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OFFICE OF GOVERNMENT ETHICS

5 CFR Parts 2634 and 2635

RINs 3209–AA00 and 3209–AA04

Technical Updating Amendments to Executive Branch Financial Disclosure and Standards of Ethical Conduct Regulations

AGENCY: Office of Government Ethics (OGE).

ACTION: Final rule; technical amendments.

SUMMARY: The Office of Government Ethics is updating its executive branch regulation on financial disclosure to reflect the retroactive statutory increase of the reporting thresholds for gifts and travel reimbursements. In addition, OGE is similarly raising the widely attended gatherings nonsponsor gifts exception dollar ceiling under the executive branchwide standards of ethical conduct regulation.

DATES: The amendments to 5 CFR 2634.304 are retroactively effective to January 1, 2005, and the amendments to 5 CFR 2635.204 are effective March 11, 2005.

FOR FURTHER INFORMATION CONTACT: William E. Gressman, Senior Associate General Counsel, Office of Government Ethics; Telephone: 202–482–9300; TDD: 202–482–9293; FAX: 202–482–9237.

SUPPLEMENTARY INFORMATION: The Office of Government Ethics is amending pertinent sections of its executive branchwide ethics regulations on financial disclosure and standards of ethical conduct (the Standards), as codified at 5 CFR parts 2634 and 2635, in order to update them.

Increased Gifts and Travel Reimbursements Reporting Thresholds

First, OGE is retroactively increasing, to January 1, 2005, the reporting thresholds for gifts, reimbursements and travel expenses in the OGE executive branchwide regulation at 5 CFR 2634.304 (and as illustrated in the four examples following paragraph (d) of that section) for both the public and confidential financial disclosure systems under section 102(a)(2)(A) & (B) of the Ethics in Government Act as amended, 5 U.S.C. app. 102(a)(2)(A) & (B), as extended to the executive branch confidential reporting system by 5 CFR 2634.907(a)(3). The new reporting thresholds for gifts and travel reimbursements being retroactively incorporated in OGE's financial disclosure regulation are "more than $305" for the aggregation threshold for reporting and "$122 or less" for the *de minimis* exception for gifts and reimbursements which do not have to be counted towards the aggregate threshold (from the prior levels of more than $285 aggregate and $114 or less *de minimis* exception, respectively).

These increases are brought about by a recent General Services Administration (GSA) rulemaking raising "minimal value" under the Foreign Gifts and Decorations Act, 5 U.S.C. 7342, to "$305 or less" (from the prior level of $285 or less) for the three-year period 2005–2007, as the Ethics Act and OGE regulatory gifts/travel reimbursements reporting thresholds are tied to any such increase in foreign gifts minimal value over $250. See GSA's rulemaking as published at 70 FR 2317–2318 (part V) (January 12, 2005), revising retroactively to January 1, 2005 the foreign gifts minimal value definition as codified at 41 CFR 102–42.10.

The Office of Government Ethics will continue to adjust the gifts and travel reimbursements reporting thresholds in the future as needed in light of GSA's redefinition of "minimal value" every three years for foreign gifts purposes. See OGE's previous retroactive adjustments of those reporting thresholds, as published at 65 FR 69655–69657 (November 20, 2000) and 67 FR 61761–61762 (October 2, 2002), that were based on GSA's prior redefinitions for the periods 1999–2001 and 2002–2004, respectively.

Increased Dollar Ceiling for the Exception for Nonsponsor Gifts of Free Attendance at Widely Attended Gatherings

In addition, OGE is increasing from $285 to $305 the exception ceiling for nonsponsor gifts of free attendance at widely attended gatherings under the standards of ethical conduct regulation, as codified at 5 CFR 2635.204(g)(2) (and as illustrated in the examples following paragraph (g)). This separate regulatory change is effective upon publication in the **Federal Register**, on March 11, 2005. As OGE noted in the preambles to the proposed and final rules on such nonsponsor gifts, that ceiling is based in part on the financial disclosure gifts reporting threshold. See 60 FR 31416 (June 15, 1995) and 61 FR 42968 (August 20, 1996). The nonsponsor gift ceiling was last raised in the October 2002 OGE rulemaking noted in the preceding paragraph above. Thus, it is reasonable now to again increase the nonsponsor gift ceiling to match the further increase in the gifts/travel reimbursements reporting thresholds. The other requirements for acceptance of such nonsponsor gifts, including an agency interest determination and expected attendance by more than 100 persons, remain unchanged.

Matters of Regulatory Procedure

Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b) and (d), as Acting Director of the Office of Government Ethics, I find good cause exists for waiving the general notice of proposed rulemaking, opportunity for public comment and 30-day delay in effectiveness as to these technical updating amendments. The notice, comment and delayed effective date provisions are being waived in part because these technical amendments concern matters of agency organization, practice and procedure. Further, it is in the public interest that correct and up-to-date information be contained in the affected sections of OGE's regulations as soon as possible. The increase in the reporting thresholds for gifts and reimbursements is based on a statutory formula and also lessens the reporting burden somewhat, and thus the effective date of that regulatory revision is being made retroactively effective to January 1, 2005, when the change became effective under the Ethics Act.

Regulatory Flexibility Act

As Acting Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this rulemaking will not have a significant economic impact on a substantial number of small entities because it primarily affects Federal employees.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this amendatory rulemaking does not contain information collection requirements that require the approval of the Office of Management and Budget.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 25, subchapter II), the final rule will not significantly or uniquely affect small governments and will not result in increased expenditures by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more (as adjusted for inflation) in any one year.

Congressional Review Act

The Office of Government Ethics has determined that this amendatory rulemaking is a nonmajor rule under the Congressional Review Act (5 U.S.C. chapter 8) and will submit a report thereon to the U.S. Senate, House of Representatives and General Accounting Office in accordance with that law at the same time this rulemaking document is sent to the Office of the Federal Register for publication in the **Federal Register**.

Executive Order 12866

In promulgating these technical amendments, OGE has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. These amendments have not been reviewed by the Office of Management and Budget under that Executive order, since they are not deemed "significant" thereunder.

Executive Order 12988

As Acting Director of the Office of Government Ethics, I have reviewed this final amendatory regulation in light of section 3 of Executive Order 12988, Civil Justice Reform, and certify that it meets the applicable standards provided therein.

List of Subjects

5 CFR Part 2634

Certificates of divestiture, Conflict of interests, Financial disclosure, Government employees, Penalties, Privacy, Reporting and recordkeeping requirements, Trusts and trustees.

5 CFR Part 2635

Conflict of interests, Executive branch standards of ethical conduct, Government employees.

Approved: March 4, 2005.

Marilyn L. Glynn,

Acting Director, Office of Government Ethics.

■ For the reasons set forth in the preamble, the Office of Government Ethics is amending 5 CFR parts 2634 and 2635 as follows:

PART 2634—EXECUTIVE BRANCH FINANCIAL DISCLOSURE, QUALIFIED TRUSTS, AND CERTIFICATES OF DIVESTITURE

■ 1. The authority citation for part 2634 continues to read as follows:

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978); 26 U.S.C. 1043; Pub. L. 101–410, 104 Stat. 890, 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990), as amended by Sec. 31001, Pub. L. 104–134, 110 Stat. 1321 (Debt Collection Improvement Act of 1996); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

§ 2634.304 [Amended]

■ 2. Section 2634.304 is amended by:
■ a. Removing the dollar amount "$285" in paragraphs (a) and (b) and in example 1 following paragraph (d) and adding in its place in each instance the dollar amount "$305";
■ b. Removing the dollar amount "$114" in paragraph (d) and in examples 1 and 2 following paragraph (d) and adding in its place in each instance the dollar amount "$122"; and
■ c. Removing the dollar amount "$285" in examples 3 and 4 following paragraph (d) and adding in its place in each instance the dollar amount "$305".

PART 2635—STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE EXECUTIVE BRANCH

■ 3. The authority citation for part 2635 continues to read as follows:

Authority: 5 U.S.C. 7301, 7351, 7353; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

§ 2635.204 [Amended]

■ 4. Section 2635.204 is amended by:
■ a. Removing the dollar amount "$285" in paragraph (g)(2) and in examples 1 and 2 (in the latter of which it appears twice) following paragraph (g)(6) and adding in its place in each instance the dollar amount "$305"; and
■ b. Removing the dollar amount "$570" in example 2 following paragraph (g)(6) and adding in its place the dollar amount "$610".

[FR Doc. 05–4879 Filed 3–10–05; 8:45 am]
BILLING CODE 6345–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 94 and 95

[Docket No. 03–080–6]

RIN 0579–AB73

Bovine Spongiform Encephalopathy; Minimal-Risk Regions and Importation of Commodities; Partial Delay of Applicability

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule; partial delay of applicability.

SUMMARY: The amendments in this final rule delay until further notice the applicability of certain provisions of the rule entitled "Bovine Spongiform Encephalopathy; Minimal-Risk Regions and Importation of Commodities," published in the **Federal Register** on January 4, 2005, 70 FR 460–553. That rule was scheduled to amend the regulations in 9 CFR parts 93, 94, 95, and 96, effective March 7, 2005, to establish a category of regions that present a minimal risk of introducing bovine spongiform encephalopathy into the United States via live ruminants and ruminant products and byproducts and to add Canada to this category. That rule included conditions for the importation of certain live ruminants and ruminant products from such regions.

DATES: Effective March 7, 2005.

FOR FURTHER INFORMATION CONTACT: Dr. Karen James-Preston, Director, Technical Trade Services, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–4356.

SUPPLEMENTARY INFORMATION: On January 4, 2005, we published a final rule in the **Federal Register** (70 FR 460–553, Docket No. 03–080–3) that establishes a category of regions that present a minimal risk of introducing

bovine spongiform encephalopathy into the United States via live ruminants and ruminant products and byproducts and that adds Canada to this category. The rule also establishes conditions for the importation of certain live ruminants and ruminant products from such regions. The rule was scheduled to become effective on March 7, 2005.[1]

Pursuant to an announcement by the Secretary of Agriculture on February 9, 2005, this document delays the applicability of the provisions in that rule as they apply to the importation from Canada of the following commodities when derived from bovines 30 months of age or older when slaughtered: (1) Meat, meat food products, and meat byproducts other than liver;[2] (2) whole or half carcasses; (3) offal; (4) tallow composed of less than 0.15 percent insoluble impurities that is not otherwise eligible for importation under 9 CFR 95.4(a)(1)(i); and (5) gelatin derived from bones of bovines that is not otherwise eligible for importation under 9 CFR 94.18(c).

If the courts allow the January 4, 2005, rule to go into effect while this delay of applicability is in effect, the commodities listed above that are derived from bovines less than 30 months of age when slaughtered must be accompanied to the United States by certification that (1) the age requirement has been met and (2) the commodity was processed in an establishment inspected by the Canadian Food Inspection Agency (CFIA) that operates in compliance with an approved CFIA program to prevent commingling of ruminant products eligible for export to the United States with ruminant products ineligible for export to the United States. Such certification must be made by a full-time salaried veterinary officer of Canada, or by a veterinarian designated and accredited by the Canadian Government, provided the certification is endorsed by a full-time salaried veterinary officer of Canada who represents that the veterinarian issuing the certification was authorized to do so.

To the extent that 5 U.S.C. 553 applies to this action, it is exempt from notice and comment because it constitutes a rule of procedure under 5 U.S.C. 553(b)(A). Alternatively, the Department's implementation of this action without opportunity for public comment is based on the good cause exceptions in 5 U.S.C. 553(b)(B) and 553(d)(3). Seeking public comment is impracticable, unnecessary, and contrary to the public interest. The delay of applicability is necessary to give Department officials the opportunity for further review and consideration of the specified provisions. Given the scheduled effective date of those provisions, seeking prior public comment on this delay would have been impractical, as well as contrary to the public interest, in the orderly promulgation and implementation of regulations.

List of Subjects

9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

9 CFR Part 95

Animal feeds, Hay, Imports, Livestock, Reporting and recordkeeping requirements, Straw, Transportation.

■ Accordingly, we are amending 9 CFR parts 94 and 95 as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, CLASSICAL SWINE-FEVER, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

■ 1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

■ 2. Section 94.19 is amended by adding notes at the end of paragraphs (a), (b), and (f) to read as follows:

§ 94.19 Restrictions on importation from BSE minimal-risk regions of meat and edible products from ruminants.

* * * * *

(a) * * *

Note to paragraph (a): The applicability of paragraph (a) to meat, meat byproducts other than liver, and meat food products when such commodities are derived from bovines that were 30 months of age or older when slaughtered is delayed indefinitely.

(b) * * *

Note to paragraph (b): The applicability of paragraph (b) to whole or half carcasses derived from bovines that were 30 months of age or older when slaughtered is delayed indefinitely.

* * * * *

(f) * * *

Note to paragraph (f): The applicability of paragraph (f) to gelatin derived from the bones of bovines that were 30 months of age or older when slaughtered is delayed indefinitely.

