68 FR 65663), in which EPA requested public comments for a period of 45 days. Further notice was provided by way of publication in the following newspapers on December 5, 2003: The Arizona Republic; The Tucson Citizen, and the Arizona Daily Star. EPA also provided public notice to the following interested persons and parties: permitted facilities, Indian tribes, other Federal and state agencies, and environmental groups within Arizona. Copies of ADEQ's application package were available for public review at the offices of EPA, Region 9 and ADEQ.

III. Was a Public Hearing Held?

A public hearing was not held. The above notice explained that a hearing had not been scheduled and how a hearing could be requested. EPA holds a public hearing whenever the Regional Administrator finds, on the basis of requests, a significant degree of public interest. No request for a hearing was received during the public comment period and therefore, no hearing was held.

IV. Did EPA Receive Any Public Comments?

Pursuant to the public notice, we accepted written comments from the public postmarked on or before January 5, 2004. During the comment period, we received one comment. The commenter fully supports the modification of the state's AZPDES program to include the administration and enforcement of a biosolids management program. This comment is addressed in EPA's Response to Comment Document, dated March 26, 2004.

V. Does EPA's Approval Affect Indian Country (18 U.S.C. 1151) in Arizona?

ADEQ did not seek approval to administer and enforce the state biosolids management program for activities occurring in Indian Country. Our approval does not authorize ADEQ to carry out its biosolids program in Indian Country. Therefore, our approval of the state's biosolids management program will have no effect in Indian Country where EPA continues to implement and administer the NPDES program.

VI. Conclusion

The Arizona Department of Environmental Quality has demonstrated that it adequately meets the requirements for approval of a state administered biosolids management program (specifically, the application of biosolids to land, surface disposal of biosolids, and the landfilling of biosolids) as defined in the Clean Water Act and 40 CFR parts 501 and 503.

VII. Administrative Requirements

A. Endangered Species Act

Section 7(a)(2) of the Endangered Species Act (ESA), 16 U.S.C. 1536(a)(2), requires that federal agencies insure, in consultation with the United States Fish & Wildlife Service (FWS), that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of Federally-listed threatened or endangered species (listed species) or result in the destruction or adverse modification of critical habitat designated for such listed species.

EPA, Region 9 initiated informal ESA section 7 consultation with the FWS regarding Arizona's request for approval of its biosolids management program. On November 12, 2003, the FWS concurred with EPA's Biological Evaluation, concluding that EPA's approval of Arizona's biosolids management program may affect, but is not likely to adversely affect, endangered species or their designated critical habitat. Issuance of the FWS

concurrence concluded the consultation process required by ESA section 7(a)(2) and reflects the FWS's agreement with EPA that the approval of the State program meets the substantive requirements of the ESA.

B. National Historic Preservation Act

Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. 470(f), requires Federal agencies to take into account the effects of their undertakings on historic properties and to provide the Advisory Council on Historic Preservation (ACHP) an opportunity to comment on such undertakings. Under the ACHP's regulations (36 CFR part 800), agencies consult with the appropriate State Historic Preservation Officer (SHPO) on federal undertakings that have the potential to affect historic properties listed or eligible for listing in the National Register of Historic Places.

On January 16, 2004, EPA provided the Arizona State Parks Board (which includes the SHPO) with EPA's determination that approval of Arizona's application would have no effect on historic properties in Arizona. On March 12, 2004, the Arizona State Parks Board concurred with EPA's determination.

C. Other Provisions

Based on General Counsel Opinion 78–7 (April 18, 1978), EPA has long considered a determination to approve or deny a State Clean Water Act (CWA) program submission to constitute an adjudication because an "approval," within the meaning of the Administrative Procedure Act (APA), constitutes a "licence," which, in turn, is the product of an "adjudication." For this reason, the statutes and Executive Orders that apply to rulemaking action are not applicable here.

List of Subjects in 40 CFR Parts 501 and 503

Environmental protection, Administrative practice and procedures, Sewage sludge use and disposal, Water pollution control, Waste treatment and disposal, Indian lands, Intergovernmental relations.

Authority: Clean Water Act 33, U.S.C. 1251 *et seq.*

Dated: March 31, 2004.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 04–8448 Filed 4–13–04; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Equal Employment Opportunity Commission.

DATE AND TIME: Thursday, April 22, 2004, 10 a.m. eastern time.

PLACE: Clarence M. Mitchell, Jr. Conference Room on the Ninth Floor of the EEOC Office Building, 1801 "L" Street, NW., Washington, DC 20507.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Open Session

1. Announcement of Notation Votes, and
2. Submission for Interagency Coordination under Executive Order 12067 of Proposed Final Rule Exempting the Coordination of Employer-Sponsored Retiree Health Benefits with Medicare Eligibility from the ADEA.

Note: In accordance with the Sunshine Act, this meeting will be open to public observation of the Commission's deliberations and voting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions.)

Please telephone (202) 663–7100 (voice) and (202) 663–4074 (TTD) at any time for information and meetings.

FOR FURTHER INFORMATION CONTACT: Stephen Llewellyn, Acting Executive Officer on (202) 663–4070.

Dated: April 12, 2004.

Stephen Llewellyn,

Acting Executive Officer Executive Secretariat.

[FR Doc. 04–8610 Filed 4–12–04; 3:08 pm]

BILLING CODE 6750–06–M

EXPORT-IMPORT BANK OF THE UNITED STATES

Economic Impact Policy

This notice is to inform the public that the Export-Import Bank of the United States has received an application to finance the export of approximately $17 million of U.S. goods to a steel service center in Ukraine. The U.S. exports will enable the center to process approximately 150,000 metric tons per year of galvanized and painted steel. Available information indicates that virtually all of this new production will be consumed in the Ukraine and Russian construction industries.

Interested parties may submit comments on this transaction by e-mail to *economic.impact@exim.gov* or by mail to 811 Vermont Avenue, NW., Room 1238, Washington, DC 20571, within 14 days of the date this notice appears in the **Federal Register**.

Helene S. Walsh,

Director, Policy Oversight and Review.

[FR Doc. 04–8402 Filed 4–13–04; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

April 7, 2004.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law No. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before June 14, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th

Street, SW., Washington, DC 20554 or via the Internet to *Leslie.Smith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Les Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0981.

Title: Part 76, Multichannel Video and Cable Television Service Public File and Notice Rules.

Form Number: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Businesses or other for-profit entities; and State, Local, or Tribal Government.

Number of Respondents: 10,800.

Estimated Hours per Response: 30 minutes to 3 hours.

Frequency of Response: On occasion and semi-annual reporting requirements.

Total Annual Burden: 43,200 hours.

Total Annual Cost: None.

Privacy Impact Assessment: No impacts.

Needs and Uses: Section 631 of the Communications Act, as amended, provides that at the time of entering into an agreement to provide any cable service or other service to a subscriber and at least once a year thereafter, a cable operator shall provide notice in the form of a separate, written statement to such subscriber which clearly and conspicuously informs the subscriber of (a) the nature of personally identifiable information collected or to be collected with respect to the subscriber and the nature of the use of such information; (b) the nature, frequency, and purpose of any disclosure which may be made of such information, including an identification of the types of persons to whom the disclosure may be made; (c) the period during which such information will be maintained by the cable operator; (d) the times and place at which the subscriber may have access to such information in accordance with section 631(d), the limitations provided by section 631 with respect to the collection and disclosure of information by a cable operator and the right of the subscriber under sections 631(f) and (h) to enforce such limitations. This notice requirement appears in the Communications Act but not in the FCC cable television rules. The Report and Order, *1998 Biennial Review—Multichannel Video and Cable Television Service,* CS Docket No. 98–132, FCC 99–12, which was released on September 5, 2000, amended the Commission's cable television rules so that the notice requirement is now referenced in notes at the end of various rule sections. In addition, the Copyright Act requires that cable operators file, on a semi-annual basis, a statement of account with the Licensing Division of the Copyright Office, Library of Congress. The Report and Order amended the Commission's cable television rules so that this filing is now referenced in a note at the end of 47 CFR 76.1800.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–8483 Filed 4–13–04; 8:45 am]

BILLING CODE 6712–10–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

March 29, 2004.

SUMMARY: The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number.

FOR FURTHER INFORMATION CONTACT: Paul J. Laurenzano, Federal Communications Commission, 445 12th Street, SW, Washington DC, 20554, (202) 418–1359 or via the Internet at *plaurenz@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0855.

OMB Approval date: 3/16/2004.

Expiration Date: 3/31/2007.

Title: Telecommunications Reporting Worksheet, CC Docket No. 96–45.

Form No.: FCC Forms 499 (FCC Forms 499–A and 499–Q).

Estimated Annual Burden: 15,500 responses; 175,487 total annual hours; 11–12 hours per respondent.

Needs and Uses: Pursuant to the Communications Act of 1934, as amended, telecommunications carriers (and certain other providers of telecommunications services) must contribute to the support and cost recovery mechanisms for telecommunications relay services, numbering administration, number portability, and universal service. The Commission is now seeking to collect information concerning carriers' uncollectible revenue information consistent with Part 54 of its rules, as revised in the Interim Contribution Methodology Order of Dec. 2002.

OMB Control No.: 3060–0804.

OMB Approval date: 3/16/2004.

Expiration Date: 3/31/2007.

Title: Universal Service—Health Care Providers Universal Service Program.

Form No.: FCC 465, 466, 466–A and 467.

Estimated Annual Burden: 14,400 responses; 17,600 total annual hours; 1–2 hours per respondent.

Needs and Uses: In this Further Notice of Proposed Rulemaking, we seek comment on ways to streamline further the application process and expand outreach efforts regarding the rural health care universal service support mechanism. The Commission implemented the rural health care mechanism at the direction of Congress as provided in the Telecommunications Act of 1996 (1996 Act). In past years of its operation, the rural health care mechanism has provided discounts that have facilitated the ability of health care providers to provide critical access to modern telecommunications and information services for medical and health maintenance purposes to rural America. Participation in the rural health care universal service support mechanism, however, has not met the Commission's projections. The Commission finds it appropriate to assess whether our rules and policies require modification.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–8484 Filed 4–13–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

April 1, 2004.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a)

whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction (PRA) comments should be submitted on or before June 14, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *JudithB.Herman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *JudithB.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1030.

Title: Service Rules for Advanced Wireless Services (AWS) in the 1.7 GHz and 2.1 GHz Bands.

Form Nos.: FCC Forms 601, 602, 603, 604 and 605.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit, Federal government, and State, local or tribal government.

Number of Respondents: 1,010.

Estimated Time per Response: .50 hours–3 hours.

Frequency of Response: On occasion and other one-time reporting requirements, recordkeeping requirement, and third party disclosure requirement.

Total Annual Burden: 6,505 hours.

Total Annual Cost: $910,750.

Privacy Act Impact Assessment: Not applicable.

Needs and Uses: The Commission adopted a Report and Order for service rules for Advanced Wireless Services (AWS) in the 1710–1755 and 2110–2155 MHz bands, including provisions for application, licensing, operating and technical rules, and for competitive bidding. The Commission is making AWS licensees subject to three existing Part 27 requirements that contain paperwork implications. These are foreign ownership, substantial service, and interference coordination. The foreign ownership and interference requirements are only a one-time requirement unless the licensee's ownership changes or they change the service or equipment they are using. The substantial service requirement would have to be made at the end of a licensee's license term.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–8486 Filed 4–13–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2655]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceeding

April 5, 2004.

Petitions for Reconsideration and Clarification have been filed in the Commission's Rulemaking proceeding listed in this Public Notice. The full text of this document is available for viewing and copying in Room CY–A257, 445 12th Street, SW., Washington, DC, or may be purchased from the Commission's copy contractor, Quales International, (202) 863–2893. Oppositions to these petitions must be filed by April 29, 2004. *See* § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions have expired.

Subject: In the Matter of Implementation of Section 304 of the Telecommunications Act of 1996 (CS Docket No. 97–80); Commercial Availability of Navigation Devices; Compatibility Between Cable Systems and Consumer Electronics Equipment (PP Docket No. 00–67).

Number of Petitions Filed: 2.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–8485 Filed 4–13–04; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. 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.: 011574–010.

Title: Pacific Islands Discussion Agreement.

Parties: P & O Nedlloyd Limited, Hamburg-Süd, Polynesia Line Ltd., FESCO Ocean Management Limited, and Australia-New Zealand Direct Line.

Synopsis: The amendment revises the geographic scope to include the United States Atlantic and Gulf Coasts and deletes the trade name of Hamburg-Süd.

Agreement No.: 011786–003.

Title: Zim/Great Western Agreement.

Parties: Zim Israel Navigation Co., Ltd. and Great Western Steamship Company.

Synopsis: The amendment revises slot allocations, extends the term of the agreement until terminated by mutual agreement, and revises the governing law and arbitration provisions.

Agreement No.: 011795–001.

Title: Puerto Rican Cross Space Charter and Sailing Agreement.

Parties: Compania Chilena de Navegacion Interoceanica S.A. and Compania Sud Americana de Vapores S.A.

Synopsis: The amendment revises the geographic scope to include Jamaica.

Agreement No.: 011852–005.

Title: Maritime Security Discussion Agreement.

Parties: American President Lines, Ltd.; APL Co. Pte Ltd.; China Shipping Container Lines, Co., Ltd.; CMA–CGM S.A.; COSCO Container Lines Company, Ltd.; Evergreen Marine Corp.; Hanjin Shipping Company, Ltd.; Hapag Lloyd Container Linie GmbH; Kawasaki Kisen Kaisha Ltd.; A.P. Moller-Maersk A/S, trading under the name of Maersk Sealand; Mitsui O.S.K. Lines, Ltd.; Nippon Yusen Kaisha; Yang Ming Marine Transport Corp.; Safmarine Container Line, NV; Zim Israel Navigation Co., Ltd.; Alabama State Port Authority; APM Terminals North America, Inc.; Ceres Terminals, Inc.; Cooper/T. Smith Stevedoring Co., Inc.; Eagle Marine Services Ltd.; Global Terminal & Container Services, Inc.; Howland Hook Container Terminal, Inc.; Husky Terminal & Stevedoring, Inc.; International Shipping Agency; International Transportation Service, Inc.; Lambert's Point Docks Inc.; Long Beach Container Terminal, Inc.; Maersk Pacific Ltd.; Maher Terminals, Inc.; Marine Terminals Corp.; Maryland Port

Administration; Massachusetts Port Authority (MASSPORT); Metropolitan Stevedore Co.; P&O Ports North American, Inc.; Port of Tacoma; South Carolina State Ports Authority; Stevedoring Services of America, Inc.; Trans Bay Container Terminal, Inc. TraPac Terminals; Universal Maritime Service Corp.; and Virginia International Terminals.

Synopsis: The amendment adds CP Ships (UK) Limited; ANZDL; Canada Maritime; Contship Container Lines; Italia di Navigazione, LLC; Lykes Lines Limited, LLC; and TMM Lines Limited, LLC, all acting together as a single party under the agreement.

Agreement No.: 011876.

Title: Seafreight/Crowley Space Charter Agreement.

Parties: Crowley Liner Service, Inc. and Seafreight Line, Ltd.

Synopsis: The agreement authorizes Crowley to charter space to Seafreight in the trade between Florida ports and Bridgetown, Barbados. The parties request expedited review.

Agreement No.: 011877.

Title: Norasia/CMA–CGM Europe-USEC/USWC Slot Charter Agreement.

Parties: CMA CGM, S.A. and Norasia Container Lines Limited.

Synopsis: The agreement is a vessel-sharing agreement between the parties in the trade between U.S. East and West Coast ports and ports in Northern Europe. It also provides for the movement of empty containers between U.S. East Coast ports and ports in Asia. The parties request expedited review.

Agreement No.: 201156.

Title: Port of Palm Beach/Royal Star Entertainment Operating Agreement.

Parties: Port of Palm Beach District and Royal Star Entertainment LLC.

Synopsis: The agreement provides for the terms and conditions under which Royal Star will use the cruise terminal facility at the Port of Palm Beach.

Dated: April 9, 2004.

By Order of the Federal Maritime Commission.

Karen V. Gregory,

Assistant Secretary.

[FR Doc. 04–8474 Filed 4–13–04; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as an 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

Transexpress, Inc., 7801 NW 37th Street, Miami, FL 33166, Officers: Hector J. Guzman, President (Qualifying Individual), Ana Lida Guzman, Secretary.

Evergreen International Group, LLC, 1937 Pontius Ave., #301, Los Angeles, CA 90025, Officers: Ho-Chun-Lee, Import Manager (Qualifying Individual), Jenq Horng Chen, President.

JX Global, Inc. dba GFX Logistics Group, 550 E. Carson Plaza Drive, #208, Carson, CA 90746, Officers: Doug Hee Shin, CEO (Qualifying Individual), Duk Gyun Kim, CFO/Secretary.

C & F Worldwide Agency Corp., Carr 848 KM 3.2 Calle Diaz Final, St. Just Carolina, PR 00983, Officers: Jose E. Del Cueto, President (Qualifying Individual), Ana M. Del Cueto, Vice President.

Ampact Transline, Inc., 1533 W. 139th Street, Gardena, CA 90249, Officer: Wu J. Yl, President (Qualifying Individual).

Aras International, Inc. dba Umac Express Cargo Of San Diego, 4518 Vista De La Tierra, Del Mar, CA 92014, Officers: Amable H. Aguiluz, IV, Vice President (Qualifying Individual), Emer S. Aguiluz, President.

Timothy E. Granderson, 1–C Clifton Hill, Kingshill, St. Croix, U.S. Virgin Islands 00850, Sole Proprietor.

Orion Transport Corporation, 21136 S. Wilmington Avenue, Suite 110, Carson, CA 90810, Officers: Kenneth Isao Kawashiri, Vice President (Qualifying Individual), Kien Ngo, President.

I-Dream S & A, Inc., 460 E. Carson Plaza Drive, Suite 220, Carson, CA 90746, Officers: Susan Songun Mun, Vice President (Qualifying Individual), Young Hyo Kim, President.

Dolphin Express Inc., 141 Lanza Avenue, Building No. 29N, Garfield, NJ 07026, Officers: Shlomi Shuly Raymond, Vice President (Qualifying Individual), Mordechai Mezuman, President.

Wonder Shipping Line Inc., 1460 Rolling Hill Drive, Monterey Park, CA 91754, Officers: Howard Tsung Hao Liu, CEO (Qualifying Individual), Mei-Ling Lu, CFO.

Transportes Zuleta, Inc., 844 W. Flagler Street, Miami, FL 33130, Officers: Jaqueline Valle Morales, President (Qualifying Individual), Hermelinda Valle, Vice President.

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

SWT Shipping USA Inc., 4034 W 21st Street, Los Angeles, CA 90018, Officers: Han P. Kim, General Manager (Qualifying Individual), Choon Y. Cha, CEO.

Caribbean Travel Agency Inc. & Cargo, dba Ferrons W.I. Shipping Co, 735 Blue Hills Avenue, Unit 3, Bloomfield, CT 06002, Officers: Walter L. Benjamin, President (Qualifying Individual), Daemond Benjamin, Vice President.

AMF Global Transportation, 1630 Jarvis Avenue, Elk Grove Village, IL 60007, Officers: Michael Franco, President (Qualifying Individual), James Matta, Vice President.

AME Logistics LLC, 156–15 146th Avenue, Suite 128, Jamaica, NY 11434, Officers: Peter Lee, President (Qualifying Individual), James Lo Fong Ming, Director.

Reliable International Logistics, Inc., 33442 Western Avenue, Union City, CA 94587, Officers: Mike Chiali Chu, President (Qualifying Individual), Hermes C. Hu, Vice President.

Delta Wholesale Trading Corp. IV, dba Delta Cargo Logistic, 5101 W. Esplanade Avenue, Suite #9, Metairie, LA 70006, Officers: Carlos H. Sosa, Traffic & Cargo Manager (Qualifying Individual), Salvador Abud, President.

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants

Interlink Logistics & Management Inc., 13412 SW 131 Street, Miami, FL 33186, Officers: Damary Cordova Dominquez, Treasurer (Qualifying Individual), Fatima G. Lopes, President.

Carex Shipping LLC, 1555 E. Flamingo, Suite 155, Las Vegas, NV 89119, Officer: Michael Sekirin, Owner.

Spirit International Transport, Inc., 40 East Daniels Road, Palatine, IL 60067, Officer: Jim Romano, President (Qualifying Individual).

Dated: April 9, 2004.

Karen V. Gregory,

Assistant Secretary.

[FR Doc. 04–8475 Filed 4–13–04; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:30 a.m., Monday, April 19, 2004.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Director, Office of Board Members; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Board of Governors of the Federal Reserve System, April 9, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–8529 Filed 4–12–04; 9:07 am]

BILLING CODE 6210–01–S

GOVERNMENT PRINTING OFFICE

Depository Library Council to the Public Printer; Meeting

The Depository Library Council to the Public Printer (DLC) will meet on Sunday, April 18, 2004, through Wednesday, April 21, 2004, in St. Louis, Missouri. The sessions will take place from 1 p.m. until 4 p.m. and 7 p.m. to 10 p.m. on Sunday, 8:30 a.m. until 5 p.m. on Monday and Tuesday and from 8:30 a.m. until 3 p.m. on Wednesday. The meeting will be held at the Sheraton Westport Hotel, 900 West Port Plaza, St. Louis, Missouri. The purpose of this meeting is to discuss the Federal Depository Library Program. All sessions are open to the public.

There are no sleeping rooms remaining at the Sheraton Westport for the Government rate of $102 per night. We have made arrangements with the Sheraton to get additional sleeping rooms for our attendees. The Holiday Inn St. Louis-Westport, has offered us rooms for Saturday, April 17 through Wednesday, April 21. Rates will be $102 per night (plus tax) single or double. This rate will be honored through April 14, 2004. The Holiday Inn offers complimentary shuttle transportation to and from the airport and parking is free. The hotel will also provide complimentary transportation to the Sheraton Westport and the Sheraton Westport will provide complimentary transportation back to the Holiday Inn.

You can reserve your room by calling the hotel directly at 314–434–0100 and mention that you are with the U.S. Government Printing Office group. The Holiday Inn is in compliance with the requirements of Title III of the Americans With Disabilities Act and meets all Fire Safety Act regulations.

William H. Turri,

Deputy Public Printer.

[FR Doc. 04–8442 Filed 4–13–04; 8:45 am]

BILLING CODE 1520–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Secretary's Council on Public Health Preparedness; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is given of a meeting of the Secretary's Council on Public Health Preparedness.

The purpose of this public meeting is to convene the Council to discuss issues related to public health emergency preparedness and response and bioterrorism. The Council may consider the following major issues: BioShield; Research and Development Initiatives; Transport of Possibly Infected Exotic Animals; Modeling Initiatives; Academic Health Centers; State and Local Programs; and Public Health Preparedness Efforts.

The meeting will be open to the public as indicated below; however, attendance is limited by the availability of space on a first come, first serve basis. Because the meeting is taking place in a Federal building, attendees are require to register in advance by e-mail at *Secretary.council@hhs.gov* no later than close of business on April 28, 2004. Please include the name, address, telephone number, and business or professional affiliation of those registering.

All attendees must show a photo ID when they enter the building. The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(9)(B), title 5 U.S.C., as amended to allow for a classified briefing on potential terrorist threats.

Name of Committee: Secretary's Council on Public Health Preparedness.

Date: May 3–4, 2004.

Open: May 3, 2004, 9 a.m. to 4:30 p.m.

Agenda: BioShield; Research and Development Initiatives; Transport of Possibly Infected Exotic Animals; Modeling Initiatives.

Place: U.S. Department of Health & Human Services, 200 Independence Avenue, SW., Eisenberg Memorial Room (Room 800), Washington, DC 20201.

Closed: May 3, 2004, 4: 30 p.m. to adjournment.

Agenda: Classified briefing on potential terrorist threats.

Place: U.S. Department of Health & Human Services, 200 Independence Avenue, SW., Eisenberg Memorial Room (Room 800), Washington, DC 20201.

Open: May 4, 2004, 9 a.m. to adjournment.

Agenda: Academic Health Centers; State and Local Programs; and Public Health Preparedness Efforts.

Place: U.S. Department of Health & Human Services, 200 Independence Avenue, SW., Eisenberg Memorial Room (Room 800), Washington, DC 20201.

Contact Person: Ms. Carol Baker, Office of the Assistant Secretary for Public Health Emergency Preparedness, 200 Independence Avenue, SW., Washington, DC 20201. (202) 260–0945; *Secretary.council@hhs.gov.*

SUPPLEMENTARY INFORMATION: The Secretary's Council on Public Health Preparedness was established on October 22, 2001 by the Secretary of Health and Human Services under the authorization of section 319 of the Public Health Service Act (42 U.S.C. 247d); section 222 of the Public Health Service Act (42 U.S.C. 217a). The purpose of the Secretary's Council on Public Health Preparedness is to advise the Secretary on appropriate actions to prepare for and respond to public health emergencies, including acts of bioterrorism. The function of the Council is to advise the Secretary regarding steps that the U.S. Department of Health and Human Services can take to (1) improve the public health and health care infrastructure to better enable Federal, State, and local governments to respond to a public health emergency or an act of bioterrorism; (2) ensure that there are comprehensive contingency plans in

place at the Federal, State, and local levels to respond to a public health emergency or an act of bioterrorism; and (3) improve public health preparedness at the Federal, State, and local levels.

Public Participation

Opportunities for oral statements by the public will be provided on Tuesday, May 4, 2004, at approximately 11:30 a.m. Oral comments are limited to 5 minutes per person or organization, including 3 minutes to make a statement and 2 minutes to respond to questions from Council members. Due to time constraints, only one representative from each organization will be allotted time for oral testimony. The number of speakers and the number of registrants may also limit the time allotment. If you wish to have photocopies of your materials distributed to the Council, please bring an adequate number of copies.

Members of the public who wish to present oral comments at the meeting must register by e-mailing Ms. Carol Baker at *Secretary.council@hhs.gov* no later than close of business, April 26, 2004. All requests to present oral comments must include the name, address, telephone number, business or professional affiliation of the interested party, and the areas of interest or issue to be addressed.

Any person attending the meeting who has not registered to speak in advance of the meeting will be allowed to make a brief oral statement during the time set aside for public comment if time permits and at the Chairperson's discretion. Individuals or interested parties that are unable to attend the meeting may send written comments by e-mail to: Ms. Carol Baker, *Secretary.council@hhs.gov*, (202) 260–0945 no later than close of business, April 26, 2004.

Persons needing special assistance, such as sign language interpretation or other special accommodations, should contact: Ms. Carol Baker, *Secretary.council@hhs.gov*, (202) 260–0945 no later than close of business April 23, 2004.

Dated: April 8, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–8491 Filed 4–9–04; 2:50 pm]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Grants and Cooperative Agreements; Notice of Availability

Federal Agency Contact Name: Administration on Children, Youth and Families, Children's Bureau.

Funding Opportunity Title: National Resource Center for Community-Based Grants for the Prevention of Child Abuse and Neglect.

Announcement Type: Cooperative Agreement-Initial.

Funding Opportunity Number: HHS–2004–ACF–ACYF–CA–0005.

CFDA Number: 93.590.

Due Date for Applications: The due date for receipt of applications is June 14, 2004.

I. Funding Opportunity Description

The purpose of this Cooperative Agreement is to provide financial support for training and technical assistance to promote the purposes of the Community-Based Grants for the Prevention of Child Abuse and Neglect program, known hereafter as the Community-Based Child Abuse Prevention (CBCAP) program. This training and technical assistance is intended to build the capacity of CBCAP lead agencies to:

(1) Foster an understanding, appreciation, and knowledge of diverse populations in order to be effective in preventing and treating child abuse and neglect;

(2) Facilitate and assist efforts of State, local, Tribal, public, and private agencies in the interagency, inter-disciplinary, coordinated planning and development of a network of community-based programs and activities designed to strengthen and support families to prevent child abuse and neglect;

(3) Actively engage in conducting regular and ongoing needs assessments that will be used to identify unmet needs and which also incorporate findings from other Statewide needs assessment processes;

(4) Demonstrate a commitment to meaningful parent leadership, especially for parents of children with disabilities, racial and ethnic minorities, and members of other underrepresented or underserved groups;

(5) Maximize funding through leveraging of funds for the financing, planning and operation of child abuse prevention programs and activities;

(6) Promote the development and implementation of lead agency program evaluation processes that include a peer review component and other evaluation methodologies; and

(7) Support States in their Program Improvement Plans resulting from Child and Family Service Reviews.

Expected outcomes include the enhanced capacity of each State lead agency to engage in:

(1) Developing, supporting, and maintaining networks of coordinated resources and activities to better strengthen and support families to reduce the likelihood of child abuse and neglect;

(2) Conducting interagency needs assessments of required services;

(3) Facilitating CBCAP program and policy development;

(4) Coordinating the delivery of child abuse and neglect prevention services;

(5) Promoting the meaningful participation of parents in the design, implementation and evaluation of funded services;

(6) Conducting program evaluations that include a peer review component and other evaluation methodologies; and

(7) Enhancing the capacity of the lead agencies to become more active participants in their State's Child and Family Services Review/Program Improvement Planning processes.

This Resource Center is expected to train and assist State lead agencies to establish effective interagency cooperation and collaboration that involves all stakeholders, including families, and promotes public-private partnerships in the establishment and expansion of child abuse prevention programs. Training and technical assistance needs will be identified by CBCAP lead agency staff in collaboration with ACYF Central and Regional Office personnel, and coordinated with other ongoing national training and technical assistance efforts. The Children's Bureau is also working closely with its network of Child Welfare National Resource Centers to respond to training and technical assistance needs related to CFSRs, PIPs and other priorities. The NRC for CBCAP is also expected to work closely with these other national efforts. The Resource Center will also be actively involved with identifying other training and technical assistance needs based on their work with the Lead Agencies. Training outcomes should be achieved through a combination of strategies, including on-site training, on and off-site technical assistance, and consultation with all appropriate stakeholder groups.

Background Information

The Administration on Children, Youth and Families (ACYF) administers national programs for children and youth; works with States and local communities to develop services which support and strengthen family life; seeks joint ventures with the private sector to enhance the lives of children and their families; and provides information and other assistance to parents. The concerns of ACYF extend to all children from pre-natal through adolescence. Many of the programs administered by the agency focus on children from low-income families; abused and neglected children; children and youth in need of foster care, independent living, adoption or other child welfare services; preschool children; children with disabilities; runaway and homeless youth; and children from Native American and migrant families.

Within ACYF, the Children's Bureau plans, manages, coordinates, and supports child abuse and neglect prevention and child welfare services programs. The Children's Bureau programs are designed to promote the safety, permanency, and well-being of all children, including those in foster care, available for adoption, recently adopted, abused, neglected, dependent, disabled, or homeless children and to prevent neglect and abuse of children. The programs also encourage strengthening the family unit to help prevent the unnecessary separation of children from their families and reunifying families, when appropriate, when separation has occurred. The Children's Bureau also supports programs and services that encourage healthy marriage; promote family stability; support relationship building for parenting couples; reach out to and provide assistance to fathers; and emphasize the role of fathers in ensuring the well-being of their children.

The Children's Bureau is the agency within the Federal Government that has primary responsibility for assisting State child welfare systems to promote continuous improvement in the delivery of child welfare services. State child welfare systems are designed to protect children who have suffered maltreatment, who are at risk for maltreatment, or who are under the care and placement responsibility of the State because their families are unable to care for them. These systems also focus on securing permanent living arrangements through foster care and adoption for children who are unable to return home.

The Children's Bureau fulfills this mission by providing leadership and conducting activities designed to assist and enhance national, State, and community efforts to prevent, assess, identify, and treat child abuse and neglect. These activities include data collection and analysis; research and demonstration programs, and grants to States for: developing comprehensive child-centered and family-focused child protective services systems; providing training and technical assistance to develop the necessary resources to implement successful comprehensive child and family protection strategies; gathering, processing, and housing high quality data sets through a National Data Archive on Child Abuse and Neglect; and gathering, storing, and disseminating child maltreatment information through a National Clearinghouse on Child Abuse and Neglect Information and a National Adoption Information Clearinghouse.

Federal programs administered by the Bureau include the Foster Care and Adoption Assistance Programs, the Child Welfare Services State Grants Program, Child Welfare Services Training Program, the Chafee Foster Care Independence Program, the Adoption Opportunities Program, the Abandoned Infants Assistance Program, the Promoting Safe and Stable Families Program, the Court Improvement Program, and several State and discretionary grant programs authorized by the Child Abuse Prevention and Treatment Act (CAPTA). For more information about Children's Bureau programs, visit *http://www.acf.hhs.gov/programs/cb.*

Child Abuse Prevention and Treatment Act (CAPTA)

Since its enactment in 1974, CAPTA (42 U.S.C. 5101 *et seq.*) has sought to increase national attention to the problem of child abuse and neglect and to improve the Nation's ability to prevent and respond to the maltreatment of children. Through its several reauthorizations over the years, the law has worked to strengthen the entire child protective services system. Under CAPTA, programs have been implemented for the prevention of child maltreatment, the identification of child abuse and neglect, initial response, assessment and investigation of suspected child abuse reports, and prosecution of caregivers found to be the perpetrators of the abuse.

Title I of CAPTA authorizes research and demonstration grants, data collection and information dissemination activities and two State grant programs: the Basic State Grant and the Children's Justice Act Grant. The Basic State Grant provides States with funds and basic Federal guidelines to strengthen and maintain their child protective services (CPS) systems. The Children's Justice Act provides funds to assist States in developing, establishing and operating programs which are designed to improve the handling of child abuse and neglect cases to reduce trauma to the child victim; the handling of cases of suspected child abuse or neglect related fatalities; and the investigation and prosecution of cases on child abuse or neglect.

Title II of CAPTA authorizes the Community-Based Grants for the Prevention of Child Abuse and Neglect. This program assists States to develop and implement, or expand and enhance a comprehensive statewide system of community-based family resource and support services to prevent child maltreatment.

Community-Based Grants for the Prevention of Child Abuse and Neglect Program

In 2003, the Congress passed legislation reauthorizing CAPTA's programs for an additional five years. Among the provisions in the legislation was a section reauthorizing, amending and re-naming the program previously known as the Community-Based Family Resource and Support (CBFRS) Grants program. The program is now known as the Community-Based Grants for the Prevention of Child Abuse and Neglect or, for the sake of brevity, the Community-Based Child Abuse Prevention (CBCAP) program. This formula grant program specifically supports community-based efforts to develop, operate, expand, enhance, and, where appropriate, to network, initiatives aimed at the prevention of child abuse and neglect, to support networks of coordinated resources and activities to better strengthen and support families to reduce the likelihood of child abuse and neglect, and to foster an understanding, appreciation, and knowledge of diverse populations in order to be effective in preventing and treating child abuse and neglect.

All States, the District of Columbia, and the territories receive funding under the program. In every State, the Governor designated a Lead Agency to receive these funds. The Lead Agencies were most often the State child welfare agency or other public agency or the Children's Trust and Prevention Board for the State. Those Lead Agencies provided grants to local agencies to fund child abuse prevention and family support services and activities. Many

States funded core services such as parent education, parent mutual support, home visiting programs, early childhood programs, respite and crisis care, family resource centers, and other family support services. In addition, the Lead Agencies provided leadership and support for the child abuse prevention network in the State and offered training and technical assistance to their funded programs.

Lead agencies are often involved in many other systems change efforts in the States. One of these major systems change efforts at the Federal level is the Child and Family Services Reviews (CFSR). Findings from the States that have completed their reviews thus far indicate that many States and communities lack adequate prevention and community-based services for families. There is also a need for comprehensive family assessments and for greater engagement of parents in the case planning process. Since the provision of prevention services and the emphasis on parent engagement are strong components of the CBCAP program, technical assistance to the Lead Agencies to increase coordination between the State's CFSR process and the development and operation of the CBCAP program is greatly encouraged.

II. Award Information

Funding Instrument Type: Cooperative agreement.

Description of Federal Substantial Involvement With Cooperative Agreement: A cooperative agreement is a specific method of awarding Federal assistance in which substantial Federal involvement is anticipated. A cooperative agreement clearly defines the respective responsibilities of the Children's Bureau and the grantee prior to the award. The Children's Bureau anticipates that agency involvement will produce programmatic benefits to the recipient otherwise unavailable to them for carrying out the project. The involvement and collaboration includes Children's Bureau review and approval of planning stages of the activities before implementation phases may begin; Children's Bureau involvement in the establishment of policies and procedures that maximize open competition, and rigorous and impartial development, review and funding of grant or sub-grant activities, if applicable; and Children's Bureau and recipient joint collaboration in the performance of key programmatic activities (*i.e.*, strategic planning, implementation, information technology enhancements, training and technical assistance, publications or products, and evaluation). It also includes close monitoring by the Children's Bureau of the requirements stated in this announcement that limit the grantee's discretion with respect to scope of services offered, organizational structure and management processes, coupled with close Children's Bureau monitoring during performance, which may, in order to ensure compliance with the intent of this funding, exceed those Federal stewardship responsibilities customary for grant activities.

Anticipated Total Program Funding: The anticipated total for all awards under this funding opportunity in FY2004 is $1,075,000.

Anticipated Number of Awards: It is anticipated that one project will be funded.

Ceiling on Amount of Individual Awards: The cooperative agreement amount will not exceed $1,075,000 in the first budget period. An application received that exceeds the upper value of the dollar range specified will be considered "non-responsive" and be returned to the applicant without further review.

Floor of Individual Award Amounts: None.

Project Periods for Awards: The projects will be awarded for a project period of 60 months. The initial grant award will be for a 12-month budget period. The award of continuation funding beyond each 12-month budget period will be subject to the availability of funds, satisfactory progress on the part of the grantee, and a determination that continued funding would be in the best interest of the government.

III. Eligibility Information

1. Eligible Applicants

State controlled institutions of higher education;

Nonprofits having a 501(c)(3) status with the IRS, other than institutions of higher education;

Nonprofits that do not have a 501(c)(3) status with the IRS, other than institutions of higher education;

Private institutions of higher education;

For-profit organization other than small businesses.

Additional Information on Eligibility

Public or private non-profit agencies and organizations (including faith-based organizations), for-profit organizations, and institutions of higher education may apply. Collaborative efforts and interdisciplinary approaches are acceptable. Applications from collaborations must identify a primary applicant responsible for administering the cooperative agreement.

Proof of non-profit status is any one of the following:

(a) A reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in the IRS code.

(b) A copy of a currently valid IRS tax exemption certificate.

(c) A statement from a State taxing body, State Attorney General, or other appropriate State official certifying that the applicant organization has a non-profit status and that none of the net earnings accrue to any private shareholders or individuals.

(d) A certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status.

(e) Any of the items in the subparagraphs immediately above for a State or national parent organization and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate.

Applications that exceed the $1,075,000 ceiling will be considered non-responsive and will not be eligible for funding under this announcement.

2. Cost Sharing or Matching

The grantee must provide at least 10 per cent of the total approved cost of the project. The total approved cost is the sum of the Federal share and the non-Federal share. Therefore, a project requesting $1,075,000 per budget period must include a match of at least $119,444 per budget period. Applicants should provide a letter of commitment verifying the actual amount of the non-Federal share of project costs.

The following example shows how to calculate the required 10% match amount for a $1,075,000 grant:

$1,075,000 (Federal share) divided by .90 (100%—10%) equals $1,194,444 (total project cost including match) minus $1,075,000 (Federal share) equals $119,444 (required 10% match)

The non-Federal share may be cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. If approved for funding, grantees will be held accountable for the commitment of non-Federal resources and failure to provide the required amount will result in a disallowance of unmatched Federal funds.

3. Other (if applicable)

On June 27, 2003, the Office of Management and Budget published in the **Federal Register** a new Federal policy applicable to all Federal grant

applicants. The policy requires all Federal grant applicants to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number when applying for Federal grants or cooperative agreements on or after October 1, 2003. The DUNS number will be required whether an applicant is submitting a paper application or using the government-wide electronic portal (*www.Grants.gov*). A DUNS number will be required for every application for a new award or renewal/continuation of an award, including applications or plans under formula, entitlement and block grant programs, submitted on or after October 1, 2003.

Please ensure that your organization has a DUNS number. You may acquire a DUNS number at no cost by calling the dedicated toll-free DUNS number request line on 1–866–705–5711 or you may request a number on-line at *http://www.dnb.com.*

IV. Application and Submission Information

1. Address To Request Application Package

ACYF Operations Center, c/o The Dixon Group, Inc., ATTN: Children's Bureau, 118 Q Street, NE., Washington, DC 20002–2132; Telephone: (866) 796–1591.

2. Content and Form of Application Submission

You may submit your application to us either in electronic or paper format. To submit an application electronically, please use the *www.Grants.gov* apply site. If you use Grants.gov you will be able to download a copy of the application package, complete it off-line, and then upload and submit the application via the Grants.gov site. You may not e-mail an electronic copy of a grant application to us.

Please note the following if you plan to submit your application electronically via Grants.gov.

- Electronic submission is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation. We strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.
- To use Grants.gov, you, as the applicant, must have a DUNS Number and register in the Central Contractor Registry (CCR). You should allow a minimum of five days to complete the CCR registration.
- You will not receive additional point value because you submit a grant application in paper format.
- You may submit all documents electronically, including all information typically included on the SF424 and all necessary assurances and certifications.
- Your application must comply with any page limitation requirements described in this program announcement.
- After you electronically submit your application, you will receive an automatic acknowledgement from Grants.gov that contains a Grants.gov tracking number. The Administration for Children and Families will retrieve your application from Grants.gov.
- We may request that you provide original signatures on forms at a later date.
- You may access the electronic application for this program on *www.grants.gov.*
- You must search for the downloadable application package by the CFDA number.

Electronic Address Where Applications Will Be Accepted: Grants.gov.

Address Where Hard Copy Applications Will Be Accepted: Children's Bureau Grant Receipt Point, ACYF Operations Center, c/o The Dixon Group, Inc., 118 Q Street, NE., Washington, DC 20002–2132.

Each application must contain the following items in the order listed:

* Application for Federal Assistance (Standard Form 424). Follow the instructions below and those that accompany the form.

In Item 5 of Form 424, put DUNS number in "Organizational DUNS:" box.

In Item 5 of Form 424, include name, phone number, and, if available, email and fax numbers of the contact person.

In Item 8 of Form 424, check 'New.'

In Item 10 of Form 424, clearly identify the Catalog of Federal Domestic Assistance (CFDA) program title and number for the program for which funds are being requested as stated in the funding opportunity announcement.

In Item 11 of Form 424, identify the single funding opportunity the application addresses.

In Item 12 of Form 424, identify the specific geographic area to be served.

In Item 14 of Form 424, identify Congressional districts of both the applicant and project.

* Budget Information Non-Construction Programs (Form 424A) and Budget Justification.

Follow the instructions provided and those in the Uniform Project Description. Note that Federal funds provided to States and services or other resources purchased with Federal funds may not be used to match project grants.

* Certifications/Assurances. Applicants requesting financial assistance for nonconstruction projects must file the Standard Form 424B, 'Assurances: Non-Construction Programs.' Applicants must sign and return the Standard Form 424B with their applications. Applicants must provide a certification regarding lobbying when applying for an award in excess of $100,000. Applicants must sign and return the certification with their applications.

Applicants must disclose lobbying activities on the Standard Form LLL when applying for an award in excess of $100,000. Applicants who have used non-Federal funds for lobbying activities in connection with receiving assistance under this announcement shall complete a disclosure form to report lobbying. Applicants must sign and return the disclosure form, if applicable, with their applications.

Applicants must make the appropriate certification regarding environmental tobacco smoke. By signing and submitting the application, the applicant is providing the certification and need not mail back the certification with the applications.

If applicable, applicants must include a completed SPOC certification (Single Point of Contact) with the date of the SPOC contact entered in line 16, page 1 of the Form 424.

By signing the "Signature of Authorized Representative" on the SF 424, the applicant is providing a certification and need not mail assurances for completing the following grant and cooperative agreement requirements:

The applicant will have the project fully functioning within 90 days of the notification of the grant award;

Participation in any evaluation or technical assistance effort supported by ACYF;

Submission of all required semi-annual and final Financial Status Reports (SF269) and Program Performance Reports in a timely manner, in hard-copy and electronic formats (preferably MS WORD and PDF) as negotiated with the Federal Project Officer; and allocate sufficient funds in the budget to provide for the project director and the evaluator to attend a 2-day early kick off meeting to be held within the first three months of the project (first year only) in Washington, DC, and attend an annual 3–5 day grantees' conference in Washington, DC. Attendance at these meetings is a grant requirement.

The Office for Human Research Protections of the U.S. Department of Health and Human Services provides Web site information and policy

guidance on the Federal regulations pertaining to protection of human subjects (45 CFR part 46), informed consent, informed consent checklists, confidentiality of personal identification information, data collection procedures, and internal review boards: *http://ohrp.osophs.dhhs.gov/polasur.htm.*

If applicable, applicants must include a completed Form 310, Protection of Human Subjects.

In implementing their projects, grantees are expected to comply with all applicable administrative regulations regarding extent or types of costs. Applicable DHHS regulations can be found in 45 CFR part 74 or 92.

* Project Abstract/Summary (one page maximum). Clearly mark this page with the applicant name as shown on item 5 of the Form 424, identify the competitive grant funding opportunity and the title of the proposed project as shown in item 11 and the service area as shown in item 12 of the Form 424. The summary description should not exceed 300 words.

Care should be taken to produce an abstract/summary that accurately and concisely reflects the proposed project. It should describe the objectives of the project, the approach to be used and the results or benefits expected.

* Project Description for Evaluation. Applicants should organize their project description according to the Evaluation Criteria described in this funding opportunity announcement providing information that addresses all the components.

* Proof of non-profit status (if applicable). Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. Any of the following constitutes acceptable proof of such status:

a. A reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in the IRS Code.

b. A copy of a currently valid IRS tax exemption certificate.

c. A statement from a State taxing body, State attorney general, or other appropriate State official certifying that the applicant organization has a non-profit status and that none of the net earnings accrue to any private shareholders or individuals.

d. A certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status.

e. Any of the items immediately above for a State or national parent organization and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate.

* Indirect cost rate agreement. If claiming indirect costs, provide documentation that applicant currently has an indirect cost rate approved by the Department of Health and Human Services (HHS) or another cognizant Federal agency.

* Letters of agreement and memoranda of understanding. If applicable, include a letter of commitment or Memorandum of Understanding from each partner and/or sub-contractor describing their role, detailing specific tasks to be performed, and expressing commitment to participate if the proposed project is funded.

* Provide a letter of commitment verifying the actual amount of the non-Federal share of project costs.

* The application limit is 75 pages total including all forms and attachments. Submit one original and two copies.

To be considered for funding, each application must be submitted with the Standard Federal Forms (provided at the end of this announcement or through the electronic links provided) and following the guidance provided. The application must be signed by an individual authorized to act for the applicant agency and to assume responsibility for the obligations imposed by the terms and conditions of the grant award.

To be considered for funding, each applicant must submit one signed original and two additional copies of the application, including all forms and attachments, to the Application Receipt Point specified in the section titled Deadline at the beginning of the announcement. The original copy of the application must have original signatures, signed in *black* ink.

The application must be typed, double spaced, printed on only one side, with at least ½ inch margins on each side and 1 inch at the top and bottom, using standard 12 Point fonts (such as Times Roman or Courier). Pages must be numbered.

Pages over the page limit stated within this funding opportunity announcement will be removed from the application and will not be reviewed. All copies of an application must be submitted in a single package, and a separate package must be submitted for each funding opportunity. The package must be clearly labeled for the specific funding opportunity it is addressing.

Because each application will be duplicated, do not use or include separate covers, binders, clips, tabs, plastic inserts, maps, brochures, or any other items that cannot be processed easily on a photocopy machine with an automatic feed. Do not bind, clip, staple, or fasten in any way separate subsections of the application, including supporting documentation. Applicants are advised that the copies of the application submitted, not the original, will be reproduced by the Federal government for review. Each copy must be stapled securely in the upper left corner.

Tips for Preparing a Competitive Application

It is essential that applicants read the entire announcement package carefully before preparing an application and include all of the required application forms and attachments. The application must reflect a thorough understanding of the purpose and objectives of the Children's Bureau priority-area initiatives. Reviewers expect applicants to understand the goals of the legislation and the Children's Bureau's interest in each topic. A "responsive application" is one that addresses all of the evaluation criteria in ways that demonstrate this understanding. Applications that are considered to be "unresponsive" generally receive very low scores and are rarely funded.

The Children's Bureau's Web site (*http://www.acf.dhhs.gov/programs/cb*) provides a wide range of information and links to other relevant Web sites. Before you begin preparing an application, we suggest that you learn more about the mission and programs of the Children's Bureau by exploring the Web site.

Organizing Your Application

The specific evaluation criteria in Section V of this funding announcement will be used to review and evaluate each application. The applicant should address each of these specific evaluation criteria in the project description. It is strongly recommended that applicants organize their proposals in the same sequence and using the same headings as these criteria, so that reviewers can readily find information that directly addresses each of the specific review criteria.

Project Evaluation Plan

Project evaluations are very important. If you do not have the in-house capacity to conduct an objective, comprehensive evaluation of the project, then the Children's Bureau advises that you propose contracting with a third-party evaluator specializing in social science or evaluation, or a university or college, to conduct the

evaluation. A skilled evaluator can assist you in designing a data collection strategy that is appropriate for the evaluation of your proposed project. Additional assistance may be found in a document titled "Program Manager's Guide to Evaluation." A copy of this document can be accessed at *http://www.acf.hhs.gov/programs/core/pubs_reports/prog_mgr.html* or ordered by contacting the National Clearinghouse on Child Abuse and Neglect Information, 330 C Street, SW., Washington, DC 20447; phone (800) 394–3366; fax (703) 385–3206; e-mail *nccanch@calib.com*.

Logic Model

A logic model is a tool that presents the conceptual framework for a proposed project and explains the linkages among program elements. While there are many versions of the logic model, they generally summarize the logical connections among the needs that are the focus of the project, project goals and objectives, the target population, project inputs (resources), the proposed activities/processes/outputs directed toward the target population, the expected short- and long-term outcomes the initiative is designed to achieve, and the evaluation plan for measuring the extent to which proposed processes and outcomes actually occur. Information on the development of logic models is available on the Internet at *http://www.uwex.edu/ces/pdande/* or *http://www.extension.iastate.edu/cyfar/capbuilding/outcome/outcome_logicmdir.html*.

Use of Human Subjects

If your evaluation plan includes gathering data from or about clients, there are specific procedures which must be followed in order to protect their privacy and ensure the confidentiality of the information about them. Applicants planning to gather such data are asked to describe their plans regarding an Institutional Review Board (IRB) review. For more information about use of human subjects and IRB's you can visit these Web sites: *http://ohrp.osophs.dhhs.gov/irb/irb_chapter2.htm#d2* and *http://ohrp.osophs.dhhs.gov/humansubjects/guidance/ictips.htm*.

3. Submission Dates and Times

The closing date for receipt of applications is 4:30 p.m. eastern standard time (e.s.t.) on June 14, 2004. Mailed applications received after the closing date will be classified as late.

Deadline: Mailed applications shall be considered as meeting an announced deadline if they are received on or before June 14, 2004. Applications must be mailed to the following address: ACYF Operations Center, c/o The Dixon Group, Inc., ATTN: Children's Bureau, 118 Q Street, NE., Washington, DC 20002–2132.

Applicants must ensure that a legibly dated U.S. Postal Service postmark or a legibly dated, machine produced postmark of a commercial mail service is affixed to the envelope/package containing the application (s). To be acceptable as proof of a timely mailing, a postmark from a commercial mail service must include the logo/emblem of the commercial mail service company and must reflect the date the package was received by the commercial mail service company from the applicant. Private Metered postmarks shall not be acceptable as proof of timely mailing. Applicants are cautioned that express/overnight mail services do not always deliver as agreed.

Applications hand-carried by applicants, applicant couriers, or by other representatives of the applicant shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m., e.s.t., at ACYF Operations, The Dixon Group, ATTN: Children's Bureau, 118 Q Street, NE., Washington, DC 20002–2132, between Monday and Friday (excluding Federal holidays). This address must appear on the envelope/package containing the application with the note "ATTN: Children's Bureau." Applicants are cautioned that express/overnight mail services do not always deliver as agreed.

Late applications

Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines

ACF may extend application deadlines when circumstances such as acts of God (floods, hurricanes, etc.) occur, or when there are widespread disruptions of mails service. Determinations to extend or waive deadline requirements rest with the Chief Grants Management Officer.

Required Forms

What to Submit	Required content	Required form or format	When to submit
1. SF424	Per required form	May be found at *http://www.acf.hhs.gov/programs/ofs/grants/form.htm.*	See application due date.
2. SF424	Per required form	May be found at *http://www.acf.hhs.gov/programs/ofs/grants/form.htm.*	See application due date.
3. a. SF424B	Per required form	May be found at *http:/www.acf.hhs.gov/programs/ofs/grants/form.htm.*	See application due date.
3. b. Certification regarding lobbying.	Per required form	May be found at *http://www.acf.hhs.gov/programs/ofs/grants/form.htm.*	See application due date.
3. c. Disclosure of Lobbying Activities (SF–LLL).	Per required form	May be found at *http://www.acf.hhs.gov/programs/ofs/grants/form.htm.*	See application due date.
4. Project Summary/Abstract.	Summary of application request.	See instructions in this funding announcement	See application due date.
5. Project Description	Responsive-ness evaluation criteria date.	See instructions in this funding announcement	See application due date.
6. Proof of non-profit status	See above	See instructions in this funding announcement	See application due date.
7. Indirect cost rate agreement.	See above	See instructions in this funding announcement	See application due date.
8. Letters of agreement & MOUs.	See above	See instructions in this funding announcement	See application due date.
9. Non-Federal share letter	See above	See instructions in this funding announcement	See application due date.
Total application	See above	Application limit 75 pages total including all forms and attachments. Submit one original and two copies.	See application due date.

Additional Forms

Private-non-profit organizations may submit with their applications the additional survey located under "Grant Related Documents and Forms" titled "Survey for Private, Non-Profit Grant Applicants."

What to submit	Required content	Required form or format	When to submit
Survey for Private, Non-Profit Grant applicants.	Per required form	map be found on *http://www.acf.hhs.gov/programs/ofs/grants/form.htm.*	By application due date.

4. Intergovernmental Review

State Single Point of Contact (SPOC)

This program is covered under Executive Order (E.O.) 12372, "Intergovernmental Review of Federal Programs", and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

As of October 2003, of the most recent SPOC list, the following jurisdictions have elected not to participate in the Executive Order process. Applicants from these jurisdictions or for projects administered by federally-recognized Indian Tribes need take no action in regard to E.O. 12372: Alabama, Alaska, Arizona, Colorado, Connecticut, Hawaii, Idaho, Indiana, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, New York, Ohio, Oklahoma, Oregon, Palau, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington and Wyoming.

Although the jurisdictions listed above no longer participate in the process, entities which have met the eligibility requirements of the program are still eligible to apply for a grant even if a State, Territory, Commonwealth, etc. does not have a SPOC. All remaining jurisdictions participate in the Executive Order process and have established SPOCs. Applicants from participating jurisdictions should contact their SPOCs as soon as possible to alert them of the prospective applications and receive instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. The applicant must submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a. Under 45 CFR 100.8(a) (2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to differentiate clearly between mere advisory comments and those official State process recommendations which may trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., Washington, DC 20447.

The official list, including addresses, of the jurisdictions elected to participate in E.O. 12372 can be found on the following URL: *http://www.whitehouse.gov/omb/grants/spoc.html.*

5. Funding Restrictions

Grant awards will not allow reimbursement of pre-award costs. Construction is not an allowable activity or expenditure under this solicitation.

6. Other Submission Requirements

Submission by Mail: An applicant must provide an original application with all attachments, signed by an authorized representative and two copies. The application must be received at the address below by 4:30 p.m. eastern standard time (e.s.t.) on or before the closing date. Applications should be mailed to: ACYF Operations Center, c/o The Dixon Group, Inc., ATTN: Children's Bureau, 118 Q Street, NE., Washington, DC 20002–2132.

For Hand Delivery Applicant must provide an original application with all attachments, signed by an authorized representative and two copies. The application must be received at the above address by 4:30 PM Eastern Standard Time (EST) on or before the closing date. Applications that are hand delivered will be accepted between the hours of 8 a.m. and 4:30 p.m., Monday through Friday. Applications may be delivered to: ACYF Operations Center, c/o The Dixon Group, ATTN: Children's Bureau, 118 Q Street, NE., Washington, DC 20002–2132. It is strongly recommended that applicants obtain documentation that the application was hand delivered on or before the closing date. Applicants are cautioned that express/overnight mail services do not always deliver as agreed.

Electronic Submission: Please see Section IV. 2. Content and Form of Application Submission, for guidelines and requirements when submitting applications electronically.

V. Application Review Information

The Paperwork Reduction Act of 1995 (Pub. L. 104–13)

Public reporting burden for this collection of information is estimated to average 40 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed and reviewing the collection information. The project description is approved under OMB control number 0970–0139 which expires 3/31/2004 (under review at OMB). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Instruction

Introduction

Applicants are required to submit a full project description and shall prepare the project description statement in accordance with the following instructions and the specified evaluation criteria. The instructions give a broad overview of what your project description should include while the evaluation criteria expands and clarifies more program-specific information that is needed.

1. Criteria

General Instruction for Preparing Full Project Description

Objectives and Need for Assistance

Clearly identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonials from

concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

Approach

Outline a plan of action which describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors which might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served and the number of activities accomplished. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

If any data is to be collected, maintained, and/or disseminated, clearance may be required from the U.S. Office of Management and Budget (OMB). This clearance pertains to any "collection of information that is conducted or sponsored by ACF."

List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

Organizational Profiles

Provide information on the applicant organization(s) and cooperating partners such as organizational charts, financial statements, audit reports or statements from CPAs/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission.

The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code, or by providing a copy of the currently valid IRS tax exemption certificate, or by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

Budget and Budget Justification

Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

Personnel

Description: Costs of employee salaries and wages.

Justification: Identify the project director or principal investigator, if known. For each staff person, provide the title, time commitment to the project (in months), time commitment to the project (as a percentage or full-time equivalent), annual salary, grant salary, wage rates, etc. Do not include the costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

Fringe Benefits

Description: Costs of employee fringe benefits unless treated as part of an approved indirect cost rate.

Justification: Provide a breakdown of the amounts and percentages that comprise fringe benefit costs such as health insurance, FICA, retirement insurance, taxes, etc.

Travel

Description: Costs of project-related travel by employees of the applicant organization (does not include costs of consultant travel).

Justification: For each trip, show the total number of traveler(s), travel destination, duration of trip, per diem, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances. Travel costs for key staff to attend ACF-sponsored workshops should be detailed in the budget.

Equipment

Description: "Equipment" means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of (a) the capitalization level established by the organization for the financial statement purposes, or (b) $5,000. (Note: Acquisition cost means the net invoice unit price of an item of equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in-transit insurance, freight, and installation shall be included in or excluded from acquisition cost in accordance with the organization's regular written accounting practices.)

Justification: For each type of equipment requested, provide a description of the equipment, the cost per unit, the number of units, the total cost, and a plan for use on the project, as well as use or disposal of the equipment after the project ends. An applicant organization that uses its own definition for equipment should provide a copy of its policy or section of its policy which includes the equipment definition.

Supplies

Description: Costs of all tangible personal property other than that included under the Equipment category.

Justification: Specify general categories of supplies and their costs. Show computations and provide other information which supports the amount requested.

Contractual

Description: Costs of all contracts for services and goods except for those which belong under other categories such as equipment, supplies, construction, etc. Third-party evaluation contracts (if applicable) and contracts with secondary recipient organizations, including delegate agencies and specific project(s) or businesses to be financed by the applicant, should be included under this category.

Justification: All procurement transactions shall be conducted in a manner to provide, to the maximum

extent practical, open and free competition. Recipients and subrecipients, other than States that are required to use Part 92 procedures, must justify any anticipated procurement action that is expected to be awarded without competition and exceed the simplified acquisition threshold fixed at 41 U.S.C. 403(11). Recipients might be required to make available to ACF pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc.

Note: Whenever the applicant intends to delegate part of the project to another agency, the applicant must provide a detailed budget and budget narrative for each delegate agency, by agency title, along with the required supporting information referred to in these instructions.

Other

Enter the total of all other costs. Such costs, where applicable and appropriate, may include but are not limited to insurance, food, medical and dental costs (noncontractual), professional services costs, space and equipment rentals, printing and publication, computer use, training costs, such as tuition and stipends, staff development costs, and administrative costs.

Justification: Provide computations, a narrative description and a justification for each cost under this category.

Indirect Charges

Description: Total amount of indirect costs. This category should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services (HHS) or another cognizant Federal agency.

Justification: An applicant that will charge indirect costs to the grant must enclose a copy of the current rate agreement. If the applicant organization is in the process of initially developing or renegotiating a rate, it should immediately upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the cognizant agency's guidelines for establishing indirect cost rates, and submit it to the cognizant agency. Applicants awaiting approval of their indirect cost proposals may also request indirect costs. It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool should not also be charged as direct costs to the grant. Also, if the applicant is requesting a rate which is less than what is allowed under the program, the authorized representative of the applicant organization must submit a signed acknowledgement that the applicant is accepting a lower rate than allowed.

Specific Evaluation Criteria

The following criteria will be used to review and evaluate each application. The applicant should address each criterion in the project description. The point values (summing up to 100) indicate the maximum numerical weight each criterion will be accorded in the review process.

Criterion 1. Objectives and Need for Assistance

In reviewing the objectives and need for assistance, the following factors will be considered: (20 points)

(1) The extent to which the application demonstrates a clear understanding of the need for providing training and technical assistance to public and private agencies linked to the CBCAP program, and demonstrates a clear understanding of the goals of the legislative mandate.

(2) The extent to which the training and technical assistance objectives of the project will effectively build the capacity of State, and local public and private agencies to support effective community-based efforts to develop, operate, expand, and enhance initiatives aimed at the prevention of child abuse and neglect.

(3) The extent to which the overall vision for the training and technical assistance approach will effectively enable CBCAP lead agencies to facilitate the effective development and implementation of excellent evaluation processes that will effectively determine the efficacy and impact of their activities and programs.

(4) The extent to which the proposed project will produce significant results and benefits, and a high level of customer satisfaction on the part of lead agencies for the CBCAP program and their State and local constituents.

Criterion 2. Approach

In reviewing the approach, the following factors will be considered: (50 points)

(1) The extent to which there is a reasonable timeline for implementing the proposed project, including the activities to be conducted in chronological order, showing a reasonable schedule of accomplishments and target dates and the factors that may accelerate or decelerate the work.

(2) The extent to which the application provides a workable plan of action and evaluation plan. The extent to which these plans relate to the stated objectives and scope of the project and reflect the intent of the legislative mandates.

(3) The extent to which the application describes sound strategies for effectively providing technical assistance and building the capacity of State, and local public and private agencies to create and support excellent networks of coordinated resources and activities designed to strengthen and support families to prevent child abuse and neglect.

(4) The extent to which the application describes a sound process for providing technical assistance to the lead agencies on the development and implementation of evaluation processes that will determine the efficacy and impact of their networks, programs, and activities. The extent to which these evaluation processes encompass a continuum of approaches from more qualitative methods such as peer reviews to more quantitative methods such as outcome evaluations.

(5) The extent to which the application describes effective strategies to help lead agencies develop a child-focused, family-centered approach to the delivery of child abuse prevention programs and activities that reinforce and complement the State's efforts to provide services to preserve and support families. The extent to which this plan includes strategies that will enhance the lead agency's capacity to promote parent leadership and involve parents in the planning, implementation, and evaluation of funded programs.

(6) The extent to which the project will promote: (1) Interagency collaboration and implementation of new procedures for blending funding streams; (2) collaborative long-range planning of child abuse prevention, family support services and service delivery options; and (3) management improvement strategies that facilitate interagency coordination. The extent to which the awardee will assist lead agencies to become more active participants in the Child and Family Services Reviews and Program Improvement Planning processes in their States.

(7) The extent to which the application describes a sound plan for establishing an advisory board that will provide useful overall program direction and guidance to the activities of the Resource Center. The extent to which the application describes effective strategies for efficiently and effectively utilizing their expertise.

(8) The extent to which the application will effectively coordinate activities with other National Resource

Centers and Clearinghouses funded by the Children's Bureau and others; particularly as it relates to the Child and Family Service Reviews.

(9) The extent to which the Resource Center's services, program activities, and materials will be developed and provided in a manner that is racially and culturally sensitive to the population being served.

(10) The extent to which the evaluation strategy addresses both process and outcomes. The extent to which this plan includes methods and criteria to evaluate the results and benefits of the technical assistance project in terms of its stated objectives. The extent to which goals and objectives are stated in specific measurable form and will document change, improvement, and effectiveness. The extent to which the awardee will collect appropriate data. The extent to which the project proposes appropriate measure(s) for each goal, objective, result or benefit.

Criterion 3. Organizational Profiles

In reviewing the organizational profiles, the following factors will be considered: (20 points)

(1) The extent to which the proposed project clearly demonstrates the ability to administer and implement the project effectively and efficiently. The extent to which the applicant and any partnering organizations collectively have sufficient experience and expertise in: (1) Identifying the training and technical assistance needs of an agency or organization; (2) developing or participating in the development of a plan to meet those needs; (3) designing, developing and delivering training and technical assistance including recruiting, assigning, and deploying staff with appropriate experience; (4) developing evaluation strategies and providing technical assistance on evaluation methodologies, and (5) designing, developing, delivering and evaluating training materials. If the project involves partnerships with additional agencies, organizations or subcontractors; the extent to which each partnering organization has the ability and organizational capacity to fulfill its roles and functions.

(2) The extent to which the proposed project director and key project staff possess sufficient relevant knowledge, experience and capabilities to implement and manage a project of this size, scope and complexity effectively. The extent to which the role, responsibilities and time commitments of each proposed project staff position, including consultants, subcontractors and/or partners, are clearly defined and appropriate to the successful implementation of the proposed project.

(3) The extent to which there is a sound management plan for achieving the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines and milestones for accomplishing project tasks and ensuring quality. The extent to which the plan clearly defines the role and responsibilities of the lead agency. The extent to which the plan clearly describes the effective management and coordination of activities carried out by any partners, subcontractors and consultants (if appropriate). The extent to which there would be a mutually beneficial relationship between the proposed project and other work planned, anticipated or underway with Federal assistance by the applicant.

(4) The extent to which the author(s) of the proposal will be involved in the ongoing implementation and/or administrative structure of the project.

Criterion 4. Budget and Budget Justification

In reviewing the budget and budget justification, the following factors will be considered: (10 points)

(1) The extent to which the costs of the proposed project are reasonable, in view of the activities to be conducted and expected results and benefits.

(2) The extent to which the applicant's fiscal controls and accounting procedures would ensure prudent use, proper and timely disbursement and accurate accounting of funds received under this program announcement

2. Review and Selection Process

When the Operations Center receives your application it will be screened to confirm that your application was received by the deadline. Federal staff will verify that you are an eligible applicant and that the application contains all the essential elements. Applications received from ineligible organizations and applications received after the deadline will be withdrawn from further consideration.

A panel of at least three reviewers (primarily experts from outside the Federal government) will use the evaluation criteria described in this announcement to evaluate each application. The reviewers will determine the strengths and weaknesses of each application, provide comments about the strengths and weaknesses and give each application a numerical score.

All applications will be reviewed and evaluated using four major criteria: (1) Objectives and need for assistance, (2) approach, (3) organizational profiles, and (4) budget and budget justification. Each criterion has been assigned a point value. The point values (summing up to 100) indicate the maximum numerical weight each criterion may be given in the review and evaluation process.

Reviewers also are evaluating the project products and materials that you propose. They will be interested in your plans for sustaining your project without Federal funds if the evaluation findings are supportive. Reviewers will be looking to see that the total budget you propose and the way you have apportioned that budget are appropriate and reasonable for the project you have described. Remember that the reviewers only have the information that you give them—it needs to be clear, complete, and concise.

The results of the competitive review are a primary factor in making funding decisions. In addition, Federal staff conducts administrative reviews of the applications and, in light of the results of the competitive review, will recommend applications for funding to the ACYF Commissioner. ACYF reserves the option of discussing applications with other funding sources when this is in the best interest of the Federal government. ACYF may also solicit and consider comments from ACF Regional Office staff in making funding decisions. ACYF may take into consideration the involvement (financial and/or programmatic) of the private sector, national, or State or community foundations; a favorable balance between Federal and non-Federal funds for the proposed project; or the potential for high benefit from low Federal investment. ACYF may elect not to fund any applicants having known management, fiscal, reporting, programmatic, or other problems which make it unlikely that they would be able to provide effective services or effectively complete the proposed activity.

With the results of the peer review and the information from Federal staff, the Commissioner of ACYF makes the final funding decisions. The Commissioner may give special consideration to applications proposing services of special interest to the Government and to achieve geographic distributions of grant awards. Applications of special interest may include, but are not limited to, applications focusing on unserved or inadequately served clients or service areas and programs addressing diverse ethnic populations.

VI. Award Administration Information

1. Award Notices

Anticipated Announcement and Award Dates: Applications will be reviewed in the Summer 2004. Grant awards will have a start date no later than September 30, 2004.

Award Notices

Successful applicants will receive a Financial Assistance Award which will set forth the amount of funds granted, the terms and conditions of the grant or cooperative agreement, the effective date of the grant, the budget period for which initial support will be given, the non-Federal share to be provided, if applicable, and the total project period for which support is contemplated. The award will be signed by the Grants Management Officer and transmitted via postal mail.