* * * * *

PART 95—SANITARY CONTROL OF ANIMAL BYPRODUCTS (EXCEPT CASINGS), AND HAY AND STRAW, OFFERED FOR ENTRY INTO THE UNITED STATES

■ 3. The authority citation for part 95 continues to read as follows:

Authority: 7 U.S.C. 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

■ 4. Section 95.4 is amended by adding notes at the end of paragraphs (f) and (g) to read as follows:

§ 95.4 Restrictions on the importation of processed animal protein, offal, tankage, fat, glands, certain tallow other than tallow derivatives, and serum due to bovine spongiform encephalopathy.

* * * * *

(f) * * *

Note to paragraph (f): The applicability of paragraph (f) to tallow derived from bovines that were 30 months of age or older when slaughtered is delayed indefinitely.

(g) * * *

Note to paragraph (g): The applicability of paragraph (g) to offal derived from bovines that were 30 months of age or older when slaughtered is delayed indefinitely.

* * * * *

Done in Washington, DC, this 8th day of March 2005.

Bill Hawks,

Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 05–4917 Filed 3–10–05; 8:45 am]

BILLING CODE 3410–34–P

[1] On March 2, 2005, Judge Richard F. Cebull of the U.S. District Court for the District of Montana ordered that the implementation of APHIS' January 4, 2005, final rule is preliminarily enjoined.

[2] In accordance with an August 8, 2003, announcement by the Secretary of Agriculture, since August 2003 APHIS has issued permits for the importation into the United States from Canada of certain fresh or frozen liver from bovines of any age.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19470; Directorate Identifier 2003–NM–268–AD; Amendment 39–13997; AD 2005–05–08]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100B SUD, –300, –400, and –400D Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Boeing Model 747–100B SUD, –300, –400, and –400D series airplanes. This AD requires a one-time inspection for discrepancies of the fuselage frame to tension tie joints at body stations (BS) 1120 through 1220 and to determine if steel splice plates are installed on the fuselage frames, and related investigative and corrective actions. This AD is prompted by reports indicating that severed tension ties were found at the fuselage frame joints at BS 1120 and 1140. We are issuing this AD to prevent fatigue cracking of the fuselage frame to tension tie joints, which could result in severing of the tension ties and consequent rapid decompression of the airplane fuselage.

DATES: This AD becomes effective April 15, 2005.

The incorporation by reference of a certain publication listed in the AD is approved by the Director of the Federal Register as of April 15, 2005.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

Docket: The AD docket contains the proposed AD, comments, and any final disposition. You can examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Washington, DC. This docket number is FAA–2004–19470; the directorate identifier for this docket is 2003–NM–268–AD.

FOR FURTHER INFORMATION CONTACT: Ivan Li, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6437; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with an AD for certain Boeing Model 747–100B SUD, –300, –400, and –400D series airplanes. That action, published in the **Federal Register** on October 29, 2004 (69 FR 63106), proposed to require a one-time inspection for discrepancies of the fuselage frame to tension tie joints at body stations (BS) 1120 through 1220 and to determine if steel splice plates are installed on the fuselage frames, and related investigative and corrective actions.

Comments

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

Changes to Delegation Authority

Boeing has received a Delegation Option Authorization (DOA). We have revised this final rule to delegate the authority to approve an alternative method of compliance for any repair required by this AD to the Authorized Representative for the Boeing DOA Organization rather than the Designated Engineering Representative (DER).

Conclusion

We have carefully reviewed the available data, including the comments that have been submitted, and determined that air safety and the public interest require adopting the AD as proposed, with the change described previously.

Costs of Compliance

There are about 537 airplanes of the affected design in the worldwide fleet. This AD will affect about 67 airplanes of U.S. registry. The inspection will take about 2 work hours per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the AD for U.S. operators is $8,710, or $130 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–05–08 Boeing: Amendment 39–13997. Docket No. FAA–2004–19470; Directorate Identifier 2003–NM–268–AD.

Effective Date

(a) This AD becomes effective April 15, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model 747–100B SUD, –300, –400, and –400D series airplanes; certificated in any category; as identified in Boeing Special Attention Service Bulletin 747–53–2483, Revision 1, dated August 28, 2003.

Unsafe Condition

(d) This AD was prompted by reports indicating that severed tension ties were found at the fuselage frame joints at body stations (BS) 1120 and 1140. We are issuing this AD to prevent fatigue cracking of the fuselage frame to tension tie joints, which could result in severing of the tension ties

and consequent rapid decompression of the airplane fuselage.

Compliance

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

One-Time Inspection/Investigative and Corrective Actions

(f) Before the accumulation of 4,000 total flight cycles, or within 1,000 flight cycles after the effective date of this AD, whichever is later: Perform a detailed inspection for discrepancies of the fuselage frame to tension tie joints at BS 1120 through BS 1220, and to determine if steel splice plates are installed on the fuselage frames. Do the inspection in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–53–2483, Revision 1, dated August 28, 2003. Do any applicable investigative and corrective actions before further flight in accordance with the service bulletin, except as provided by paragraph (h) of this AD.

Note 1: For the purposes of this AD, a detailed inspection is: "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."

Determining Number of Flight Cycles for Compliance Time

(g) For the purposes of calculating the compliance threshold for the actions required by paragraph (f) of this AD, all pressurized flight cycles, including the number of flight cycles in which cabin differential pressure is at 2.0 pounds per square inch (psi) or less, must be counted when determining the number of flight cycles that have occurred on the airplane. Where the service bulletin and this AD differ, the AD prevails.

Repair Requirements

(h) For any repairs outside the limits of Boeing Special Attention Service Bulletin 747–53–2483, Revision 1, dated August 28, 2003, or if any aluminum splice plate is installed on the fuselage frames: Before further flight, repair or replace, as applicable, in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or in accordance with data meeting the certification basis of the airplane approved by an Authorized Representative for the Boeing Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair or replacement method to be approved, as required by this paragraph, the approval must specifically refer to this AD.

Actions Accomplished Per Previous Issue of Service Bulletin

(i) Inspections and corrective actions accomplished before the effective date of this AD in accordance with Boeing Special Attention Service Bulletin 747–53–2483, dated October 24, 2002, are considered acceptable for compliance with the corresponding actions specified in this AD.

No Reporting Requirements

(j) Although the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–53–2483, Revision 1, dated August 28, 2003; describe procedures for submitting certain information to the manufacturer, this AD does not require that action.

Alternative Methods of Compliance (AMOCs)

(k)(1) The Manager, Seattle ACO, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

Material Incorporated by Reference

(l) You must use Boeing Special Attention Service Bulletin 747–53–2483, Revision 1, dated August 28, 2003, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approves the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. For copies of the service information, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. For information on the availability of this material at the National Archives and Records Administration (NARA), call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*. You may view the AD docket at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC.

Issued in Renton, Washington, on February 28, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–4410 Filed 3–10–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19812; Directorate Identifier 2003–NM–197–AD; Amendment 39–13996; AD 2005–05–07]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, –100B, –100B SUD, –200B, –200C, –200F, and –300 Series Airplanes; and Model 747SP and 747SR Series Airplanes; Equipped With Pratt and Whitney Model JT9D–3 or –7 (Except –70) Series Engines

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Boeing transport category airplanes. This AD requires repetitive detailed inspections to detect cracking of the aft and forward surfaces of the bulkhead web at nacelle station 180, and repair if necessary. This AD is prompted by reports of cracking of the web bulkhead at nacelle station 180. We are issuing this AD to detect and correct fatigue cracking of the web bulkhead, and consequent loss of the load path of the bulkhead at nacelle station 180, which when combined with the loss of the midspar load path, could result in the in-flight separation of the engine and strut. Such separation may result in secondary damage to the airplane and consequent reduced controllability of the airplane.

DATES: This AD becomes effective April 15, 2005.

The incorporation by reference of certain publications listed in the AD is approved by the Director of the Federal Register as of April 15, 2005.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

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

FAA–2004–19812; the directorate identifier for this docket is 2003–NM–197–AD.

FOR FURTHER INFORMATION CONTACT: Tamara Anderson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6421; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR Part 39 with an AD for certain Boeing Model 747–100, –100B, –100B SUD, –200B, –200C, –200F, and –300 series airplanes; and Model 747SP and 747SR series airplanes; equipped with Pratt and Whitney Model JT9D–3 or –7 (except –70) series engines. That action, published in the **Federal Register** on December 8, 2004 (69 FR 70936), proposed to require repetitive detailed inspections to detect cracking of the aft and forward surfaces of the bulkhead web at nacelle station 180, and repair 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.

Explanation of Change to Proposed AD

Boeing has received a Delegation Option Authorization (DOA). We have revised this final rule to delegate the authority to approve an alternative method of compliance for any repair required by this AD to the Authorized Representative for the Boeing DOA Organization rather than the Designated Engineering Representative.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD with the change described previously. We have determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

This AD will affect about 223 airplanes worldwide and 73 airplanes of U.S. registry. The required actions will take about 1 work hour per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the AD for U.S. operators is $4,745, or $65 per airplane, per inspection cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–05–07 Boeing: Amendment 39–13996. Docket No. FAA–2004–19812; Directorate Identifier 2003–NM–197–AD.

Effective Date

(a) This AD becomes effective April 15, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 747–100, –100B, –100B SUD, –200B, –200C, –200F, and –300 series airplanes; and Model 747SP and 747SR series airplanes; equipped with Pratt and Whitney Model JT9D–3, or –7 (except for –70) series engines; as identified in Boeing Alert Service Bulletin 747–54A2220, dated July 31, 2003; certificated in any category.

Unsafe Condition

(d) This AD was prompted by reports of cracking of the web bulkhead at nacelle station 180. We are issuing this AD to detect and correct fatigue cracking of the web bulkhead, and consequent loss of the load path of the bulkhead at nacelle station 180, which when combined with the loss of the midspar load path, could result in the in-flight separation of the engine and strut. Such separation may result in secondary damage to the airplane and consequent reduced controllability of the airplane.

Compliance

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

Repetitive Inspections and Repair

(f) Within 9 months after the effective date of this AD, do a detailed inspection to detect cracking of the aft and forward surfaces of the bulkhead web at nacelle station 180, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–54A2220, dated July 31, 2003.

(1) If no cracking is detected, repeat the detailed inspection at the applicable intervals specified in the "Repeat Inspection Interval" column of Tables 1 and 2 in Figure 1 of the service bulletin.

(2) If any cracking is detected, before further flight, repair the cracking in accordance with the service bulletin, except as provided by paragraph (f)(3) of this AD. Thereafter, repeat the detailed inspection at the applicable intervals specified in the "Repeat Inspection Interval" column of Tables 1 and 2 in Figure 1 of the service bulletin.

(3) If any cracking exceeds the repair limits specified in the applicable structural repair manual (referenced in the service bulletin), before further flight, repair the cracking in accordance with a method approved by the Manager, Seattle Aircraft Certification Office

(ACO), FAA; or in accordance with data meeting the certification basis of the airplane approved by an Authorized Representative (AR) for the Boeing Delegation Option Authorization (DOA) Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

Alternative Methods of Compliance (AMOCs)

(g)(1) The Manager, Seattle ACO, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an AR, for the Boeing DOA Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

Material Incorporated by Reference

(h) You must use Boeing Alert Service Bulletin 747–54A2220, dated July 31, 2003, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approves the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. For copies of the service information, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. For information on the availability of this material at the National Archives and Records Administration (NARA), call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*. You may view the AD docket at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW, room PL–401, Nassif Building, Washington, DC.

Issued in Renton, Washington, on February 28, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–4411 Filed 3–10–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19537; Directorate Identifier 2004–NM–145–AD; Amendment 39–13993; AD 2005–05–05]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B4–600, B4–600R, and F4–600R Series Airplanes, and Model C4–605R Variant F Airplanes (Collectively Called A300–600); and Model A310 Series Airplanes; Equipped With Certain Honeywell Inertial Reference Units (IRU)

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Airbus Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model C4–605R Variant F airplanes (collectively called A300–600); and Model A310 series airplanes; equipped with certain Honeywell inertial reference units (IRUs). This AD requires revising the Limitations section of the airplane flight manual to prohibit the use of CAT 2 and CAT 3 automatic landing and rollout procedures at certain airports. This AD is prompted by a report that some magnetic deviation tables in the IRU database are obsolete and contain significant differences with the real magnetic deviations. We are issuing this AD to prevent an airplane from deviating from the runway centerline, and possibly departing the runway.

DATES: This AD becomes effective April 15, 2005.

The incorporation by reference of certain publications listed in the AD is approved by the Director of the Federal Register as of April 15, 2005.

ADDRESSES: For service information identified in this AD, contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France.

Docket: The AD docket contains the proposed AD, comments, and any final disposition. You can examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, Washington, DC. This docket number is FAA–2004–19537; the directorate identifier for this docket is 2004–NM–145–AD.

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: The FAA proposed to amend 14 CFR part 39 with an AD for all Airbus Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model C4–605R Variant F airplanes (collectively called A300–600); and Model A310 series airplanes; equipped with certain Honeywell inertial reference units (IRUs). That action, published in the **Federal Register** on November 5, 2004 (69 FR 64520), proposed to require revising the Limitations section of the airplane flight manual (AFM) to prohibit the use of CAT 2 and CAT 3 automatic landing and rollout procedures at certain airports.

Comments

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

Explanation of Changes Made to This Final Rule

We have revised Table 2 of this AD to more clearly identify the applicable airplane flight manuals (AFM) to be revised.