The Commissioner will notify organizations in writing when their applications will not be funded. Every effort will be made to notify all unsuccessful applicants as soon as possible after final decisions are made.

2. Administrative and National Policy Requirements

45 CFR Part 74 and 45 CFR Part 92.

Conditions of the Cooperative Agreement

A cooperative agreement is a specific method of awarding federal assistance in which substantial federal involvement is anticipated. A cooperative agreement clearly defines the respective responsibilities of the Children's Bureau and the grantee prior to the award. The Children's Bureau anticipates that agency involvement will produce programmatic benefits to the recipient otherwise unavailable to them for carrying out the project. The involvement and collaboration includes Children's Bureau review and approval of planning stages of the activities before implementation phases may begin; Children's Bureau involvement in the establishment of policies and procedures that maximize open competition, and rigorous and impartial development, review and funding of grant or sub-grant activities, if applicable; and Children's Bureau and recipient joint collaboration in the performance of key programmatic activities (*i.e.*, strategic planning, implementation, information technology enhancements, training and technical assistance, publications or products, and evaluation). It also includes close monitoring by the Children's Bureau of the requirements stated in this announcement that limit the grantee's discretion with respect to scope of services offered, organizational structure and management processes, coupled with close Children's Bureau monitoring during performance, which may, in order to ensure compliance with the intent of this funding, exceed those federal stewardship responsibilities customary for grant activities.

Faith-based organizations that receive funding may not use Federal financial assistance, including funds, to meet any cost-sharing requirements or to support inherently religious activities, such as worship, religious instruction, or prayer.

3. Reporting

Reporting Requirements

Programmatic Reports and Financial Reports are required semi-annually with final reports due 90 days after project period end. All required reports will be submitted in a timely manner, in recommended formats (to be provided), and the final report will also be submitted on disk or electronically using a standard word-processing program.

Within 90 days of project end date, the awardee will submit a copy of the final report, the evaluation report, and any program products to the National Clearinghouse on Child Abuse and Neglect, 330 C Street, SW., Washington, DC 20447. This is in addition to the standard requirement that the final program and evaluation report must also be submitted to the Grants Management Specialist and the Federal Project Officer.

VII. Agency Contacts

Program Office Contact: Melissa Lim-Brodowski, 330 C St., SW., Washington, DC 20447, 202–205–2629, mbrodowski@acf.hhs.gov.

Grants Management Office Contact: William Wilson, 330 C St, SW., 20447, Washington, DC, 202–205–8913, *wwilson@acf.hhs.gov.*

General: The Dixon Group, ACYF Operations Center, 118 Q Street, NE., Washington, DC 20002–2132, telephone: (866) 796–1591.

VIII. Other Information

Additional information about this program and its purpose can be located on the following Web sites: *http://www.acf.hhs.gov/programs/cb/.*

Copies of the following Forms, Assurances, and Certifications are available online at *http://www.acf.hhs.gov/programs/ofs/grants/form.htm.*

Standard Form 424: Application for Federal Assistance; Standard Form 424A: Budget Information; Standard Form 424B: Assurances-Non-Construction Programs; Form LLL: Disclosure of Lobbying; Certification Regarding Environmental Tobacco Smoke; Standard Form 310: Protection of Human Subjects.

The State Single Point of Contact SPOC listing is available on line at *http://www.whitehouse.gov/omb/grants/spoc.html.*

Dated: April 5, 2004.

Frank Fuentes,

Deputy Commissioner, Administration on Children, Youth and Families.

[FR Doc. 04–8465 Filed 4–13–04; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Grants and Cooperative Agreements; Notice of Availability of Funds

Federal Agency Name: Administration for Children and Families, Office of Family Assistance.

Funding Opportunity Title: Healthy Marriage Resource Center.

Announcement Type: Competitive Grant-Initial.

Funding Opportunity Number: HHS–2004–ACF–OFA–FM–0001.

CFDA Number: 93.647.

Dates: Applications are due June 14, 2004. Letters of Intent are due May 4, 2004.

I. Funding Opportunity Description

The Administration for Children and Families (ACF), Office of Family Assistance (OFA), announces the availability of funds for a Healthy Marriage Resource Center (HMRC). The HMRC will serve as a national repository and distribution center for information and research relating to healthy marriage for educators, practitioners, individuals, and other interested entities. In addition, the HMRC will provide individuals with information on locally run healthy marriage programs. Further, the HMRC will develop resource materials to promote the objectives of the ACF Healthy Marriage Initiative, including but not limited to, syntheses of research and evaluation findings, summaries of relevant information about best practices, and products (tools) and services to help interested persons and entities learn about effective approaches to developing and implementing innovative programs in accordance with Temporary Assistance to Needy Families (TANF) purposes two through

four listed below, as stated in the Social Security Act, Section 401(a), and the Code of Federal Regulations at 45 CFR 260.20:

(2) End dependency of needy parents on government benefits by promoting job preparation, work, and marriage;

(3) Prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and

(4) Encourage the formation and maintenance of two-parent families.

Background

In recognition of the importance of healthy married families on child well-being, Congress included the formation and maintenance of two parent families as one of the primary goals of the Temporary Assistance for Needy Families Program when it was signed into law by President Clinton in 1996. In recent years, a number of states have begun to implement various healthy marriage activities. For example, in 2004, 70 cities across the United States celebrated Black Marriage Day, many for the first time; 26 states attended events hosted by ACF on developing healthy marriage initiatives; and federally sponsored peer requests by states to learn of existing healthy marriage initiatives increased fourfold. In addition, ACF has funded over 65 healthy marriage grants in the past two years. A central repository containing information, program listings, and other resources for entities and individuals is needed to help support emerging healthy marriage activities, and to provide state and local administrators with information about what does and does not work in promoting healthy marriages.

ACF Programs Funding the Healthy Marriage Resource Center

- The Office of Family Assistance (OFA) administers the Temporary Assistance for Needy Families (TANF) program, under title IV–A of the Social Security Act. TANF is a State/Federal partnership that provides temporary assistance and promotes economic self-sufficiency and family strengthening, including healthy marriages, to States, Territories, Indian Tribes, Native American organizations, localities and community groups. *Statutory Authority:* Section 1110 of the Social Security Act governing Social Services Research and Demonstration activities.
- The Office of Planning, Research and Evaluation (OPRE) provides research, evaluation, and data analysis in support of ACF programs. The HMRC is one of several projects designed to develop and disseminate knowledge on program practices that improve economic and family outcomes and child well-being, including programs to support the formation and stability of healthy marriages. *Statutory Authority:* Section 1110 of the Social Security Act governing Social Services Research and Demonstration activities.
- The Children's Bureau supports a range of child welfare programs that increase the strength and stability of families, protect children from abuse and neglect, and lead to permanent placements for children who cannot safely return to their homes, including programs that seek to integrate supports for healthy marriages and family formation into the child welfare system. *Statutory Authority:* Title IV–B, Subpart 2 of the Social Security Act, Promoting Safe and Stable Families.
- The Office of Child Support Enforcement (OCSE) provides for the location of non-custodial parents, establishing paternity, obtaining child support orders, and enforcing support obligations of non-custodial parents. OCSE also funds demonstration projects that seek to integrate supports for healthy marriages and family formation into the existing array of child support enforcement activities. *Statutory Authority:* Section 452(j) of the Social Security Act.

Ten percent of the funding for the HMRC will be set aside for an informational database for individuals and interested parties and a clearinghouse for information to support State-run healthy marriage demonstration programs funded through Title IV–D (Child Support Enforcement) of the Social Security Act.

Ten percent of the funding for the HMRC also will be set aside for an informational database for individuals and interested parties and a clearinghouse for information to support healthy marriage programs and initiatives administered by States and Indian Tribes and funded through Title IV–B (Child Welfare) of the Social Security Act.

Purpose

Healthy marriage is important to society. On average, men and women in healthy marriages are more likely to build wealth, have better health, experience emotional well-being and live longer. Even more importantly, children who grow up in healthy married families do better on a host of outcomes than those who grow up in unhealthy married households. For example, children in healthy married households are at less risk for substance abuse, emotional distress and mental illness, suicide, criminal behavior, educational decline, poverty, child abuse and neglect. Further, children raised in healthy married households are more likely to develop better relationships with their parents, develop stable marriages and families themselves, experience greater economic security, perform better academically and later in occupational settings, and have better physical health.

The HMRC is one of ACF's efforts to support and promote healthy marriages. ACF has undertaken crosscutting program and field activities to strengthen healthy marriages, including engaging States, communities, and faith-based organizations in partnerships to develop local healthy marriage initiatives. ACF has awarded numerous grants to support the integration of healthy marriage programs and services into the broad array of existing public sector social service programs including child support enforcement, child welfare, refugee resettlement, and community services. ACF also launched a research and evaluation agenda that includes large-scale evaluations of multi-site interventions as well as smaller research projects. The HMRC will help disseminate relevant information to practitioners, educators, other interested stakeholders, and to individuals seeking both national and local information about existing activities. The HMRC will be an important addition to help ACF more effectively improve the well-being of children.

The HMRC will have multiple functions which will fall under the following broad activities:

- Maintain a website clearinghouse on information related to the federal Healthy Marriage Initiative. HMRC will serve as a national repository and distribution center for information and research relating to healthy marriage programs, initiatives, and activities.
- Maintain a database of local healthy marriage programs for use by educators, practitioners, government officials and individuals.
- Provide a forum for dissemination of research and information and public discussion on healthy marriages. Efforts to promote the objectives of the healthy marriage initiative will include (but are not limited to) a speakers bureau, an inquiry response system, email and mailing lists, web casts, conference calls and newsletters. The HMRC will be responsible for developing effective resource materials about healthy marriages to support entities developing and implementing innovative programs

to accomplish the goals of the healthy marriage initiative.

A key staff person from the project must attend an annual meeting with the HMRC project leadership (to be determined by the Office of Family Assistance) in Washington, D.C. and a "kick-off" meeting following award (if specified in the Priority Area). Substantial involvement is expected between ACF and the recipient when carrying out the activity contemplated in the cooperative agreement.

II. Award Information

Funding Instrument Type: Cooperative Agreement.

The cooperative agreement will require a close working relationship between ACF and the successful applicant for the HMRC. It will be necessary for ACF to collaborate with the HMRC to facilitate relationships and the exchange of information necessary to build the website, and work with the applicant to identify technical assistance and training needs, emerging issues, research findings, available resources, and model programs. ACF will work closely with the HMRC to identify the types of technical assistance and training to be made available to interested entities, and the areas of research and information to be disseminated. ACF, together with the HMRC, will sponsor appropriate meetings to promote coordination, information sharing and access to resources, training and learning opportunities. ACF will work together with the HMRC to address issues or problems with regard to the applicant's ability to carry out the full range of activities effectively and efficiently under the HMRC included in the applicant's proposal.

Anticipated Total Priority Area Funding: $900,000 per budget period.

Anticipated Number of Awards: 1 per budget period.

Ceiling on Amount of Individual Awards: $900,000 per budget period.

Floor on Individual Award Amounts: $900,000 per budget period.

Average Projected Award Amount: $900,000 per budget period.

Project Periods for Awards: Possible funding up to $900,000 per year over a 5 year period. The initial funding award will be for a 12-month budget period. The award of continuation funding beyond the initial 12-month budget period will be subject to the availability of funds, satisfactory progress on the part of the applicant, and a determination that continued funding would be in the best interest of the government.(Subject to Congressional appropriations.)

ACF plans to award $900,000 for the first year and $4,500,000 over a 5 year period. OFA reserves the right to award less, or more, than the funds described, in the absence of worthy applications, or under such other circumstances as may be deemed to be in the best interest of the government.

III. Eligibility Information

1. Eligible Applicants

County governments, City or township governments, Special district governments, State controlled institutions of higher education, Native American tribal governments (Federally recognized), Non-profit organizations having a 501(c)(3) status with the Internal Revenue Service, other than institutions of higher education, Private institutions of higher education, For-profit organizations other than small businesses, Small businesses, and faith-based organizations.

2. Cost Sharing or Matching—Yes

The grantee must provide at least 10 percent of the total approved cost of the project (see section V. Evaluation Criteria). The total approved cost of the project is $1,000,000 per year which is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Since the federal funds authorized for the HMRC are $900,000 per year, applicants are expected to match a total of $100,000 per 12 month budget period. The grantee will be held accountable for commitments of non-Federal resources even if over the amount of the required match. Failure to provide the matching share will result in disallowance of Federal dollars. These commitments must be bona fide funding commitments, subject to scrutiny by ACF.

Applications that fail to include the required amount of cost-sharing will be considered non-responsive and will not be eligible for funding under this announcement.

3. Other (If Applicable)

On June 27, 2003, the Office of Management and Budget published in the **Federal Register** a new Federal policy applicable to all Federal grant applicants. The policy requires all Federal grant applicants to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number when applying for Federal grants or cooperative agreements on or after October 1, 2003. The DUNS number will be required whether an applicant is submitting a paper application or using the government-wide electronic portal (*http://www.Grants.gov*). A DUNS number will be required for every application for a new award or renewal/continuation of an award, including applications or plans under formula, entitlement and block grant programs, submitted on or after October 1, 2003.

Please ensure that your organization has a DUNS number. You may acquire a DUNS number at no cost by calling the dedicated toll-free DUNS number request line on 1–866–705–5711 or you may request a number on-line at *http://www.dnb.com.*

IV. Application and Submission Information

1. Address To Request Application Package

U.S. Department of Health and Human Services (HHS), Administration for Children and Families, Office of Family Assistance, Healthy Marriage Resource Center Program, 370 L'Enfant Promenade, SW., 5th Floor, East Side, Washington, DC 20447, Telephone: (202) 401–5438, Attention: Paul Maiers.

2. Content and Form of Application Submission

Electronic Format

You may submit your application to us either in electronic or paper format. To submit an application electronically, please use the *http://www.Grants.gov* apply site. If you use Grants.gov you will be able to download a copy of the application package, complete it off-line, and then upload and submit the application via the Grants.gov site. You may not e-mail an electronic copy of a grant application to us.

Please note the following if you plan to submit your application electronically via Grants.gov.

- Electronic submission is voluntary
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation. We strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.
- To use Grants.gov, you, as the applicant, must have a DUNS Number and register in the Central Contractor Registry (CCR). You should allow a minimum of five days to complete the CCR registration.
- You will not receive additional point value because you submit a grant application in paper format.
- You may submit all documents electronically, including all information

typically included on the SF424 and all necessary assurances and certifications.

- Your application must comply with any page limitation requirements described in this program announcement.
- After you electronically submit your application, you will receive an automatic acknowledgement from Grants.gov that contains a Grants.gov tracking number. The Administration for Children and Families will retrieve your application from Grants.gov.
- We may request that you provide original signatures on forms at a later date.
- You may access the electronic application for this program on *http://www.Grants.gov*. You must search for the downloadable application package by the CFDA number.

Application Requirements

An original and two copies of the complete application are required. The original copy must include all required forms, certifications, assurances, and appendices, be signed by an authorized representative, have original signatures, and be submitted unbound. The two additional copies of the complete application must include all required forms, certifications, assurances, and appendices and must also be submitted unbound. Applicants have the option of omitting from the application copies (not the original) specific salary rates or amounts for individuals specified in the application budget.

The proposal should be double-spaced and single sided on 8″ x 11″ plain white paper, with 1″ margins on all sides. Use only a standard size font (such as Times New Roman or Arial) no smaller than 12 pitch throughout the application. All pages of the application (including appendices, resumes, charts, references/footnotes, tables, maps and exhibits) must be sequentially numbered, beginning on the first page after the budget justification, the principal investigator contact information and the Table of Contents. Applicants are urged to be concise and limit applications to no more than 25 pages. This limit of 25 pages applies to the narrative portion of the application only. There is an additional limit of 15 pages for all supporting documents for a total of no more than 40 pages. The supporting documents may include resumes, letters of recommendation, and any other documents that relate to the program announcement's evaluation criteria. Any proposals over this limit will be removed and not be reviewed.

Applicants are requested not to send pamphlets, brochures, or other printed material along with their applications as these pose copying difficulties. These materials, if submitted, will not be included in the review process. In addition, applicants must not submit any additional letters of endorsement beyond any that may be required. Please note that applicants that do not comply with the requirements in the section on "Eligible Applicants" will not be included in the review process.

Forms and Certifications: Eligible applicants applying for funds must submit a complete application, including the required forms, in order to be considered for a grant. Under this announcement, an application must be submitted on the Standard Form 424 (approved by the Office of Management and Budget under Control Number 0348–0043.) Each application must be signed by an individual authorized to act for the applicant and to assume responsibility for the obligations imposed by the terms and conditions of the grant award.

The project description should include all the information requirements described in the specific evaluation criteria outlined in the program announcement under Part V. In addition to the project description, the applicant needs to complete all the standard forms required for making applications for awards under this announcement. Applicants requesting financial assistance for non-construction projects must file the Standard Form 424B, "Assurances: Non-Construction Programs." Applicants must sign and return the Standard Form 424B with their applications. Applicants must provide a certification regarding lobbying when applying for an award in excess of $100,000. Applicants must sign and return the certification with their applications. Applicants must disclose lobbying activities on the Standard Form LLL when applying for an award in excess of $100,000. Applicants who have used non-Federal funds for lobbying activities in connection with receiving assistance under this announcement shall complete a disclosure form, if applicable, with their applications. The forms (Forms 424, 424A–B; and Certifications may be found at: *http://www.acf.hhs.gov/programs/ofs/forms.htm* under new announcements. Fill out Standard Forms 424 and 424A and the associated certifications and assurances based on the instructions on the forms.

Private, non-profit organizations are encouraged to submit with their applications the survey located under "Grant Related Documents and Forms" titled "Survey for Private, Non-Profit Grant Applicants." The forms are located on the web at *http://www.acf.hhs.gov/programs/ofs/forms.htm*.

3. Submission Dates and Times

The closing time and date for receipt of applications is 4:30 p.m. (Eastern Time Zone) on June 14, 2004. Mailed or hand carried applications received after 4:30 p.m. on the closing date will be classified as late.

Deadline: Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date at the following address:

U.S. Department of Health and Human Services (HHS), Administration for Children and Families, Office of Family Assistance, 370 L'Enfant Promenade, SW., 4th Floor, West Side, Washington, DC 20447, ATTN: Barbara Ziegler Johnson, Telephone: (202) 401–4646.

Applicants are responsible for mailing applications well in advance, when using all mail services, to ensure that the applications are received on or before the deadline time and date.

Applications hand carried by applicants, applicant couriers, other representatives of the applicant, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m., EST, at the following address:

U.S. Department of Health and Human Services (HHS), Administration for Children and Families, Office of Family Assistance, 370 L'Enfant Promenade, SW., 4th Floor, West Side, Washington, DC 20447, ATTN: Barbara Ziegler Johnson, Telephone: (202) 401–4646.

Late applications: Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines: ACF may extend application deadlines when circumstances such as acts of God (floods, hurricanes, etc.) occur, or when there are widespread disruptions of mails service. Determinations to extend or waive deadline requirements rest with the Chief Grants Management Officer.

Required Forms:

What to submit	Required content	Required form or format	When to submit
Narrative	Described in Section V of this Announcement.	Format described in Section V	By application due date.
SF 424, SF 424 A, and SF 424 B.	Per required form	May be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	By application due date.
Certification regarding Lobbying and associated Disclosure of Lobbying Activities (SF LLL).	Per required form	May be found at *http://www.acf.hhs.gov/programs/ofs/forms htm.*	By application due date.
Environmental Tobacco Smoke Certification.	Per required form	May be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	By application due date.

Additional Forms: Private-non-profit organizations may submit with their applications the additional survey located under "Grant Related Documents and Forms" titled "Survey for Private, Non-Profit Grant Applicants".

What to submit	Required content	Required form or format	When to submit
Survey for Private, Non-Profit Grant Applicants.	Per required form	May be found on *http://www.acf.hhs.gov/programs/ofs/form.htm.*	By application due date.

4. Intergovernmental Review

State Single Point of Contact (SPOC)

This program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs," and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

Applicants from jurisdictions that have elected not to participate in the Executive Order process or for projects administered by federally-recognized Indian Tribes need take no action in regard to E.O. 12372. As of October 1, 2003, the following jurisdictions have elected not to participate in the Executive Order process:

Alabama
Alaska
Arizona
Colorado
Connecticut
Hawaii
Idaho
Indiana
Kansas
Louisiana
Minnesota
Montana
Nebraska
New Jersey
Ohio
Oklahoma
Oregon
Pennsylvania
South Dakota
Tennessee
Vermont
Virginia

Although the jurisdictions listed above no longer participate in the process, entities which have met the eligibility requirements of the program are still eligible to apply for a grant even if a State, Territory, Commonwealth, etc. does not have a SPOC. All remaining jurisdictions participate in the Executive Order process and have established SPOCs. Applicants from participating jurisdictions should contact their SPOCs as soon as possible to alert them of the prospective applications and receive instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. The applicant must submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a. Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW. Washington, DC 20447.

A list of the Single Points of Contact for each State and Territory is included with the application materials for this announcement.

5. Funding Restrictions

Applicants are cautioned that the ceiling for individual awards is $900,000. Applications exceeding the $900,000 threshold will be considered non-responsive and will not be eligible for funding under this announcement.

Applicants that fail to include the required amount of cost share will be considered non-responsive and will not be eligible for funding under this announcement.

6. Other Submission Requirements

Submission by Mail: An Applicant must provide an original application with all attachments, signed by an authorized representative and two copies. The Application must be received at the address below by 5 PM Eastern Standard Time on or before the closing date. Applications should be mailed to:

U.S. Department of Health and Human Services (HHS), Administration for Children and Families, Office of Family Assistance, 370 L'Enfant Promenade, SW., 4th Floor, West Side, Washington, DC 20447, ATTN: Barbara Ziegler Johnson, Telephone: (202) 401–4646.

Hand Delivery: An Applicant must provide an original application with all attachments signed by an authorized representative and two copies. The application must be received at the address below by 4:30 PM Eastern Standard Time on or before the closing date. Applications that are hand delivered will be accepted between the hours of 8 AM to 4:30 PM, Monday

through Friday. Applications may be delivered to: U.S. Department of Health and Human Services (HHS), Administration for Children and Families, Office of Family Assistance, 370 L'Enfant Promenade, SW., 4th Floor, West Side, Washington, DC 20447, ATTN: Barbara Ziegler Johnson, Telephone: (202) 401–4646.

Electronic Submission: Please see section *IV. 2 Content and Form of Application Submission,* for guidelines and requirements when submitting applications electronically.

V. Application Review Information

1. Criteria

General Instructions for the Uniform Project Description

The following are instructions and guidelines on how to prepare the "project summary/abstract" and "Full Project Description" sections of the application. Under the evaluation criteria section, note that each criterion is preceded by the generic evaluation requirement under the ACF Uniform Project Description (UPD). Public Reporting for this collection of information is estimated to average 40 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed, and reviewing the collection information.

The project description is approved under OMB Control Number 0970–0139. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Approach

Outline a plan of action which describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors which might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement. Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served and the number of activities accomplished. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

If any data is to be collected, maintained, and/or disseminated, clearance may be required from the U.S. Office of Management and Budget (OMB). This clearance pertains to any "collection of information that is conducted or sponsored by ACF." List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

Objectives and Need for Assistance

Clearly identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated. Supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

Organizational Profiles

Provide information on the applicant organization(s) and cooperating partners, such as organizational charts, financial statements, audit reports or statements from CPAs/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission.

Results or Benefits Expected

Identify the results and benefits to be derived. For example, describe how the intermediary's assistance to faith-based and community organizations will increase their effectiveness, enhance their ability to provide social services, diversify their funding sources, and create collaborations to better serve those most in need.

Budget and Budget Justification

Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

Objectives (15 points)

- The objectives are clearly stated, necessary and relevant to the Healthy Marriage Initiative.
- Stated objectives are sufficient for accomplishing the goals of the project.
- The objectives will broaden the information base available to interested entities on healthy marriage programs.
- The objectives address the vital needs related to program purposes and provide data and information to support its claim.

Approach (35 points)

- The proposal specifies the activities to be completed and the scope of these activities.
- The scope of activities is appropriate and sufficient for addressing the objectives of the Healthy Marriage Resource Center.
- The extent to which the focus of the activities helps couples and individuals, on a voluntary basis, gain access to the skills and information that can increase their chances of forming and sustaining healthy marriages.
- The proposal clearly articulates the extent to which the applicant is qualified to undertake this work based on a demonstrated history of doing related work.
- The application includes a detailed description of the HMRC's targeted audience and the Center's functions related to each of these groups.
- The extent to which the activities and analyses reflect knowledge of web-based clearing houses and use of state-of-the-art technology to support such a clearing house.
- The scope of the project is reasonable for the funds available for the cooperative agreement.
- The proposed project plan includes specific dates for various phases of the project including start-up, initial

implementation, and full implementation of the complete project and is reasonable given the proposed staffing, timeline, and budget.

Staff and Position Data (30 points)

- The project director and staff have demonstrated expertise in issues relating to healthy marriages, marriage education and implementation practices to conduct the activities described in the application.
- The proposed staff experience reflects an understanding of and sensitivity to the issues of working with States, localities, governments, for-profit and non-profit providers, and ACF programs.
- The time that will be devoted to this project by the project director and other key staff is adequate to ensure a high level of professional input and attention.

Budget (20 points)

- The predominance of funding is for program-related costs, with a minimal amount dedicated for administrative costs.
- The budget presentation is clear and detailed, and justifies funding uses.
- Applicants have provided a plan for project continuance beyond the duration of the grant support.

2. Review and Selection Process

Initial OFA Screening

Each application submitted to OFA will be screened to determine whether it was received by the closing date and time.

Applications received by the closing date and time will be screened for completeness and conformity with the requirements outlined in Section III and IV of this announcement. Only complete applications that meet the requirements listed below will be reviewed and evaluated competitively. Other applications will be returned to the applicants with a letter stating that they were unacceptable and will not be reviewed.

Review Process

Applications that pass the initial OFA screening will be reviewed and rated by a panel of experts based on the program elements and review criteria presented in relevant sections of this program announcement. The review criteria are designed to enable the review panel to assess the quality of a proposed project and determine the likelihood of its success. The criteria are closely related to each other and are considered as a whole in judging the overall quality of an application. The review panel awards points only to applications that are responsive to the program elements and relevant review criteria within the context of this program announcement.

The OFA Director and program staff will use the reviewer scores when considering competing applications. Reviewer scores will weigh heavily in funding decisions, but will not be the only factors considered.

Applications generally will be considered in order of the average scores assigned by the review panel. Because other important factors are taken into consideration, highly ranked applications are not guaranteed funding. These other considerations include, for example: the timely and proper completion by the applicant of projects funded with Federal funds granted in the last five (5) years; comments of reviewers and government officials; staff evaluation and input; amount and duration of the grant requested and the proposed project's consistency and harmony with OFA goals and policy; geographic distribution of applications; previous program performance of applicants; compliance with grant terms under previous Federal grants, including the actual dedication to program of mobilized resources as set forth in project applications; audit reports; investigative reports; and applicant's progress in resolving any final audit disallowance on previous Federal agency grants.

VI. Award Administration Information

1. Award Notices

The successful applicants will be notified through the issuance of a Financial Assistance Award document which sets forth the amount of funds granted, the terms and conditions of the grant, the effective date of the grant, the budget period for which initial support will be given, the non-Federal share to be provided, and the total project period for which support is contemplated. The Financial Assistance Award will be signed by the Grants Officer and transmitted via postal mail.

Organizations whose applications will not be funded will be notified in writing by the Office of Family Assistance.

2. Administrative and National Policy Requirements

45 CFR Part 74 and 45 CFR Part 92.

Conditions for the Cooperative Agreement

The HMRC applicant will develop and implement work plans to ensure that the services and activities included in the approved proposal address the needs of the HMRC in an efficient, effective and timely manner. ACF will closely review and monitor all of these work products. The HMRC applicant will submit for ACF approval plans and procedures for the issuance of contracts awarded for activities under this announcement prior to the issuance of any contracts. The HMRC will submit regular reports, no less frequently than semi-annually, on the name and description of the organization receiving any contracts, summary and purpose of the contracts, the amount of the contract, and proposed plan for outcome measurements. The HMRC will work collaboratively with ACF and ACF partners to assist in carrying out the purposes of the HMRC.

3. Reporting

Programmatic Reports: Semi-annually.

Financial Reports: Semi-annually.

Special Reporting Requirements: None.

All grantees are required to submit semi-annual program reports; grantees are also required to submit semi-annual expenditure reports using the required financial standard form (SF–269) which is located on the Internet at: *http://forms.psc.gov/forms/sf/SF–269.pdf.* A suggested format for the program report will be sent to all grantees after the awards are made.

VII. Agency Contacts

Program Office Contact: Paul Maiers, U.S. Department of Health and Human Services (HHS), Administration for Children and Families, Office of Family Assistance, Marriage Resource Center Program, 370 L'Enfant Promenade, SW., 5th Floor, East Side, Washington, DC 20447, Telephone: (202) 401–5438.

Grants Management Office Contact: Barbara Ziegler Johnson, Office of Grants Management, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., 4th Floor West, Aerospace Building, Washington, DC 20447–0002, Telephone: Telephone: (202) 401–4646.

VIII. Other Information

Additional information about this program and its purpose can be located on the following Web site: *http://intranet.acf.dhhs.gov/.*

Wade F. Horn,

Assistant Secretary for Children and Families.

[FR Doc. 04–8416 Filed 4–13–04; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0506]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Experimental Study of Possible Footnotes and Cuing Schemes to Help Consumers Interpret Quantitative Trans Fat Disclosure on the Nutrition Facts Panel

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Experimental Study of Possible Footnotes and Cuing Schemes to Help Consumers Interpret Quantitative Trans Fat Disclosure on the Nutrition Facts Panel" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 10, 2003 (68 FR 63901), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0532. The approval expires on September 30, 2004. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: April 2, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–8388 Filed 4–13–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee on Heritable Disorders and Genetic Diseases in Newborns and Children; Notice of Inaugural Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), notice is hereby given that the following Committee will convene its inaugural meeting.

Name: Advisory Committee on Heritable Disorders and Genetic Diseases in Newborns and Children (ACHDGDNC).

Dates and Times: June 7, 2004, 9 a.m. to 5 p.m., June 8, 2004, 8:30 a.m. to 5 p.m.

Place: Ronald Reagan Building and International Trade Center, 1300 Pennsylvania Avenue, NW., Washington, DC 20004.

Status: The meeting will be open to the public with attendance limited to space availability.

Purpose: The Advisory Committee provides advice and recommendations concerning the grants and projects authorized under the Heritable Disorders Program and technical information to develop policies and priorities for this program that will enhance the ability of the State and local health agencies to provide for newborn and child screening, counseling and health care services for newborns and children having or at risk for heritable disorders. Specifically, the Committee shall advise and guide the Secretary regarding the most appropriate application of universal newborn screening tests, technologies, policies, guidelines and programs for effectively reducing morbidity and mortality in newborns and children having or at risk for heritable disorders.

Agenda: The first day will be devoted to presentations on and discussion of the status and future directions of newborn and child screening, counseling and health care services for newborns and children having or at risk for heritable disorders and relevant surrounding issues. The second day will involve deliberations aimed at formulating the ACHDGDNC issues agenda. Time will be provided each day for public comment.

Proposed agenda items are subject to change as priorities indicate.

For Further Information Contact: Individuals who wish to provide public comment; plan to attend the meeting and need special assistance, such as sign language interpretation or other reasonable accommodations; or are interested in obtaining a roster of members or other relevant information should write or contact Michele A. Lloyd-Puryear, M.D., Ph.D., Maternal and Child Health Bureau, Health Resources and Services Administration, Room 18–20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–1080.

Dated: April 6, 2004.

Tina M. Cheatham,

Director, Division of Policy Review and Coordination.

[FR Doc. 04–8390 Filed 4–13–04; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee on Training in Primary Care Medicine and Dentistry; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: Advisory Committee on Training in Primary Care Medicine and Dentistry.

Date and Time: May 17, 2004, 8:30 a.m.–4:30 p.m. and May 18, 2004, 8 a.m.–2 p.m.

Place: The Holiday Inn Select, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

Status: The meeting will be open to the public.

Purpose: The Advisory Committee provides advice and recommendations on a broad range of issues dealing with programs and activities authorized under section 747 of the Public Health Service Act as amended by The Health Professions Education Partnership Act of 1998, Pub. L. 105–392. At this meeting the Advisory Committee will discuss and finalize the draft fourth report which will be submitted to Congress and the Secretary of the Department of Health and Human Services in November 2004 and which focuses on the role of primary care in health care delivery in the future and the implications for training health professionals.

Agenda: The meeting on Monday, May 17, will begin with opening comments from the Chair of the Advisory Committee. A plenary session will follow in which Advisory Committee members will review and finalize the draft of the fourth report. The Advisory Committee will also divide into workgroups to finalize various sections of the report. An opportunity will be provided for public comment.

On Tuesday, May 18, the Advisory Committee will meet in plenary session to continue work on its fourth report. An opportunity will be provided for public comment.

For Further Information Contact: Anyone interested in obtaining a roster of members or other relevant information should write or contact Jerilyn K. Glass, M.D., Ph.D., Division of Medicine and Dentistry, Bureau of Health Professions, Health Resources and Services Administration, Room 9A–27, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6326. The web address for information on the Advisory Committee is *http://bhpr.hrsa.gov/medicine-dentistry/actpcmd*.

Dated: April 6, 2004.

Tina M. Cheatham,

Director, Division of Policy Review and Coordination.

[FR Doc. 04–8389 Filed 4–13–04; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of a meeting of the National Advisory Council for Human Genome Research.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussion 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 Advisory Council for Human Genome Research.

Date: May 10–11, 2004.

Open: May 10, 2004, 8:30 a.m. to 1 p.m.

Agenda: To discuss matters of program relevance.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892.

Closed: May 10, 2004 1 p.m. to adjournment on May 11, 204.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Mark S. Guyer, Director for Extramural Research, Assistant Director for Scientific Coordination, National Human Genome Research Institute, 31 Center Drive, MSC 2033, Building 31, Room B2B07, Bethesda, MD 20892, 301–435–5536, *guyerm@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://www.genome.gov/11509849*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: April 7, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–8397 Filed 4–13–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Board on Medical Rehabilitation Research.

The meetings will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Advisory Board on Medical Rehabilitation Research.

Date: May 6–7, 2004.

Time: May 6, 2004, 8:30 a.m. to 5:30 p.m.

Agenda: NICHD Director's Report presentation, Regional Research Networks, and an update on the Rehabilitation Medicine Scientist Training Program.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Time: May 7, 2004, 8:30 a.m. to 12 p.m.