In Table 2 of the proposed AD we referenced an incorrect date for the temporary revisions. We have revised Table 2 of this final rule to correct that information.

Conclusion

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

Costs of Compliance

This AD will affect about 136 airplanes of U.S. registry. The AFM revision will take about 1 work hour per airplane, at an average labor rate of $65 per work hour. Based on these figures,

the estimated cost of the AD for U.S. operators is $8,840, or $65 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–05–05 Airbus: Amendment 39–13993. Docket No. FAA–2004–19537; Directorate Identifier 2004–NM–145–AD.

Effective Date

(a) This AD becomes effective April 15, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus airplanes, certificated in any category; as identified in Table 1 of this AD:

TABLE 1.—APPLICABILITY

Model—	Equipped with any honeywell inertial reference unit (IRU) having part number—			Excluding airplanes modified in accordance with—
A300 B4–600, B4–600R, and F4–600R series airplanes; and C4–605R Variant F airplanes (collectively called A300–600).	HG1050BD01, HG1050BD05.	HG1050BD02,	or	Airbus modification 12304 in production.
A310 series airplanes	HG1050BD01, HG1050BD05.	HG1050BD02,	or	Airbus modification 12304 in production.

Unsafe Condition

(d) This AD was prompted by a report that some magnetic deviation tables in the IRU database are obsolete and contain significant differences with the real magnetic deviations. We are issuing this AD to prevent an airplane from deviating from the runway centerline, and possibly departing the runway.

Compliance

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

Airplane Flight Manual (AFM) Revision

(f) Within 10 days after the effective date of this AD, revise the Limitations section of the Airbus A300–600 AFM; or the Airbus A310 AFM; as applicable; by inserting a copy of the applicable Airbus temporary revision (TR) listed in Table 2 of this AD into the applicable AFM.

Note 1: When Airbus includes these TRs in the general revisions of the AFM, the general revisions may be inserted in the AFM, provided the relevant information in the general revisions is identical to that in Airbus TRs 6.01.03/08 and 6.01.03/36.

TABLE 2.—AFM TRS

For model	Airbus temporary revision	AFM
A300–600 airplanes	6.01.03/08, dated February 9, 2004	A300–600 Flight Manual.
A310 series airplanes	6.01.03/36, dated February 9, 2004	A310 Flight Manual.

Terminating Action

(g) After replacing the Honeywell IRUs with new or modified Honeywell IRUs in accordance with the requirements of AD 2003–20–01, amendment 39–13319 (68 FR 55814), the AFM revision required by paragraph (f) of this AD may be removed.

Alternative Methods of Compliance (AMOCs)

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

Related Information

(i) French airworthiness directive F–2004–093(B), issued June 23, 2004, also addresses the subject of this AD.

Material Incorporated by Reference

(j) You must use the applicable temporary revision to the applicable Airbus airplane flight manual specified in Table 3 of this AD to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approves the incorporation by reference of those documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. For copies of the service information, contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. For information on the availability of this material at the National Archives and Records Administration (NARA), call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

You may view the AD docket at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC.

TABLE 3.—MATERIAL INCORPORATED BY REFERENCE

Airbus temporary revision	AFM
6.01.03/08, dated February 9, 2004.	A300–600 Flight Manual.
6.01.03/36, dated February 9, 2004.	A310 Flight Manual.

Issued in Renton, Washington, on February 18, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–4070 Filed 3–10–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–256–AD; Amendment 39–13968; AD 2005–03–12]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330, A340–200, and A340–300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects a typographical error that appeared in airworthiness directive (AD) 2005–03–12 that was published in the **Federal Register** on February 14, 2005 (70 FR 7386). The typographical error resulted in an incorrect AD number. This AD is applicable to certain Airbus Model A330, A340–200, and A340–300 series airplanes. This AD requires initial and repetitive inspections of certain frame stiffeners to detect cracking and replacement of any cracked stiffener with a new, reinforced stiffener. Replacement of the stiffener constitutes terminating action for certain inspections. This AD also requires a one-time inspection of any new, reinforced stiffener; and repair or replacement of the new, reinforced stiffener if any cracking is found during the one-time inspection. This AD also provides for an optional terminating action for certain requirements of this AD.

DATES: Effective March 21, 2005.

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: Airworthiness Directive (AD) 2005–03–12, amendment 39–13968, applicable to certain Airbus Model A330, A340–200, and A340–300 series airplanes, was published in the **Federal Register** on February 14, 2005 (70 FR 7386). That AD requires initial and repetitive inspections of certain frame stiffeners to detect cracking and replacement of any cracked stiffener with a new, reinforced stiffener. Replacement of the stiffener constitutes terminating action for certain inspections. That AD also requires a one-time inspection of any new, reinforced stiffener; and repair or replacement of the new, reinforced stiffener if any cracking is found during the one-time inspection. That AD also provides for an optional terminating action for certain requirements of that AD.

As published, that final rule incorrectly specified the AD number in a single location in the AD as "2005–NM–03–12" instead of "2005–03–12."

Since no other part of the regulatory information has been changed, the final rule is not being republished in the **Federal Register.**

The effective date of this AD remains March 21, 2005.

§ 39.13 [Corrected]

■ In the **Federal Register** of February 14, 2005, on page 7388, in the first column, paragraph 2. of PART 39—AIRWORTHINESS DIRECTIVES is corrected to read as follows:

* * * * *

2005–03–12 Airbus: Amendment 39–13968. Docket 2003–NM–256–AD.

* * * * *

Issued in Renton, Washington, on February 28, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–4824 Filed 3–10–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19446; Directorate Identifier 2004–NM–130–AD; Amendment 39–13967; AD 2005–03–11]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–200 and –300 Series Airplanes

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

ACTION: Final rule; correction.

SUMMARY: The FAA is correcting a typographical error in an existing airworthiness directive (AD) that was published in the **Federal Register** on February 11, 2005 (70 FR 7174). The error resulted in an incorrect AD number. This AD applies to certain Boeing Model 767 series airplanes. This AD requires repetitive detailed and eddy current inspections of the aft pressure bulkhead for damage and cracking, and repair if necessary. This AD also requires one-time detailed and high frequency eddy current inspections of any "oil-can" located on the aft pressure bulkhead, and related corrective actions if necessary.

DATES: Effective March 18, 2005.

ADDRESSES: The AD docket contains the proposed AD, comments, and any final disposition. You can examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Washington, DC. This docket number is FAA–2004–19446; the directorate identifier for this docket is 2004–NM–130–AD.

FOR FURTHER INFORMATION CONTACT: Suzanne Masterson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton,

Washington 98055–4056; telephone (425) 917–6441; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: On January 31, 2005, the FAA issued AD 2005–03–11, amendment 39–13967 (70 FR 7174, February 11, 2005), for certain Boeing Model 767 series airplanes. The AD requires repetitive detailed and eddy current inspections of the aft pressure bulkhead for damage and cracking, and repair if necessary. The AD also requires one-time detailed and high frequency eddy current inspections of any "oil-can" located on the aft pressure bulkhead, and related corrective actions if necessary.

As published, that final rule incorrectly specified the AD number in a single location in the AD as "2005–NM–03–11" instead of "2005–03–11."

No other part of the regulatory information has been changed; therefore, the final rule is not republished in the **Federal Register**.

The effective date of this AD remains March 18, 2005.

§ 39.13 [Corrected]

■ In the **Federal Register** of February 11, 2005, on page 7175, in the first column, paragraph 2. of PART 39—AIRWORTHINESS DIRECTIVES is corrected to read as follows:

* * * * *

2005–03–11 Boeing: Amendment 39–13967. Docket No. FAA–2004–19446; Directorate Identifier 2004–NM–130–AD.

* * * * *

Issued in Renton, Washington, on February 28, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–4825 Filed 3–10–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19530; Directorate Identifier 2002–NM–274–AD; Amendment 39–14008; AD 2005–05–19]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727 Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD), which applies to certain Boeing Model 727 airplanes. That AD currently requires repetitive detailed inspections to detect cracking, corrosion, and existing stop-drilled repairs of cracking in the upper chord of the rear spar of the wing; and repair if necessary. This new AD requires new repetitive inspections to detect cracks, corrosion, minor surface defects, and existing stop-drilled repairs of cracks in the upper and lower chords of the front and rear spars of the wing; and repair if necessary. This AD is prompted by our determination that further rulemaking action is necessary to require additional actions specified in the referenced service bulletin. We are issuing this AD to prevent structural failure of the wing and fuel leaks in the airplane due to stress corrosion cracking of the wing spar chords.

DATES: This AD becomes effective April 15, 2005.

On December 18, 2002 (67 FR 71808, December 3, 2002), the Director of the Federal Register approved the incorporation by reference of Boeing Alert Service Bulletin 727–57A0145, Revision 2, dated October 24, 2002.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

Docket: The AD docket contains the proposed AD, comments, and any final disposition. You can examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the U.S. Department of Transportation, 400 Seventh Street SW, room PL–401, Washington, DC. This docket number is FAA–2004–19530; the directorate identifier for this docket is 2002–NM–274–AD.

FOR FURTHER INFORMATION CONTACT: Daniel F. Kutz, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6456; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend part 39 of the Federal Aviation Regulations (14 CFR Part 39) with an AD to supersede AD 2002–24–05, amendment 39–12970 (67 FR 71808, December 3, 2002). The existing AD applies to certain Boeing Model 727 airplanes. The proposed AD was published in the **Federal Register** on November 5, 2004 (69 FR 64506), to require new repetitive inspections to detect cracks, corrosion, minor surface defects, and existing stop-drilled repairs of cracks in the upper and lower chords of the front and rear spars of the wing; and repair if necessary.

Comments

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

Explanation of Change to Model Designation

We have revised the subject heading of the existing AD to identify model designations as published in the most recent type certificate data sheet for the affected models.

Changes to Delegation Authority

Boeing has received a Delegation Option Authorization (DOA). We have revised this final rule to delegate the authority to approve an alternative method of compliance for any repair required by this AD to the Authorized Representative for the Boeing DOA Organization rather than the Designated Engineering Representative (DER).

Conclusion

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

Costs of Compliance

There are about 1,426 airplanes of the affected design in the worldwide fleet. This AD will affect about 946 airplanes of U.S. registry.

For Group 1 airplanes identified in the service bulletin, the actions (Part 1 of the Accomplishment Instructions of the service bulletin) that are required by AD 2002–24–05 and retained in this AD take about 8 work hours per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the currently required actions is $520 per airplane.

The following table provides the estimated costs for U.S. operators to comply with the new actions required by this AD. The average labor rate is $65 per work hour.

ESTIMATED COSTS

For airplanes identified in the service bulletin as—	Actions in—	Work hours—	Per airplane cost, per inspection cycle—
Group 1	Part 2 of the Accomplishment Instructions of the service bulletin.	30	$1,950
Group 1	Part 3 of the Accomplishment Instructions of the service bulletin.	21	1,365
Group 1	Part 4 of the Accomplishment Instructions of the service bulletin.	68	4,420
Group 1	Part 8 of the Accomplishment Instructions of the service bulletin.	8	520
Group 1	Part 9 of the Accomplishment Instructions of the service bulletin.	30	1,950
Group 2	Part 5 of the Accomplishment Instructions of the service bulletin.	52	3,380
Group 2	Part 6 of the Accomplishment Instructions of the service bulletin.	110	7,150

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing amendment 39–12970 (67 FR 71808, December 3, 2002), and by adding the following new airworthiness directive (AD):

2005–05–19 Boeing: Amendment 39–14008. Docket No. FAA–2004–19530; Directorate Identifier 2002–NM–274–AD.

Effective Date

(a) This AD becomes effective April 15, 2005.

Affected ADs

(b) This AD supersedes AD 2002–24–05, amendment 39–12970.

Applicability

(c) This AD applies to Boeing Model 727, 727C, 727–100, –100C, –200, and –200F series airplanes, line numbers 1 through 1832 inclusive; certificated in any category.

Unsafe Condition

(d) This AD was prompted by our determination that further rulemaking action is necessary to require additional actions specified in the referenced service bulletin. We are issuing this AD to prevent structural failure of the wing and fuel leaks in the airplane due to stress corrosion cracking of the wing spar chords.

Compliance

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

Service Bulletin References

(f) The term "the service bulletin," as used in this AD, means Boeing Alert Service Bulletin 727–57A0145, Revision 2, dated October 24, 2002.

Inspection Requirements of AD 2002–24–05, Amendment 39–12970

Inspection

(g) For airplanes specified as "Group 1" airplanes in the service bulletin: Within 20 years after the date of manufacture or within 90 days after December 18, 2002 (the effective date of AD 2002–24–05, amendment 39–12970), whichever occurs later, perform an external detailed inspection for cracking, corrosion, and existing stop-drilled repairs of cracking in the upper chord on the rear spar from Wing Butt Line (WBL) 70.5 through WBL 249.3, per the service bulletin, paragraph 3.B, "Work Instructions," Part 1. Thereafter, repeat the inspection at intervals not to exceed 2 years.