Agenda: Other business dealing with the NABMRR Board.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Ralph M. Nitkin, PhD, Director, BSCD, National Center for Medical, Rehabilitation Research, National Institute of Child Health and Human Development, NIH, 6100 Building, Room 2A03, Bethesda, MD 20892, (301) 402–4206.

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.

Information is also available on the Institute's/Center's home page: *http://www.nichd.nih.gov/about/ncmrr.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: April 7, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–8393 Filed 4–13–04; 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 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 Neurological Disorders and Stroke Special Emphasis Panel Fellowship & Training.

Date: April 12, 2004.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The Ritz Carlton, Washington DC, 1150 22nd Street, NW., Washington, DC 20037.

Contact Person: Joann McConnell, Phd, Scientific Review Administrator, Scientific Review Branch, NIH/NINDS/Neuroscience Center, 6001 Executive Blvd., Suite 3208, Msc 9529, Bethesda, MD 20892–9529, (301) 496–5324, *mcconnej@ninds.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 Neurological Disorders and Stroke Special Emphasis Panel Neural Mechanisms in Sleep Disorders.

Date: April 14, 2004.

Time: 2 p.m. to 4 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: Andrea Sawczuk, DDS, Phd, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NIDS/NIH/DHHS, 6001 Executive Boulevard, Room #3208, Bethesda, MD 20892, 301–496–0660, *sawczuka@ninds.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: April 7, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–8394 Filed 4–13–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Population Genetic Analysis Program: Immunity to Vaccines/Infections.

Date: May 6–7, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Brenda Lange-Gustafson, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, National Institutes of Health, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, 301–496–2550, *bgustafson@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 7, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–8395 Filed 4–13–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, "Operation of a Facility for Testing of Malaria Vaccines in Adult Human Subjects".

Date: May 6, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: John A. Bogdan, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–496–2550, *jbogdan@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 7, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–8396 Filed 4–13–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel Placental Cellular Proliferation and Pregnancy Outcome.

Date: April 13, 2004.

Time: 10 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Gopal M. Bhatnagar, PhD, Scientific Review Administrator, National Institute of Child Health and Human Development, National Institute of Health, 6100 Bldg Rm 5B01, Rockville, MD 20852, (301) 435–6889, *bhatnagg@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.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: April 7, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–8398 Filed 4–13–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Substance Abuse Prevention and Treatment Block Grant Synar Report Format, FFY 2005–2007—(OMB No. 0930–0222; Revision)—Section 1926 of the Public Health Service Act [42 U.S.C. 300x-26] stipulates that funding Substance Abuse Prevention and Treatment (SAPT) Block Grant agreements for alcohol and drug abuse programs for fiscal year 1994 and subsequent fiscal years require States to have in effect a law providing that it is unlawful for any manufacturer, retailer, or distributor of tobacco products to sell or distribute any such product to any individual under the age of 18. This section further requires that States conduct annually, random, unannounced inspections to ensure compliance with the law; that the State submit annually a report describing the results of the inspections, and the activities carried out by the State to enforce the required law, the success the State has achieved in reducing the availability of tobacco products to individuals under the age of 18, and the strategies to be utilized by the State for enforcing such law during the fiscal year for which the grant is sought.

Before making an award to a State under the SAPT Block Grant, the Secretary must make a determination that the State has maintained compliance with these requirements. If a determination is made that the State is not in compliance, penalties shall be applied. Penalties range from 10 percent of the Block Grant in applicable year 1 to 40 percent in applicable year 4 and subsequent years. Respondents include the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, Palau, Micronesia, and the Marshall Islands.

Regulations that implement this legislation are at 45 CFR 96.130, are approved by OMB under control number 0930–0163, and require that each State submit an annual Synar report to the Secretary describing their progress in complying with section 1926 of the PHS Act. The Synar report, due December 31 following the fiscal year for which the State is reporting, describes the results of the inspections and the activities carried out by the State to enforce the required law; the success the State has achieved in reducing the availability of tobacco products to individuals under the age of 18; and the strategies to be utilized by the State for enforcing such law during the fiscal year for which the grant is sought.

SAMHSA's Center for Substance Abuse Prevention will request OMB approval of revisions to the current report format associated with Section 1926 (42 U.S.C. 300x–26). The report format is changing significantly. Any changes in either formatting or content are being made to simplify the reporting process for the States and to clarify the information as the States report it; both outcomes will facilitate consistent, credible, and efficient monitoring of Synar compliance across the States and will reduce the reporting burden by the States. All of the information required in the new report format is already being collected and reported by the States.

ANNUAL REPORTING BURDEN

45 CFR citation	Number of respondents [1]	Responses per respondent	Hours per response	Total hour burden
Annual Report (Section 1—States and Territories) 96.130(e)(1–3)	59	1	15	885
State Plan (Section II–States and Territories) 96.130 (e)(4, 5); 96.130 (g)	59	1	3	177
Total	59		18	1,062

[1] Red Lake Indian Tribe is not subject to tobacco requirements.

Written comments and recommendations concerning the proposed information collection should be sent by May 14, 2004, to: SAMHSA Desk Officer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: 202–395–6974.

Dated: April 7, 2004.

Anna Marsh,

Executive Officer, SAMHSA.

[FR Doc. 04–8422 Filed 4–13–04; 8:45 am]

BILLING CODE 4162–20–P

INTER-AMERICAN FOUNDATION

Sunshine Act Meeting

TIME AND DATE: April 30, 2004, 9 a.m.–1:30 p.m.

PLACE: Inter-American Foundation, 901 North Stuart Street, Arlington, VA 22203.

STATUS: Open session.

MATTERS TO BE CONSIDERED:

- President's Report (Board of Directors): 9:30
- Break (enter Advisory Council): 10:30
- Results Report: 10:45
- Presentation on Project in the Dominican Republic: 11
- Presentation on Transnationalism: 11:15
- Three-Pronged Strategy for Fiscal Year 2005: 11:30
- Prong I
  - Congress and the Administration
- Prong II
  - Lunch
  - Alternative Financing Mechanisms
- Prong III
  - Outreach and Democratic Practices
- Closing: 1:30

CONTACT PERSON FOR MORE INFORMATION: Carolyn Karr, Senior Vice President and General Counsel, (703) 306–4350.

Dated: April 8, 2004.

Carolyn Karr,

Senior Vice President and General Counsel.

[FR Doc. 04–8605 Filed 4–12–04; 2:44 pm]

BILLING CODE 7025–01–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Establishment Notice

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of establishment of the Outer Continental Shelf (OCS) Policy Committee.

SUMMARY: Following consultation with the General Services Administration, notice is hereby given that the Secretary of the Interior has established the OCS Policy Committee.

The OCS Policy Committee will provide advice to the Secretary of the Interior, through the Director of the Minerals Management Service, related to the discretionary functions of the Bureau under the Outer Continental Shelf Lands Act and related statutes. The Committee will review and comment on all aspects of leasing, exploration, development and protection of OCS resources and provide a forum to convey views representative of coastal states, local government, offshore mineral industries, environmental community, and other users of the offshore and the interested public.

FOR FURTHER INFORMATION CONTACT: Jeryne Bryant, Minerals Management Service, Offshore Minerals Management, Herndon, Virginia 20170-4817, telephone, (703) 787–1213.

Certification

I hereby certify that the OCS Policy Committee is in the public interest in connection with the performance of duties imposed on the Department of the Interior by 43 U.S.C. 1331 *et. seq.*, 30 U.S.C. 1701 *et. seq.*, and 30 U.S.C. 1001 *et. seq.*

Dated: February 27, 2004.

Gale A. Norton,

Secretary of the Interior.

[FR Doc. 04–8425 Filed 4–13–04; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Establishment Notice

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of establishment of the Royalty Policy Committee.

SUMMARY: Following consultation with the General Services Administration, notice is hereby given that the Secretary of the Interior has established the Royalty Policy Committee.

The Royalty Policy Committee will provide advice related to the performance of discretionary functions under the laws governing the Department of the Interior management of Federal and Indian mineral leases and revenues. The Committee will review and comment on revenue management and other mineral-related policies and provide a forum to convey views representative of mineral lessees, operators, revenue payors, revenue recipients, governmental agencies, and the interested public.

FOR FURTHER INFORMATION CONTACT: Gary Fields, Minerals Management Service, Minerals Revenue Management, Denver, Colorado 80225–0165, telephone, (303) 231–3102.

Certification

I hereby certify that the Royalty Policy Committee is in the public interest in connection with the performance of duties imposed on the Department of the Interior by 43 U.S.C. 1331 *et. seq.*, 30 U.S.C. 1701 *et. seq.*, and 30 U.S.C. 1001 *et. seq.*

Dated: February 27, 2004.

Gale A. Norton,

Secretary of the Interior.

[FR Doc. 04–8424 Filed 4–13–04; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–260–09–1060–00–24 1A]

Correction to Notice of Call for Nominations for the Wild Horse and Burro Advisory Board

AGENCY: Bureau of Land Management, Interior.

ACTION: Corrections to Notice of Call for Nominations for the Wild Horse and Burro Advisory Board. This notice was previously published in the **Federal Register:** Vol. 69, No. 61, Tuesday, March 30, 2004.

SUMMARY: The **Federal Register** Notice has an incorrect date for nominations to be submitted to the National Wild Horse and Burro Advisory Board. The corrected date is May 15, 2004. The nominations should be submitted to the National Wild Horse and Burro Program, Bureau of Land Management, Department of the Interior, P.O. Box 12000, Reno, Nevada 89520–0006, Attn: Janet Neal: Fax (775) 861–6711.

FOR FURTHER INFORMATION CONTACT: Jeff Rawson, Group Manager, Wild Horse and Burro Group, (202) 452–0379. 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.

Dated: April 7, 2004.

Thomas H. Dyer,

Assistant Director, Renewable Resources and Planning.

[FR Doc. 04–8489 Filed 4–13–04; 8:45 am]

BILLING CODE 4310–84–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–506]

In the Matter of Certain Optical Disk Controller Chips and Chipsets and Products Containing Same, Including DVD Players and PC Optical Storage Devices; Notice of Investigation

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on March 11, 2004, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Zoran Corporation and Oak Technology, Inc., both of Sunnyvale, California. Three letters supplementing the complaint were filed on March 29 and March 30, 2004. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain optical disk controller chips and chipsets and products containing same, including DVD players and PC optical storage devices, by reason of infringement of claims 1–12 of U.S. Patent No. 6,466,736, claims 1–3 of U.S. Patent No. 6,584,527, and claims 1–35 of U.S. Patent No. 6,546,440. The complaint further alleges that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint and supplemental letters, except for any confidential information contained therein, are 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., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained 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 at *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*.

FOR FURTHER INFORMATION CONTACT: Karin J. Norton, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2606.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's rules of practice and procedure, 19 CFR 210.10 (2003).

Scope of Investigation: Having considered the complaint the U.S. International Trade Commission, on April 6, 2004, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain optical disk controller chips or chipsets or products containing same, including DVD players and PC optical storage devices, by reason of infringement of claims 1–12 of U.S. Patent No. 6,466,736, claims 1–3 of U.S. Patent No. 6,584,527, or claims 1–35 of U.S. Patent No. 6,546,440, and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are—

Zoran Corporation, 1390 Kifer Road, Sunnyvale, CA 94086–5305;

Oak Technology, Inc., 1390 Kifer Road, Sunnyvale, CA 94086–5305.

(b) The respondents are the following companies alleged to be in violation of section 337 and upon which the complaint is to be served:

ASUSTek Computer, Inc., 150 Li-Te Road, Peitou, Taipei, Taiwan 112;

Creative Technology, Ltd., 31 International Business Park, Creative Resource, Singapore 609921, Republic of Singapore;

Creative Labs, Inc., 1901 McCarthy Boulevard, Milpitas, California 95035;

Jiangsu Shinco Electronic Group Co., Ltd., 5# Waihuan Road, Changzhou, Jiangsu, China 213022;

LITE-ON Information Technology Corporation, 14F, No. 392, Ruey Kuang Road, Neihu, Taipei 114, Taiwan;

MediaTek, Inc., 5F, No. 1–2, Innovation Road 1, Science-Based Industrial Park, Hsin-Chu City, Taiwan 300;

Mintek Digital, 4195 E. Hunter Ave., Anaheim, California 92807;

Shinco International AV Co., Ltd., Rm 1503, Kinox Center, 9 Hung To Road, Ngau Tau Kok, Kowloon, Hong Kong;

TEAC Corporation, 3–7–3 Naka-Cho, Musashino-shi, Tokyo 180–8550, Japan;

TEAC America, Inc., 7733 Telegraph Road, Montebello, California 90640;

Terapin Technology Corporation, 76 Playfair Rd #04–03 Block 2, LHK2 Building, Singapore 367996, Republic of Singapore;

Terapin Technology, 1430 Valwood Parkway, Suite 110, Carrollton, Texas 75006.

(c) Karin J. Norton, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401–A, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's rules of practice and procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received no later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting a response to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

By order of the Commission.

Issued: April 8, 2004.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–8401 Filed 4–13–04; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under Comprehensive Environmental Response, Compensation and Liability Act

Under 28 CFR 50.7, notice is hereby given that on March 29, 2004, a proposed Consent Judgment in *United States* v. *Coltec Industries, Inc.*, et. al., Civil Action No. 04–1308, was lodged with the United States District Court for the Eastern District of New York.

The proposed Consent Judgment resolves cost recovery claims of the United States, on behalf of the U.S. Environmental Protection Agency, under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9601 *et seq.*, in connection with the Liberty Industrial Finishing Superfund Site in Oyster Bay, New York ("Site"), against Coltec Industries, Inc.; Goodrich Corporation; 55 Motor Avenue LLC; Cubbies Properties, Inc.; Jefry Rosmarin; J. Jay Tanenbaum; Jan Burman; Jerome Lazarus; Liberty Associates; William Heller; Koch-Glitsch, LP; and Beazer East, Inc. The proposed Consent Judgment also resolves potential contribution claims against the United States pursuant to sections 107(a) and 113(f) of CERCLA, 42 U.S.C. 9607(a) and 9613(f). The proposed Consent Judgment requires the twelve defendants to perform and fund the cleanup of the Site (estimated at $32.8 million). The United States, on behalf of two Settling Federal Agencies, the Department of Defense and the General Services Administration, will pay about 41.5 percent of the costs to be incurred in performing the remedy, which will amount to between $13.5 million and $17.6 million, depending on total cost of the remedy. The proposed Consent Judgment provides that the twelve defendants and the Settling Federal Agencies are entitled to contribution protection as provided by section 113(f)(2) of CERCLA, 42 U.S.C.

9613(f)(2) for matters addressed by the settlement.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Judgment. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Coltec Industries, Inc.* et al., Civil Action No. 04–1308, D.J. Ref. 90–11–2–1222/90–11–3–766.

The proposed Consent Judgment may be examined at the Office of the United States Attorney, Eastern District of New York, One Pierrepont Plaza, 14th Fl., Brooklyn, New York 11201, and at the United States Environmental Protection Agency, Region II, 290 Broadway, New York, New York 10007–1866. During the public comment period, the proposed Consent Judgment may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the proposed Consent Judgment may be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy of the proposed Consent Judgment, please enclose a check in the amount of $49.00 (25 cent per page reproduction cost) payable to the U.S. Treasury.

Ronald Gluck,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 04–8472 Filed 4–13–04; 8:45 am]

BILLING CODE 4410–13–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Water Act

Under 28 CFR 50.7, notice is hereby given that on March 31, 2004, a proposed Consent Decree in *United States* v. *Conoco Pipe Line Company,* Civil Action No. CV 04–37–BLG–RFC, was lodged with the United States District Court for the District of Montana.

The Consent Decree resolves the United States' claims under section 311(b) of the Clean Water Act arising from the release of oil from two pipelines operated by the Defendant. These claims pertain specifically to two spills of gasoline from Defendant's Seminoe Pipeline near Lodge Grass, Montana on June 20, 1997, and near Banner, Wyoming on June 27, 1997, and to a spill of crude oil from Defendant's Glacier Pipeline near Conrad, Montana on May 7, 2001. Under the Consent Decree, the Defendant has agreed to pay a civil penalty of $465,000 to resolve the United States' claims regarding these spills.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Conoco Pipe Line Company,* D.J. Ref. 90–5–1–1–06939.

The Consent Decree may be examined at the Office of the United States Attorney, 2929 3rd Avenue North, Suite 400, Billing, Montana, and at U.S. EPA Region 8, 999 Eighteenth Street, Suite 300, Denver, Colorado, 80202–2466. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $3.50 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Robert Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division

[FR Doc. 04–8471 Filed 4–13–04; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA")

Consistent with Departmental policy, 28 CFR 50.7, 38 FR 19029, and 42 U.S.C. 9622(d), notice is hereby given that on March 30, 2004, a proposed consent decree in *United States* v. *NCH Corporation,* et al., Civil Action No. 98–5268(KSH) and *United States* v. *FMC Corporation,* et al., Civil Action No. 01–0476(KSH), was lodged with the United States District Court for the District of New Jersey.

In these actions the United States sought recovery of response costs pursuant to section 107(a) of CERCLA, for costs incurred related to the Higgins Farm Superfund Site in Franklin Township, New Jersey and the Higgins Disposal Superfund Site in Kingston, New Jersey. The consent decree requires Princeton Gamma-Tech, Inc., a third-party generator defendant to pay $5,000,000 to the United States.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *NCH Corporation,* et al., D.J. Ref. # 90–11–3–1486/1 or *United States* v. *FMC Corporation,* et al., D.J. Ref. # 90–11–3–1486/2.

The consent decree may be examined at U.S. EPA Region II, 290 Broadway, New York, New York 10007–1866 (contact Deborah Schwenk). During the public comment period, the Consent Decree, may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*Tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $8.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ronald G. Gluck,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 04–8473 Filed 4–13–04; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with section 113(g) of the Clean Air Act ("CAA"), 42 U.S.C. 7413(g), and with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Dominance Industries, Inc., d/*

b/a Pan Pacific Products Company, Civil Action No. *CIV–04–158,* was lodged on April 6, 2004, with the United States District Court for the Eastern District of Oklahoma.

In this action the United States sought civil penalties and injunctive relief for Defendant's violations of the Oklahoma State Implementation Plan ("SIP") approved pursuant to section 110 of the CAA, 42 U.S.C. 7410, and the Prevention of Significant Deterioration ("PSD") provisions of the CAA, Part C of Title I, 42 U.S.C. 7470–7492, and the regulations promulgated thereunder at 40 CFR 52.21 ("the PSD Rules").

The Consent Decree settles an action brought under section 113 of the Clean Air Act, 42 U.S.C. 7413. The Consent Decree provides that *Dominance Industries, Inc., d/b/a Pan Pacific Products Company,* will pay the United States $200,000.00 in civil penalties, and perform injunctive relief by installing a control technology system for control of volatile organic compounds ("VOC") emissions on the Fiber Dryer Exhaust Numbers one and two at its Broken Bow, Oklahoma facility.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Dominance Industries, Inc., d/b/a Pan Pacific Products Company,* D.J. Ref. #90–5–2–1–07366.

The proposed Consent Decree may be examined at the office of the United States Attorney for the Eastern District of Oklahoma, 1200 West Okmulgee Street, Muskogee, Oklahoma 74401; the Region 6 Office of the Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202; and the Headquarters Office of the Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of *$7.50* (25 cents per page reproduction costs), payable to the U.S. Treasury.

Benjamin Fisherow,

Deputy Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 04–8470 Filed 4–13–04; 8:45 am]

BILLING CODE 4410–15–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 04–050]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Ms. Nancy Kaplan, Code VE, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ms. Nancy Kaplan, NASA Reports Officer, NASA Headquarters, 300 E Street SW., Code VE, Washington, DC 20546, (202) 358–1372, *nancy.kaplan@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Aeronautics and Space Administration (NASA) is initiating a new collection designed to assess current levels of customer satisfaction on an Agency-wide basis in key service areas that are managed as part of the NASA Integrated Information Infrastructure Program. The information collected will establish a baseline for future customer satisfaction surveys, and will identify and assist in the implementation of appropriate corrective measures for improved products and services that meet the needs of NASA customers.

II. Method of Collection

NASA will collect this information electronically via a Web-based survey.

III. Data

Title: NASA Chief Information Officer Customer Satisfaction Survey.

OMB Number: 2700–XXXX.

Type of review: New collection.

Affected Public: Federal Government; business or other for-profit.

Estimated Number of Respondents: 7,000.

Estimated Time Per Response: 20 minutes.

Estimated Total Annual Burden Hours: 2,334.

Estimated Total Annual Cost: $0.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Dated: March 29, 2004.

Patricia L. Dunnington,

Chief Information Officer.

[FR Doc. 04–8392 Filed 4–13–04; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (04–049)]

Notice of prospective patent license

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that UBE America, Inc., of 55 East 59th Street, 18th Floor, New York, NY 10022, has applied for an exclusive license to practice the invention described in NASA Case Nos. LAR 15834–1–CA, LAR 15834–1–EP, LAR 15834–1–JP, and LAR 15834–1–MX, all of which are

entitled "Composition Of And Method For Making High Performance Resins For Infusion And Transfer Molding Processes," which are assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to NASA Langley Research Center. NASA has not yet made a determination to grant the requested license and may deny the requested license even if no objections are submitted within the comment period.

DATES: Responses to this notice must be received by April 29, 2004.

FOR FURTHER INFORMATION CONTACT: Robin W. Edwards, Patent Attorney, Mail Stop 212, NASA Langley Research Center, Hampton, VA 23681–2199, telephone (757) 864–3230; fax (757) 864–9190.

Dated: April 8, 2004.

Keith T. Sefton,

Chief of Staff, Office of the General Counsel.

[FR Doc. 04–8391 Filed 4–13–04; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES

Public Hearing

ACTION: Notice of public hearing.

SUMMARY: The National Commission on Terrorist Attacks Upon the United States will hold its tenth public hearing on April 13–14, 2004 in Washington, DC. The two-day hearing will examine the performance of law enforcement and the intelligence communities prior to September 11 and evaluate post-9/11 reforms in these areas. The hearing will be open to the public and members of the media. Seating will be provided on a first-come, first-served basis, and doors will open at 8 a.m. Members of the media must register by the close of business on April 9, 2004, by visiting the Commission's Web site, *http://www.9-11commission.gov*. Members of the media, particularly photographers and radio and television broadcasters, also must contact the appropriate Senate Press Gallery for accreditation.

DATES: April 13–14, 2004, 9 a.m. to 4:30 p.m. Press availability to follow.

LOCATION: Hart Senate Office Building, Room 216, Washington, DC, 20510

FOR FURTHER INFORMATION CONTACT: Al Felzenberg or Jonathan Stull at (202) 401–1627, (202) 494–3538 (cellular), or *jstull@9-11commission.gov*.

SUPPLEMENTARY INFORMATION: Please refer to Public Law 107–306 (November 27, 2002), title VI (Legislation creating the Commission), and the Commission's Web site: *http://www.9-11commission.gov*.

Dated: April 9, 2004.

Philip Zelikow,

Executive Director.

[FR Doc. 04–8523 Filed 4–12–04; 10:52 am]

BILLING CODE 8800–01–M

NUCLEAR REGULATORY COMMISSION

Tennessee Valley Authority

[Docket Nos. 50–327 and 50–328]

Sequoyah Nuclear Plant, Units 1 and 2; Notice of Consideration of Issuance of Amendments to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License No. DPR–77 and Facility Operating License No. DPR–79 issued to Tennessee Valley Authority (the licensee) for operation of the Sequoyah Nuclear Plant, Units 1 and 2, located in Hamilton County, Tennessee.

The proposed amendments would allow both trains of control room air-conditioning system (CRACS) to be inoperable for up to 7 days provided control room temperatures are verified every 4 hours to be less than or equal to 90 degrees Fahrenheit. If this temperature limit cannot be maintained or if both CRACS trains are inoperable for more than 7 days, requirements of Technical Specification Section (TS) 3.0.3 will be required.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in Title 10 of the Code of Federal Regulations (10 CFR), Section 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed change will allow the use of alternate cooling methods in the event both trains of the CRACS are inoperable. The CRACS is used to maintain an acceptable environment for control room equipment and personnel during normal and emergency conditions. This system does not have the potential to create a design basis accident as it only provides control room cooling and does not directly mitigate postulated accidents. Temporary cooling devices will be designed in accordance with appropriate design controls, sized to ensure adequate cooling capability, and located such that safety-related features would not be prevented from performing their safety function. Since the CRACS does not contribute to the initiators of postulated accidents, the probability of an accident is not significantly increased by the proposed change.

The CRACS does ensure a suitable environment for safety-related equipment and personnel during an accident. The temperature limit placed on the proposed action ensures that the control room temperature will remain at acceptable levels to support plant evolutions in response to postulated accidents. Safety functions that are necessary to maintain acceptable offsite dose limits will not be degraded by the proposed change. Alternate cooling methods that will maintain the control room well within the equipment temperature limits will ensure these safety functions. With the control room cooling requirements satisfied, the offsite dose impact is not affected. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed change will continue to ensure that the control room temperatures will not exceed operability limits for equipment or personnel. The temperature control functions for the control room are not postulated to create an accident and since the proposed change continues to maintain acceptable temperatures, there are no new accident initiators created. The alternate cooling methods to be used will utilize appropriate design, sizing, and location considerations. Implementation of temporary cooling methods will be designed such that safety-related features would not be prevented from performing their safety function and in compliance with 10 CFR 50.59 requirements. Plant will comply with applicable TS requirements. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

No. The proposed change will continue to maintain control room temperatures at acceptable levels to ensure the availability of equipment necessary for safety functions. Sufficient margin to temperature limits will be maintained to ensure response to accident conditions can be managed adequately and temperatures will remain at acceptable levels to complete necessary accident mitigation actions. Plant components and their setpoints will not be altered by the proposed change that would impact the ability to respond to accident conditions. The installation of temporary cooling devices will be designed such that safety-related features would not be prevented from performing their safety function. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received on or before May 14, 2004, will be considered in making any final determination.

Normally, the Commission will not issue the amendments until the expiration of the 30-day comment period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of the 30-day comment period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention shall be given a separate numeric or alpha designation within one of the following groups, and all like subject matters shall be grouped together:

1. Technical—primarily concerns issues relating to technical and/or health and safety matters discussed or referenced in the applicant's safety analysis for the application (including issues related to emergency planning and physical security to the extent such matters are discussed or referenced in the application).

2. Environmental—primarily concerns issues relating to matters discussed or referenced in the Environmental Report for the applications.

3. Miscellaneous—does not fall into one of the categories outlined above.

As specified in 10 CFR 2.309, if two or more requestors/petitioners seek to co-sponsor a contention or propose substantially the same contention, the requestors/petitioners will be required to jointly designate a single representative who shall have the authority to act for the requestors/petitioners with respect to that contention within ten (10) days after admission of such contention.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact.[1] Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to

[1] To the extent that the applications contain attachments and supporting documents that are not publically available because they are asserted to contain safeguards or proprietary information, petitions desiring access to this information should contact applicant's counsel and discuss the need for protective order.

relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Nontimely requests and or/petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer of the Atomic Safety and Licensing Board that the petition, request and or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)–(viii).

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendments and make them immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) e-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *Hearingdocket@nrc.gov;* or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Attorney for the Licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

For further details with respect to this action, see the application for amendments dated March 23, 2004, which is available for public inspection at the Commission's PDR, located at One White Flint North, File Public Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 8th day of April 2004.

For the Nuclear Regulatory Commission.

Michael L. Marshall, Jr.,

Senior Project Manager, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 04–8421 Filed 4–13–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Standard Review Plan, Chapter 18.0, "Human Factors Engineering," and Associated Documents: Availability of NUREG Documents

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Nuclear Regulatory Commission is announcing the completion and availability of three NUREG documents: (1) NUREG–0800, Standard Review Plan, Chapter 18.0, "Human Factors Engineering," Rev. 1, dated February 2004; (2) NUREG–0711, Human Factors Engineering Program Review Model, Rev. 2, dated February 2004; and (3) NUREG–1764, Guidance for the Review of Changes to Human Actions: Final Report, dated February 2004.

ADDRESSES: Copies of these NUREG documents may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20402–9328; *http://www.access.gpo.gov/su_docs;* 202–512–1800 or The National Technical Information Service, Springfield, Virginia 22161–0002; *http://www.ntis.gov;* 1–800–533–6847 or, locally, 703–805–6000.

Copies of these documents are also available for inspection and/or copying for a fee in the NRC Public Document Room, 11555 Rockville Pike, Rockville, Maryland. As of November 1, 1999, you may also electronically access NUREG-series publications and other NRC records at NRC's Public Electronic Reading Room at *http://www.nrc.gov/reading-rm.html.*

A free single copy of these NUREG documents, to the extent of supply, may be requested by writing to Office of the Chief Information Officer, Reproduction and Distribution Services Section, U.S. Nuclear Regulatory Commission, Printing and Graphics Branch, Washington, DC 20555–0001; facsimile: 301–415–2289; e-mail: *DISTRIBUTION@nrc.gov.*

Some publications in the NUREG series that are posted at NRC's Web site address *http://www.nrc.gov/NRC/NUREGS/indexnum.html* are updated regularly and may differ from the last printed version.

FOR FURTHER INFORMATION CONTACT: James P. Bongarra, Jr., Division of Inspection Program Management, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: 301–415–1046. E-mail: *JXB@nrc.gov.*

SUPPLEMENTARY INFORMATION: On December 31, 2002 (67 FR 79948–79950), NRC announced the availability of the three NUREG documents, and requested comments on them. The NRC staff considered all of the comments, including constructive suggestions to improve the documents, in the preparation of the revised NUREG documents.

The final versions of the three NUREG documents are now available for use by applicants, licensees, NRC reviewers, and other NRC staff. The new revisions of the three NUREGs supersede previous version of those documents.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory

Affairs of the Office of Management and Budget.

Dated at Rockville, Maryland, this 4th day of March, 2004.

For the Nuclear Regulatory Commission.

William D. Beckner,

Chief, Reactor Operations Branch, Division of Inspection Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 04–8420 Filed 4–13–04; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 26413; 812–12797]

AMR Investment Services Trust, *et al.*; Notice of Application

April 8, 2004.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of an application for an order under (a) section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from sections 18(f) and 21(b) of the Act; (b) section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act; (c) sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(3) of the Act; and (d) section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint transactions.

Summary of the Application: Applicants request an order that would permit certain registered open-end management investment companies to participate in a joint lending and borrowing facility.

Applicants: AMR Investment Services Trust ("AMR Trust"), American AAdvantage Funds ("AAdvantage Trust"), American AAdvantage Mileage Funds ("Mileage Trust"), American AAdvantage Select Funds ("Select Trust"), (collectively, the "Trusts"), on behalf of their series (the "Funds") and AMR Investment Services, Inc. (the "Adviser").

Filing Dates: The application was filed on March 19, 2002, and amended on March 19, 2004. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

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 May 3, 2004, 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 Fifth Street, NW., Washington, DC 20549–0609. Applicants, 4151 Amon Carter Boulevard, MD 2450, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel at (202) 942–0634 or Todd Kuehl, Branch Chief, at (202) 942–0564 (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 Fifth Street, NW., Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. AAdvantage Trust, Mileage Trust, and Select Trust are registered under the Act as open-end management investment companies and are organized as Massachusetts business trusts.[1] AMR Trust is registered under the Act as an open-end management investment company and is organized as a New York common law trust. The Adviser is registered under the Investment Advisers Act of 1940 and serves as investment adviser for each of the Funds. An existing Commission order permits certain series of AMR Trust, AAdvantage Trust and Mileage Trust that are not money market Funds to invest uninvested cash balances in one or more series that are money market Funds that comply with rule 2a–7 under the Act ("Money Market Funds").[2]

2. Some Funds may lend money to banks or other entities by entering into repurchase agreements or purchasing other short-term investments. Other Funds may borrow money from the same or other banks for temporary purposes to satisfy redemption requests or to cover unanticipated cash shortfalls such as a trade "fail" in which cash payment for a security sold by a Fund has been delayed. Currently, the Funds have a credit arrangement with their custodian banks (*i.e.*, overdraft protection) and each Trust has a credit agreement with the Adviser under which the Adviser may make temporary unsecured loans (up to 30 days) to the Funds.

3. If the Funds were to borrow money from a bank, the Funds would pay interest on the borrowed cash at a rate which would be significantly higher than the rate earned by other (non-borrowing) Funds on repurchase agreements and other short-term instruments of the same maturity as the bank loan. Applicants state that this differential represents the profit the banks would earn for serving as a middleman between a borrower and lender. In addition, while bank borrowings generally could supply needed cash to cover unanticipated redemptions and sales fails, the borrowing Funds would incur commitment fees and/or other charges involved in obtaining a bank loan.

4. Applicants request an order that would permit the Funds to enter into interfund lending agreements ("Interfund Lending Agreements") under which the Funds would lend and borrow money for temporary purposes directly to and from each other through a credit facility ("Interfund Loan"). Applicants state that the proposed credit facility would reduce the Funds' potential borrowing costs and enhance their ability to earn higher rates of interest on short-term loans. Although the proposed credit facility would reduce the Funds' need to borrow from banks, the Funds would be free to establish new lines of credit or other borrowing arrangements with banks.

5. Applicants anticipate that the credit facility would provide borrowing Funds with savings when the cash position of the Fund is insufficient to meet temporary cash requirements. This situation could arise when redemptions exceed anticipated volumes and certain Funds have insufficient cash on hand to satisfy such redemptions. When the Funds liquidate portfolio securities to meet redemption requests, which normally are effected immediately, they often do not receive payment in settlement for up to three days (or

[1] Applicants request that the relief also apply to any other existing or future registered open-end management investment company or series thereof that is advised by the Adviser or any person controlling, controlled by, or under common control with the Adviser or its successors (together with the Funds, the "Funds"). "Successors" are limited to any entities that result from the Adviser's reorganization into another jurisdiction or a change in the type of business organization. All Funds that currently intend to rely on the order have been named as applicants, and any other existing or future Fund that subsequently may rely on the order will comply with the terms and conditions in the application.

[2] American AAdvantage Funds, *et al.*, ICA Rel. Nos. 23791 (Apr. 19, 1999) (notice) and 23838 (May 14, 1999) (order).

longer for certain foreign transactions). The credit facility would provide a source of immediate, short-term liquidity pending settlement of the sale of portfolio securities.

6. Applicants also propose using the credit facility when a sale of securities "fails" due to circumstances such as a delay in the delivery of cash to a Fund's custodian or improper delivery instructions by the broker effecting the transaction. Sales fails may present a cash shortfall if the Fund has undertaken to purchase a security using the proceeds from the securities sold. Under such circumstances, the Fund could fail on its intended purchase due to lack of funds from the previous sale, resulting in additional cost to the Fund, or sell a security on a same day settlement basis, earning a lower return on the investment. Use of the credit facility under these circumstances would enable the Fund to have access to immediate short-term liquidity without incurring custodian overdraft or other charges.

7. While bank borrowing generally could supply needed cash to cover unanticipated redemptions and sales fails, under the proposed credit facility a borrowing Fund would pay lower interest rates than those offered by banks on short-term loans. In addition, Funds making short-term cash loans directly to other Funds would earn interest at a rate higher than they otherwise could obtain from investing their cash in repurchase agreements or purchasing shares of a Money Market Fund. Thus, applicants believe that the proposed credit facility would benefit both borrowing and lending Funds.

8. The interest rate charged to the Funds on any Interfund Loan ("Interfund Loan Rate") would be the average of the "Repo Rate" and the "Bank Loan Rate," both as defined below. The Repo Rate on any day would be the highest rate available to the Funds from investing in overnight repurchase agreements. The Bank Loan Rate on any day would be calculated by the Credit Facility Team, as defined below, each day an Interfund Loan is made according to a formula established by each Trust's board of trustees (each a "Board") intended to approximate the lowest interest rate at which bank short-term loans would be available to the Funds. The formula would be based upon a publicly available rate (*e.g.*, Federal funds plus 25 basis points) and would vary with this rate so as to reflect changing bank loan rates. Each Trust's Board would periodically review the continuing appropriateness of using the publicly available rate to determine the Bank Loan Rate and current bank loan rates that would be available to the Funds. The initial formula and any subsequent modifications to it would be subject to the approval of each Trust's Board.

9. The credit facility would be administered by an investment professional within the Adviser, a compliance officer of the Funds, and representatives of the Adviser's accounting group (collectively, the "Credit Facility Team"). Under the proposed credit facility, the portfolio managers for each participating Fund could provide standing instructions to participate daily as a borrower or lender. On each business day, the Adviser, would collect data on the uninvested cash and borrowing requirements of all participating Funds from the Funds' custodian. Applicants expect far more available uninvested cash each day than borrowing demand. Once the Credit Facility Team determined the aggregate amount of cash available for loans and borrowing demand, the Credit Facility Team would allocate loans among borrowing Funds without any further communication from portfolio managers. All allocations would require approval of at least one member of the Credit Facility Team other than the investment professional within the Adviser. After allocating cash for Interfund Loans, the Credit Facility Team would invest any remaining cash in accordance with the standing instructions from portfolio managers or return remaining amounts to the Funds. The Money Market Funds would not participate as borrowers.

10. The Credit Facility Team would allocate borrowing demand and cash available for lending among the Funds on what the Credit Facility Team believes to be an equitable basis, subject to certain administrative procedures applicable to all Funds, such as the time of filing requests to participate, minimum loan lot sizes, and the need to minimize the number of transactions and associated administrative costs. To reduce transaction costs, each Interfund Loan normally would be allocated in a manner intended to minimize the number of Funds necessary to complete the transaction.

11. The Credit Facility Team would (a) monitor the interest rates charged and other terms and conditions of the loans; (b) ensure compliance with each Fund's investment policies and limitations; (c) ensure equitable treatment of each Fund; and (d) make quarterly reports to the Board concerning any transactions by the Funds under the credit facility and Interfund Loan Rate charged. The method of allocation and related administrative procedures would be approved by the Board of each Fund, including a majority of the trustees who are not "interested persons," as defined in section 2(a)(19) of the Act ("Independent Trustees"), of the Fund, to ensure that both borrowing and lending Funds participate on an equitable basis.

12. The Adviser will administer the credit facility as a disinterested fiduciary. The Adviser would administer the credit facility as part of its duties under the relevant management or administrative agreement with each Fund and would receive no additional fee as compensation for its services. The Adviser may, however, collect standard pricing and recordkeeping, bookkeeping and accounting fees associated with repurchase and lending transactions generally, including transactions effected through the credit facility. Fees paid to the Adviser would be no higher than those applicable for comparable bank loan transactions.

13. No Fund may participate in the credit facility unless: (a) The Fund has obtained shareholder approval for its participation, if such approval is required by law; (b) the Fund has fully disclosed all material information concerning the credit facility in its prospectus and/or SAI; and (c) the Fund's participation in the credit facility is consistent with its investment policies, limitations, and organizational documents.

14. In connection with the credit facility, applicants request an order under (a) section 6(c) of the Act granting relief from sections 18(f) and 21(b) of the Act; (b) section 12(d)(1)(J) of the Act granting relief from section 12(d)(1) of the Act; (c) sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(3) of the Act; and (d) section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint arrangements.

Applicants' Legal Analysis

1. Section 17(a)(3) generally prohibits an affiliated person, or an affiliated person of an affiliated person, from borrowing money or other property from a registered investment company. Section 21(b) generally prohibits any registered management investment company from lending money or other property to any person if that person controls or is under common control with the company. Section 2(a)(3)(C) of the Act defines an "affiliated person" of another person, in part, to be any person directly or indirectly controlling, controlled by, or under common control with, the other person. Applicants state

that the Funds may be under common control by virtue of having the Adviser as their common investment adviser and/or by reason of having common officers, directors and/or trustees.

2. Section 6(c) provides that an exemptive order may be granted where an 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. Section 17(b) authorizes the Commission to exempt a proposed transaction from section 17(a) provided that the terms of the transaction, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching on the part of any person concerned, and the transaction is consistent with the policy of the investment company as recited in its registration statement and with the general purposes of the Act. Applicants believe that the proposed arrangements satisfy these standards for the reasons discussed below.

3. Applicants submit that sections 17(a)(3) and 21(b) of the Act were intended to prevent a person with strong potential adverse interests to, and some influence over the investment decisions of, a registered investment company from causing or inducing the investment company to engage in lending transactions that unfairly inure to the benefit of that person and that are detrimental to the best interests of the investment company and its shareholders. Applicants assert that the proposed credit facility transactions do not raise these concerns because: (a) The Adviser would administer the program as a disinterested fiduciary; (b) all Interfund Loans would consist only of uninvested cash reserves that the Funds otherwise would invest in short-term repurchase agreements or other short-term instruments either directly or through a Money Market Fund; (c) the Interfund Loans would not involve a greater risk than such other investments; (d) a lending Fund would receive interest at a rate higher than they could obtain through such other investments; and (e) the borrowing Funds would pay interest at a rate lower than otherwise available to it under bank loan agreements and avoid the up-front commitment fees associated with committed lines of credit. Moreover, applicants believe that the other conditions in the application would effectively preclude the possibility of any Fund obtaining an undue advantage over any other Fund.

4. Section 17(a)(1) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of an affiliated person, from selling any securities or other property to the company. Section 12(d)(1) of the Act generally makes it unlawful for a registered investment company to purchase or otherwise acquire any security issued by any other investment company except in accordance with the limitations set forth in that section. Applicants state that the obligation of a borrowing Fund to repay an Interfund Loan may constitute a security under sections 17(a)(1) and 12(d)(1) of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt persons or transactions from any provision of section 12(d)(1) if and to the extent such exception is consistent with the public interest and the protection of investors. Applicants contend that the standards under sections 6(c), 17(b), and 12(d)(1)(J) are satisfied for all the reasons set forth above in support of their request for relief from sections 17(a)(3) and 21(b) and for the reasons discussed below.

5. Applicants state that section 12(d)(1) was intended to prevent the pyramiding of investment companies in order to avoid imposing on investors additional and duplicative costs and fees attendant upon multiple layers of investment companies. Applicants submit that the proposed credit facility does not involve these abuses. Applicants note that there will be no duplicative costs or fees to any Fund or its shareholders, and that the Adviser will receive no additional compensation for its services in administering the credit facility. Applicants also note that the purpose of the proposed credit facility is to provide economic benefits for all the participating Funds (and their shareholders).

6. Section 18(f)(1) prohibits open-end investment companies from issuing any senior security except that a company is permitted to borrow from any bank; if immediately after the borrowing, there is an asset coverage of at least 300 percent for all borrowings of the company. Under section 18(g) of the Act, the term "senior security" includes any bond, debenture, note or similar obligation or instrument constituting a security and evidencing indebtedness. Applicants request relief from section 18(f)(1) to the limited extent necessary to implement the credit facility (because the lending Funds are not banks).

7. Applicants believe that granting relief under section 6(c) is appropriate because the Funds would remain subject to the requirement of section 18(f)(1) that all borrowings of the Fund, including combined credit facility and bank borrowings, have at least 300% asset coverage. Based on the conditions and safeguards described in the application, applicants also submit that to allow the Funds to borrow from other Funds pursuant to the proposed credit facility is consistent with the purposes and policies of section 18(f)(1).

8. Section 17(d) and rule 17d–1 generally prohibit any affiliated person of a registered investment company, or affiliated person of such a person, when acting as principal, from effecting any joint transactions in which the company participates unless the transaction is approved by the Commission. Rule 17d–1(b) provides that in passing upon applications for relief under section 17(d), the Commission will consider whether the participation of a registered investment company in a joint enterprise on the basis proposed is consistent with the provisions, policies, and purposes of the Act and the extent to which the company's participation is on a basis different from or less advantageous than that of other participants.

9. Applicants submit that the purpose of section 17(d) is to avoid overreaching by, and unfair advantage to, investment company insiders. Applicants believe that the credit facility is consistent with the provisions, policies and purposes of the Act in that it offers both reduced borrowing costs and enhanced returns on loaned funds to all participating Funds and their shareholders. Applicants note that each Fund would have an equal opportunity to borrow and lend on equal terms consistent with its investment policies and fundamental investment limitations. Applicants therefore believe that each Fund's participation in the credit facility will be on terms no different from, or less advantageous than, that of other participating Funds.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The Interfund Loan Rate to be charged to the Funds under the credit facility will be the average of the Repo Rate and the Bank Loan Rate.

2. On each business day, the Credit Facility Team will compare the Bank Loan Rate with the Repo Rate and will make cash available for Interfund Loans only if the Interfund Loan Rate is (a) more favorable to the lending Fund than the Repo Rate and, if applicable the yield of any money market Fund in which the lending Fund could otherwise invest and (b) more favorable to the borrowing Fund than the Bank Loan Rate.

3. If a Fund has outstanding borrowings, any Interfund Loans to the

Fund (a) will be at an interest rate equal to or lower than any outstanding bank loan, (b) will be secured at least on an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding bank loan that requires collateral, (c) will have a maturity no longer than any outstanding bank loan (and in any event not over seven days), and (d) will provide that, if an event of default occurs under any agreement evidencing an outstanding bank loan to the Fund, that event of default will automatically (without need for action or notice by the lending Fund) constitute an immediate event of default under the Interfund Lending Agreement entitling the lending Fund to call the Interfund Loan (and exercise all rights with respect to collateral) and that such call will be made if the lending bank exercises its right to call its loan under its agreement with the borrowing Fund.

4. A Fund may make an unsecured borrowing through the credit facility if its outstanding borrowing from all sources immediately after the interfund borrowing total 10% or less of its total assets, provided that if the Fund has a secured loan outstanding from any other lender, including but not limited to another Fund, the Fund's interfund borrowing will be secured on at least an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding loan that requires collateral. If a Fund's total outstanding borrowings immediately after an interfund borrowing would be greater than 10% of its total assets, the Fund may borrow through the credit facility on a secured basis only. A Fund may not borrow through the credit facility or from any other source if its total borrowings immediately after the interfund borrowing would be more than 33⅓% of its total assets.

5. Before any Fund that has outstanding interfund borrowings may, through additional borrowings, cause its outstanding borrowings from all sources to exceed 10% of its total assets, the Fund must first secure each outstanding Interfund Loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan. If the total outstanding borrowings of a Fund with outstanding Interfund Loans exceeds 10% of its total assets for any other reason (such as a decline in net asset value or because of shareholder redemptions), the Fund will within one business day thereafter (a) repay all its outstanding Interfund Loans; (b) reduce its outstanding indebtedness to 10% or less of its total assets; or (c) secure each outstanding Interfund Loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan until the Fund's total outstanding borrowings cease to exceed 10% of its total assets, at which time the collateral called for by this condition 5 shall no longer be required. Until each Interfund Loan that is outstanding at any time that a Fund's total outstanding borrowings exceeds 10% is repaid or the Fund's total outstanding borrowings cease to exceed 10% of its total assets, the Fund will mark the value of the collateral to market each day and will pledge additional collateral as necessary to maintain the market value of the collateral that secures each outstanding Interfund Loan at least equal to 102% of the outstanding principal value of the loan.

6. No Fund may lend to another Fund through the credit facility if the loan would cause its aggregate outstanding loans through the credit facility to exceed 15% of its net assets at the time of the loan.

7. A Fund's Interfund Loans to any one Fund shall not exceed 5% of the lending Fund's net assets.

8. The duration of Interfund Loans will be limited to the time required to receive payment for securities sold, but in no event more than seven days. Loans effected within seven days of each other will be treated as separate loan transactions for purposes of this condition.

9. Each Interfund Loan may be called on one business day's notice by a lending Fund and may be repaid on any day by a borrowing Fund.

10. A Fund's participation in the credit facility must be consistent with its investment policies and limitations and organizational documents.

11. The Credit Facility Team will calculate total Fund borrowing and lending demand through the credit facility, and allocate loans on an equitable basis among the Funds without the intervention of any portfolio manager of the Funds (except a portfolio manager acting in his/her capacity as a member of the Credit Facility Team). All Allocations will require approval of at least one member of the Credit Facility Team who is not a portfolio manager. The Credit Facility Team will not solicit cash for the credit facility from any Fund or prospectively publish or disseminate loan demand data to portfolio managers (except to the extent that a portfolio manager on the Credit Facility Team has access to loan demand data). The Credit Facility Team will invest any amounts remaining after satisfaction of borrowing demand in accordance with the standing instructions from portfolio managers or return remaining amounts to the Funds.

12. The Credit Facility Team will monitor the interest rates charged and the other terms and conditions of the Interfund Loans and will make a quarterly report to the Board(s) concerning the participation of the Funds in the credit facility and the terms and other conditions of any extensions of credit under the facility.

13. Each Trust's Board, including a majority of the Independent Trustees: (a) Will review no less frequently than quarterly each Fund's participation in the credit facility during the preceding quarter for compliance with the conditions of any order permitting the transactions; (b) will establish the Bank Loan Rate formula used to determine the interest rate on Interfund Loans, and review no less frequently than annually the continuing appropriateness of the Bank Loan Rate formula; and (c) will review no less frequently than annually the continuing appropriateness of each Fund's participation in the credit facility.

14. In the event an Interfund Loan is not paid according to its terms and the default is not cured within two business days from its maturity or from the time the lending Fund makes a demand of payment under the provisions of the Interfund Lending Agreement, the Credit Facility Team will promptly refer the loan for arbitration to an independent arbitrator selected by the Board(s) of any Fund(s) involved in the loan who will serve as arbitrator of disputes concerning Interfund Loans. The arbitrator will resolve any problem promptly, and the arbitrator's decision will be binding on both Funds. The arbitrator will submit at least annually a written report to the Board setting forth a description of the nature of any dispute and the actions taken by the Funds to resolve the dispute.[3]

15. Each Fund will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any transaction under the credit facility occurred, the first two years in an easily accessible place, written records of all such transactions setting forth a description of the terms of the transaction, including the amount, the maturity and Interfund Loan Rate, the rate of interest available at the time on overnight repurchase agreements and bank borrowings, the yield on any money market Fund in which the lending Fund could otherwise invest

[3] If the dispute involves Funds with separate Boards, the respective Boards of each Fund will select an independent arbitrator that is satisfactory to each Fund.

and such other information presented to the Fund's Board in connection with the review required by conditions 12 and 13.

16. The Credit Facility Team will prepare and submit to the Board(s) for review, an initial report describing the operations of the credit facility and the procedures to be implemented to ensure that all Funds are treated fairly. After the commencement of operations of the credit facility, the Adviser will report on the operations of the credit facility at the quarterly Board meetings.

In addition, for two years following the commencement of the credit facility, the independent public accountant for each Fund shall prepare an annual report that evaluates the Adviser's assertion that it has established procedures reasonably designed to achieve compliance with the conditions of the order. The report shall be prepared in accordance with the Statements on Standards for Attestation Engagements No. 10 and filed pursuant to Item 77Q3 of Form N-SAR, as such Statements or Form may be revised, amended, or superseded from time to time. In particular, the report shall address procedures designed to achieve the following objectives: (a) That the Interfund Loan Rate will be higher than the Repo Rate and, if applicable, the yield of the money market Funds, but lower than the Bank Loan Rate; (b) compliance with the collateral requirements as set forth in the Application; (c) compliance with the percentage limitations on interfund borrowing and lending; (d) allocation of interfund borrowing and lending demand in an equitable manner and in accordance with procedures established by the Board(s); and (e) that the interest rate on any Interfund Loan does not exceed the interest rate on any third party borrowings of a borrowing Fund at the time of the Interfund Loan.

After the final report is filed, the Fund's external auditors, in connection with their Fund audit examinations, will continue to review the operation of the credit facility for compliance with the conditions of the application and their review will form the basis, in part, of the auditor's report on internal accounting controls in Form N-SAR.

17. No Fund will participate in the credit facility upon receipt of requisite regulatory approval unless it has fully disclosed in its SAI all material facts about its intended participation.

18. A Fund's borrowings through the credit facility, as measured on the day when the most recent loan was made, will not exceed the greater of 125% of the Fund's total net cash redemptions and 102% of sales fails for the preceding seven calendar days.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–8445 Filed 4–13–04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49545; File No. SR–NASD–2003–164]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 by the National Association of Securities Dealers, Inc. Relating to the Adjournment of a Hearing Within Three Business Days of the First Scheduled Hearing Session A

April 8, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 4, 2003, the National Association of Securities Dealers, Inc. ("NASD" or "Association") through its wholly owned subsidiary, NASD Dispute Resolution, Inc. ("NASD Dispute Resolution"), 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 March 5, 2004, NASD filed Amendment No. 1 to the proposed rule change.[3] On April 1, 2004, NASD filed Amendment No. 2 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 Dispute Resolution is proposing to amend NASD IM–10104, Rule 10306, and Rule 10319 of the NASD Code of Arbitration Procedure ("Code") of the NASD, to impose a fee on parties of $100 and to compensate arbitrators in the event a hearing is adjourned within three business days before a scheduled hearing session. Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in [brackets].

* * * * * *

IM–10104. Arbitrators' Honorarium

All persons selected to serve as arbitrators pursuant to the Association's Code of Arbitration Procedure shall be paid an honorarium for each hearing session (including a prehearing conference) in which they participate.

The honorarium shall be $200 for each hearing session[, $50 for travel to a canceled hearing,] and $75 per day additional honorarium to the chairperson of the panel. The honorarium for a case not requiring a hearing shall be $125.

The honorarium for travel to a canceled hearing session shall be $50. If a hearing session other than a prehearing conference is adjourned pursuant to Rule 10319(d), each arbitrator shall receive an additional honorarium of $100.

10306. Settlements

(a) Parties to an arbitration may agree to settle their dispute at any time.

(b) If the parties agree to settle their dispute, they will remain responsible for payment of fees incurred, including fees for previously scheduled hearing sessions and fees incurred as a result of adjournments, pursuant to Rule 10319.

[(b)] *(c)* The terms of a settlement agreement do not need to be disclosed to the Association. However, [the parties will remain responsible for payment of fees incurred, including fees for previously scheduled hearing sessions. If] if the parties fail to agree on the allocation of outstanding fees, the fees shall be divided equally among all parties.

10319. Adjournments

(a) The arbitrator(s) may, in their discretion, adjourn any hearing(s) either upon their own initiative or upon the request of any party to the arbitration.

(b) If an adjournment requested by a party is granted after arbitrators have been appointed, the party requesting the adjournment shall pay a fee equal to the initial deposit of hearing session fees for the first adjournment and twice the initial deposit of hearing session fees, not to exceed $1,500, for a second or subsequent adjournment requested by that party. The arbitrators may waive these fees in their discretion. If more than one party requests the adjournment, the arbitrators shall

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter dated March 5, 2004 from Mignon McLemore, Counsel, NASD Dispute Resolution, to Katherine England, Assistant Director, Division of Market Regulation.

[4] *See* letter dated April 1, 2004 from Mignon McLemore, Counsel, NASD Dispute Resolution, to Katherine England, Assistant Director, Division of Market Regulation.

allocate the fees among the requesting parties.

(c) Upon receiving a third request consented to by all parties for an adjournment, the arbitrator(s) may dismiss the arbitration without prejudice to the Claimant filing a new arbitration.

(d) If an adjournment request is made by one or more parties and granted within three business days before a scheduled hearing session, the party or parties making the request shall pay an additional fee of $100 per arbitrator. If more than one party requests the adjournment, the arbitrators shall allocate the $100 per arbitrator fee among the requesting parties. The arbitrators may allocate all or portion of the $100 per arbitrator fee to the non-requesting party or parties, if the arbitrators determine that the non-requesting party or parties caused or contributed to the need for the adjournment. In the event that a request results in the adjournment of consecutively scheduled hearing sessions, the additional fee will be assessed only for the first of the consecutively scheduled hearing sessions. In the event that an extraordinary circumstance prevents a party or parties from making a timely adjournment request, arbitrators may use their discretion to waive the fee, provided verification of such circumstance is received.

* * * * *

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

1. Purpose

NASD Dispute Resolution proposes to amend NASD IM–10104, Rule 10306, and Rule 10319 of the Code to impose a fee of $100 per arbitrator on parties and to compensate arbitrators in the event a hearing is adjourned within three business days before a scheduled hearing session.

Background

The NASD Code has several provisions dealing with postponements and cancellations of hearings (both situations are included in the term "adjournments"). Rule 10319(b) requires parties to pay fees for first and subsequent adjournments; Rules 10332(f) and 10205(f) provide for the forfeiture of the initial hearing deposit for matters that are settled or withdrawn within eight business days of the first scheduled hearing session (other than a prehearing conference); and Rules 10332(g) and 10205(g) provide that matters that are settled or withdrawn after the commencement of the first hearing session (which may include a prehearing conference) are subject to assessment of forum fees for hearings held or scheduled within eight business days after NASD receives notice of the settlement or withdrawal.

Over the past 13 years, NASD has taken several steps to address the delays caused by adjournments. In 1990, NASD proposed [5] and the SEC approved [6] an amendment to the Code to increase the adjournment fee and establish a timeframe by which an arbitration case could be settled or withdrawn without parties' forfeiting their hearing session deposit. In one provision, NASD proposed to increase the adjournment fee from $100 to an amount equal to the initial hearing session deposit, because it found that "adjournments [were] the single most significant cause of delays in resolving disputes and result[ed] in the lengthening of the overall processing time for arbitration cases."[7] In another provision, NASD proposed that if a case were settled or withdrawn within eight business days of the first scheduled hearing session, NASD would retain the initial hearing session deposit.[8] NASD expected these changes to "reduce delays by discouraging frivolous requests for adjournments in the arbitration process and to encourage more efficient use of this process by parties to arbitration proceedings."[9] In 2001, in an effort to ensure that the adjournment fees would operate as a deterrent to repeated adjournment requests, NASD amended Rule 10319(b) to increase the cap for second or subsequent adjournments from $1,000 to $1,500.[10]

These Code provisions have not had the expected impact on curbing adjournment requests, particularly those requested at the last minute. NASD has found that parties often seek to adjourn scheduled hearing sessions on short notice for various reasons, which may include scheduling conflicts of parties or their counsel, ongoing settlement discussions, or unrelated matters.

The issue of last minute hearing cancellations was raised as a concern by arbitrators at each of the regional arbitrator focus groups held by NASD Dispute Resolution in 2001 and 2002. Arbitration hearing dates are scheduled often months in advance and arbitrators, once assigned to hear a case, must reserve those dates. Thus, if a party requests that a hearing be adjourned at the last minute, the arbitrators lose not only the time that they spent preparing for the hearing and the honoraria from the adjourned hearing (or series of hearings), but also other income they could have earned on the reserved dates. Therefore, NASD Dispute Resolution believes that the proposed rule change is necessary to provide arbitrators with some compensation in the event that a scheduled hearing is adjourned at the last minute and to encourage parties, when appropriate, to settle their disputes earlier to avoid additional fees.

The Proposed Rule Change and its Application

The proposed rule change would amend Rule 10319 to require that an additional $100 fee per arbitrator be paid by one or more parties if their request for an adjournment is made and granted within three business days before a scheduled hearing session or before the first of a number of consecutively scheduled hearing sessions.[11] If one hearing session had been scheduled, the arbitrators would assess this fee for adjourning that hearing session. If a number of consecutively scheduled hearing sessions were scheduled, the fee would be assessed only for adjourning the first hearing in that group of consecutively scheduled hearing sessions, not for all hearing sessions in that group. The Rule will not apply to the adjournment of a prehearing conference. Further, for purposes of determining whether the timing of an adjournment would trigger a fee assessment, holidays recognized by

[5] *See* Securities Exchange Act Rel. No. 27900 (April 12, 1990), 55 FR 15048 (April 20, 1990) (File No. 90–3).

[6] *See* Securities Exchange Act Rel. No. 28086 (June 1, 1990), 55 FR 23493 (June 8, 1990) (File No. 90–3).

[7] *See* Rel. No. 28086 at 23494.

[8] *See* Rel. No. 27900 at 15052.

[9] *See* Rel. No. 28086 at 23494.

[10] *See* Securities Exchange Act Rel. No. 44573 (July 18, 2001), 66 FR 38773 (July 25, 2001) (File No. 2001–21).

[11] Conforming changes are being made to IM–10104 and Rule 10306.

NASD will not be counted as business days.

The following example illustrates how the Rule will work. An arbitrator schedules five consecutive hearing sessions to begin on a Tuesday, following a Monday holiday. If a party's adjournment request is made and granted no later than the preceding Tuesday, the party would not be assessed the $100 per-arbitrator fee, because the request was made and granted more than three business days before the first scheduled day of the hearing session.[12] If, however, a party's request is made and granted on the preceding Wednesday or later in that week, then the party would be assessed the $100 per-arbitrator fee for the adjournment of the first day in a group of consecutively scheduled hearing sessions, which, in the example, is the following Tuesday.[13] The party would not be assessed a $100 per-arbitrator fee for the subsequently scheduled hearing sessions that have now been canceled.

Generally, when NASD Dispute Resolution receives a party's adjournment request, a decision on the request is usually made in a short timeframe (*i.e.*, from a few hours to a few days). Staff of NASD Dispute Resolution makes every effort to process adjournment requests expeditiously, but the requesting party should allow for delays over which the staff has no control. If a requesting party asks for an adjournment within the three days before a scheduled hearing session and the arbitrators cannot be reached, the request will not be granted and the hearing will proceed as scheduled, unless extraordinary circumstances exist, as explained below.

The proposed rule change would allow arbitrators to assess the $100 per-arbitrator fee against the requesting party, after the request is granted. There may be instances, however, in which the arbitrators determine that a non-requesting party has caused or contributed to the need for the adjournment. In these instances, the requesting party can ask for a reallocation of the fees to the non-requesting party or a sharing of the fees. The arbitrators can review the circumstances and, in their discretion, allocate all or a portion of the fee to the non-requesting party. In instances where more than one party requests an adjournment, arbitrators must allocate the fees among those parties.[14]

The proposed rule change also will apply to final settlements reached by the parties. If staff is notified of a final settlement within three business days before a scheduled hearing session, and the hearing must be canceled, this will be considered to be an adjournment request that is "made and granted" for purposes of proposed Rule 10319(d); and the allocation of the $100 per-arbitrator fee will be handled pursuant to Rule 10306.[15]

If an adjournment is requested and granted within three business days before a scheduled hearing session, NASD Dispute Resolution believes that arbitrators should assess the $100 per-arbitrator fee in all cases, regardless of the reason for the request. For example, this fee should be assessed even if arbitrators determine to waive the fees established under Rule 10319(b). NASD Dispute Resolution believes that by applying this standard, arbitrators will not be inundated with requests to waive the fee. NASD Dispute Resolution recognizes, however, that there are some extraordinary circumstances that could prevent a party from making an adjournment request in time to avoid the additional fee assessment (*e.g.*, a serious accident or a sudden severe illness). In these cases, arbitrators will have the discretion to waive the fee, provided they receive verification of such circumstances.[16]

The NASD will announce the effective date of the proposed rule change in a Notice to Members to be published no later than 60 days following Commission approval. The effective date will be 30 days following publication of the Notice to Members announcing Commission approval.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[17] which require, among other things, that the Association's 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 will help NASD Dispute Resolution maintain a deep pool of qualified arbitrators by assuring them of some compensation in the event a scheduled hearing is adjourned at the last minute. NASD believes maintaining depth and quality of arbitrators protects investors and the public interest by providing a more efficient forum for investors to address grievances.

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 proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments should be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–NASD–2003–164. 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, comments should be sent in hard copy or by e-mail but not by both methods. 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

[12] The party could be subject to other fees and costs as a result of adjourning the hearing, however. *See* Rules 10319(b) and 10332(f).

[13] *Id.*

[14] *See* Rule 10319(b).

[15] Rule 10306 is being amended to include a specific reference to fees for adjournments under Rule 10319; however, the provisions of the Rule addressing fee allocation remain unchanged.

[16] A waiver of the fee, pursuant to Rule 10319(d), will not affect the payment of the honorarium, described in IM–10104.

[17] 15 U.S.C. 78o–3(b)(6).

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 will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2003–164 and be submitted by May 5, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–8444 Filed 4–13–04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49536; File No. SR–NYSE–2003–37]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. To Amend Exchange Rule 124 To Change the Way Odd-Lot Orders Are Priced and Executed Systemically

April 7, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on November 18, 2003, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by the Exchange. On March 31, 2004, the Exchange amended the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change seeks to amend NYSE Rule 124 to change the way odd-lot orders are priced and executed systemically. Below is the text of the proposed rule change. Proposed new language is in *italics;* proposed deletions are in [brackets].

* * * * *

Rule 124. (a) Except as provided below, all orders for less than the unit of trading ("odd-lot orders") shall be received, processed, and executed by means of the Exchange system designated for such purpose ("the System"). The specialist for the subject security shall be the contra party to all such executions. No differential or commission may be charged with respect to any odd-lot order received by the System. All odd-lot orders entered for execution to the System shall contain the appropriate account type identification code according to specified account type categories in accordance with the reporting requirements of Rule 132.

(b) Market Orders. Odd-lot market orders received by the System shall be executed in time priority of receipt by the System at the price of the next round-lot transaction on the Exchange in the subject security following receipt of the orders by the System, subject to the following:

(i) Odd-lot buy orders and odd-lot sell orders will be executed at the price of such round-lot transaction with the specialist as the contra side to the extent that such odd-lot orders total an equal number of shares bought and sold.

(ii) The total number of additional shares of odd-lot orders executed at the price of such round lot transaction shall not exceed the number of shares of such round-lot transaction, except that an odd-lot order which would otherwise receive a partial execution shall be executed in full.

(iii) Odd-lot market orders not executed pursuant to paragraph (i) or (ii) above shall be executed, in time priority order, at the price of the subsequent round-lot transactions, subject to the same procedures stated in paragraph (i) and (ii) as to volume of round-lot transactions.

(iv) Any odd-lot market order not executed within 30 seconds of receipt by the System pursuant to paragraphs (i), (ii) or (iii) above shall be executed, in the case of an order to buy, at the price of the adjusted ITS offer after 30 seconds, and in the case of an order to sell, at the price of the adjusted ITS bid after 30 seconds.

(v) Odd-lot market orders entered before the opening of the subject security shall be executed at the price of the opening transaction.

(vi) If odd-lot market orders are entered within 30 seconds of the close of trading and have not been executed prior to the closing transaction, an odd-lot market order to buy shall be executed at the price of the adjusted ITS offer at 4:00 p.m. (or such other closing time), and an order to sell shall be executed at the price of the adjusted ITS bid at 4:00 p.m. (or such other closing time).

(vii) An odd-lot market order to sell short shall be executed at the price of the next sale in the round-lot market on the Exchange following entry of the order which is higher than the last different round-lot price.

(c) Limit Orders. Odd-lot limit orders received by the System shall be executed in time priority of receipt by the System at prices of round-lot transactions effected subsequent to receipt of the orders by the System, that are at or better than the limit prices on the odd-lot orders, subject to the principles of paragraphs (b) (i), (ii) and (iii) above.

(d) Limit Orders to Sell Short. An odd-lot limit order to sell short shall be executed at the price of the first round-lot transaction on the Exchange which is at or above the specified limit of the order, and which is also higher than the last different round-lot transaction (a "plus" or "zero plus" tick).

(e) Market Stop Orders. Odd-lot market stop orders shall be executed as follows:

(i) Buy Stop Orders. A buy stop order shall become a market order when a round-lot transaction takes place at or above the stop price. The order shall then be filled at the price of the next round-lot transaction, as provided in (b) above.

(ii) Sell Stop Orders, Marked "Long". A sell stop order marked "long" shall become a market order when a round-lot transaction takes place at or below the stop price. The order shall then be filled at the price of the next round-lot transaction, as provided in (b) above.

(iii) Sell Stop Orders, Marked "Short". A sell stop order marked "short" shall become a market order when a round-lot transaction takes place at or below the stop price. The order shall then be filled at the price of the next round-lot transaction, which is higher than the last different round-lot transaction (a "plus" or "zero plus" tick) as provided in (b) above.

(f) Limit Stop Orders. Odd-lot stop limit orders shall be executed as follows:

(i) Buy Stop Limited Orders. A buy stop limited order shall become a limited order when a round-lot transaction takes place at or above the stop price. The order shall then be filled in the manner prescribed in (c) above for handling a limited order to buy.

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[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter, from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated March 30, 2004 and accompanying Form 19b–4. ("Amendment No. 1"). Amendment No. 1 replaced the original rule filing in its entirety.

(ii) Sell Stop Limited Orders, Marked "Long". A sell stop limited order marked "long" shall become a limited order when a round-lot transaction takes place at or below the stop price. The order shall then be filled in the manner prescribed in (c) above for handling a limited order to sell.

(iii) Sell Stop Limited Orders, Marked "Short". A sell stop limited order marked "short" shall become a limited order when a round-lot transaction takes place at or below the stop price. The order shall then be filled in the manner prescribed in (d) above for handling a limited order to sell.

[(A) Any market order to purchase or sell a security in an amount less than the unit of trading (an odd-lot order) which is transmitted for execution to a member organization engaged in the odd-lot business or its agent shall be executed, unless otherwise provided herein, at the price of the adjusted ITS bid (in the case of an order to sell) or adjusted ITS offer (in the case of an order to purchase) in the security at the time the order is received by the Exchange system designated to process odd-lot orders ("the odd-lot system"). In instances in which quotation information is not available, *e.g.*, the quotation collection or dissemination facilities are inoperable, or the market in a security has been determined to be in a "non-firm mode" (as defined in Rule 60(c)(2)), standard, regular way odd-lot market orders will be executed by means of the "odd-lot system" at the price of the next Exchange round lot sale or will be executed by the member organization designated by the Exchange to act as market maker for odd-lot orders in the subject security at a price deemed appropriate under prevailing market conditions. In instances where the quote in a security does not meet odd-lot system guidelines, standard, regular way odd-lot market orders will be executed by means of the next Exchange round lot sale or the next Exchange quote that is within the odd-lot system guidelines, whichever occurs first, or will be executed by the member organization designated by the Exchange to act as market maker for odd-lot orders in the subject security at a price deemed appropriate under prevailing market conditions. Guidelines for quotes to be utilized in the odd-lot system will be as from time to time determined by the Exchange and announced to the membership. A market order to sell marked "short exempt" shall be executed at the price of the adjusted ITS bid at the time the order is received by the "odd-lot system". All standard odd-lot market orders entered prior to the opening of trading will automatically receive the opening price. No differential shall be charged on such transactions enumerated in this paragraph. These procedures shall apply to orders to buy on the offer and orders to sell on the bid marked "long".