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

New Actions Required by This AD

Inspections Specified in Parts 2 Through 6, and 8 and 9 of the Service Bulletin

(h) Accomplish the applicable inspection(s) specified in paragraphs (h)(1) through (h)(7) of this AD at the later of the applicable times specified in the "Threshold" and "Grace Period" columns in Table 1 of this AD, and repeat the inspection(s) at the time specified in the "Repetitive Interval" column of Table 1 of this AD. Accomplishment of the inspection required by paragraph (h)(1) of this AD terminates the repetitive inspection requirements of paragraph (g) of this AD.

TABLE 1.—COMPLIANCE TIMES FOR INSPECTIONS SPECIFIED IN PARTS 2 THROUGH 6, AND 8 AND 9 OF SERVICE BULLETIN

For airplanes identified in the service bulletin as—	Threshold—	Grace period—	Repetitive interval—	Do—
(1) Group 1	Before 20 years since the date of issuance of the original Airworthiness Certificate or the date of issuance of the original Export Certificate of Airworthiness.	Within 1 year after the effective date of this AD.	None	A high frequency eddy current (HFEC) inspection and detailed inspection of the upper chord the rear spar from WBL 70.5 to the wing tip for cracks, corrosion, minor surface defects, and existing stop-drilled repairs of cracking, in accordance with paragraph 3.B., Work Instructions, Part 2, of the Accomplishment Instructions of the service bulletin.
(2) Group 1	Before 20 years since the date of issuance of the original Airworthiness Certificate or the date of issuance of the Original Export Certificate of Airworthiness.	Within 2 years after the effective date of this AD.	At intervals not to exceed 2 years.	A detailed inspection of the upper and lower chord of the front spar and the lower chord of the rear spar from WBL 70.5 to the wing tip for cracks, corrosion, minor surface defects, and existing stop-drilled repairs of cracking (initial inspection only), in accordance with paragraph 3.B., Work Instructions, Part 3, of the Accomplishment Instructions of the service bulletin.
(3) Group 1	Before 20 years since the date of issuance of the original Airworthiness Certificate or the date of issuance of the original Export Certificate of Airworthiness.	Within 4 years after the effective date of this AD.	At intervals not to exceed 4 years.	An HFEC inspection of the upper and lower chords of the rear spar from WBL 70.5 to the wing tip for cracks, corrosion, minor surface defects, and existing stop-drilled repairs of cracking (initial inspection only), in accordance with paragraph 3.B., Work Instructions, Part 4, of the Accomplishment Instructions of the service bulletin.
(4) Group 1	Within 2 years after doing the actions required by paragraph (h)(1) of this AD.	None	At intervals not to exceed 2 years.	A detailed inspection of the upper chord of the rear spar WBL 70.5 to the wing tip for cracks, corrosion, minor surface defects, and existing stop-drilled repairs of cracking (initial inspection only), in accordance with paragraph 3.B., Work Instructions, Part 8, of the Accomplishment Instructions of the service bulletin.

TABLE 1.—COMPLIANCE TIMES FOR INSPECTIONS SPECIFIED IN PARTS 2 THROUGH 6, AND 8 AND 9 OF SERVICE BULLETIN—Continued

For airplanes identified in the service bulletin as—	Threshold—	Grace period—	Repetitive interval—	Do—
(5) Group 1	Within 4 years after doing the actions required by paragraph (h)(1) of this AD.	None	At intervals not to exceed 4 years.	An HFEC inspection of doing the not to the upper chord actions exceed 4 of the rear spar required by years from WBL 70.5 to paragraph the wing tip for (h)(1) of cracks, this AD corrosion, minor surface defects, and existing stop-drilled repairs of cracking (initial inspection only), in accordance with paragraph 3.B., Work Instructions, Part 9, of the Accomplishment Instructions of the service bulletin.
(6) Group 2	Before 20 years since the date of issuance of the original Airworthiness Certificate or the date of issuance of the original Export Certificate of Airworthiness.	Within 2 years after the effective date of this AD.	At intervals not to exceed 2 years.	An exterior detailed inspection of the upper and lower chords of the front and rear spars from WBL 70.5 to the wing tip for cracks, corrosion, minor surface defects, and existing stop-drilled repairs of cracking (initial inspection only), in accordance with paragraph 3.B., Work Instructions, Part 5, of the Accomplishment Instructions of the service bulletin.
(7) Group 2	Before 20 years since the date of issuance of the original Airworthiness Certificate or the date of issuance of the original Export Certificate of Airworthiness.	Within 4 years after the effective date of this AD.	At intervals not to exceed 4 years.	An HFEC inspection of the upper and lower chords of the front and rear spars from WBL 70.5 to the wing tip for cracks, corrosion, minor surface defects, and existing stop-drilled repairs of cracking (initial inspection only), in accordance with paragraph 3.B., Work Instructions, Part 6, of the Accomplishment Instructions of the service bulletin.

Corrective Actions

(i) If any crack, corrosion, or minor surface defect is detected during any inspection required by this AD, before further flight, do the applicable corrective actions in accordance with Part 7 of the Accomplishment Instructions of the service bulletin, except as provided by paragraph (j) of this AD.

(j) If any crack or corrosion is detected during any inspection required by this AD that exceeds the limits specified in the service bulletin, and the bulletin specifies to contact Boeing for appropriate action: Before further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or in accordance with data meeting the certification basis of the airplane approved by an Authorized Representative for the Boeing Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, the approval must specifically reference this AD.

(k) If any existing stop-drilled repair of previous cracking is detected during any inspection required by this AD, before further flight, permanently repair crack in accordance with paragraph 3.B., Work Instructions, Part 7, paragraph 2., "Crack Repair" of the Accomplishment Instructions of the service bulletin.

(l) Before further flight following any inspection or repair required by this AD, apply a wet layer of BMS 3–23 organic corrosion inhibiting compound or Boeing equivalent, in accordance with the Accomplishment Instructions of the service bulletin.

Alternative Methods of Compliance (AMOCs)

(m)(1) The Manager, Seattle ACO, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(2) Alternative methods of compliance, approved previously in accordance with AD 2002–24–05, amendment 39–12970, are

approved as alternative methods of compliance with this AD.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, the approval must specifically reference this AD.

Material Incorporated by Reference

(n) You must use Boeing Alert Service Bulletin 727–57A0145, Revision 2, dated October 24, 2002, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register previously approved the incorporation by reference of this document as of December 18, 2002 (67 FR 71808, December 3, 2002). For copies of the service information, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. For information on the availability of this material at the National Archives and Records Administration (NARA), call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*. You may view the AD docket at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW, room PL–401, Nassif Building, Washington, DC.

Issued in Renton, Washington, on March 2, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–4826 Filed 3–10–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19751; Directorate Identifier 2002–NM–59–AD; Amendment 39–14001; AD 2005–05–12]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited (Jetstream) Model 4101 Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all BAE Systems (Operations) Limited (Jetstream) Model 4101 airplanes. This AD requires repetitive detailed inspections of the aft fuselage frames for any discrepancies, and any applicable corrective actions. This AD is prompted by reports of corrosion found on the aft fuselage frames due to the ingress of water or liquid. We are issuing this AD to detect and correct corrosion of the aft fuselage frames, which could result in reduced structural integrity of the fuselage.

DATES: This AD becomes effective April 15, 2005.

The incorporation by reference of certain publications listed in the AD is approved by the Director of the Federal Register as of April 15, 2005.

ADDRESSES: For service information identified in this AD, contact British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171.

Docket: The AD docket contains the proposed AD, comments, and any final disposition. You can examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the U.S. Department of Transportation, 400 Seventh Street SW, room PL–401, Washington, DC. This docket number is FAA–2004–19751; the directorate identifier for this docket is 2002–NM–59–AD.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR Part 39 with an AD for all BAE Systems (Operations) Limited (Jetstream) Model 4101 airplanes. That action, published in the **Federal Register** on December 1, 2004 (69 FR 69834), proposed to require repetitive detailed inspections of the aft fuselage frames for any discrepancies, and any applicable corrective actions.

Comments

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

Request To Revise Discussion Section

The commenter requests that we revise the Discussion section of the proposed AD. The commenter suggests that the sentence that describes the area where corrosion may occur should read, "This corrosion occurs on frame areas below floor panel level, between frames 434 and 555, particularly in the vicinity of the toilet, galley, and baggage door due to the ingress of water or liquid." The commenter's suggestion points out that, though corrosion particularly occurs in the vicinity of the toilet, galley, and baggage door, it may also occur over a wider area.

We acknowledge that the commenter's suggestion is accurate. However, the Discussion section is not restated in the final rule. Thus, we have made no change to the final rule.

Explanation of Change to This AD

We have revised the applicability statement in paragraph (c) of this AD to identify model designations as published in the most recent type certificate data sheet for the affected models.

Conclusion

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

Costs of Compliance

This AD will affect about 57 airplanes of U.S. registry. The required inspections will take about 30 work hours per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of this AD for U.S. operators is $111,150, or $1,950 per airplane, per inspection cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–05–12 BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Amendment 39–14001. Docket No. FAA–2004–19751; Directorate Identifier 2002-NM–59–AD.

Effective Date

(a) This AD becomes effective April 15, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft) Model 4101 airplanes, certificated in any category.

Unsafe Condition

(d) This AD was prompted by reports of corrosion found on the aft fuselage frames due to the ingress of water or liquid. We are issuing this AD to detect and correct corrosion of the aft fuselage frames, which could result in reduced structural integrity of the fuselage. .

Compliance

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

Inspection and Corrective Actions

(f) Within 12 months after the effective date of this AD, do a detailed inspection of the aft fuselage frames for any discrepancies i.e., corrosion, soft spots, and suspected corrosion), and any applicable corrective actions, in accordance with the Accomplishment Instructions of BAE Systems (Operations) Limited Service Bulletin J41–53–051, dated January 25, 2002; or Revision 1, dated May 2, 2003; except as provided by paragraphs (g) and (i) of this AD. Do any applicable corrective action before further flight.

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

(g) If any corrosion outside the limits defined in the service bulletin is detected: Before further flight, repair the corrosion according to a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the Civil Aviation Authority (or its delegated agent).

Repetitive Inspection

(h) Repeat the inspection and do applicable corrective actions required by paragraph (f) of this AD at intervals not to exceed 24 months.

No Reporting

(i) Although the service bulletins referenced in this AD specify to submit inspection reports to the manufacturer, this AD does not include that requirement.

Alternative Methods of Compliance (AMOCs)

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

Related Information

(k) British airworthiness directive 003–01–2002 also addresses the subject of this AD.

Material Incorporated by Reference

(l) You must use BAE Systems (Operations) Limited Service Bulletin J41–53–051, dated January 25, 2002; or BAE Systems (Operations) Limited Service Bulletin J41–53–051, Revision 1, dated May 2, 2003; to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approves the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. For copies of the service information, contact British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. For information on the availability of this material at the National Archives and Records Administration (NARA), call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*. You may view the AD docket at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW, room PL–401, Nassif Building, Washington, DC.

Issued in Renton, Washington, on February 28, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–4414 Filed 3–10–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19681; Directorate Identifier 2003–NM–184–AD; Amendment 39–13999; AD 2005–05–10]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited Model BAe 146 Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all BAE Systems (Operations) Limited Model BAe 146 series airplanes. This AD requires repetitive detailed inspections for cracking of the elevator "G" weight support structure, and repairs if necessary. This AD also provides for an optional terminating action. This AD is prompted by reported cracking of the elevator "G" weight support structure. We are issuing this AD to prevent failure of the elevator "G" weight support structure with possible consequent jamming of the right-hand elevator servo tab and reduced controllability of the airplane.

DATES: This AD becomes effective April 15, 2005.

The incorporation by reference of certain publications listed in the AD is

approved by the Director of the Federal Register as of April 15, 2005.

ADDRESSES: For service information identified in this AD, contact British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171.

Docket: The AD docket contains the proposed AD, comments, and any final disposition. You can examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the U.S. Department of Transportation, 400 Seventh Street SW, room PL–401, Washington, DC. This docket number is FAA–2004–19681; the directorate identifier for this docket is 2003–NM–184–AD.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer; International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR Part 39 with an AD for all BAE Systems (Operations) Limited Model BAe 146 series airplanes. That action, published in the **Federal Register** on November 24, 2004 (69 FR 68265), proposed to require repetitive detailed inspections for cracking of the elevator "G" weight support structure, and repairs if necessary. That action also proposed to provide an optional terminating action.

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.

Costs of Compliance

This AD will affect about 19 airplanes of U.S. registry. The required actions will take about 1 work hour per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of this AD for U.S. operators is $1,235, or $65 per airplane, per inspection cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–05–10 BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Amendment 39–13999. Docket No. FAA–2004–19681; Directorate Identifier 2003–NM–184–AD.

Effective Date

(a) This AD becomes effective April 15, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all BAE Systems (Operations) Limited Model BAe 146 series airplanes, certificated in any category.

Unsafe Condition

(d) This AD was prompted by reported cracking of the elevator "G" weight support structure. We are issuing this AD to prevent failure of the elevator "G" weight support structure with possible consequent jamming of the right-hand elevator servo tab and reduced controllability of the airplane.