A market order to sell marked "short" shall be filled at the price of the next sale in the round-lot market on the Floor of the Exchange following entry of the order which is higher than the last different round-lot price.

Other odd-lot orders, unless otherwise provided under Section B, shall be executed in the manner described below. The term "first transaction," unless otherwise provided herein, shall be regarded as the first round-lot transaction to occur in the security following the receipt of the order by the appropriate system. The term effective transaction used herein refers to the round-lot transaction on which the execution of an odd-lot order shall be based.

No differential may be charged on any odd-lot order transactions, for either market or limit orders, unless otherwise provided in this rule.

All odd-lot orders entered for execution to the "odd-lot system" shall contain the appropriate account type identification code according to specified account type categories in accordance with the reporting requirements of Rule 132.

Limited Orders

(1) Buy Limited Orders. The effective transaction for a limited order to buy shall be the first round-lot transaction which is at or below the specified limit. The order shall be filled at the price of the effective transaction.

(2) Sell Limited Orders, Marked "Long." The effective transaction for a limited order to sell marked "long" shall be the first round-lot transaction which is at or above the specified limit. The order shall be filled at the price of the effective transaction.

(3) Sell Limited Orders, Marked "Short." The effective transaction for a limited order to sell marked "short" shall be the first round-lot transaction which is at or above the specified limit of the order, and which is also higher than the last different round-lot transaction (a "plus" or "zero-plus" tick). The order shall be filled at the price of the effective transaction.

(4) Marketable limit orders shall be effected in accordance with the above procedures applicable to standard limit orders.]

[(5)] (*g*) Limited Order, "With or Without Sale." A limited order "With or Without Sale" shall be filled on an effective round-lot transaction, or an effective bid or offer, whichever occurs first after the odd-lot broker receives the order. The order shall be filled as follows:

(i) If an effective round-lot transaction occurs first, a buy order shall be filled at the price of the effective transaction and a sell order shall be filled at the price of the effective transaction.

(ii) If an effective bid or an effective offer occurs before an effective round-lot transaction takes place, a buy order shall be filled at the effective offer price and a sell order shall be filled at the effective bid price.

[Stop Orders

(1) Buy Stop Orders. A buy stop order shall become a market order when a round-lot transaction takes place at or above the stop price. The order shall then be filled at the price of the next transaction.

(2) Sell Stop Orders, Marked "Long." A sell stop order marked "long" shall become a market order when a round-lot transaction takes place at or below the stop price. The order shall then be filled at the price of the next transaction.

(3) Sell Stop Orders, Marked "Short." A sell stop order marked "short" shall become a market order when a round-lot transaction takes place at or below the stop price. The order shall then be filled at the price of the next transaction, which is higher than the last different round-lot price.

Stop Limited Orders

(1) Buy Stop Limited Orders. A buy stop limited order shall become a limited order when a round-lot transaction takes place at or above the stop price. The order shall then be filled in the manner prescribed for handling a limited order to buy.

(2) Sell Stop Limited Orders, Marked "Long." A sell stop limited order marked "long" shall become a limited order when a round-lot transaction takes place at or below the stop price. The order shall then be filled in the manner prescribed for handling a limited order to sell, marked "long."

(3) Sell Stop Limited Orders, Marked "Short." A sell stop limited order marked "short" shall become a limited order when a round-lot transaction takes place at or below the stop price. The order shall then be filled in the manner prescribed for handling a limited order to sell, marked "short."]

[(B)] (h) Other Types of Orders

Buying on Closing Offer-Selling on Closing Bids

(1) Buy "On Close." An order to buy "On Close" shall be filled at the price of the closing round-lot sale.

(2) Sell "On Close." An order to sell "On Close" marked "long" shall be filled at the price of the closing round-lot sell. An order to sell "On Close" marked "short" shall not be accepted.

Discretionary Orders

A discretionary order must not be accepted by an odd-lot dealer.

Orders for Manual Handling

A "seller's option" trade for delivery within not less than six business days nor more than sixty days following the day of the contract, an odd-lot order for cash, any orders for additional settlement terms as may be provided under Rule 64, and basis price orders as discussed below, shall be represented by the specialist and executed at a price deemed appropriate in accordance with the terms of the orders. A differential may be charged on such orders.

Basis Price Order

An order may be filled at the "Basis Price" provided a Basis Price has been established and the order was received at least a half hour before the close of the market, and marked "On Basis". "On Basis" market orders and "On Basis" limited price orders for which the Basis Price is effective shall be filled as follows.

(1) Buy Order. A buy order marked "Basis Price" shall be filled at the Basis Price plus any differential.

(2) Sell Order. A sell order marked "long" and marked "Basis Price" shall be filled at the Basis Price minus any differential. A sell order marked "short" may not be filled at the Basis Price.

(See Rule 124.10 for establishment of Basis Prices).

Supplementary Material

.10 Basis Prices.—Basis Prices shall be established by joint agreement of odd-lot dealers in 100-share unit stocks where there has been no round-lot sale during the trading session, the spread between the closing bid and offer prices is two points or more and an odd-lot dealer has been given an "On Basis" order. The Basis Price must be reviewed and approved by a Floor Official.

.20 "Delayed Sale," "Sold Sale."—When a "delayed sale" or "sold sale" occurs (printed on the ticker tape followed by the symbol "sold"), the odd-lot dealers shall make every effort to ascertain the approximate time the transaction took place. If there is some doubt as to whether or not this transaction in any way affects the execution of an odd-lot order, the firm that entered the order should be notified, informed of the circumstances, and given the opportunity to accept or reject a report based on the transaction.

.30 Sales Not Printed on the Tape.—The customer of the odd-lot dealer must accept a report based on a sale which took place on the Floor, but which, through error, was not printed on the tape, if the odd-lot dealer filled and reported the customer's order at the time the sale occurred.

If the odd-lot dealer failed to fill the order at the time the sale occurred the customer should be offered the choice of accepting or refusing a report based on that sale.

.40 Orders to Be Reduced on Ex-Date.—Open buy limited orders and open stop orders to sell held by an odd-lot dealer prior to the day a stock sells ex-dividend, ex-distribution or ex-rights shall be handled in accordance with the procedures set forth in Rule 118 and the provisions in Rule 118.10, .20 and .21 in the Supplementary Material thereto.

.50 The odd-lot portion of PRL (part of round lot) orders will be executed at the same price as the round lot portion and will be processed through the round lot system.

.60 For the purposes of paragraph [(A)](*b*) of this Rule, the term "adjusted ITS bid" and "adjusted ITS offer" for a stock shall mean the highest bid and lowest offer, respectively, disseminated (i) by the Exchange or (ii) by another market center participating in the "Intermarket Trading System," as that term is defined in Rule 15 ("ITS and Pre-Opening Applications"); provided, however, that the bid and offer in another ITS market center will be considered in determining the adjusted ITS bid and adjusted ITS offer in a stock only if (A) the stock is included in ITS in that market center, (B) the size of the quotation is greater than 100 shares, (C) the bid or offer is no more than one-quarter dollar away from the bid or offer, respectively, disseminated by the Exchange, (D) the quotation conforms to the requirements of Rule 62 ("Variations"), (E) the quotation does not result in a locked market, as the term is defined in Rule 15A ("ITS Trade-Throughs and Locked Markets"), (F) the market center is not experiencing operational or system problems with respect to the dissemination of quotation information, and (G) the bid or offer is "firm," that is, members of the market center disseminating the bid or offer are not relieved of their obligations with respect to such bid or offer under paragraph (c)(2) of Rule 11Ac1–1 pursuant to the "usual market" exception of paragraph (b)(3) of Rule 11Ac1–1.

.70 In instances in which quotation information is not available, e.g., the quotation collection or dissemination facilities are inoperable, or the market in a security has been determined to be in a "non-firm mode" (as defined in Rule 60(c)(2)), standard, regular way odd-lot market orders will be executed by means of the odd-lot System at the price of the next Exchange round lot sale or will be executed by the specialist in the subject security at a price deemed appropriate under prevailing market conditions. In instances where the quote in a security does not meet odd-lot system guidelines, standard, regular way odd-lot market orders will be executed by means of the next Exchange round lot sale or the next Exchange quote that is within the odd-lot system guidelines, whichever occurs first, or will be executed by the specialist in the subject security at a price deemed appropriate under prevailing market conditions. Guidelines for quotes to be utilized in the odd-lot system will be as from time to time determined by the Exchange and announced to the membership.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, 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 Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Odd-lot orders are orders for a size less than the standard unit (round-lot) of trading, which is 100 shares for most stocks, although some stocks trade in 10 share units. Currently, odd-lot orders do not enter the Exchange's auction market, but are executed systemically, with the specialist being assigned as the contra-party in all cases. Odd-lot market orders to buy (sell) are generally executed at the price of the adjusted ITS round-lot

offer (bid) [4] at the time the Exchange's system receives the order. Odd-lot limit orders are generally executed at the price of the first round-lot transaction, subsequent to the receipt of the order by the system, that is at or better than the limit price on the order.

Specialists are not informed as to the amount of odd-lot shares that they are acquiring or selling at the time of execution in the odd-lot system. In some instances, a significant number of shares can be acquired by or sold before the specialist is alerted to the position change. When the odd-lot orders consist primarily of limit orders, the triggering round-lot trade could be for as little as 100 shares, yet it could have a significant impact on the specialist's market-making position.

Recently, new odd-lot trading strategies [5] have emerged which have resulted in specialists having to assume large positions of aggregated odd-lot orders at prices that are not necessarily reflective of the prices such orders would have received had they been executed pursuant to the supply/demand dynamics of the round-lot auction market. For example, a round-lot trade as small as 100 shares may result in the specialist having to assume a position of thousands of shares in odd-lot orders entered in furtherance of professional trading strategies. According to the Exchange, this results in increased, significant financial risk to specialists, as the odd-lot system was established as a service for very small retail investor orders.

The Exchange believes that the most appropriate way to execute odd-lot orders, ultimately, is to represent them in the round-lot auction market, where they will interact with all other market interest, and be priced in accordance with supply/demand dynamics. In addition, odd-lot volume would be reported to the Consolidated Tape, resulting in "sunlight" with respect to this market activity, which is not currently reported anywhere.

However, representing odd-lot orders in the round-lot market will require technical changes to a number of Exchange systems, and cannot be implemented in the near term. As an interim measure, the Exchange is proposing to change the way odd-lot orders are priced and executed systemically. Under the proposal, odd-lot orders would be priced and executed at the price of subsequent round-lot transactions, and in proportion to round-lot volume, as follows:

a. *Market Orders.* Odd-lot market orders would be executed in time priority at the price of the next round-lot transaction. Buy and sell orders would, in essence, be netted against one another and executed (the specialist is technically the contra party to the buy orders and to the sell orders, but since the specialist is buying the same amount that he or she is selling, there is no economic consequence to the specialist in this type of pairing-off of orders). Any imbalance of buy or sell orders would be executed against the specialist, but only up to the size of the round-lot transaction. Any market orders that do not receive an execution because of the volume limitation would be executed, in time priority order, at the price of the next round-lot transaction, again subject to the volume limitation. There would be a "timer" provision in the rule to provide that an order not executed within 30 seconds would be executed at the price of the adjusted ITS best round-lot bid (in the case of a sell order) or offer (in the case of a buy order).

Example: Assume that there are 6,000 shares of odd-lot market orders to buy and 4,000 shares of odd-lot market orders to sell. A round-lot transaction takes place at a price of $20 for 1,000 shares. Buy orders up to 4,000 shares, in time priority will be netted against the 4,000 shares of sell orders, and these orders will be executed at a price of $20. The next 1,000 shares of buy orders, in time priority, will be executed against the specialist at a price of $20. The remaining 1,000 shares of buy market orders will be executed at the price of the next round-lot transaction, subject to the volume limitation of such next transaction. However, any market orders that are not executed within 30 seconds after they are entered will be systemically executed against the specialist at the adjusted ITS best bid or offer price in existence at that time.

b. *Limit Orders.* Odd-lot limit orders will be executed at the price of the first round-lot transaction that is at or better than the limit price of the order, subject to the volume limitation of the round-lot transaction. Odd-lot limit orders will be aggregated with odd-lot market orders for purposes of the volume limitation. Limit orders eligible for execution would be intermingled with market orders for purposes of determining time priority, and buy and sell orders could be netted in the same fashion as market orders. As with odd-lot market orders, odd-lot limit orders which would otherwise receive a partial execution will be executed in full. There is no "timer" for odd-lot limit orders.

Example: Assume that a customer enters an odd-lot limit order to buy 50 shares at a price of $20. A round-lot transaction takes place at a price of $20 for 1,000 shares, but 1,000 shares of odd-lot market orders had time priority and are executed at a price of $20 against the specialist. The odd-lot limit order will continue to reside in the odd-lot system and retain its time priority for execution after a subsequent round-lot transaction that is at or better than the limit price of the odd-lot order.

The Exchange believes that the method of pricing for odd-lot orders being proposed in the interim program, *i.e.*, using the next sale price, offers these orders the possibility of price improvement, whereas using the quotation does not. In addition, the proposed method of pricing is consistent with the Exchange's ultimate approach of integrating odd-lots in the round-lot auction market, in which orders are executed in, and at the prices of, transactions effected subsequent to the entry of the orders.[6]

Odd-lot sell orders which are short sales will be executed as follows. A short sale market odd-lot order will be eligible for execution at the price of the next sale in the round-lot market on the Exchange which is higher than the last different round-lot transaction. Short sale limit odd-lot orders will be eligible for execution at the price of the first round-lot transaction on the Exchange which is at or above the specified limit of the order, and which is also higher than the last different round-lot transaction.

Stop orders in odd-lots will be handled as they are today. The odd-lot portion of part round-lot orders will continue to be executed at the same price as the price of the first round-lot portion of the order. Procedures in use today regarding execution of odd-lot orders when Exchange quotes are not available, are non-firm, or do not meet system validations, are also being retained in the amended rule.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is

[4] "Adjusted ITS bid" and "adjusted ITS offer" are defined in NYSE Rule 124.60.

[5] The Exchange has identified and advised its membership that certain types of trading strategies are not valid for use with odd-lot orders. These include unbundling round-lot orders, failure to aggregate odd-lot orders into round-lots, entry of both buy and sell odd-lot limit orders for purposes of capturing the spread in a stock, index arbitrage and other patterns of activity that suggest day-trading. *See* NYSE Information Memos Nos. 91–29 (July 25, 1991), 94–14 (April 18, 1994), and 04–14 (March 19, 2004). The Exchange takes regulatory action where appropriate with respect to such trading practices.

[6] The Commission notes that such an approach would be subject to a rule change filing under section 19(b) of the Act.

consistent with section 6(b) of the Act,[7] in general, and further the objectives of section 6(b)(5),[8] in particular, because it is designed 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.

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 neither solicited nor received written comments on 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 the proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–NYSE–2003–37. 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, comments should be sent in hard copy or by e-mail but not by both methods. 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. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–2003–37 and should be submitted by May 5, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–8446 Filed 4–13–04; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49533; File No. SR–ODD–2004–02]

Self-Regulatory Organizations; the Options Clearing Corporation; Order Granting Approval of Proposed Amendment to the Front Inside Cover Page of the Options Disclosure Document

April 7, 2004.

On March 9, 2004, the Options Clearing Corporation ("OCC") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Rule 9b–1 under the Securities Exchange Act of 1934 ("Exchange Act"),[1] five definitive copies of an amendment to its options disclosure document ("ODD") to amend the ODD's front inside cover page to add the Boston Stock Exchange, Inc. ("BSE").[2]

The ODD currently contains general disclosures on the characteristics and risks of trading standardized options. The front inside cover page contains a listing of the U.S. national securities exchanges that trade options issued by OCC. BSE currently trades options issued by OCC.[3] The proposed amendment would add BSE and its corporate address to the front inside cover page of the ODD so that it contains a current list of the U.S. exchanges that trade options issued by the OCC.

The Commission has reviewed the proposed amendment and finds that it complies with Rule 9b–1 under the Exchange Act.[4] Rule 9b–1(b)(2)(i) under the Exchange Act[5] provides that an options market must file five copies of an amendment or supplement to the ODD with the Commission at least 30 days prior to the date definitive copies are furnished to customers, unless the Commission determines otherwise, having due regard to the adequacy of information disclosed and the public interest and protection of investors.[6] In addition, five definitive copies shall be filed with the Commission not later than the date the amendment or supplement, or the amended options disclosure document, is furnished to customers. The Commission has reviewed the proposed amendment, and finds it consistent with the protection of investors and in the public interest to allow the distribution of this document as of the date of this order.

It is therefore ordered, pursuant to Rule 9b–1 under the Exchange Act,[7] that the proposed amendment (SR–ODD–2004–02), which would add BSE and its corporate address to the front inside cover page of the ODD, is approved. The Commission has also determined that definitive copies can be furnished to customers as of the date of this order.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–8413 Filed 4–13–04; 8:45 am]

BILLING CODE 8010–01–P

[1] 17 CFR 240.9b–1.

[2] See letter from Jean M. Cawley, First Vice President and Deputy General Counsel, OCC, to Sharon Lawson, Senior Special Counsel, Division of Market Regulation, Commission, dated March 9, 2004 ("OCC letter").

[3] See Securities Exchange Act Release No. 49068 (January 13, 2004), 69 FR 2775 (January 20, 2004) (approving File No. SR–BSE–2002–15).

[4] 17 CFR 240.9b–1.

[5] 17 CFR 240.9b–1(b)(2)(i).

[6] This provision is intended to permit the Commission either to accelerate or extend the time period in which definitive copies of a disclosure document may be distributed to the public.

[7] 17 CFR 240.9b–1.

[8] 17 CFR 200.30–3(a)(39).

SMALL BUSINESS ADMINISTRATION

Public Federal Regulatory Enforcement Fairness Roundtable; Region II Regulatory Fairness Board

The Small Business Administration Region II Regulatory Fairness Board and

the SBA Office of the National Ombudsman will hold a Public Roundtable on Wednesday, April 28, 2004, at 8:30 a.m. at the Ridge Hill Plaza Development Corporation, 1 Ridge Hill Road, South Ridge Room, Yonkers, NY 10710–5511, to provide small business owners and representatives of trade associations with an opportunity to share information concerning the Federal regulatory enforcement and compliance environment.

Anyone wishing to attend or to make a presentation must contact Herbert Austin in writing or by fax, in order to be put on the agenda. Herbert Austin, Deputy Director, SBA New York District Office, 26 Federal Plaza, Suite 31–08, New York, NY 10278, phone (212) 264–1482, fax (212) 264–7751, e-mail: *herbert.austin@sba.gov*.

For more information, *see* our Web site at *http://www.sba.gov/ombudsman*.

Dated: April 8, 2004.

Peter Sorum,

Senior Advisor, Office of the National Ombudsman.

[FR Doc. 04–8426 Filed 4–13–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Public Federal Regulatory Enforcement Fairness Roundtable, Region V Regulatory Fairness Board

The Small Business Administration Region V Regulatory Fairness Board and the SBA Office of the National Ombudsman will hold a Public Roundtable on Thursday, April 29, 2004, at 1 p.m. at the Radisson Hotel Lansing, Michigan Room 2 & 3, 111 N. Grand Avenue, Lansing, MI 48933, to provide small business owners and representatives of trade associations with an opportunity to share information concerning the federal regulatory enforcement and compliance environment.

Anyone wishing to attend or to make a presentation must contact Constance Logan in writing or by fax, in order to be put on the agenda. Constance Logan, Senior Manager Economic Development, SBA Michigan District Office, 477 Michigan Avenue, Suite 515, Detroit, MI 48226, phone (313) 226–6075 Ext. 279, fax (313) 226–4769, e-mail: *constance.logan@sba.gov*.

For more information, see our Web site at *http://www.sba.gov/ombudsman*.

Dated: April 8, 2004.

Peter Sorum,

Senior Advisor, Office of the National Ombudsman.

[FR Doc. 04–8427 Filed 4–13–04; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4690]

Culturally Significant Objects Imported for Exhibition Determinations: "The Arts and Crafts Movement in Europe and America: Design for the Modern World, 1880–1920"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 *note*, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 (68 FR 19875), I hereby determine that the objects to be included in the exhibition "The Arts and Crafts Movement in Europe and America: Design for the Modern World, 1880–1920," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at the Los Angeles County Museum of Art, Los Angeles, California from on or about December 19, 2004, until on or about March 27, 2005, at the Delaware Art Museum, Wilmington Delaware, from on or about June 17, 2005, until on or about September 11, 2005, at the Cincinnati Art Museum from on or about October 21, 2005, until on or about January 26, 2006, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact the Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6982). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: April 7, 2004.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 04–8469 Filed 4–13–04; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4689]

Culturally Significant Objects Imported for Exhibition Determinations: "Beyond Geometry: Experiments in Form, 1940s–70s"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "Beyond Geometry: Experiments in Form, 1940s–70s," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at the Los Angeles County Museum of Art, Los Angeles, California from on or about June 13, 2004 until on or about October 3, 2004, at the Miami Art Museum, Miami, Florida, from on or about November 18, 2004 until on or about May 1, 2005, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact the Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6982). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: April 7, 2004.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 04–8468 Filed 4–13–04; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number MARAD 2004 17520]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel FAWAN.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2004–17520 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

DATES: Submit comments on or before May 14, 2004.

ADDRESSES: Comments should refer to docket number MARAD–2004 17520. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel FAWAN is:

Intended Use: "Private charters."

Geographic Region: "US East Coast."

Dated: April 8, 2004.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 04–8410 Filed 4–13–04; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD 2004–17519]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel L'AQUILA.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 20004–17519 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

DATES: Submit comments on or before May 14, 2004.

ADDRESSES: Comments should refer to docket number MARAD–2004–17519. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel L'AQUILA is:

Intended Use: "Charter and sail training on the Great Lakes."

Geographic Region: "Great Lakes."

Dated: April 8, 2004.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 04–8411 Filed 4–13–04; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Maritime Security Act of 2003, Subtitle D—National Defense Tank Vessel Construction Assistance

AGENCY: Maritime Administration, DOT.

ACTION: Supplemental notice of request for competitive proposals for construction of new product tank vessels.

SUMMARY: The purpose of the supplemental notice is to amend the schedule contained in section I of the Request for Competitive Proposals (RFP)

which is available on the Internet at *http://www.fedbizopps.gov* and *http://www.marad.dot.gov* and the hard copies of the RFP which are available in the Office of the Secretary, Maritime Administration.

FOR FURTHER INFORMATION CONTACT: Gregory V. Sparkman, Office of Insurance and Shipping Analysis, Maritime Administration, Room 8117, 400 Seventh Street, SW., Washington, DC 20590; telephone (202) 366–2400; fax (202) 366–7901.

SUPPLEMENTARY INFORMATION: The supplemental notice amends the schedule contained in section I of the current RFP by extending the currently scheduled date for submission of Phase I Proposals by 45 days. This extension necessitates the extension of other deadline dates by 45 days.

Three companies submitted initial comments in response to the notice published in the **Federal Register** on February 20, 2004, on the National Defense Tank Vessel Construction Assistance Program. Two of the commenters requested a 45-day extension be granted with respect to the due date on the Phase I Proposals, which is currently set for May 4, 2004. According to the two companies making the request, the grant of the 45-day extension will ensure that MARAD receives competitive proposals that will present the best value to the government. The third commenter requested that MARAD delay responses to the RFP until funds are specifically appropriated for the National Defense Vessel Construction Program.

MARAD believes that delay of responses to the RFP until funds are specifically appropriated could seriously delay the implementation of the program. On the other hand, the grant of the 45-day extension on the due date of Phase I—Request for Competitive Proposals—should enable the proponents of extension to improve the quality of their submission.

The schedule contained in section I of the RFP shall be modified to reflect the 45-day extension, as follows:

Issue RFP—Friday, February 20, 2004
Phase I Proposals Due—Friday, June 18, 2004 (120 calendar days)
Phase I Evaluation Complete—Thursday, September 2, 2004 (76 calendar days)
Phase II Offerors Notified—Tuesday, September 7, 2004 (5 calendar days)
Phase II Proposals Due—Saturday, November 20, 2004 (75 calendar days)
Phase II Evaluation Complete—Thursday, February 3, 2005 (75 calendar days)

The RFP is available on the Internet at *http://www.fedbizopps.gov* and *http://www.marad.dot.gov*. Hard copies of the amended RFP will be available in the Office of the Secretary, Maritime Administration.

Authority: 49 CFR 1.66.

By Order of the Maritime Administrator.
Dated: April 8, 2004.

Joel C. Richard,
Secretary, Maritime Administration.

[FR Doc. 04–8409 Filed 4–13–04; 8:45 am]
BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2002–12366 Notice 2]

General Motors Corporation; Ruling on Petition for Determination of Inconsequential Noncompliance

General Motors Corporation (GM) has determined that the seat belt assemblies in approximately 1,870,000 of the company's model year (MY) 2001–2002 vehicles fail to comply with the requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 209, *Seat Belt Assemblies* (49 CFR 571.209). The identified noncompliance involves the emergency-locking retractors (ELR) [1] in the seat belt assemblies for the vehicles' front outboard seats. Some of the ELRs in these assemblies do not lock before the belt webbing extends 25 mm (1 inch) when they are subjected to an acceleration of 7 m/s2 (0.7 g), as required under paragraph S4.3(j)(1) of the standard. Pursuant to 49 CFR Part 573, GM filed a Noncompliance Information Report with the National Highway Traffic Safety Administration (NHTSA) on April 19, 2002.[2]

In general, manufacturers of motor vehicles and replacement equipment are required to notify owners of, and provide a remedy for, noncompliances with FMVSSs. 49 U.S.C. 30118–30120. However, 49 U.S.C. 30118(d) and 30120(h) authorize manufacturers to file petitions for an exemption from these notification and remedy requirements on the basis that the noncompliance is inconsequential to motor vehicle safety.

GM submitted such a petition on May 3, 2002.[3] The petition stated that the noncompliance occurs because the vehicle-sensitive ELR mechanism in a small number of seat belt assemblies can be disabled by atypical handling during transit from GM's safety belt supplier, TK Holdings, Inc. (TKH), to the seat suppliers or during installation in vehicle seats.

The ELR in the vehicles in question incorporates two different types of locking mechanisms. The first is a vehicle-sensitive mechanism that was used to certify compliance with FMVSS No. 209, and which, when functioning, meets the requirements of the standard. The second locking mechanism is a voluntarily supplied, webbing-sensitive one that does not meet the requirements of the standard (although webbing-sensitive ELRs can be designed to comply with FMVSS No. 209). GM asserted that the failure of the vehicle-sensitive mechanism was inconsequential to safety because the webbing-sensitive system offers a level of protection nearly equivalent to that provided by a compliant ELR under the conditions that it and TKH evaluated. GM also submitted a calculation, based on a number of assumptions, which it asserts shows that less than one person would be likely to sustain a moderate to severe injury as a result of the noncompliance.

The vehicles covered by the petition are all MY 2001 and most MY 2002 C series and K series (C/K) vehicles (such as the GMC C/K pickups, GMC Yukon, Chevrolet C/K pickups (*e.g.*, the Silverado), Chevrolet Tahoe, Chevrolet Suburban, Chevrolet Avalanche, and Cadillac Escalade), and GM's S series and T series (S/T) vehicles (such as the GMC Envoy, Chevrolet Trailblazer, and Oldsmobile Bravada). As described below, the webbing-sensitive mechanism in the ELRs in the C/K vehicles will lock up the retractor when the webbing is exposed to 2.0 g (the force of gravity), while the webbing-sensitive mechanism in the ELRs in the S/T vehicles does not lock up the retractor until the webbing experiences 3.0 g. The C/K vehicles constitute approximately 80 percent of the vehicles covered by the noncompliance determination.

[1] FMVSS No. 209 defines an "emergency-locking retractor" as "a retractor incorporating adjustment hardware by means of a locking mechanism that is activated by vehicle acceleration, webbing movement relative to the vehicle, or other automatic action during an emergency and is capable, when locked, of withstanding restraint forces." 49 CFR 571.209, S.3.

[2] Although not referred to in GM's Noncompliance Information Report, the failure of the ELRs also constitutes a noncompliance with FMVSS No. 208, *Occupant crash protection*.

[3] GM submitted a revised petition on July 30, 2002 (Docket No. NHTSA–2002–12366–4), which replaced the May 3, 2002 petition (Docket No. NHTSA–2002–12366–3) in full. However, GM stated that the subsequent petition did not change the substance, rationale, basis, or conclusion of the original petition.

On July 8, 2002, NHTSA published a **Federal Register** notice announcing the availability of GM's petition and affording the public a 30-day comment period (67 FR 45179). No comments were received. GM and TKH met with agency staff on four separate occasions to provide and discuss the results of various tests they had conducted to assess the risk of increased injury due to the noncompliance.[4]

For the reasons discussed below, NHTSA has concluded that the noncompliance with FMVSS No. 209 in the C/K vehicles is inconsequential to motor vehicle safety, while the noncompliance in the S/T vehicles (equipped with the less sensitive webbing-based mechanism) is not. Accordingly, GM's petition is granted in part and denied in part.

I. ELR Requirements of FMVSS No. 209

FMVSS No. 209 specifies certain requirements for all seat belt assemblies manufactured for use in passenger cars, multipurpose passenger vehicles, trucks and buses. Among these requirements is one requiring each belt assembly to have either an automatic-locking retractor, an ELR, or an adjusting device that is within the reach of the occupant (S4.1(g)(1)). However, all passenger cars and light trucks are equipped with ELRs pursuant to S7.1.1.3 of FMVSS No. 208, *Occupant Crash Protection,* which requires that the safety belt assemblies in all forward-facing, outboard designated seating positions in vehicles with a gross vehicle weight rating of 10,000 pounds or less be equipped with ELRs meeting the requirements of FMVSS No. 209.

ELRs are designed to provide maximum freedom of movement unless the belted occupant is subjected to a rapid acceleration or deceleration. In a vehicle-sensitive ELR, the locking mechanism is activated in response to a rapid deceleration of the vehicle, such as results from a collision or sudden braking. In a webbing-sensitive ELR, the locking mechanism is activated based on the rate at which the occupant extracts webbing from the retractor housing. In many cases, vehicle manufacturers voluntarily equip their vehicles with ELRs that have both a vehicle-sensitive mechanism and a webbing-sensitive mechanism. The two types of mechanisms do not behave identically, with each offering some advantages over the other.

FMVSS No. 209 permits both webbing-sensitive and vehicle-sensitive ELRs, and either type may be used for certification as long as it meets the conditions set forth in S4.3(j) of the standard. S4.3(j)(1) requires an ELR to lock before the webbing extends 25 mm (one inch) when the retractor is subjected to an acceleration of 0.7 g (7 meters/second^2). S4.3(j)(2) prohibits the locking of a webbing-sensitive retractor at 0.3 g or less; and S4.3(j)(3) prohibits the locking of a vehicle-sensitive retractor when the retractor is rotated 15 degrees or less from its orientation in the vehicle.

The test procedure under which the compliance of ELRs is assessed is found at S5.2(j) of FMVSS No. 209. The ELR is subject to an acceleration of 0.7 g within a period of 50 ms while the attached belt webbing is extended to 75 percent of its total length. The test is conducted differently depending on whether the ELR is webbing-sensitive or vehicle-sensitive, but both types of ELRs must lock in response to the specified acceleration at different angles to account for various possible crash scenarios.

When FMVSS No. 209 was first adopted, the standard required ELRs to lock when subjected to an acceleration of 0.5 g, and not to lock in an acceleration of 0.2 g. In 1970, the agency proposed to increase this 0.5 g level to 2.0 g and to increase the no-lock level to 1.0 g because it was concerned the then-existing requirements resulted in safety belts that cinched up on the user to a degree that was uncomfortable, possibly inhibiting belt use. 35 FR 4641 (March 17, 1970). In response to comments that the proposed acceleration levels were too high, the agency decided to set the acceleration level at which locking is required at 0.7 g and to set the no-lock level at 0.3 g. 36 FR 4607 (March 10, 1971). Those were the levels that GM had suggested in its comments on the Notice of Proposed Rulemaking.

II. The Noncompliance

From May 2000 to May 2002, GM installed front seat belt assemblies in almost two million MY 2001 and 2002 C/K series and S/T series vehicles with ELRs manufactured by TKH that were equipped with a vehicle-sensitive mechanism that, when functioning, met the requirements of S4.3(j) of FMVSS No. 209. However, as GM subsequently discovered, these ELRs could be damaged during handling and installation. In assemblies with damaged retractors, the plastic cross bar at the top of the weight pendulum interferes with the ELR actuator and renders it inoperative. As a result, these vehicle-sensitive mechanisms do not function at all, and they would not lock the safety belt in the event of sudden vehicle deceleration or rollover. However, the ELRs in these vehicles were also equipped with a second, webbing-sensitive locking mechanism, which functions as designed, notwithstanding the breakage of the vehicle-sensitive mechanism. This mechanism will limit the webbing payout of the safety belt, although not in precisely the same manner or under the same conditions as the vehicle-sensitive locking mechanism.

The webbing-sensitive mechanisms in the ELRs installed in the C/K series vehicles were designed to lock up the retractor at 2.0 g, with the objective of meeting the requirements of the Economic Commission for Europe's Regulation No. 16, *Uniform Provisions Concerning the Approval of: Safety-belts and Restraint Systems for Occupants of Power-driven Vehicles; Vehicles Equipped with Safety-belts* (ECE R16) and be sold in Europe.[5] The webbing-sensitive mechanism in the ELRs installed in the S/T series vehicles were designed to lock up the retractor at 3.0 g, since these vehicles were only produced for the U.S. market and were not designed to meet ECE requirements. GM has not claimed that the webbing-sensitive mechanism would allow the ELRs on any of the noncompliant vehicles to meet the 0.7 g acceleration requirements of FMVSS No. 209.

According to GM, the noncompliance was initially discovered by TKH in January 2002. Seat belt assemblies that had been shipped to a Belgian test facility for type approval under ECE R16 were returned to the manufacturer because the vehicle-sensitive locking mechanisms of the ELRs were broken. During inspections of completed seating units at seat assembly plants, TKH discovered that the vehicle-sensitive ELR mechanism was not functioning in a small number of seat belt assemblies. TKH concluded that atypical handling during transit likely damaged the vehicle-sensitive mechanism so that it would not function. To address this, on January 15, 2002, TKH initiated a 100 percent inspection of the seat belt assemblies upon their arrival at the seat-manufacturing facilities.

This inspection practice was intended to, and apparently did, identify failures

[4] GM requested, and was granted, confidentiality for the presentations made to NHTSA during these meetings. This document will include some general information about the test results shared with the agency, but will not reveal detailed information about the confidential materials. All non-confidential documents related to the inconsequentiality petition are posted in the DOT Docket Management System Web site at *http://dms.dot.gov* in Docket No. 2002–12366.

[5] We offer no opinion as to whether these C/K vehicles would satisfy all of the European requirements.

that arose during transit. However, based on its inspection of some seat belt assemblies after their installation in seats, TKH discovered that handling of the assemblies at the seat-manufacturing facilities during installation also could disable the vehicle-sensitive ELR mechanism. Consequently, during March and April of 2002, TKH initiated a 100 percent inspection of the safety belts in assembled seats. Beginning in April 2002, TKH also implemented a design change to the vehicle-sensitive mechanism to improve its robustness, in order to prevent breakage during shipping or installation. GM and TKH are confident that all vehicles produced after April 30, 2002 are equipped with belt assemblies that comply with the emergency locking requirements of FMVSS No. 209.

On the basis of its inspections, TKH has estimated that the mishandling during transit could cause the failure of the vehicle-sensitive mechanism in 58 out of every one million retractors and that mishandling during seat assembly could lead to the failure of this mechanism in an additional 32 out of every one million retractors.

III. GM's Petition for an Inconsequentiality Determination

GM's petition for a determination that the noncompliance is inconsequential to motor vehicle safety took two separate approaches.

First, GM submitted a "risk analysis" in which it estimated that of the approximately 3,740,000 seat belt assemblies in 1,870,000 vehicles produced between May 2000 (*i.e.*, the earliest vehicle production start date among the affected vehicles) and April 29, 2002 (*i.e.*, the date after which it has confidence that the noncompliance was eliminated), there were approximately 271 noncomplying assemblies. It then contended that very few occupants would actually be exposed to any possible increased risk due to the absence of a vehicle-sensitive ELR.

Second, GM submitted the results of a series of frontal sled tests comparing the performance of C/K and S/T vehicles with compliant ELR systems to those vehicles equipped with ELRs with only a webbing-sensitive mechanism. GM asserted that this data demonstrated that the webbing-sensitive locking mechanisms performed nearly identically to a properly functioning vehicle-sensitive ELR mechanism.

In GM's opinion, the existence of the webbing-sensitive locking mechanism, combined with the very low frequency of potentially noncomplying retractors, renders this noncompliance inconsequential with respect to vehicle safety.

IV. NHTSA's Consideration of the GM Inconsequentiality Petition

A. General Principles

Federal motor vehicle safety standards are adopted only after the agency has determined, following notice and comment, that the performance requirements are objective and practicable and "meet the need for motor vehicle safety." See 49 U.S.C. 30111(a). Thus, there is a general presumption that the failure of a motor vehicle or item of motor vehicle equipment to comply with a FMVSS increases the risk to motor vehicle safety beyond the level deemed appropriate by NHTSA through the rulemaking process. To protect the public from such risks, manufacturers whose products fail to comply with a FMVSS are normally required to conduct a safety recall under which they must notify owners, purchasers, and dealers of the noncompliance and provide a remedy without charge. 49 U.S.C. 30118–30120.

However, Congress has recognized that, under some limited circumstances, a noncompliance could be "inconsequential" to motor vehicle safety. It therefore established a procedure under which NHTSA may consider whether it is appropriate to exempt the manufacturer from the duty to conduct a notification and remedy (*i.e.*, recall) campaign. 49 U.S.C. 30118(d) and 30120(h). The agency's regulations governing the filing and consideration of petitions for inconsequentiality exemptions are set out at 49 CFR part 556.

Under the statute and regulations, inconsequentiality exemptions may be granted only in response to the petition of a manufacturer, and then only after publication of a notice in the **Federal Register** and an opportunity for interested members of the public to present information, views, and arguments on the petition. When NHTSA does not receive any public comments, as in the present case, the agency will draw upon its own understanding of safety-related systems and its experience in deciding the merits of a petition. An absence of opposing argument and data does not require us to grant a manufacturer's petition.

"Inconsequential" is not defined either in the statute or in NHTSA's regulations. Rather, the agency determines whether a particular noncompliance is inconsequential to motor vehicle safety based on the specific facts before it.

There have been instances in the past in which NHTSA has determined that a manufacturer has met its burden of demonstrating that a noncompliance is inconsequential to safety. For example, a label intended to provide safety advice to an owner or occupant may have a misspelled word, or it may be printed in the wrong format or the wrong type size. If the manufacturer shows that the discrepancy with the safety requirement is unlikely to lead to any misunderstanding, we have granted an inconsequentiality exemption, especially where other sources of correct information are available (*e.g.*, in the vehicle owner's manual). See *IMPCO Technologies; Grant of Application for Decision of Inconsequential Noncompliance*, 65 FR 14009 (March 15, 2000) (NHTSA–99–6269–2); *TRW, Inc.; Grant of Petition for Determination of Inconsequential Noncompliance*, 58 FR 7171 (February 4, 1993).

The burden of establishing the inconsequentiality of a failure to comply with a performance requirement in a standard is more substantial and difficult to meet, and the agency has not found many such noncompliances to be inconsequential. One area in which the agency has granted such petitions has been where the noncompliance is expected to be imperceptible, or nearly so, to vehicle occupants or approaching drivers. For example, NHTSA has determined that the following three noncompliances with FMVSS No. 108, *Lamps, Reflective Devices, and Associated Equipment*, were inconsequential: where certain headlamps had a slight decrease in long-range visibility and a slight broadening of beam patterns, where the photometric output of certain center high-mounted stop lamps (CHMSL) was blocked by blackout paint, and where a CHMSL illuminated briefly absent braking when the hazard button was fully depressed. In these cases, there was deviation from the performance requirements of the standard, but in each case, the noncompliance was determined to be so minor as to be inconsequential. *See General Motors Corporation; Grant of Application for Decision of Inconsequential Noncompliance*, 63 FR 70179 (December 18, 1998) (NHTSA–98–3813–2); *Subaru of America, Inc.; Grant of Application for Decision of Inconsequential Noncompliance*, 66 FR 18354 (April 6, 2001) (NHTSA–2000–8201–2); *General Motors Corporation; Grant of Application for Decision of Inconsequential Noncompliance*, 66 FR 32871 (June 18, 2001) (NHTSA–2000–7312–2).

Arguments that only a small number of vehicles or items of motor vehicle equipment are affected by a noncompliance will not justify granting an inconsequentiality petition. Likewise, we have rejected petitions based on the assertion that only a small percentage of the vehicles or items of equipment covered by a noncompliance determination are likely to actually exhibit the noncompliance. In many cases, it may not be readily apparent which vehicles or items of equipment are actually noncompliant. More importantly, the key issue in determining inconsequentiality is not the aggregate safety consequences of the noncompliance as a percentage of all drivers, but instead, whether the noncompliance in question is likely to increase the safety risk to individual occupants who experience the type of injurious event against which the standard was designed to protect. *See Cosco, Inc.; Denial of Application for Decision of Inconsequential Noncompliance*, 64 FR 29408 (June 1, 1999) (NHTSA–98–4033–2).

B. Assessment of GM's Arguments in Support of Its Petition

GM's attempt, through its "risk analysis," to minimize the potential safety impact of the noncompliance by arguing that there is a very low likelihood of any particular individual being exposed to an increased risk is not compelling, and we reject it for the reasons discussed above and in previous agency denials of inconsequentiality petitions (*e.g., Cosco, Inc., ibid*). The percentage of potential occupants that could be adversely affected by a noncompliance is irrelevant to the consequentiality of the noncompliance. Rather, the question is whether an occupant who is affected by the noncompliance is likely to be exposed to a significantly greater risk than an occupant in a compliant vehicle.

However, on the basis of the sled test and simulation data provided by GM, the agency has concluded that GM has adequately demonstrated that the potential safety consequences of the failure of the vehicle-sensitive locking mechanisms in the ELRs in the C/K vehicles to function properly are inconsequential. While the webbing-sensitive systems in these vehicles do allow slightly increased belt payout compared to a functional vehicle-sensitive system, and lock slightly later in a crash event, these differences do not appear to expose a vehicle occupant to a significantly greater risk of injury. Conversely, the absence of a properly functioning vehicle-sensitive retractor in the seat belt assemblies installed in the S/T vehicles results in a significant derogation of their performance compared to their performance with a complying assembly, which precludes a determination that the noncompliance is inconsequential in those vehicles.

For both the C/K and S/T vehicles, GM estimated the performance differences between a vehicle with a fully functional, compliant ELR and a vehicle with an ELR that has a broken, non-functioning vehicle-sensitive mechanism and a functioning webbing-sensitive locking mechanism. This analysis was based upon a series of tests conducted by TKH. GM analyzed three scenarios in which there could conceivably be an increased risk: (1) Injuries due to an occupant moving closer to the front of the vehicle following pre-crash braking; (2) injuries in frontal crashes; and (3) injuries in rollover crashes.

With respect to the first scenario, GM presented confidential test data from in-vehicle panic braking tests conducted by TKH in an S/T vehicle at three different speeds with test dummies and human volunteers, as well as simulated sled tests for both C/K and S/T vehicles. Although there is a very slight increase in the amount of belt payout when the vehicle-sensitive mechanism is disabled, we have concluded that it is unlikely to significantly increase the risk of injury during pre-crash braking events in any of these vehicles.

To assess the potential increase in risk in a frontal crash, GM analyzed the results of 30 frontal sled tests at differing test speeds.[6] The tests were conducted with both a 50th percentile adult male test dummy and a 6-year-old child test dummy. The webbing payout, estimated lock time, and dummy head excursion were recorded in each test. In eight of the tests, maximum chest acceleration readings were recorded in accordance with the procedures in FMVSS No. 208. The noncompliance consistently had a greater effect in the S/T vehicles than in the C/K vehicles, although with both types of vehicles, the dummy injury measurements did not increase significantly and were well below the maximum values permitted under FMVSS No. 208.

For example, in two 16 km/h (10 mph) frontal sled tests of the C/K vehicles with a 50th percentile male dummy, the webbing payout of the 2.0 g webbing-sensitive locking mechanism averaged only 2.5 mm (0.1 inch) more than that allowed by the compliant vehicle-sensitive ELRs, the average estimated lock time increased by 5 ms, and there was no difference in forward head excursion. In two 16 km/h (10 mph) frontal sled tests of the S/T vehicles with a 50th percentile male dummy, the webbing payout of the 3.0 g webbing-sensitive locking mechanism averaged 25.0 mm (1.0 inch) more than that allowed by the compliant vehicle-sensitive ELRs, the average estimated lock time increased by approximately 6 ms, and there was an average increase in forward head excursion of 47 mm (1.85 inches).

Similarly, in a 32 km/h (20 mph) frontal sled test of a C/K vehicle with a 50th percentile male dummy, the webbing payout was only 5.0 mm (0.2 inches) more than that allowed by the compliant ELR, there was no increase in the lock time, and there was no difference in forward head excursion. But in two 32 km/h (20 mph) frontal sled tests of the S/T vehicles with a 50th percentile male dummy, the webbing payout averaged 39.4 mm (1.55 inches) more than that allowed by the compliant ELRs, the average estimated lock time increased by 6 ms, and there was an average increase in forward head excursion of 21 mm (0.8 inches).

Sled tests using the 6-year-old child test dummy were conducted at 16 km/h (10 mph). In the C/K vehicles, the webbing payout of the 2.0 g webbing sensitive locking mechanism was, on average, 3.8 mm (0.15 inches) more than that allowed by the compliant ELRs, the average estimated lock time increased by 3.5 ms, and the head excursion increased by an average of 3.8 mm (0.15 inches). In the S/T vehicles, the webbing payout of the 3.0 g webbing sensitive locking mechanism was, on average, 25 mm (1.0 inch) more than that allowed by the compliant ELRs, the average lock time increased by 13 ms, and the head excursion increased by an average of 65 mm (0.65 inches).

NHTSA has concluded that the extremely small increases in webbing payout and lock time, with little or no increased head excursion, reflected in the tests of the ELRs installed in the C/K vehicles do not demonstrate a significant likelihood of increased injury due to the absence of a complying ELR in these vehicles. Accordingly, the agency has determined that the risk of

[6] The highest test speed was 32 km/h (20 mph). TKH explained that "higher severity pulses will increase [the] web extraction rate, causing [the] web sensor to lock faster, and [be] more similar to [the] vehicle sensor." To support this statement, TKH's May 30, 2002 presentation stated that the differences in webbing payout and in the estimated lock times recorded in the 16 km/h (10 mph), 24 km/h (15 mph), and 32 km/h (20 mph) sled tests generally decreased as the test speed increased. NHTSA agrees that it is likely that a webbing-sensitive ELR mechanism will lock up more quickly in a severe frontal crash than in a low-to-moderate severity frontal crash.

injury posed by the noncompliant systems in these vehicles in a frontal crash is not significantly greater than if they had a compliant ELR. However, the differences in the amount of webbing payout, lock time, and head excursion between compliant and noncompliant ELRs in the S/T vehicles were significantly greater than the differences experienced in the C/K vehicles.

With respect to the performance of the noncompliant vehicles in a rollover crash, in its July 30, 2002 submission, GM acknowledged that, in a rollover, "We would expect that the noncomplying belt would not lock up as early as the complying belt, but we have no way to be sure how great a difference there would be." However, during a November 19, 2002 meeting at the agency, TKH presented confidential test data from a rollover simulation that it performed. TKH asserts that this simulation represents the worst-case scenario relative to the ability of these vehicles' webbing-sensitive systems to adequately restrain an occupant in the event of a rollover.[7] These tests yielded data with respect to webbing payout, final belt position, and head and chest displacement.

The data indicates that, in both cases, ELRs with only a webbing-sensitive locking mechanism allowed somewhat more head and chest displacement than the compliant vehicle-sensitive ELRs. However, the increases in the S/T vehicles (with a 3.0 g webbing-sensitive mechanism), was significantly greater than the increases experienced in the C/K vehicles (with a 2.0 g webbing-sensitive mechanism); *e.g.*, the increase in head displacement was approximately twice as large in the S/T vehicles as in the C/K vehicles. This data leads us to conclude that the absence of a vehicle-sensitive locking mechanism in the ELRs installed in the S/T vehicles will significantly increase the safety risk to occupants in a rollover crash, while the increased risk associated with the noncompliance in the C/K vehicles is not likely to be significant.

On the basis of the foregoing, NHTSA has determined that GM has adequately demonstrated that, under the specific facts and circumstances presented here, the noncompliance with FMVSS No. 209 in the C/K vehicles is inconsequential to motor vehicle safety. Conversely, the noncompliance in the S/T vehicles is not inconsequential. Accordingly, GM's petition for an exemption from the duty to recall these noncompliant vehicles is granted in part and denied in part.

Authority: 49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 501.8.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 04–8418 Filed 4–13–04; 8:45 am]

BILLING CODE 4910–59–P

[7] Although the simulated rollover utilized by TKH is relatively benign in terms of crash severity, we agree with GM and TKH that it presents a "worst case" scenario for the purpose of assessing the likelihood that an occupant of a vehicle with only a webbing-sensitive ELR would be adversely affected by additional webbing payout in a rollover, since a more violent crash would likely cause the webbing-sensitive system to lock more quickly than in the simulation.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5330

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5330, Return of Excise Taxes Related to Employee Benefit Plans.

DATES: Written comments should be received on or before June 14, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411; 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at *Larnice.Mack@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Return of Excise Taxes Related to Employee Benefit Plans.

OMB Number: 1545–0575.

Form Number: Form 5330.

Abstract: Internal Revenue Code sections 4971, 4972, 4973(a), 4975, 4976, 4977, 4978, 4978A, 4978B, 4979, 4979A, and 4980 impose various excise taxes in connection with employee benefit plans. Form 5330 is used to compute and collect these taxes. The IRS uses the information on the form to verify that the proper amount of tax has been reported.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Pubic: Individuals and business or other for-profit organizations.

Estimated Number of Respondents: 8,403.

Estimated Time Per Respondent: 37 hours, 14 minutes.

Estimated Total Annual Burden Hours: 312,844.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 5, 2004.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–8476 Filed 4–13–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[INTL–952–86]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking and temporary regulation, INTL–952–86 (TD 8228), Allocation and Apportionment of Interest Expense and Certain Other Expenses (§§ 1.861–9T, and 1.861–12T).

DATES: Written comments should be received on or before June 14, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Larnice Mack at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at *Larnice.Mack@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Allocation and Apportionment of Interest Expense and Certain Other Expenses.

OMB Number: 1545–1072.

Regulation Project Number: INTL–952–86.

Abstract: Section 864(e) of the Internal Revenue Code provides rules concerning the allocation and apportionment of interest and certain other expenses to foreign source income for purposes of computing the foreign tax credit limitation. These regulations provide for the affirmative election of either the gross income method or the asset method of apportionment in the case of a controlled foreign corporation.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, and business or other for-profit organizations.

Estimated Number of Respondents/Recordkeepers: 15,500.

Estimated Time Per Respondent/Recordkeeper: 15 minutes.

Estimated Total Annual Reporting/Recordkeeping Hours: 3,750.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 5, 2004.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–8477 Filed 4–13–04; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register
Vol. 69, No. 72
Wednesday, April 14, 2004

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Programmatic Environmental Impact Statement for the Near–Term Ecosystem Restoration Plan for the Louisiana Coastal Area

Correction

In notice document 04–7967 beginning on page 18552 in the issue of Thursday, April 8, 2004, make the following corrections:

1. On page 18553, in the third column, in the 24th line from the top, "march" should read "marsh".

2. On the same page, in the same column, in the 38th line from the top, "march" should read "marsh".

[FR Doc. C4–7967 Filed 4–13–04; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: The Colorado College, Colorado Springs, CO

Correction

The correct text of notice document 04-8170 was inadvertently left out of the issue of Monday, April 12, 2004. It is being published in Separate Part IV in this issue of the **Federal Register**.

[FR Doc. C4–8170 Filed 4–13–04; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Wednesday,
April 14, 2004

Part II

Department of Housing and Urban Development

24 CFR Parts 30 and 203
Treble Damages for Failure To Engage in Loss Mitigation; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 30 and 203

[Docket No. FR–4553–P–02]

RIN 2501–AC66

Treble Damages for Failure To Engage in Loss Mitigation

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule amends HUD's civil money penalty regulations to reflect HUD's authorization to impose treble damages on a mortgagee for any mortgage for which the mortgagee had a duty but failed to engage in appropriate loss mitigation actions. The proposed rule follows publication of an advanced notice of proposed rulemaking (ANPR) and takes into consideration public comments received on the ANPR.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address.

DATES: *Comment Due Date:* June 14, 2004.

FOR FURTHER INFORMATION CONTACT: Michael Reyes, Office of the Deputy Assistant Secretary for Single Family Housing, Office of Housing, Department of Housing and Urban Development, 301 NW Sixth Street, Oklahoma City, OK 73102–2807, telephone (405) 609–8475 (this is not a toll-free number). Hearing-or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

Sections 601(f), (g), and (h) of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999 (Pub. L. 105–276, approved October 21, 1998) amended sections 230, 536(a), and 536(b)(1) of the National Housing Act (NHA) (12 U.S.C. 1715u, 12 U.S.C. 1735f–14(a)(2), and 12 U.S.C. 1735f–14(b)(1), respectively) to add a triple penalty to the existing civil money penalty system for failure to engage in appropriate loss mitigation. Section 230(a) of Title II of the NHA, as amended, makes it mandatory for the mortgagee, upon the default of a single family mortgage, to engage in loss mitigation actions (including, but not limited to, special forbearance, loan modification, and deeds in lieu of foreclosure) for the purpose of providing alternatives to foreclosure. Section 601(h) amends section 536(b) of the NHA to authorize but not require HUD to impose a civil money penalty on mortgagees that fail to engage in loss mitigation activities, as required in section 230(a) of the NHA. Section 601(g) amends section 563(a) of the NHA to provide that the penalty shall be equal to three times the amount of any insurance benefits claimed by a mortgagee with respect to any mortgage for which the mortgagee had a duty to engage in loss mitigation and failed to do so.

On December 6, 2000 (65 FR 76520), HUD published in the **Federal Register** an advance notice of proposed rulemaking (ANPR) that advised the public of HUD's plan to issue a proposed rule to amend HUD's civil money penalties regulations to assess treble damages for a mortgagee that had a duty to engage in loss mitigation and failed to do so. HUD's ANPR also solicited comments on the use of a tier ranking system (TRS) that analyzes a mortgagee's loss mitigation efforts on a portfolio-wide basis, and ranks the mortgagee on performance ratios of loss mitigation actions to real estate owned (REO). The TRS, proposed through this rule, is based on a system that HUD implemented through notice as a pilot.

HUD's TRS consists of four tiers (Tiers 1, 2, 3 and 4) and is designed to measure a mortgagee's loss mitigation performance. While any mortgagee that has duty to engage in loss mitigation and fails to do so is subject to treble damages, this rule provides appropriate notification that HUD will focus on Tier 4 mortgagees. Information available to HUD indicates that Tier 4 mortgagees engage in little or no loss mitigation. The public will be apprised of any change to HUD's focus through **Federal Register** notice. In addition, for any mortgagee, regardless of ranking or absence of ranking, HUD is not prevented from pursuing HUD penalties or sanctions.

Failure to engage in loss mitigation is defined as a servicing lender's failure to evaluate a loan for loss mitigation before four full monthly mortgage installments are due and unpaid to determine which, if any, loss mitigation techniques are appropriate (*see* 24 CFR 203.605), or subsequent failure to take appropriate loss mitigation action(s). Offering plausible loss mitigation options (as defined in 24 CFR 203.501) to qualified borrowers is engaging in loss mitigation. Mortgagees must be able to provide documentation of their loss mitigation evaluations and actions. Should a claim for mortgage insurance benefits later be filed, this documentation must be maintained in the claim review file in accordance with 24 CFR 203.365(c). Failure to successfully engage in loss mitigation with a borrower that is uncooperative or otherwise ineligible is not considered "failure to engage" in loss mitigation for that mortgage.

II. This Proposed Rule

A. Proposed Amendments

Consistent with HUD's proposal as expressed in the ANPR, this proposed rule would add a triple penalty to the existing penalty system for failure to engage in loss mitigation. The proposed rule would also describe the process for assessing the treble damages when a mortgagee fails to engage in loss mitigation activities with cooperative and qualified mortgagors. The proposed rule would amend 24 CFR parts 30 and 203 to set out the maximum penalty amounts for those servicing mortgagees who fail to engage in loss mitigation. Mortgagees who fail to engage in loss mitigation may be subject to penalties of three times the amount of any mortgage insurance benefits claimed by the mortgagee.

In part 30, HUD proposes to revise § 30.35 to set out the maximum penalty amounts for failing to engage in loss mitigation. Additionally, HUD proposes to amend the existing language and add paragraph (l) of § 30.80 to establish that, with regard to treble damages, the factors listed in paragraphs (a) through (k) may only be considered in assessing the appropriateness of the sanction, because the statute provides no flexibility with regard to the amount of the penalty. Attention will be given to whether circumstances beyond the control of the mortgagee made loss mitigation impossible (*e.g.*, natural disaster) or whether the mortgagee took affirmative steps prior to the Department's awareness of the violation to make HUD and the mortgagor whole for losses sustained due to the mortgagee's failure to engage in loss mitigation.

In 24 CFR part 203, HUD proposes to revise and reorganize § 203.605, currently captioned "Loss Mitigation Evaluation." The first sentence of

§ 203.605 that begins, "No later than when three full monthly mortgage payments due on the mortgage are unpaid" is revised for clarity to read "Before four full monthly installments due on the mortgage are unpaid * * *" Section 203.605 is then reorganized into three paragraphs. The existing and sole paragraph in § 203.605, which sets out a lender's duty to mitigate, becomes paragraph (a), "Duty to mitigate." New paragraph (b) describes how HUD will measure a mortgagee's loss mitigation performance and analyze its loss mitigation efforts portfolio-wide by using the current tier ranking system. New paragraph (c) provides the consequences for mortgagees that fail to perform the loss mitigation techniques as provided in paragraph (a) of this section and in § 203.501.

B. The Tier Ranking System

HUD's TRS is designed to measure loss mitigation performance by each mortgagee. Tier 1 reflects the highest or best ranking mortgagees and Tier 4 reflects the lowest or least satisfactory ranking mortgagees. HUD considers a Tier 4 ranking evidence that a mortgagee has failed to engage in loss mitigation to such an extent that it is highly probable that the mortgagee has systematically denied loss mitigation to cooperative and qualified borrowers. Therefore, as noted earlier in this preamble, while any mortgagee that fails to engage in loss mitigation may be subject to treble damages, HUD's present intent is to focus on Tier 4 mortgagees.

The current formula for determining TRS ranking is: (Forbearances + Loss Mitigation Retention Claims + Pre Foreclosure Sale claims + Deed in Lieu Claims)/ (Forbearances + Loss Mitigation Retention Claims + Pre Foreclosure Sale Claims + Deed in Lieu Claims + Foreclosure Claims).

Loss mitigation retention claims are special forbearance claims, loan modification claims, and partial claims. An account is counted only once for purposes of calculating the number of loss mitigation actions the mortgagee performed. Therefore, if within the same evaluation period, a mortgagee provides the mortgagor a forbearance agreement and also a loan modification, the loan would be counted as having received only one loss mitigation action. However, if the loan is terminated due to foreclosure during the same ranking period, the loan would be counted twice in the denominator—once for having received a loss mitigation claim, and once for the foreclosure.

The current stratification for the tiers is as follows:

Tier 1 is greater than or equal to 80 percent;

Tier 2 is equal to or greater than 55 percent and less than 80 percent;

Tier 3 is equal to or greater than 15 percent and less than 55 percent; and

Tier 4 is less than 15 percent.

Neither the current TRS nor the current stratification will be codified in regulation. The TRS formula and stratification will be issued through **Federal Register** notice. Changes to the TRS formula and stratification will be announced through **Federal Register** notice and provide the opportunity for public comment before taking effect.

HUD sets the cut-off between tiers based on break points identified by application of the formula to the mortgagees. The Tier 4 cut-off is currently at 15 percent. HUD's information indicates that mortgagees below 15 percent are performing little or no loss mitigation. Three mortgagees scored in Tier 4 for the most recent round of scoring, with scores issued on April 28, 2003.

Under the TRS, a mortgagee will have notice of its tier ranking through (1) HUD's quarterly "Tier Ranking Letters" and (2) the mortgagee's ability to calculate its own score at any interval desired for self-monitoring. The documents will advise the mortgagee that it has the opportunity to appeal its ranking. The scoring methodology is such that mortgagees can calculate their own score at any interval desired for self-monitoring. The quarterly Tier Ranking Letters cover a rolling 12-month period, so the ranking assigned to a mortgagee always covers 12 months of performance with a one-quarter lag from the ending calculation date.

A mortgagee that disagrees with its Tier 4 ranking may appeal to the Deputy Assistant Secretary for Single Family or the Deputy Assistant Secretary's designee and request an informal conference on the ranking. The only basis, however, for appeal of a Tier 4 ranking is the mortgagee's belief that the ranking was based on incorrect or incomplete data. For example, the tiering formula relies in part on the lender's accurate reporting of informal forbearance (where no loss mitigation claim has been filed). This is accomplished by the mortgagee's reporting of servicing actions to HUD's Single Family Default Monitoring System (SFDMS), which also requires the mortgagee to report other loss mitigation actions (including loan modification) whether or not a claim for a loss mitigation incentive may also be submitted. If the lender produces appropriate documentation of informal forbearance agreements, delinquent refinances, or other valid loss mitigation actions, which were not reported to HUD or were not included in the tier ranking calculation, HUD will revise that servicer's tier ranking score.

In order for treble damages to be imposed relative to an individual loan, HUD will first look to see if the servicing mortgagee took any loss mitigation action. As stated in Mortgagee Letter 00–05, "HUD believes that the mortgagee is in the best position to determine which, if any, loss mitigation strategies are appropriate in a given circumstance." Without HUD approval, mortgagees may, in their sole discretion, utilize any of the loss mitigation options within the guidelines provided in Mortgagee Letter 00–05 and any subsequent mortgagee letter regarding loss mitigation.

Generally, a mortgagee would be considered in compliance and not subject to treble damages for a particular loan if (1) a proper evaluation indicated that the mortgagor was not eligible for any loss mitigation tools or (2) despite documented attempts to evaluate or provide loss mitigation, implementation could not occur due to the borrower's refusal or failure to cooperate with the mortgagee.

A mortgagee is subject to treble damages when the mortgagee has failed to properly evaluate whether a mortgagor was eligible for any loss mitigation tool and, if the mortgagor was eligible and cooperative, the mortgagee has failed to undertake loss mitigation for the eligible mortgagor. However, in determining whether to proceed with a violation, HUD will consider whether the mortgagee's failure to engage in loss mitigation is excused by circumstances beyond the mortgagee's control (*e.g.* natural disasters), or whether the mortgagee has taken affirmative steps, prior to HUD's awareness of the violation, to make HUD and the mortgagor whole for losses sustained as a result of the mortgagee's failure to engage in loss mitigation. If HUD determines to proceed on a violation, the due process procedures provided in 24 CFR part 30 apply.

III. Discussion of Public Comments on ANPR

The public comment period for the ANPR closed on February 5, 2001. HUD received seven comments in response to the ANPR. The following discussion provides a summary of the issues and comments raised by the commenters and HUD's responses to these comments. Specifically, HUD sought comments on the proposed tier system and any other factor that commenters believe should be included. HUD has

taken these comments into consideration in developing the proposed rule.

Comment: Two commenters wrote that four components of treble damages should be: (1) Definition of "failure to engage in loss mitigation", (2) assessment of penalty, (3) standards for compliance, and (4) standards to measure performance.

HUD Response: HUD agrees, and all four components are part of the regulation in this proposed rule.

Comment: Two commenters wrote that good overall performers, such as those in Tiers 1 through 3 should be excluded from treble damages even if a small number of loans are found to be in noncompliance. The commenters suggested that this exemption is fair, because HUD has the ability to impose other sanctions, including ordinary civil money penalties.

HUD Response: As discussed in Section II of this preamble, while no mortgagee that fails to engage in loss mitigation is exempt from possible imposition of treble damages, the proposed rule provides notification that HUD's focus is Tier 4 mortgagees. As also discussed earlier in this preamble, HUD retains the authority to impose other sanctions, including civil money penalties, on all mortgagees.

Comment: Two commenters wrote that, rather than subjecting a Tier 4 servicer to treble damages automatically, HUD should develop a process that provides (1) a standard for liability, (2) an opportunity to mitigate or bring up compensating factors, (3) sufficient warning before penalties are assessed, and (4) an appeals process.

HUD Response: The proposed rule provides for the components suggested by the commenter, as noted earlier in this preamble. A Tier 4 servicing mortgagee is not automatically subject to treble damages. The rule provides a standard for liability, and the Tier 4 servicing mortgagee has sufficient warning of its ranking and the opportunity to appeal the ranking based on a mortgagee's disagreement with the data used in the calculation. As also noted earlier in this preamble, mortgagees are able to calculate their TRS score at any time on their own, and therefore have sufficient advance notice of where they will fall in the ranking process.

Comment: Two commenters requested that "failure to engage in loss mitigation" be defined to identify the types of violations that would give rise to treble penalties on a loan-level basis, and that minor violations should clearly not give rise to treble damages. The commenter describes minor violations as (1) failure to document when letters were mailed or that the monthly evaluation took place, or (2) repayment plans that are subjectively judged "unrealistic" by auditors.

HUD Response: Earlier in this preamble, HUD described how failure to engage in loss mitigation would be defined. Additionally, the preamble noted that a servicing mortgagee would be considered in compliance and not subject to treble damages if (1) a proper evaluation indicated that the borrower was not eligible for any loss mitigation tools and (2) despite documented attempts to evaluate or provide loss mitigation, implementation could not occur due to the borrower's refusal or failure to cooperate with the mortgagee's mitigation activities.

Comment: Two commenters wrote that HUD should exclude a loan from the treble penalty if certain "compensating factors" were present. The commenters suggested that these factors would include that the violation did not result in financial damage to HUD; the borrower was not eligible for loss mitigation in any case; the reason for the failure of loss mitigation was the borrower's failure to cooperate; the borrower was in bankruptcy; the borrower was incarcerated or otherwise unable to manage his or her affairs; the property was abandoned or the property was seized by the government; loss mitigation was attempted but there was partial non-compliance; the infraction was isolated and the mortgagee took steps to ensure that the situation would not continue; the borrower was offered a remedy despite technical noncompliance; HUD had internal delays, such as delays in the payment of claims; and loss mitigation alternatives would create a loss to the servicer, *i.e.*, modification.

HUD Response: The response to the preceding comment addresses generally when a servicing lender would be considered in compliance and not subject to treble damages. Additionally, HUD may exclude a loan from treble damages if factors beyond the mortgagee's control made loss mitigation impossible (*e.g.*, natural disasters) or the mortgagee took affirmative steps prior to the Department's awareness of the violation to make HUD and the mortgagor whole for the mortgagee's failure to engage in loss mitigation.

HUD would not exclude the imposition of treble damages because the failure to engage in loss mitigation was isolated and the lender had taken steps to ensure that the situation would not continue. Additionally, the borrower's being in bankruptcy by itself does not always prohibit the "Partial Claim" or "Pre-Foreclosure Sale" options.

Comment: One commenter, a state housing agency, stated that, because of the unique characteristics of its borrowers, opportunities for loss mitigation were limited and that this should be taken into account when assessing treble penalties. The commenter stated that these included the fact that a large percentage of the borrowers were rural, first time homebuyers with low interest loans. In order to be fairly evaluated, this commenter suggested that lower tier ratios or other compensating factors needed to be implemented. Additionally, a mortgage company commenter wrote that its low average rate of interest limited its loss mitigation options. Furthermore, this commenter wrote that it uses the "informal equivalent" of recognized loss mitigation options, but a formal claims procedure was not worthwhile because of the low incentive payment.

HUD Response: HUD has evaluated the special circumstances surrounding the unique characteristics of state housing agencies. During 2001, HUD had several discussions with representatives of state housing agencies and the National Council of State Housing Agencies (NCSHA). The NCSHA provided HUD with the results of its survey of members' loss mitigation actions. The survey cited reasons that some members could not utilize loan modifications, and these reasons included limitations due to bond financing requirements.