Compliance

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

Verification of Applicability

(f) Before the accumulation of 14,000 total landings, or within 4,000 landings after the effective date of this AD, whichever is later: Perform a one-time general visual inspection of the elevator "G" weight support structure to determine whether BAE Systems (Operations) Limited Modification HCM00654A as described in BAE Systems (Operations) Limited Modification Service Bulletin SB.27–037–00654A, Revision 2, dated May 8, 2003, has been incorporated on the airplane. If it can be conclusively determined that HCM00654A has been incorporated, no further action is required by this AD.

Note 1: For the purposes of this AD, a general visual inspection is "a visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to 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."

Inspection

(g) For airplanes on which BAE Systems (Operations) Limited Modification HCM00654A has not been done and

airplanes on which it cannot be conclusively determined that this modification has been done: Before the accumulation of 14,000 total landings, or within 4,000 landings after the effective date of this AD, whichever is later, except as provided by paragraph (h) of this AD, perform a detailed inspection for cracking of the elevator "G" weight support structure, in accordance with the Accomplishment Instructions of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.27–037, Revision 3, dated April 17, 2003.

(1) If no crack is found and the structure has not been repaired previously, repeat the inspection at intervals not to exceed 4,000 landings.

(2) If no crack is found but the structure has been repaired previously, repeat the inspection at applicable intervals specified in Appendix 1 of the service bulletin.

Note 2: For the purposes of this AD, a detailed inspection is "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."

Post-Incident Inspection

(h) If, before or after any inspection required by this AD, the airplane experiences any incident of nose wheel shimmy; overweight, hard, or high drag/side load landing; flight in severe turbulence; or pitch oscillation: Before further flight, repeat the inspection required by paragraph (g) of this AD. If no crack is found, repeat the inspection required by paragraph (g)(1) or (g)(2) of this AD, as applicable.

Corrective Actions

(i) If any crack is found during any inspection required by paragraph (g) or (h) of this AD, before further flight, replace the elevator "G" weight support structure in accordance with paragraph (j) of this AD, or repair the structure in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, or the Civil Aviation Authority (CAA) (or its delegated representative).

Optional Terminating Action

(j) Replacement of the existing elevator "G" weight support structure with a new, improved elevator "G" weight support structure in accordance with BAE Systems (Operations) Limited Modification Service Bulletin SB.27–037–00654A, Revision 2, dated May 8, 2003, terminates the repetitive inspections required by paragraph (g) of this AD.

No Reporting Requirement

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

Alternative Methods of Compliance

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

Related Information

(m) British airworthiness directive 006–04–2003 also addresses the subject of this AD.

Material Incorporated by Reference

(n) You must use BAE Systems (Operations) Limited Inspection Service Bulletin ISB.27–037, Revision 3, dated April 17, 2003; to perform the inspections and corrective actions that are required by this AD, unless the AD specifies otherwise. If the replacement of the elevator "G" weight support structure is accomplished, you must use BAE Systems (Operations) Limited Modification Service Bulletin SB.27–037–00654A, Revision 2, dated May 8, 2003; to accomplish this replacement. The Director of the Federal Register approves the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. For copies of the service information, contact British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. For information on the availability of this material at the National Archives and Records Administration (NARA), call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* You may view the AD docket at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW, room PL–401, Nassif Building, Washington, DC.

Issued in Renton, Washington, on February 28, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–4412 Filed 3–10–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–19405; Airspace Docket No. 2004–ASW–14]

Modification to Class E Airspace; Mena, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; delay of effective dates.

SUMMARY: This action revises the direct final rule; request for comments that was published in the **Federal Register** on Wednesday, December 15, 2004 (69 FR 74953) (FR Doc. 04–27459). It changes the effective date for the revision of the Class E airspace area at Mena Intermountain Municipal Airport, Mena, AR (M39) to provide adequate controlled airspace for the redesigned Non-Directional Beacon (NDB) and the new Instrument Landing System (ILS) and Localizer (LOC) SIAPs.

DATES: The effective date for the direct final rule published at 69 FR 74953, December 15, 2004, is delayed until 0901 UTC, May 12, 2005.

FOR FURTHER INFORMATION CONTACT: Joseph R. Yadouga, Air Traffic Division, Airspace Branch, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0520; telephone: (817) 222–5597.

SUPPLEMENTARY INFORMATION:

History

Federal Register document 04–27459, published on Wednesday, December 15, 2004 (69 FR 74953), modified the Class E airspace area at Mena Intermountain Municipal Airport, Mena, AR (M39) to provide adequate controlled airspace for the redesigned Non-Directional Beacon (NDB) and the new Instrument Landing System (ILS) and Localizer (LOC) SIAPs.

Accordingly, pursuant to the authority delegated to me, the effective date for the Mena Intermountain Municipal Airport, Mena, AR (M39) Class E airspace, as published in the **Federal Register** on Wednesday, December 15, 2004 (69 FR 74953) (FR Doc. 04–27459) is delayed until May 12, 2005.

Issued in Fort Worth, TX, on February 24, 2005.

Herman J. Lyons, Jr.,

Area Director, Central En Route and Oceanic Operations.

[FR Doc. 05–4132 Filed 3–10–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–19696; Airspace Docket No. 04–AAL–24]

Establishment of Class E Airspace; Beluga, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Beluga, AK to provide adequate controlled airspace to contain aircraft executing Special Instrument Approach Procedures. This Rule results in new Class E airspace upward from

700 feet (ft.) above the surface at Beluga Airport, AK.

DATES: Effective 0901 UTC, May 12, 2005.

FOR FURTHER INFORMATION CONTACT: Jesse Patterson, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *Jesse.ctr.Patterson@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

SUPPLEMENTARY INFORMATION:

History

On Thursday, December 30, 2004, the FAA proposed to revise part 71 of the Federal Aviation Regulations (14 CFR part 71) to create new Class E airspace upward from 700 ft. above the surface at Beluga, AK (69 FR 78371). The action was proposed in order to establish Class E airspace sufficient in size to contain aircraft while executing Special Instrument Approach Procedures at the Beluga Airport. New Class E controlled airspace extending upward from 700 ft. above the surface within a 5-mile radius of the Beluga Airport is established by this action. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No public comments have been received, thus, the rule is adopted as proposed.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9M, *Airspace Designations and Reporting Points,* dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This revision to 14 CFR part 71 establishes Class E airspace at Beluga Airport, Alaska. This additional Class E airspace was created to accommodate aircraft executing Special Instrument Flight Procedures and will be depicted on aeronautical charts for pilot reference. The intended effect of this rule is to provide adequate controlled airspace for IFR operations at Beluga Airport, Alaska.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, part A, subpart 1, section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it creates Class E airspace sufficient in size to contain aircraft executing Instrument Approach Procedures for the Beluga Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9M, *Airspace Designations and Reporting Points,* dated August 30, 2004, and effective September 16, 2004, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Beluga, AK [New]

Beluga, Airport, AK
(Lat. 61°10′20″ N., long. 151°02′38″ W.)

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Beluga Airport.

* * * * *

Issued in Anchorage, AK, on March 4, 2005.

Anthony M. Wylie,

Acting Area Director, Alaska Flight Services Area Office.

[FR Doc. 05–4746 Filed 3–10–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–19414; Airspace Docket No. 04–AAL–16]

Establishment of Class E Airspace; Angoon, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Angoon, AK to provide adequate controlled airspace to contain aircraft executing Special Instrument Approach Procedures. This Rule results in new Class E airspace upward from 700 feet (ft.) above the surface at Angoon Seaplane Base, AK.

EFFECTIVE DATE: 0901 UTC, May 12, 2005.

FOR FURTHER INFORMATION CONTACT: Jesse Patterson, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *Jesse.ctr.Patterson@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

SUPPLEMENTARY INFORMATION:

History

On Tuesday, December 21, 2004, the FAA proposed to revise part 71 of the Federal Aviation Regulations (14 CFR part 71) to create new Class E airspace upward from 700 ft. above the surface at Angoon, AK (69 FR 76421). The action was proposed in order to establish Class E airspace sufficient in

size to contain aircraft while executing Special Instrument Approach Procedures at the Angoon Seaplane Base. New Class E controlled airspace extending upward from 700 ft. above the surface within a 7.5-mile radius of the Angoon Seaplane Base is established by this action. The longitude for the Angoon Seaplane Base was incorrectly listed in the Notice of Proposed Rulemaking and is corrected in the Final Rule. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No public comments have been received, thus, the rule is adopted as proposed.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9M, *Airspace Designations and Reporting Points,* dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This revision to 14 CFR part 71 establishes Class E airspace at Angoon Seaplane Base, Alaska. This additional Class E airspace was created to accommodate aircraft executing Instrument Flight Procedures and will be depicted on aeronautical charts for pilot reference. The intended effect of this rule is to provide adequate controlled airspace for IFR operations at Angoon Seaplane Base, Alaska.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it creates Class E airspace sufficient in size to contain aircraft executing Instrument Approach Procedures for the Angoon Seaplane Base and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9M, *Airspace Designations and Reporting Points,* dated August 30, 2004, and effective September 16, 2004, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Angoon, AK [New]

Angoon, Seaplane Base, AK
(Lat. 57°30'13" N., long. 134°35'06" W.)

That airspace extending upward from 700 feet above the surface within a 7.5-mile radius of the Angoon Seaplane Base.

* * * * *

Issued in Anchorage, AK, on March 4, 2005.

Anthony M. Wylie,

Acting Area Director, Alaska Flight Services Area Office.

[FR Doc. 05–4747 Filed 3–10–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–19813; Airspace Docket No. 04–AAL–26]

Revision of Class E Airspace; Point Lay, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises Class E airspace at Point Lay, AK to provide adequate controlled airspace to contain aircraft executing three new Standard Instrument Approach Procedures (SIAPs). This Rule results in new Class E airspace upward from 1,200 feet (ft.) above the surface at Point Lay, AK.

DATES: Effective 0901 UTC, May 12, 2005.

FOR FURTHER INFORMATION CONTACT: Jesse Patterson, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *Jesse.ctr.Patterson@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

SUPPLEMENTARY INFORMATION:

History

On Friday, January 7, 2005, the FAA proposed to revise part 71 of the Federal Aviation Regulations (14 CFR part 71) to add to the Class E airspace upward from 1,200 ft. above the surface at Point Lay, AK (70 FR 1396). The action was proposed in order to add Class E airspace sufficient in size to contain aircraft while executing three new SIAPs for the Point Lay Airport. The new approaches are (1) Area Navigation—Global Positioning System (RNAV GPS) Runway 5, original; (2) RNAV (GPS) RWY 23, original; and (3) Non-directional Beacon (NDB) RWY 5, original. Additional Class E controlled airspace extending upward from 1,200 feet above the surface within a 46-mile radius of the Point Lay Airport area is established by this action. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the

proposal to the FAA. No public comments have been received, thus, the rule is adopted as proposed.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9M, *Airspace Designations and Reporting Points*, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This revision to 14 CFR part 71 revises Class E airspace at Point Lay, Alaska. Additional Class E airspace is being created to accommodate aircraft executing three new SIAPs and will be depicted on aeronautical charts for pilot reference. The intended effect of this rule is to provide adequate controlled airspace for IFR operations at Point Lay Airport, Point Lay, Alaska.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it creates Class E airspace sufficient in size to contain aircraft executing Instrument Approach Procedures for the Point Lay Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9M, *Airspace Designations and Reporting Points*, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Point Lay, AK [Revised]

Point Lay Airport, AK
(Lat. 69°43'58" N., long. 163°00'19" W.)

That airspace extending upward from 700 feet above the surface within an 8-mile radius of the Point Lay Airport and that airspace extending upward from 1,200 feet above the surface within a 46-mile radius of the Point Lay, Airport, excluding that airspace outside 12 nautical miles from the State of Alaska shoreline.

* * * * *

Issued in Anchorage, AK, on March 4, 2005.

Anthony M. Wylie,

Acting Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 05–4748 Filed 3–10–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–19415; Airspace Docket No. 04–AAL–15]

Revision of Class E Airspace; Ketchikan, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises Class E airspace at Ketchikan, AK to provide adequate controlled airspace to contain aircraft executing Special Instrument Approach Procedures. This Rule results in additional Class E airspace upward from 700 feet (ft.) above the surface at Ketchikan, AK.

DATES: Effective 0901 UTC, May 12, 2005.

FOR FURTHER INFORMATION CONTACT: Jesse Patterson, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *Jesse.ctr.Patterson@faa.gov*. Internet address: *http://www.alaska.faa.gov/at*.

SUPPLEMENTARY INFORMATION:

History

On Thursday, December 30, 2004, the FAA proposed to revise part 71 of the Federal Aviation Regulations (14 CFR part 71) to add to the Class E airspace upward from 700 ft. above the surface at Ketchikan, AK (69 FR 78370). The action was proposed in order to add Class E airspace sufficient in size to contain aircraft while executing Special Instrument Approach Procedures for the Ketchikan Airport. The reference to Clam Cove Non-directional Beacon (NDB) in the Proposed Rule is deleted in the Final Rule, since the airspace description is no longer based on Clam Cove. Additional Class E controlled airspace is established by this action. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No public comments have been received, thus, the rule is adopted as proposed.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9M, *Airspace Designations*

and Reporting Points, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This revision to 14 CFR part 71 revises Class E airspace at Ketchikan, Alaska. Additional Class E airspace is being created to accommodate aircraft executing Special Instrument Approach Procedures and will be depicted on aeronautical charts for pilot reference. The intended effect of this rule is to provide adequate controlled airspace for IFR operations at Ketchikan Airport, Ketchikan, Alaska.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it creates Class E airspace sufficient in size to contain aircraft executing Instrument Approach Procedures for the Ketchikan Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9M, *Airspace Designations and Reporting Points*, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Ketchikan, AK [Revised]

Ketchikan International Airport, AK
(Lat. 55°21′20″ N., long. 131°42′50″ W.)
Annette Island VORTAC
(Lat. 55°03′38″ N., long. 131°34′42″ W.)
Ketchikan Localizer
(Lat. 55°20′51″ N., long. 131°42′00″ W.)

That airspace extending upward from 700 feet above the surface within 2.0 miles each side of the Ketchikan Localizer east course extending from the Ketchikan Localizer to 9.0 miles southeast of the Ketchikan International Airport and within 1.8 miles each side of the 353° radial of the Annette Island VORTAC extending from 11 miles north of the VORTAC to the Ketchikan Localizer east course and within 1.9 miles either side of the Ketchikan Localizer west course extending from the localizer to 6.7 miles west of the airport and that airspace bounded by 55°24′49″ N 131°53′23″ W 55°27′30″ N 132°03′10″ W 55°31′20″ N 132°00′30″ W 55°27′27″ N 131°48′35″ W.

* * * * *

Issued in Anchorage, AK, on March 4, 2005.

Anthony M. Wylie,

Acting Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 05–4749 Filed 3–10–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30439; Amdt. No. 3117]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is effective March 11, 2005. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 11, 2005.

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

For Examination—

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

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

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

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

For Purchase—Individual SIAP copies may be obtained from:

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

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

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

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) telephone: (405) 954–4164.

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

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

The Rule

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

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

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

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, and Navigation (air).

Issued in Washington, DC, on February 25, 2005.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

** * * Effective 14 Apr 2005*

Kanab, UT, Kanab Muni, RNAV (GPS) RWY 1, Amdt 1

** * * Effective 12 May 2005*

Atlanta, GA, Dekalb-Peachtree, RNAV (GPS) RWY 20L, Orig
Atlanta, GA, Dekalb-Peachtree, RNAV (GPS) RWY 27, Orig
Atlanta, GA, Dekalb-Peachtree, VOR/DME RWY 20L, Amdt 1D
Atlanta, GA, Dekalb-Peachtree, VOR/DME RWY 27, Amdt 1C
Sandpoint, ID, Sandpoint, RNAV (GPS)–B, Orig
Sandpoint, ID, Sandpoint, GPS–B, Orig-A, CANCELLED
Olathe, KS, New Century Aircenter, ILS OR LOC RWY 35, Amdt 6
Olathe, KS, New Century Aircenter, NDB RWY 35, Amdt 6
Olathe, KS, New Century Aircenter, VOR–A, Amdt 6
Abbeville, LA, Abbeville Chris Crusta Memorial, RNAV (GPS) RWY 15, Orig
Abbeville, LA, Abbeville Chris Crusta Memorial, RNAV (GPS) RWY 33, Orig
Abbeville, LA, Abbeville Chris Crusta Memorial, VOR/DME–A, Amdt 2
Abbeville, LA, Abbeville Chris Crusta Memorial, VOR/DME–B, Amdt 3
Baltimore, MD, Martin State, LOC RWY 15, Amdt 2
Palmer, MA, Metropolitan, GPS RWY 4, Orig, CANCELLED
Detroit Lakes, MN, Detroit Lakes-Wething Field, RNAV (GPS) RWY 13, Orig
Detroit Lakes, MN, Detroit Lakes-Wething Field, RNAV (GPS) RWY 31, Orig
Detroit Lakes, MN, Detroit Lakes-Wething Field, VOR RWY 13, Orig
Detroit Lakes, MN, Detroit Lakes-Wething Field, VOR RWY 31, Orig
Detroit Lakes, MN, Detroit Lakes-Wething Field, VOR OR GPS RWY 13, Amdt 6, CANCELLED
Detroit Lakes, MN, Detroit Lakes-Wething Field, VOR OR GPS RWY 31, Amdt 4, CANCELLED
Princeton, MN, Princeton Muni, RNAV (GPS) RWY 15, Orig
Princeton, MN, Princeton Muni, RNAV (GPS) RWY 33, Orig
Princeton, MN, Princeton Muni, NDB RWY 15, Amdt 1
Mexico, MO, Mexico Memorial, LOC/DME RWY 24, Orig
Morristown, NJ, Morristown Muni, RNAV (GPS) RWY 5, Amdt 1
Artesia, NM, Artesia Muni, RNAV (GPS) RWY 12, Orig
Artesia, NM, Artesia Muni, RNAV (GPS) RWY 21, Orig

Artesia, NM, Artesia Muni, RNAV (GPS) RWY 30, Orig
Artesia, NM, Artesia Muni, GPS RWY 12, Orig, CANCELLED
Artesia, NM, Artesia Muni, GPS RWY 21, Orig, CANCELLED
Artesia, NM, Artesia Muni, GPS RWY 30, Orig, CANCELLED
Las Vegas, NM, Las Vegas Muni, RNAV (GPS) RWY 2, Orig
Las Vegas, NM, Las Vegas Muni, RNAV (GPS) RWY 20, Orig
Las Vegas, NM, Las Vegas Muni, RNAV (GPS) RWY 32, Orig
Las Vegas, NM, Las Vegas Muni, VOR RWY 2, Amdt 11
Las Vegas, NM, Las Vegas Muni, VOR RWY 20, Amdt 6
Las Vegas, NM, Las Vegas Muni, GPS RWY 2, Orig, CANCELLED
Las Vegas, NM, Las Vegas Muni, GPS RWY 20, Orig, CANCELLED
Las Vegas, NM, Las Vegas Muni, GPS RWY 32, Orig-A, CANCELLED
Grove, OK, Grove Muni, RNAV (GPS) RWY 18, Orig
Grove, OK, Grove Muni, RNAV (GPS) RWY 36, Orig
Grove, OK, Grove Muni, VOR/DME–A, Amdt 1
Grove, OK, Grove Muni, GPS RWY 18, Orig-A, CANCELLED
Grove, OK, Grove Muni, GPS RWY 36, Orig-A, CANCELLED
Grove, OK, Grove Muni, VOR/DME RNAV RWY 18, Amdt 3, CANCELLED
Grove, OK, Grove Muni, VOR/DME RNAV RWY 36, Amdt 3, CANCELLED
Chehalis, WA, Chehalis-Centralia, RNAV (GPS) RWY 16, Orig

[FR Doc. 05–4751 Filed 3–10–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 360

[Docket Number: 040305083–5052–02]

RIN 0625–AA64

Steel Import Monitoring and Analysis System

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Interim final rule.

SUMMARY: The Department of Commerce publishes this interim final rule to implement a Steel Import Monitoring and Analysis (SIMA) System, originally outlined in the President's March 5, 2002, Proclamation on Steel Safeguards.[1] SIMA, as fully implemented by this interim final rule, contains modifications made in light of comments received in response to an Advanced Notice of Proposed Rulemaking (ANPRM) published on August 25, 2004.

DATES: This interim final rule is effective March 11, 2005. Modifications to SIMA, as stated in Annexes II and III will be implemented on June 9, 2005. Comments on the SIMA system must be submitted on or before 5 p.m. e.s.t., May 10, 2005.

Paperwork Reduction Act: Comments regarding the information collection requirements must be submitted to Diana Hynek, Departmental Paperwork Officer, on or before 5 p.m., e.s.t., May 10, 2005.

ADDRESSES: Comments on the SIMA system may be submitted through any of the following:

- Mail: Kelly Parkhill, Director for Industry Support and Analysis, Import Administration, Room 3713, Department of Commerce, 14th and Constitution Ave., NW., Washington, DC 20230.
- E-mail: *steel_license@ita.doc.gov*. Please state "Comments on the Interim final rule" in the subject line.
- Federal e-Rulemaking portal: *http://www.regulations.gov*.

Paperwork Reduction Act: Comments regarding the information collection should be sent to Diana Hynek, Departmental Paperwork, Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Ave., NW., Washington, DC 20230 or via the Internet at *dHynek@doc.gov*.

FOR FURTHER INFORMATION CONTACT: For information on the SIMA system, please contact Kelly Parkhill (202) 482–3791; Julie Al-Saadawi (202) 482–1930.

Paperwork Reduction Act: Requests for additional information on the collection of information, or copies of the information collection instrument and instructions should be directed to: William Franklin, Office of Finance, Room 1800A, U.S. Department of Commerce, 14th and Constitution Ave., NW., Washington, DC 20230; Phone Number: (202) 482–3277.

SUPPLEMENTARY INFORMATION: On December 31, 2002, the Department of Commerce published its final rule on the implementation of the current steel import monitoring system (67 FR 79845). This system was initiated in connection with the implementation of safeguard measures with respect to certain steel products pursuant to section 203 of the Trade Act of 1974 (67 FR 10593). The effective date of the system was February 1, 2003. On December 4, 2003, the President issued a proclamation that terminated the steel safeguard measures, but also directed the Secretary of Commerce to continue the monitoring system until the earlier of March 21, 2005, or such time as the Secretary of Commerce establishes a replacement program. On December 9, 2003, the Department of Commerce published a notice stating that the system would continue in effect as described in the Proclamation until March 21, 2005 (68 FR 68594).

The purpose of the SIMA system is to provide steel producers, steel consumers, importers, and the general public with accurate and timely information on anticipated imports of certain steel products. Currently, the SIMA system requires licenses for imports of certain steel products that were formerly covered under the President's safeguard action. Details of the current system can be found in the final rule (19 CFR 360) published on December 31, 2002 (67 FR 79845).

On August 25, 2004, the Department published an advanced notice of proposed rulemaking soliciting comments from the public on whether to continue the current system beyond its expiration date of March 21, 2005 (69 FR 52211) and, if extended, whether the system should be modified in any way. The Department received 73 submissions from a wide range of interested parties, including steel producers, steel consumers, steel suppliers, and importers, as well as from Congressional and foreign interests. Please refer to the SIMA system's Web site to read comments on the ANPRM and for further information about the SIMA system: *http://ia.ita.doc.gov/steel/license/*.

Interim Final Rule

The purpose of the SIMA system is to collect timely detailed statistics on anticipated steel imports and to provide stakeholders with information about import trends in this sector. The SIMA system aggregates detailed import statistics it collects from internet-generated licenses and makes the data available for public analysis on a weekly basis. The data gathering procedure through the online licensing system would remain the same. The monitor would continue to display aggregate statistical tables and graphs of U.S. steel imports combining data from the Census Bureau with data collected from the licensing system. Slightly more detailed information would be displayed in tabular form only.

The Department is implementing the SIMA system, beyond its current expiration date, for a period of four years (*see* 19 CFR 360). The Department also is expanding the coverage of the system to include all basic steel mill

[1] Formerly, the Steel Import Licensing and Surge Monitoring System.

products. Further, the Department will release, detail on the monitoring Web site, aggregate licensing data at the 6-digit Harmonized Tariff Schedule (HTS) product level. At the same time, the Department is terminating licensing with respect to certain downstream steel products now covered, specifically, carbon and alloy flanges and pipe fittings.

Licensing will continue without interruption on those products covered under the current system (*see* Annex I). With respect to those basic steel mill products not covered by the current system licensing will not be implemented until June 9, 2005 to allow affected parties sufficient time to adapt to and implement the new requirements (*see* Annex II for the full list of product codes to be covered under the new system). Finally, termination of licensing for certain downstream products will not occur until June 9, 2005 (*see* Annex III for a list of product codes to be removed from the system).

The Department does not intend to release aggregate data at the port level because of concerns about the potential release of proprietary information. In addition, the Department intends to make no changes to the timing requirement for obtaining an import license and would continue with the current policy that requires a license at the time of Customs' entry summary, although applicants could apply for a license up to two months prior to the expected date of importation.

The Department intends to issue a final rule, responding to comments received on this interim final rule, before September 30, 2005.

Comments: Submissions received during the public comment period established in the advanced notice of proposed rulemaking have been considered in preparing this interim final rule. In all, 73 submissions were received from a wide range of sources. Nearly all of the comments were supportive of continuing the SIMA system beyond its expiration date as long as it continued to be done in such a way that did not impose an additional burden on trade. The comments are summarized below and listed in order of their frequency:

Comment 1: Extension of the SIMA System—The vast majority of the submissions supported extending the SIMA system beyond its current expiration date, with most suggesting that the program be made permanent. A few commenters stated that the current system should be allowed to expire because either it was (1) unnecessary and duplicative of other import data available to the U.S. government, or (2) a burden on importers and a possible violation of U.S. international obligations.

Response 1: The Department believes that the SIMA system is a critical trade monitoring program and is extending it for another four years under the authority of the Census Act of 1930. The current automatic licensing system is WTO-consistent, and the system will continue to function in a way designed to meet our international obligations. The Department believes that the SIMA system has proven useful to both steel producers and consumers, by providing the public with timely and accurate data on steel imports through a mechanism that imposes minimal burden on those subject to licensing requirements. Other import data collected by the United States cannot be made publicly available on as timely a basis as that collected under the SIMA system. In addition, the system will continue to be Web-based and accessible 24 hours a day, seven days a week, and at no charge, in order to minimize the burden on licensees.