HUD does not find a need to establish any special requirements for state housing agencies. As HUD's records indicate from the October 17, 2001, TRS test scoring (Round 5), the only state housing agency to receive a Tier 4 ranking was so rated due to its failure to report accurately to the 'Single Family Default Monitoring System" (SFDMS). The ranking had nothing to do with its status as a quasi-government entity. Further, of the four state housing agencies ranked in Tier 1, none utilized "Mortgage Modification," three did not utilize "Partial Claims," and one agency only used "Special and Formal Forbearances." The result is that no impact to state housing agencies was found, other than failure to report accurately to HUD's SFDMS. As of Round 11, no state housing agencies were ranked in Tier 4. State housing agencies may appeal their Tier 4 ranking or penalty assessment or both in the same manner as other mortgagees.

A mortgagee has the right to utilize the "informal equivalent" of special

forbearance, since the mortgagee could receive credit for forbearances reported to HUD's default system. The mortgagee also has the right not to file incentive claims in the belief that to do so is not worthwhile. However, HUD will not alter the TRS formula to accommodate mortgagees who, while eligible, choose not to file loss mitigation incentive claims.

Comment: Three commenters wrote that mortgage servicers should have an opportunity to appeal their rankings to HUD staff knowledgeable about loss mitigation policies. Two of the commenters specifically objected to the fact that currently servicers are required to refute findings with the auditors.

HUD Response: Mortgagees may contact the Deputy Assistant Secretary or the Deputy Assistant Secretary's designee if they wish to appeal their Tier 4 rankings based on the TRS formula. Mortgagees may only appeal their Tier 4 ranking on grounds that the data on which the ranking was based are incomplete or incorrect.

Comment: Six commenters objected to aspects of the tiered scoring system outlined in the ANPR, based on their understanding of the tiered scoring system. The commenters stated that the scoring system would involve a ratio (Special Forbearances + Modifications + Partial Claims + Deeds in Lieu + Pre-Foreclosure Sales)/(Foreclosures + Deeds in Lieu + Pre-Foreclosure Sales) of loss mitigation claims that did not result in foreclosure divided by the number of non-retention loss mitigation claims and foreclosures, such that servicers would be graded on their loss mitigation success rate.

HUD Response: The commenters are referring to the ranking system that was being tested when the ANPR was published. However, subsequent to that time and effective with the Round 6 and Round 7 TRS calculations released August 20, 2002, as part of HUD's testing of this system, HUD modified the scoring system to calculate loss mitigation over loss mitigation plus foreclosures (see Section II.B. of this preamble for a more precise formula). The benchmarks assign to Tier 1 (the most favorable tier) a ratio greater than or equal to 80 percent; to Tier 2, a ratio from 55 percent to less than 80 percent; to Tier 3, a ratio from 15 percent to less than 55 percent; and to Tier 4, a ratio of less than 15 percent. However, HUD reserves the right to change the benchmarks in the future by **Federal Register** notice that provides the opportunity for comment before the change takes effect.

Comment: Four commenters wrote that the proposed TRS and benchmarks would result in the vast majority of mortgagees (as many as 84 percent based on calendar year 1999 figures) being in Tier 3 or Tier 4. The commenters noted further that this result does not make logical sense. Additionally, one commenter wrote that some servicers that would be ranked in Tiers 3 and 4 (as it understands HUD's proposal) would be ranked in the top tier in Freddie Mac's default performance measurement tool.

HUD Response: For the calendar year 1999 calculation, 46 percent of the mortgagees were ranked Tier 3, and 38 percent of mortgagees were ranked in Tier 4, for a total of 84 percent. For the eleventh round of TRS scores, released April 28, 2003, 14.23 percent of mortgagees were ranked in Tier 3, and 1.26 percent of mortgagees were ranked in Tier 4, for a total of 15.49 percent. What is significant is that only three mortgagees (1.26 percent of Tiered mortgagees) achieved a ratio of less than 15 percent, thus, receiving a Tier 4 ranking. A comparison to Freddie Mac's default measurement tool would not be an appropriate comparison due to the different methods of program delivery.

Comment: Some of the commenters proposed lowering all the tier rankings. One commenter wrote that the tier rankings should include mortgagees with ratios as follows: Tier 1, greater than 50 percent; Tier 2, 26–50 percent; Tier 3, 6–25 percent, and Tier 4, less than 5 percent. Additionally, commenters wrote that these ratios would be comparable to Freddie Mac's scoring system. Another commenter wrote that HUD's benchmarks should always be below the conventional loan workout efficiency ratio, citing as support the fact that 85 percent of the servicers on the initial Tier Ranking Report fell into a Tier 3 or lower ranking.

HUD Response: HUD has carefully examined the issue of tier ranking benchmarks. In the eleventh round of TRS scores, released April 28, 2003, there were 113 Tier 1 mortgagees (47.28 percent of tiered mortgagees), 89 Tier 2 mortgagees (37.24 percent of tiered mortgagees), and 34 Tier 3 mortgagees (14.23 percent of tiered mortgagees). Only three mortgagees (1.26 percent of tiered mortgagees) achieved a ratio of less than 15 percent, therefore, receiving a Tier 4 ranking and possible imposition of treble damages. There were a total of 37 mortgagees (15.49 percent of tiered mortgagees) in the 11th round that received a Tier 3 or lower ranking.

Effective with the Round 6 scores, released concurrently with the Round 7 scores, HUD began using the TRS ratio. HUD may choose to adjust the benchmarks in consideration of prevailing economic conditions during a ranking period. It is necessary for HUD to have the flexibility to balance the goals of advancing loss mitigation efforts with the mortgagee's need to exercise sound business judgments. HUD will issue changes through a **Federal Register** notice with the opportunity to comment before the changes take effect.

Comment: Three commenters wrote that the scoring system should take account of situations where servicers have purchased a large number of already-delinquent loans, for which some loss mitigation options may be too late and which thus have a negative impact on the servicer's score. Two of the commenters noted that such accounts, by their nature, represent a higher degree of risk and that the proposed tier scoring formula does not take this risk into account. Additionally, the commenters noted that the loss mitigation options that are available (pre-foreclosure sales and deeds in lieu) carry less weight in the formula, adversely affecting servicers who purchase such loans.

HUD Response: There are FHA mortgagees who routinely acquire delinquent loans yet are ranked in Tier 1. Therefore, HUD believes the issue of acquisition of delinquent loans affecting the tier ranking of mortgagees should be addressed through the purchasing lender's due diligence efforts.

Comment: Two commenters wrote that HUD should provide a single, aggregate score for mortgagees with multiple HUD identification numbers. The commenters noted further that such mortgagees have received excessively low scores on one mortgage number and overly high scores on another.

HUD Response: HUD provides a single, aggregate score only for those mortgagees with multiple HUD identification numbers who have legally become a single entity, and who have provided this notification to and met other requirements of HUD's Lender Approval and Recertification Division.

Comment: Two commenters requested that HUD take steps to eliminate backlogs in payment of loss mitigation claims, on which the ratio is based, to keep the scoring current. The commenter noted further that if claims data is used as a basis for scoring, backlogs must not occur. Another commenter wrote that HUD should delay implementation of the treble damages rule pending development of systems that will eliminate backlogs.

HUD Response: Effective with Mortgagee Letter 2001–02, dated January 16, 2001, mortgagees may file

loss mitigation retention claims through the FHA Connection instead of on paper. Since making the FHA Connection available for the filing of loss mitigation retention claims, there has been no backlog of unpaid claims. Should a backlog occur due to unforeseen circumstances, HUD will provide notification to industry of the backlog. HUD would then take the individual impact of the backlog into consideration before providing the next round of tiering.

Comment: Two commenters wrote that the drawback of HUD's proposal is that the rule does not take into account assumptions, refinances of delinquent loans or forbearance plans that do not meet the technical requirements of HUD rules. The commenter noted further that this could be accomplished by giving servicers credit for these actions directly or by lowering all the benchmarks to reflect the "incomplete" nature of the data.

HUD Response: HUD has begun to give mortgagees credit for formal and informal forbearance agreements, provided the mortgagee has reported these agreements in accordance with reporting requirements of the SFDMS. Where a mortgagee has been identified as having a tier four ranking and wishes to appeal the ranking, the Department will accept appropriate documentation of informal forbearance agreements, delinquent refinances, and other valid loss mitigation actions that were not reported to HUD or were not included in the tier ranking calculation. Where adequate documentation is provided, HUD will revise that tier ranking score.

Comment: Several commenters wrote that the incentive payment system should be revised. Commenters stated that loss mitigation costs exceed incentive payments. Another commenter wrote that relying on incentive claims is flawed because it overlooks what a mortgagee may have done prior to getting to that stage. Other commenters wrote that incentives should compensate mortgage servicers for their expenses in promoting and implementing loss mitigation programs.

HUD Response: Although HUD understands that mortgagees and servicers would prefer not to pay any loss mitigation expenses, payment of all such expenses by HUD would prove financially burdensome to HUD. Since successful loss mitigation benefits both HUD and mortgagees, certain costs of doing business should be borne by mortgagees and servicers themselves. The revised TRS formula does give mortgagees credit for formal and informal forbearance actions as well as loss mitigation actions.

Comment: One commenter proposed incentives in the range of $100 (for Tier 4) to $300 (for Tier 1) for special forbearances, $500 to $750 for loan modification, $250 to $500 for partial claims, $1,000 to $1,500 for foreclosure sales, and $250 to $375 for deeds in lieu of foreclosure.

HUD Response: HUD is reviewing incentive levels as part of its ongoing analysis of the effectiveness of its loss mitigation program. Any changes to loss mitigation program provisions or incentives will be announced in future notices or rules, as appropriate, with opportunity for comment as applicable.

Comment: Three commenters wrote that HUD should give greater incentives as rewards to Tier 1 and Tier 2 servicers. According to two of these commenters, Tier 1 servicers should receive a 50 percent increase in incentive payment as well as a two-month extension of pre-foreclosure sale time frames and automatic reimbursement of 75 percent of foreclosure costs on Part B claims.

HUD Response: While there has been some industry discussion of replacing the existing annual Mortgagee Performance Scores with the proposed TRS as the basis for increased incentives to the best scoring lenders, HUD has determined that the Mortgagee Performance Scores should continue to be applied. However, HUD continues to evaluate the TRS as a potential replacement of the existing scoring system as the basis for loss mitigation incentives.

Comment: One commenter stated that the tier calculation should be based on recent data. Another commenter sought a more detailed explanation of the calculation, including "timeframes" of the data HUD uses. This commenter asked whether the relevant time is when the servicer files Part A or Part B claims, when HUD approved the claim for payment, or the date that HUD processes the first claim check or the second claim check. This commenter also wanted to know how the formula is affected by claims that HUD suspends.

HUD Response: Most Tier Ranking letters have been issued with a one-quarter lag from the ending calculation date. For example, the Tiering Ranking letter issued during the third quarter of FY 2003 (April 28, 2003) covered the second quarter of FY 2002 through the first quarter of FY 2003, allowing the second quarter of FY 2003 to be used to ensure that all claims have been processed for the period under review. The tiering calculation always covers a 12-month period. The formula counts paid loss mitigation retention claims as of the date the claim was paid. It counts Pre-Foreclosure, Deed-In-lieu of Foreclosures and Foreclosures as of the insurance termination date, which is the date the deed was filed, as reported by the lender on the Pre-Foreclosure, Deed-In-Lieu of Foreclosure, or Foreclosure insurance claim form HUD 27011.

Comment: One commenter stated that HUD's formula for measuring loss mitigation is misleading because it relies on the number of incentive claims a mortgagee files and does not consider other factors, such as loss mitigation efforts undertaken without filing claims.

HUD Response: With the inclusion of formal and informal forbearances into the TRS calculation, HUD is able to give mortgagee credit for payment plans that do not result in a loss mitigation claim filing. HUD will consider whether other factors should be calculated, and welcomes additional comment on this issue.

Comment: One commenter stated that the tier ranking system should treat smaller servicers differently because the rankings could be extremely volatile using the same scoring system as for larger servicers. This commenter recommended HUD adopt a system similar to Freddie Mac's, which assigns servicers with fewer than 25 loans that are 90 days or more delinquent a ranking that generally allows these servicers to service all types of loans, unless Freddie Mac becomes dissatisfied with the servicer's delinquency ratio. In this case, the servicer may become ineligible for certain high-risk loans.

The commenter noted further that servicers with fewer than 10 conveyance claims in the prior 12-month period should be unranked. Those with 10–40 conveyance claims should be designated "small servicers." Under the commenter's proposal, the unranked servicers would be excluded from the tiered ranking system and from treble damages. Small servicers who rank in Tiers 2 through 4 would all be considered Tier 2 servicers. This is equitable, the commenter suggested, because (1) HUD's ranking system is not precise as the system fails to recognize certain loss mitigation techniques; (2) the severity of the penalty in relation to a small servicer's net worth is excessive; (3) HUD does not have significant risk exposure because these are small portfolios; and (4) borrowers with FHA-insured financing generally have higher loan to value ratios and less disposable income than conventional borrowers, so fewer of them qualify for loss mitigation options.

HUD Response: All mortgagees have an obligation to ensure that all borrowers are afforded the opportunity

for loss mitigation where loss mitigation is appropriate, and HUD has an obligation to enforce the loss mitigation requirements, regardless of the servicing lender's portfolio size. HUD recognizes, however, that the rankings for smaller servicers can be extremely volatile using the same scoring system applied to larger servicers. That is why HUD has provided consideration for smaller servicers in its calculation. Servicers with fewer than 11 foreclosure claims in the 12-month evaluation period are unranked, unless the tier calculation would place them in Tier 1 or Tier 2.

Comment: Two commenters wrote that there should be a periodic review of the tier benchmarks to ensure that they reflect economic and market conditions. Another commenter wrote that changing market conditions could cause a lender's ranking to vary widely. For example, in a market where loan originations decline, the ratio of mitigation plans generated to foreclosures completed would drop considerably. Because the majority of loss mitigation plans are generated early in the default stage, fewer new loans would produce fewer defaults (hence fewer opportunities for mitigation plans), while prior foreclosures would continue to move forward. The ratio of plans to foreclosures would appear to decline, giving the false impression that servicers are doing a poor job of loss mitigation.

HUD Response: HUD is cognizant of the fact that changing market conditions can substantially impact, positively and negatively, the successful implementation of loss mitigation techniques. Periodic reviews of market conditions will be conducted and if an adjustment to the scoring system is determined appropriate, HUD will provide advance notice of the scoring changes through **Federal Register** notice as discussed in this preamble.

Comment: One commenter urged HUD and Congress to work to rescind the treble damages law. The commenter stated that the penalty was unnecessary because of increased loss mitigation workouts in recent years; assuming a "5 percent error rate, or a 95 percent compliance rate," the provision could erase the majority of profits of the mortgage servicing industry, with a potential $1 billion annual cost to the industry; the value of servicing rights would be negatively impacted; and the penalty was not related to HUD's actual damages or loss. As a consequence, this commenter wrote, mortgagees could decide to stop originating and servicing FHA-insured loans.

HUD Response: HUD supports this legislation passed by Congress as an additional means to protect the FHA Insurance Fund from abuse and to promote homeownership retention.

Comment: Three commenters wrote that the rule should only have prospective effect. One commenter stated that any application of the treble damages penalty should relate only to loans originated after the publication date of the final rule. Two commenters asked that HUD give mortgagees a one year transition period under the TRS before applying any treble damages.

HUD Response: Section 230(a) of the National Housing Act states that a mortgagee shall engage in loss mitigation actions "upon default of any mortgage insured under [Title II] * * * as provided in regulations by the Secretary." HUD believes there is no reason to delay application of TRS beyond issuance of the final rule. All tier rankings are based on one year's data, so mortgagees have sufficient information and notice of their performance to gauge their compliance. As part of the pilot testing of TRS, 11 rounds of TRS scores have been issued since December 2000, when HUD initiated the TRS pilot.

Comment: One commenter wrote in support of the $1,100,000 per year cap on civil money penalties per mortgagee, which is statutorily required. Another commenter wrote that HUD should "confirm that treble damages assessed to a servicer fall within this $1,100,000 limit."

HUD Response: HUD cannot exceed the statutory limitation per mortgagee on civil money penalties. The civil money penalty amounts that may be imposed were raised by statute and implemented in a HUD final rule published on March 17, 2003 (68 FR 12785), and which became effective April 16, 2003.

Comment: One commenter wrote that HUD should "communicate its FHA guidelines" to the offending company and conduct any needed investigation.

HUD Response: Through this rulemaking and future notices or mortgagee letters, HUD will continue to communicate the guidelines of the loss mitigation program. Instances of a lender's failure to engage in loss mitigation are and will continue to be investigated by HUD's Quality Assurance Division and HUD's National Servicing Center (NSC). Mortgagees, regardless of tier ranking, that do not comply with HUD's loss mitigation requirements will be required to affect corrective action in all instances and will be afforded the opportunity for additional training by NSC.

Findings and Certifications

Public Reporting Burden

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and assigned OMB control number 2502–0523. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), reviewed this rule before publication and by approving it certifies that this rule would not have a significant economic impact on a substantial number of small entities. All entities, small or large, will be subject to the same penalties for failure to engage in loss mitigation as established by statute and proposed to be implemented by this rule. The statute does not provide an exemption for small entities. Nevertheless, the Department is sensitive to the fact that the uniform application of requirements on entities of differing sizes often places a disproportionate burden on non-profits/small entities businesses. That is why HUD has built a factor for smaller servicers into its scoring calculation. As noted in this preamble, HUD provides that servicers with fewer than 11 foreclosure claims in the 12-month evaluation period remain unranked, unless the tier calculation would place them in Tier 1 or Tier 2. Although HUD has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities, HUD welcomes comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Environmental Impact

In accordance with 24 CFR 50.19(c)(6) of HUD's regulations, this rule involves establishment of treble damages for lender's who fail to perform the loss mitigation evaluation and actions under 24 CFR 203.605. In accordance with 24 CFR 50.19(c)(1) of HUD's regulations, this proposed rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or

construction materials, manufactured housing, or occupancy. Therefore, this proposed rule is categorically excluded from the requirements of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts state law, unless the relevant requirements of section 6 of the Executive Order are met. This rule affects only mortgagees and does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, *Regulatory Planning and Review*. OMB determined that this rule is a "significant regulatory action" as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). Any changes made to this rule as a result of that review are identified in the docket file, which is available for public inspection in the office of the Regulations Division, Office of General Counsel, Room 10276, 451 Seventh Street, SW., Washington, DC 20410–0500.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; approved March 22, 1995) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This proposed rule does not impose any federal mandate on any state, local, or tribal government, or on the private sector, within the meaning of UMRA.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number applicable to the program affected by this rule is 14.117.

List of Subjects

24 CFR Part 30

Administrative practice and procedure, Grant programs—housing and community development, Loan programs-housing and community development, Mortgages, Penalties.

24 CFR Part 203

Hawaiian Natives, Home improvement, Indians—lands, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

For the reasons stated in the preamble, HUD proposes to amend 24 CFR parts 30 and 203 as follows:

PART 30—CIVIL MONEY PENALTIES: CERTAIN PROHIBITED CONDUCT

1. The authority citation for 24 CFR part 30 continues to read as follows:

Authority: 12 U.S.C. 1701q–1, 1703, 1723i, 1735f–14, 1735f–15; 15 U.S.C. 1717a; 28 U.S.C 2641 note; 42 U.S.C. 3535(d).

Subpart B—Violations

2. In § 30.35, add a new paragraph (a)(15) and revise paragraph (c) to read as follows:

§ 30.35 Mortgagees and lenders.

* * * * *

(a)(15) Fails to engage in loss mitigation as provided in § 203.605 of this title.

* * * .

(c) *Amount of penalty.* (1) *Maximum penalty.* Except as provided in paragraph (c)(2) of this section, the maximum penalty is $6,500 for each violation, up to a limit of $1,250,000 for all violations committed during any one-year period. Each violation shall constitute a separate violation as to each mortgage or loan application.

(2) *Maximum penalty for failing to engage in loss mitigation.* The penalty for a violation of paragraph (a)(15) of this section shall be three times the amount of the total mortgage insurance benefits claimed by the mortgagee with respect to any mortgage for which the mortgagee failed to engage in such loss mitigation actions.

Subpart C—Procedures

3. In § 30.80 add a new paragraph (l) to read as follows:

§ 30.80 Factors in determining the appropriateness and amount of civil money penalty.

* * * * *

(l) HUD may consider factors listed in paragraphs (a) through (k) of this section to determine the appropriateness of a penalty under § 30.35(c)(2); however, HUD cannot change the amount of the penalty under § 30.35(c)(2).

PART 203—SINGLE FAMILY MORTGAGE INSURANCE

4. The authority citation for 24 CFR part 203 continues to read as follows:

Authority: 12 U.S.C. 1709, 1710, 1715b, and 1715u; 42 U.S.C. 3535(d).

Subpart C—Servicing Responsibilities

5. Revise § 203.500 to read as follows:

§ 203.500 Mortgage servicing generally.

This subpart identifies servicing practices of lending institutions that HUD considers acceptable for mortgages insured by HUD. Failure to comply with this subpart shall not be a basis for denial of insurance benefits, but failure to comply will be cause for imposition of a civil money penalty, including a penalty under § 30.35(c)(2), or withdrawal of HUD's approval of a mortgagee. It is the intent of the Department that no mortgagee shall commence foreclosure or acquire title to a property until the requirements of this subpart have been followed.

6. Section 203.605, including its heading, is revised to read as follows:

§ 203.605 Loss mitigation performance.

(a) *Duty to mitigate.* Before four full monthly installments due on the mortgage have become unpaid, the mortgagee shall evaluate on a monthly basis all of the loss mitigation techniques provided at § 203.501 to determine which is appropriate. Based upon such evaluations, the mortgagee shall take the appropriate loss mitigation action. Documentation must be maintained for the initial and all subsequent evaluations and resulting loss mitigation actions. Should a claim for mortgage insurance benefits later be filed, the mortgagee shall maintain this documentation in the claim review file under the requirements of § 203.365(c).

(b) *Assessment of mortgagee's loss mitigation performance.* (1) HUD will measure and advise mortgagees of their loss mitigation performance through the Tier Ranking System (TRS). Under the TRS, HUD will analyze each mortgagee's loss mitigation efforts portfolio-wide on a quarterly basis, based on 12 months of performance, by computing ratios involving loss mitigation attempts, defaults, and claims. Based on the ratios, HUD will group mortgagees in four tiers (Tiers 1, 2, 3 and 4), with Tier 1 representing the highest or best ranking mortgagees and Tier 4 representing the lowest or least satisfactory ranking mortgagees. The precise methodology for calculating the TRS ratios and for determining the tier stratification (or cutoff points) will be provided through **Federal Register**

notice. Notice of future TRS methodology or stratification changes will be published in the **Federal Register** and will provide a 30-day public comment period.

(2) Before HUD issues each quarterly TRS notice, HUD will review the number of claims paid to the mortgagee. If HUD determines that the lender's low TRS score is the result of a small number of defaults or a small number of foreclosure claims, or both, as defined by notice, HUD may determine not to designate the mortgagee as Tier 3 or Tier 4, and the mortgagee will remain unranked.

(3) Within 30 calendar days after the date of the TRS notice, a mortgagee that scored in Tier 4 may appeal its ranking to the Deputy Assistant Secretary for Single Family or the Deputy Assistant's designee and request an informal HUD conference. The only basis for appeal by the Tier 4 mortgagee is disagreement with the data used by HUD to calculate the mortgagee's ranking. If HUD determines that the mortgagee's Tier 4 ranking was based on incorrect or incomplete data, the mortgagee's performance will be recalculated and the mortgagee will receive a corrected tier ranking score.

(c) *Assessment of civil money penalty.* A mortgagee that is found to have failed to engage in loss mitigation as required under paragraph (a) of this section shall be liable for a civil money penalty as provided in § 30.35(c) of this title.

Dated: March 22, 2004.

Sean Cassidy,

General Deputy, Assistant Secretary for Housing.

[FR Doc. 04–8340 Filed 4–13–04; 8:45 am]

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Federal Register

Wednesday,
April 14, 2004

Part III

The President

Executive Order 13334—Establishing an Emergency Board To Investigate a Dispute Between the Southeastern Pennsylvania Transportation Authority and its Conductors Represented by the United Transportation Union

Federal Register
Vol. 69, No. 72
Wednesday, April 14, 2004

Presidential Documents

Title 3—

The President

Executive Order 13334 of April 10, 2004

Establishing an Emergency Board To Investigate a Dispute Between the Southeastern Pennsylvania Transportation Authority and its Conductors Represented by the United Transportation Union

A dispute exists between the Southeastern Pennsylvania Transportation Authority, and its conductors represented by the United Transportation Union.

The dispute has not heretofore been adjusted under the provisions of the Railway Labor Act, as amended, 45 U.S.C. 151–188 (the "Act").

A party empowered by the Act has requested that the President establish an emergency board pursuant to section 9A of the Act (45 U.S.C. 159a).

Section 9A(c) of the Act provides that the President, upon such request, shall appoint an emergency board to investigate and report on the dispute.

NOW, THEREFORE, by the authority vested in me as President by the Constitution and the laws of the United States, including section 9A of the Act, it is hereby ordered as follows:

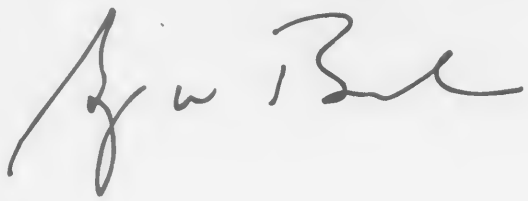
Section 1. *Establishment of Emergency Board ("Board").* There is established, effective April 12, 2004, a Board of three members to be appointed by the President to investigate and report on this dispute. No member shall be pecuniarily or otherwise interested in any organization of railroad employees or any carrier. The Board shall perform its functions subject to the availability of funds.

Sec. 2. *Report.* The Board shall report to the President with respect to this dispute within 30 days of its creation.

Sec. 3. *Maintaining Conditions.* As provided by section 9A(c) of the Act, from the date of the creation of the Board and for 120 days thereafter, no change in theconditions out of which the dispute arose shall be made by the parties to the controversy, except by agreement of the parties.

Sec. 4. *Records Maintenance.* The records and files of the Board are records of the Office of the President and upon the Board's termination shall be maintained in the physical custody of the National Mediation Board.

Sec. 5. *Expiration.* The Board shall terminate upon the submission of the report provided for in section 2 of this order.



THE WHITE HOUSE,
April 10, 2004.

[FR Doc. 04–8616
Filed 4–13–04; 9:10 am]
Billing code 3195–01–P

Federal Register

Wednesday
April 14, 2004

Part IV

Department of the Interior

National Park Service

Notice of Inventory Completion: The Colorado College, Colorado Springs, CO; Notice

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: The Colorado College, Colorado Springs, CO

AGENCY: National Park Service, Interior.
ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of The Colorado College, Colorado Springs, CO. The human remains and associated funerary object were removed from Canyon de Chelly, Apache County, AZ.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by The Colorado College professional staff in consultation with representatives the Hopi Tribe of Arizona; Navajo Nation, Arizona, New Mexico & Utah; Pueblo of Acoma; Pueblo of Cochiti; Pueblo of Isleta; Pueblo of Jemez; Pueblo of Laguna; Pueblo of Nambe; Pueblo of Picuris; Pueblo of Pojoaque; Pueblo of San Felipe; Pueblo of San Ildefonso; Pueblo of San Juan; Pueblo of Sandia; Pueblo of Santa Ana; Pueblo of Santa Clara; Pueblo of Santo Domingo; Pueblo of Taos; Pueblo of Tesuque; Pueblo of Zia; Ysleta del Sur Pueblo; and Zuni Tribe of the Zuni Reservation, New Mexico.

On an unknown date in the 19th century, human remains representing 11 individuals were removed from Canyon de Chelly, Apache County, AZ. The specific provenience is unknown, but records from the former Colorado College museum indicate that the human remains are likely from a "cliff ruin" in "Chinlee Canon." The records include a ground plan of a ruin with numbered burials in the front of the ruin. Some of the numbers correspond to numbers painted on the human remains. Evidence indicates that the human remains were donated to The Colorado College in the late 1800s and became a part of the former Colorado College museum collections, which were transferred to the Anthropology Department in the 1960s and 1970s. The human remains were curated in the Anthropology Department Archaeology Laboratory, which until 1989 was in Palmer Hall. From 1989 until the present, the laboratory has been in the Biological Anthropology Classroom/Laboratory of Barnes Science Center. No known individuals were identified. The one associated funerary object is a string and feather blanket that encases the human remains of one of the individuals. That individual is an infant.

The Colorado College has determined that the lands from which the human remains and associated funerary object were collected were not Federal lands at the time of collection.

A physical anthropological assessment of the human remains resulted in a determination that the remains are ancestral Puebloan based on the type of cranial deformation. This determination is supported by the funerary object associated with one of the individuals, as well as the provenience. Canyon de Chelly, which is also known as Chinlee Canon, was a site of ancestral Puebloan occupation. Currently, the site is within the Navajo Indian Reservation. A relationship of shared group identity can reasonably be traced between ancestral Puebloan and modern Puebloan peoples based on oral tradition, folklore, and scientific studies.

Officials of The Colorado College have determined that, pursuant to 25 U.S.C. 3001(9–10), the human remains described above represent the physical remains of 11 individuals of Native American ancestry. Officials of The Colorado College also have determined that, pursuant to 25 U.S.C. 3001(3)(A), the one object described above is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of The Colorado College have determined that, pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary object and the Hopi Tribe of Arizona; Pueblo of Acoma; Pueblo of Cochiti; Pueblo of Isleta; Pueblo of Jemez; Pueblo of Laguna; Pueblo of Nambe; Pueblo of Picuris; Pueblo of Pojoaque; Pueblo of San Felipe; Pueblo of San Ildefonso; Pueblo of San Juan; Pueblo of Sandia; Pueblo of Santa Ana; Pueblo of Santa Clara; Pueblo of Santo Domingo; Pueblo of Taos; Pueblo of Tesuque; Pueblo of Zia; Ysleta del Sur Pueblo; and Zuni Tribe of the Zuni Reservation, New Mexico.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary object should contact Joyce Eastburg, Legal Assistant, The Colorado College, 14 East Cache La Poudre Street, Colorado Springs, CO 80903, telephone (719) 389–6703, before May 14, 2004. Repatriation of the human remains and associated funerary object to the Hopi Tribe of Arizona; Pueblo of Acoma; Pueblo of Cochiti; Pueblo of Isleta; Pueblo of Jemez; Pueblo of Laguna; Pueblo of Nambe; Pueblo of Picuris; Pueblo of Pojoaque; Pueblo of San Felipe; Pueblo of San Ildefonso; Pueblo of San Juan; Pueblo of Sandia; Pueblo of Santa Ana; Pueblo of Santa Clara; Pueblo of Santo Domingo; Pueblo of Taos; Pueblo of Tesuque; Pueblo of Zia; Ysleta del Sur Pueblo; and Zuni Tribe of the Zuni Reservation, New Mexico may proceed after that date if no additional claimants come forward.

The Colorado College is responsible for notifying the Hopi Tribe of Arizona; Navajo Nation, Arizona, New Mexico & Utah; Pueblo of Acoma; Pueblo of Cochiti; Pueblo of Isleta; Pueblo of Jemez; Pueblo of Laguna; Pueblo of Nambe; Pueblo of Picuris; Pueblo of Pojoaque; Pueblo of San Felipe; Pueblo of San Ildefonso; Pueblo of San Juan; Pueblo of Sandia; Pueblo of Santa Ana; Pueblo of Santa Clara; Pueblo of Santo Domingo; Pueblo of Taos; Pueblo of Tesuque; Pueblo of Zia; Ysleta del Sur Pueblo; and Zuni Tribe of the Zuni Reservation, New Mexico that this notice has been published.

Dated: February 25, 2004.

John Robbins,

Assistant Director, Cultural Resources.

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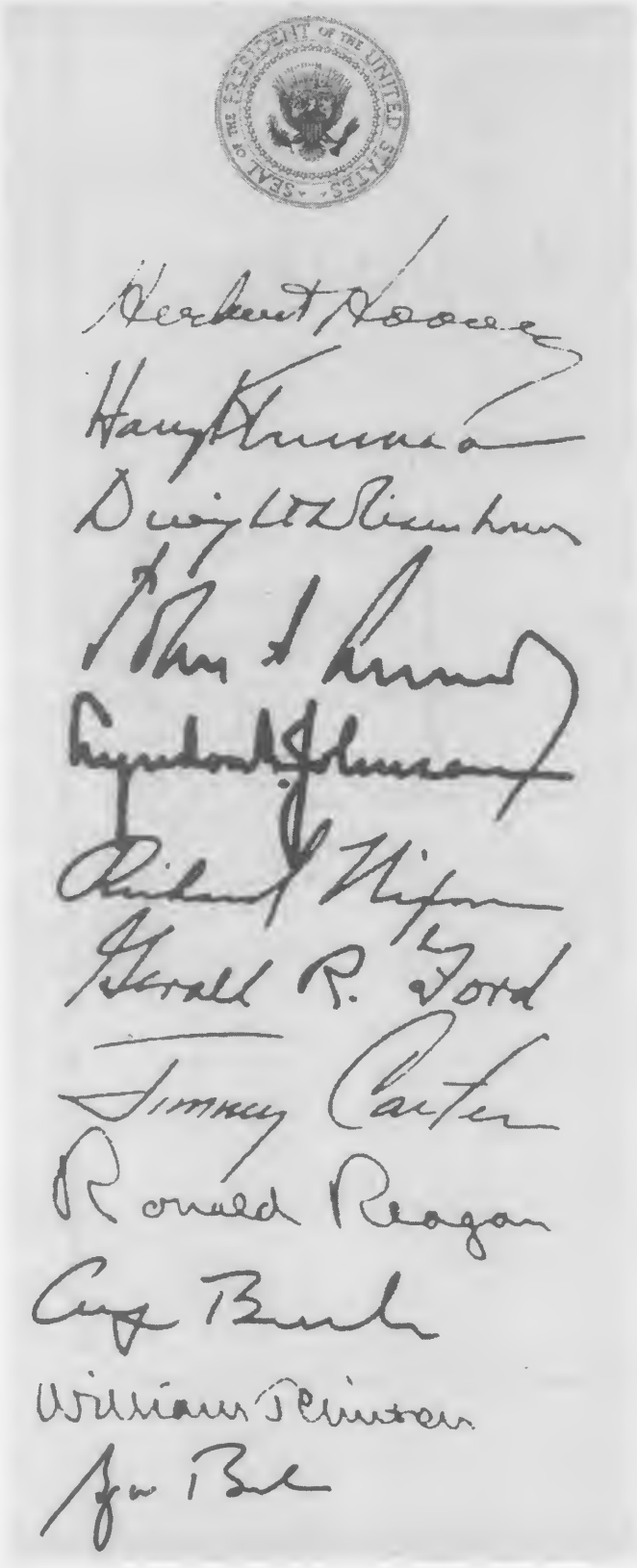

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