Comment 2: Product Coverage—The Department encouraged parties to comment on the system's product coverage. Generally, the majority of comments, particularly those from the steel producers and suppliers, and those from Members of Congress and State/local governments, requested that the monitoring system be expanded to cover a broader range of steel products than is covered by the current system. Most suggested that the system cover basic steel mill products; however, more than half also suggested that the system should also include some combination of downstream steel products, such as fabricated structurals, wire rope, wire strand and other wire products (including in a few cases, garment hangers). Several consumer groups also suggested that steel exports be covered as well. Those opposed to extension of the program also opposed its expansion, while two other commenters that were not opposed to the extension of the current program stated that they did not support expanding the program because of concerns over potential additional burden or costs to importers.

Response 2: The current system covers all steel products that were subject to the section 203 safeguards remedies imposed by the President in March 2002. That product scope, which corresponds to those products subject to the U.S. International Trade Commission's affirmative injury determinations in the section 201 investigation, included certain, but not all, basic steel mill products as well as some downstream steel products. In order to improve the usefulness of the current system, the Department is modifying the system's product coverage to make it more closely correspond to other important publicly available steel trade data by expanding the system to cover basic steel mill products. The Department also will remove certain currently covered downstream steel products, specifically carbon and alloy flanges and pipe fittings, from the licensing requirements of the system because they are not basic steel mill products. While the expansion in product coverage to basic steel mill products will result in an increase in the number of licenses, the additional burden this imposes on importers will be limited by the importers' familiarity with the current system, the system's automatic nature and the fact that the Department would continue its policy of imposing no fee for obtaining the license. The elimination of certain downstream products from coverage will also help reduce the burden on importers given the large volume of licenses associated with these products. A full list of the product categories and HTS numbers to be covered by the new SIMA system is provided in Annex II.[2] A list of the product categories and HTS numbers to be removed from the SIMA system licensing requirements is provided in Annex III.

Comment 3: Changes to the Import Monitor—The advanced notice of proposed rulemaking asked parties to comment on possible modifications to the Import Monitor, particularly with respect to the presentation of more detailed product information. A number of the submissions commented specifically on increasing the level of product detail presented in the monitor. These commenters all requested that the system be altered such that it would report aggregate data by 10-digit HTS category, rather than by the more general product categories currently displayed. Several other commenters voiced concerns over the possibility that increased product detail could potentially reveal proprietary information.

Response 3: The Department will present aggregate data at the 6-digit HTS level. The Department, however, is

[2] Implementation of the new product coverage will not occur until 90 days after the publication of this notice in the **Federal Register** to allow affected parties sufficient time to adapt to and implement the new requirements. Until that time product coverage will remain the same as the previous system. Until that time, licenses will be required on all products listed in Annex I, including those products listed in Annex lII which will be removed from the system at the same time, 90 days after publication of this notice, that the modified product scope is implemented.

reluctant to disaggregate data in any greater product detail than at the 6-digit HTS level because of the possibility of inadvertent release of proprietary information.

Comment 4: Port of entry—A number of commenters also suggested that the Department should aggregate data by port of entry.

Response 4: The dissemination of aggregate data on a port of entry basis greatly increases the possibility of inadvertent disclosure of proprietary information, particularly if product detail is increased to the 6-digit HTS level. The Department does not intend to publicly release aggregate port of entry data at this time.

Comment 5: Deadline for Obtaining a Steel Import License—A number of commenters suggested that the deadline for import licenses should be changed to require importers to obtain them earlier than they do now. One group of commenters suggested changing the current deadline to require that licenses be obtained by the time the steel products enter the country (*i.e.*, date of entry) and another group proposed that licenses must be obtained at least fifteen days prior to the date of entry. Other commenters noted that changes to the current deadline (*i.e.*, by the date of entry summary, which may be up to 10 days after the date of entry) could result in additional burdens to importers and possibly impede the flow of trade. In particular, one commenter noted that the special nature of U.S.-Canada trade must be recognized since a significant number of imports are delivered across the border on a just-in-time basis.

Response 5: The Department does not plan to change the existing deadline for the submission of licenses. For the considerable portion of the steel trade that comes across a land border, the requested license data may not be known prior to importation. Licensing deadlines concurrent with, or preceding, the date of importation have the potential for creating impediments to the normal flow of trade, particularly at those ports with high volumes of steel imports. Licenses will continue to be required at the time of entry summary, but may be obtained up to 60 days prior to the expected date of importation.

All comments responding to this notice will be a matter of public record and available for public inspection and copying at Import Administration's Central Records Unit, Room B–099, between the hours of 8:30 a.m. and 5 p.m. on business days.

Classification

Administrative Procedure Act. The Department finds good cause under 5 U.S.C. 553(b)(B) to waive the requirement for prior notice and an opportunity for public comment as such procedures would be contrary to the public interest. The current steel import licensing and monitoring system, which will expire on March 21, 2005, provides the steel industry with real-time information and detailed statistics on steel imports and import trends. The new Steel Import Monitoring System (SIMA) would replace the current system. As described in the preamble, SIMA, as implemented on the effective date of this interim final rule, would be identical to the current steel import monitoring and licensing system. Differences between the current system and SIMA would not be implemented until 90 days after the effective date of this rule, after a 60 day public comment period. As such, the SIMA system would continue to provide the public with timely and accurate data on steel imports through a mechanism that imposes minimal burden on those subject to the licensing requirements. The public has been given multiple opportunities to comment on implementation of this import licensing and monitoring system, and the overwhelming response from the public has been positive. Moreover, changes from the current system, made in response to comments previously received, would not be implemented until after the public has had an opportunity to comment.

The SIMA system must be implemented immediately to prevent a lapse in the import monitoring program. A lapse would subject importers to a severe disruption, creating confusion and uncertainty. Importers would be burdened with the uncertainty of not knowing whether they need to obtain an import license for their product. Importers would also have to change their import process until the SIMA system is implemented, at which time they would again have to change their import process to comply with the licensing requirements. Because this period of lapse would be brief, it would be difficult to determine the licensing requirements at any given time. In addition, this lapse would create unusual and confusing import transactions that would be difficult to resolve. For example, an importer could be faced with the situation where his transaction was initiated during the period when no import license was required, but completed during a time after the implementation of the SIMA system. To avoid such confusion and uncertainty, the SIMA system must be implemented immediately.

In addition, this data provides the industry with real-time information on anticipated steel imports, allowing importers to monitor steel import trends. If this rule is not implemented immediately, the data collected under this system would be less useful to the industry because the information collected during and shortly after the period of lapse would not be complete or accurate. In order to ensure the uninterrupted availability of timely and accurate import data, it is necessary to implement the SIMA system immediately. Finally, upon the effective date of this rule, importers would continue to provide information only on those products covered under the current system. Additional information requirements would not be implemented until 90 days after this rule is effective.

For the reasons above, the Department also finds good cause to waive the 30-day delay in effectiveness. 5 U.S.C. 553(d)(3). The SIMA system must be implemented immediately to prevent a lapse in the import monitoring program. As explained above, if the SIMA system is not implemented immediately, importers would be subject to a severe disruption, which would create confusion and uncertainty. In addition, if this rule is not implemented immediately, the data collected under this system would be less useful to the industry. Finally, the system that is implemented on the effective date of this rule is the same as the system that is currently in place.

Regulatory Flexibility Act. Because prior notice and an opportunity for public comment are not required for this rule under 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable. However, the Commerce Department believes this interim final rule will not have a significant economic impact. Companies are already familiar with the licensing of certain steel products under the current system. In most cases, brokerage companies will apply for the license for the steel importers. Most brokerage companies that are currently involved in filing documentation for importing goods into the U.S. are accustomed to Customs' automated systems. Today, more than 99% of the Customs filings are handled electronically. Therefore, the Web-based nature of this simple license application is not a significant obstacle to any firm in completing this requirement. However, should a company need to apply for an ID or license non-electronically, a fax/phone option will be available at Commerce during regular business hours. There is

no cost to register for a company-specific ID user code and no cost to file for the license. Each license form is expected to take less than 10 minutes to complete using much of the same information used to complete the Customs Entry Summary documentation. This is the one additional requirement of the importers' broker to fulfill U.S. entry requirements to import each covered steel product shipment. Commerce estimates that less than five percent of the licenses would be filed by brokerage companies or other businesses that would be considered small entities. Commerce estimates that about one percent, or $20,000, represents the amount that small entities will incur as a result of this interim final rule.

Paperwork Reduction Act. This interim final rule contains collection-of-information requirements subject to review and approval by OMB under the Paperwork Reduction Act (PRA). These requirements have been approved by OMB (OMB No.: 0625–0245; Expiration Date: 09/30/05). Public reporting for this collection of information is estimated to be less than 10 minutes per response, including the time for reviewing instructions, and completing and reviewing the collection of information. All responses to this collection of information are voluntary, and will be provided confidentially to the extent allowed by law.

Paperwork Reduction Act Data:
OMB Number: 0625–0245.
ITA Number: ITA–4141P.
Type of Review: Regular Submission.
Affected Public: Business or other for-profit.
Estimated Number of Registered Users: 3,500.
Estimated Time Per Response: less than 10 minutes.
Estimated Total Annual Burden Hours: 100,000 hours.
Estimated Total Annual Costs: $2,000,000.

Request for Comments: Comments are invited on (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and costs) of the proposed collection 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 forms of information technology.

Comments regarding the information collection must be submitted on or before 5 p.m., E.S.T., May 10, 2005. All comments on the information collection will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Diana Hynek, Departmental Paperwork, Clearance Officer, Department of Commerce (*see* **ADDRESSES**).

Executive Order 12866

This rule has been determined to be significant for purposes of Executive Order 12866.

Executive Order 13132

This rule does not contain policies with federalism implications as that term is defined in EO 13132.

List of Subjects in 19 CFR Part 360

Administrative practice and procedure, Business and industry, Imports, Reporting and recordkeeping requirements, Steel.

■ For reasons discussed above, 19 CFR part 360 is revised to read as follows:

PART 360—STEEL IMPORT MONITORING AND ANALYSIS SYSTEM

Sec.
360.101 Steel import licensing.
360.102 Online registration.
360.103 Automatic issuance of import licenses.
360.104 Steel import monitoring.
360.105 Duration of the steel import licensing requirement.
360.106 Fees.
360.107 Hours of operation.
360.108 Loss of electronic licensing privileges.

Authority: 13 U.S.C. 301(a) and 302.

§ 360.101 Steel import licensing.

(a) *In general.* (1) All imports of basic steel mill products are subject to the import licensing requirements. These products are listed in Annex II. Registered users will be able to obtain steel import licenses on the Steel Import Monitoring and Analysis (SIMA) System Web site. This Web site contains two sections related to import licensing—the online registration system and the automatic steel import license issuance system. Information gathered from these licenses will be aggregated and posted on the import monitoring section of the SIMA system Web site.

(2) A single license may cover multiple products as long as certain information on the license (*e.g.*, importer, exporter, manufacturer and country of origin) remains the same. However, separate licenses for steel entered under a single entry will be required if the information differs. As a result, a single Customs entry may require more than one steel import license. The applicable license(s) must cover the total quantity of steel entered and should cover the same information provided on the Customs entry summary.

(b) *Entries for consumption.* All entries for consumption of covered steel products, other than the exception for "informal entries" listed in paragraph (d) of this section, will require an import license prior to the filing of Customs entry summary documents. The license number(s) must be reported on the entry summary (Customs Form 7501) at the time of filing. There is no requirement to present physical copies of the license forms at the time of entry summary. However, copies must be maintained in accordance with Customs' normal requirements. Entry summaries submitted without the required license number(s) will be considered incomplete and will be subject to liquidated damages for violation of the bond condition requiring timely completion of entry.

(c) *Foreign Trade Zone entries.* All shipments of covered steel products into a foreign trade zones (FTZ), known as FTZ admissions, will require an import license prior to the filing of FTZ admission documents. The license number(s) must be reported on the application for FTZ admission and/or status designation (Customs form 214) at the time of filing. There is no requirement to present physical copies of the license forms at the time of FTZ admission; however, copies must be maintained in accordance with Customs' normal requirements. FTZ admission documents submitted without the required license number(s) will not be considered complete and will be subject to liquidated damages for violation of the bond condition requiring timely completion of admission. A further steel license will not be required for shipments from zones into the commerce of the United States.

(d) *Informal entries.* No import license shall be required on informal entries of

covered steel products, such as merchandise valued at less than $2,000. This exemption applies to informal entries only, imports of steel valued at less than $2,000 that are part of a formal entry will require a license. For additional information, refer to 19 CFR 143.21 through 143.28.

(e) *Other non-consumption entries.* Import licenses are not required on temporary importation bond (TIB) entries, transportation and exportation (T&E) entries or entries into a bonded warehouse. Covered steel products withdrawn for consumption from a bonded warehouse will require a license at the entry summary.

§ 360.102 Online registration.

(a) *In general.* (1) Any importer, importing company, customs broker or importer's agent with a U.S. street address may register and obtain the user identification number necessary to log on to the automatic steel import license issuance system. Foreign companies may obtain a user identification number if they have a U.S. address through which they may be reached; P.O. boxes will not be accepted. A user identification number will be issued within two business days. Companies will be able to register online through the SIMA system Web site. However, should a company prefer to apply for a user identification number non-electronically, a phone/fax option will be available at Commerce during regular business hours.

(2) This user identification number will be required in order to log on to the steel import license issuance system. A single user identification number will be issued to an importer, customs broker or importer's agent. Operating units within the company (*e.g.*, individual branches, divisions or employees) will all use the same basic company user identification code but can supply suffixes to identify the branches. The steel import license issuance system will be designed to allow multiple users of a single identification number from different locations within the company to enter information simultaneously.

(b) *Information required to obtain a user identification number.* In order to obtain a user identification number, the importer, importing company, customs broker or importer's agent will be required to provide general information. This information will include: the filer company name, employer identification number (EIN) or Customs ID number (where no EIN is available), U.S. street address, phone number, contact information and e-mail address for both the company headquarters and any branch offices that will be applying for steel licenses. It is the responsibility of the applicant to keep the information up-to-date. This information will not be released by Commerce, except as required by U.S. law.

§ 360.103 Automatic issuance of import licenses.

(a) In general. Steel import licenses will be issued to registered importers, customs brokers or their agents through an automatic steel import licensing system. The licenses will be issued automatically after the completion of the form.

(b) Customs entry number. Filers are not required to report a Customs entry number to obtain an import license but are encouraged to do so if the Customs entry number is known at the time of filing for the license.

(c) Information required to obtain an import license. (1) The following information is required to be reported in order to obtain an import license (if using the automatic licensing system, some of this information will be provided automatically from information submitted as part of the registration process):

(i) Filer company name and address;

(ii) Filer contact name, phone number, fax number and email address;

(iii) Entry type (*i.e.*, Consumption, FTZ)

(iv) Importer name;

(v) Exporter name;

(vi) Manufacturer name (filer may state "unknown");

(vii) Country of origin;

(viii) Country of exportation;

(ix) Expected date of export;

(x) Expected date of import;

(xi) Expected port of entry;

(xii) Current HTS number (from Chapters 72 or 73);

(xiii) Quantity (in kilograms) and

(xiv) Customs value (U.S. $).

(2) Certain fields will be automatically filled out by the automatic license system based on information submitted by the filer (*e.g.*, product category, unit value). Filers should review these fields to help confirm the accuracy of the submitted data.

(3) Upon completion of the form, the importer, customs broker or the importer's agent will certify as to the accuracy and completeness of the information and submit the form electronically. After refreshing the page, the system will automatically issue a steel import license number. The refreshed form containing the submitted information and the newly issued license number will appear on the screen (the "license form"). Filers can print the license form themselves only at that time. For security purposes, users will not be able to retrieve licenses themselves from the license system at a later date for reprinting. If needed, copies of completed license forms can be requested from Commerce during normal business hours.

(d) *Duration of the steel import license.* The steel import license can be applied for up to 60 days prior to the expected date of importation and until the date of filing of the entry summary documents, or in the case of FTZ entries, the filing of Customs form 214. The steel import license is valid for 75 days; however, import licenses that were valid on the date of importation but expired prior to the filing of entry summary documents will be accepted.

(e) *Correcting submitted license information.* Users will need to correct licenses themselves if they determine that there was an error submitted. To access a previously issued license, a user must log on with his user identification code and identify the license number and the volume (in kilograms) for the first product shown on the license. The information on the license should match the information presented on the CF–7501 entry summary document as closely as possible; this includes the value and volume of the shipment, the expected date of importation, and the customs district of entry.

(f) *Low-value licenses.* There is one exception to the requirement for obtaining a unique license for each Customs entry. If the total value of the covered steel portion of an entry is less than $250, applicants may apply to Commerce for a low-value license that can be used in lieu of a single entry license for low-value entries.

§ 360.104 Steel import monitoring.

(a) Throughout the duration of the licensing requirement, Commerce will maintain an import monitoring system on the SIMA system Web site that will report certain aggregate information on imports of steel mill products obtained from the steel licenses. Aggregate data will be reported on a monthly basis by country of origin and steel mill product category and will include import quantity (metric tons), import Customs value (U.S. $), and average unit value ($/metric ton). The Web site will also contain certain aggregate data at the 6-digit Harmonized Tariff Schedule level and will also present a range of historical data for comparison purposes. Provision of this aggregate data on the Web site may be revisited should concerns arise over the possible release of proprietary data.

(b) Reported monthly import data will be refreshed each week with new data

on licenses issued during the previous week. This data will also be adjusted periodically for cancelled or unused steel import licenses, as appropriate.

§ 360.105 Duration of the steel import licensing requirement.

The licensing program will be in effect through March 21, 2009, but may be extended upon review and notification in the **Federal Register** prior to this expiration date. Licenses will be required on all subject imports entered during this period, even if the entry summary documents are not filed until after the expiration of this program. The licenses will be valid for 10 business days after the expiration of this program to allow for the final filing of required Customs documentation.

§ 360.106 Fees.

No fees will be charged for obtaining a user identification number, issuing a steel import license or accessing the steel import surge monitoring system.

§ 360.107 Hours of operation.

The automatic licensing system will generally be accessible 24 hours a day, 7 days a week but may be unavailable at selected times for server maintenance. If the system is unavailable for an extended period of time, parties will be able to obtain licenses from Commerce directly via fax during regular business hours. Should the system be inaccessible for an extended period of time, Commerce would advise Customs to consider this as part of mitigation on any liquidated damage claims that may be issued.

§ 360.108 Loss of electronic licensing privileges.

Should Commerce determine that a filer consistently files inaccurate licensing information or otherwise abuses the licensing system, Commerce may revoke its electronic licensing privileges without prior notice. The filer will then only be able to obtain a license directly from Commerce. Because of the additional time need to review such forms, Commerce may require up to 10 working days to process such forms. Delays in filing caused by the removal of a filer's electronic filing privilege will not be considered a mitigating factor by the U.S. Customs Service.

Dated: March 8, 2005.

Grant Aldonas,

Under Secretary for International Trade.

Note: The Following annexes will not appear in the Code of Federal Regulations.

Annex I: Currently Covered Steel Products (based on section 203 determination): Harmonized Tariff Codes

Annex II: Covered Basic Steel Mill Products (to be implemented 90 days after publication of this notice in the **Federal Register**): Harmonized Tariff Codes

Annex III: Previously Covered Steel Products No Longer Subject to Licensing Requirements (to be implemented 90 days after publication of this notice in the **Federal Register**): Harmonized Tariff Codes

Annex I

List of Harmonized Codes Covered Under Current SIMA System

Flat Products: Carbon & Alloy Steel Slab
7207120010, 7207120050, 7207200025, 7207200045, 7224900055

Flat Products: Carbon & Alloy Steel Plate
7208403030, 7208403060, 7208510030, 7208510045, 7208510060, 7208520000, 7208900000, 7210901000, 7211130000, 7211140030, 7211140045, 7225403005, 7225403050, 7225506000, 7226915000

Flat Products: Carbon & Alloy Steel Hot-rolled Flat Products
7208101500, 7208103000, 7208106000, 7208253000, 7208256000, 7208260030, 7208260060, 7208270030, 7208270060, 7208360030, 7208360060, 7208370030, 7208370060, 7208380015, 7208380030, 7208380090, 7208390015, 7208390030, 7208390090, 7208406030, 7208406060, 7208530000, 7208540000, 7211140090, 7211191500, 7211192000, 7211193000, 7211194500, 7211196000, 7211197530, 7211197560, 7211197590, 7225303005, 7225303050, 7225307000, 7225407000, 7226917000, 7226918000

Flat Products: Carbon & Alloy Steel Cold-rolled Flat Products
7209150000, 7209160030, 7209160060, 7209160070, 7209160091, 7209170030, 7209170060, 7209170070, 7209170091, 7209181530, 7209181560, 7209182510, 7209182520, 7209182580, 7209186020, 7209186090, 7209250000, 7209260000, 7209270000, 7209280000, 7209900000, 7211231500, 7211232000, 7211233000, 7211234500, 7211236030, 7211236060, 7211236075, 7211236085, 7211292030, 7211292090, 7211294500, 7211296030, 7211296080, 7211900000, 7225190000, 7225507000, 7225508010, 7225508015, 7225508085, 7226927050, 7226928005, 7226928050, 7226191000, 7226199000, 7226925000, 7226927005

Flat Products: Carbon & Alloy Steel Coated Products
7210200000, 7210300030, 7210300060, 7210410000, 7210490030, 7210490090, 7210610000, 7210690000, 7210703000, 7210706030, 7210706060, 7210706090, 7210906000, 7210909000, 7212200000, 7212301030, 7212301090, 7212303000, 7212305000, 7212401000, 7212405000, 7212500000, 7225910000, 7225920000, 7225990010, 7225990090, 7226930000, 7226940000, 7226990000

Flat Products: Carbon & Alloy Steel Tin Products
7210110000, 7210120000, 7210500000, 7212100000

Carbon & Alloy Steel Hot-rolled bar
7213200010, 7213200080, 7213990060, 7213990090, 7214300010, 7214300080, 7214300000, 7214910015, 7214910060, 7214910090, 7214990015, 7214990030, 7214990045, 7214990060, 7214990075, 7214990090, 7215901000, 7215905000, 7216100010, 7216100050, 7216210000, 7216220000, 7216500000, 7216610000, 7216690000, 7216910010, 7216910090, 7216990010, 7216990090, 7227200000, 7227906005, 7227906050, 7228201000, 7228308005, 7228308050, 7228400000, 7228606000, 7228703020, 7228703040, 7228703060, 7228703080. 7228706000, 7228800000

Carbon & Alloy Steel Cold-Finished Bar
7215100010, 7215100080, 7215500015, 7215500060, 7215500090, 7215903000, 7228205000, 7228505005, 7228505050, 7228608000

Carbon & Alloy Steel Rebar
7213100000, 7214200000

Carbon & Alloy Steel Welded Tubular Products other than OCTG
7305111030, 7305111060, 7305115000, 7305121030, 7305121060, 7305125000, 7305191030, 7305191060, 7305195000, 7305312000, 7305314000, 7305316000, 7305391000, 7305395000, 7305901000, 7305905000, 7306301000, 7306303000, 7306305010, 7306305015, 7306305020, 7306305025, 7306305032, 7306305035, 7306305040, 7306305055, 7306305085, 7306305090, 7306501000, 7306503000, 7306505010, 7306505030, 7306505050, 7306505070, 7306601000, 7306603000, 7306605000, 7306607060, 7306901000, 7306905000

Carbon & Alloy Steel Fittings & Flanges
7307915010, 7307915030, 7307915050, 7307915070, 7307923010, 7307923030, 7307929000, 7307933000, 7307936000, 7307939030, 7307939060, 7307995015, 7307995045, 7307995060

Stainless Steel Bar
7221000045, 7222110005, 7222110050, 7222190005, 7222190050, 7222200005, 7222200045, 7222200075, 7222300000, 7222403065, 7222403085, 7222406000

Stainless Steel Rod
7221000005, 7221000015, 7221000030, 7221000075

Stainless Steel Wire
7223001015, 7223001030, 7223001045, 7223001060, 7223001075, 7223005000, 7223009000

Annex II

New SIMA System Product Coverage To Include Basic Steel Mill Products: Harmonized Tariff System Codes

Ingots and Steel for Castings
7206100000, 7206900000, 7218100000, 7224100005, 7224100075

Blooms, Billets and Slabs
7207110000, 7207120010, 7207120050, 7207190030, 7207190090, 7207200025, 7207200045, 7207200075, 7207200090, 7218910015, 7218910030, 7218910060, 7218990015, 7218990030, 7218990045, 7218990060, 7218990090, 7224900005, 7224900045, 7224900055, 7224900065, 7224900075

Wire Rods
7213913000, 7213913010, 7213913011, 7213913015, 7213913090, 7213913091, 7213913092, 7213914500, 7213914510, 7213914590, 7213916000, 7213916010, 7213916090, 7213990030, 7213990031,

7213990038, 7213990090, 7221000015, 7221000030
Structural Shapes Heavy
7216310000, 7216320000, 7216330030, 7216330060, 7216330090, 7216400010, 7216400050, 7216500000, 7216990000, 7216990010, 7216990090, 7222403025, 7222403045, 7228703020, 7228703040
Steel Piling
7301100000
Plates Cut Lengths
7208403030, 7208403060, 7208510030, 7208510045, 7208510060, 7208520000, 7210901000, 7211130000, 7211140030, 7211140045, 7219210005, 7219210020, 7219210040, 7219210050, 7219210060, 7219220005, 7219220010, 7219220015, 7219220020, 7219220025, 7219220030, 7219220035, 7219220040, 7219220045, 7219220060, 7219220070, 7219220075, 7219220080, 7219310050, 7220110000, 7225403005, 7225403050, 7225506000, 7226915000
Plates in Coils
7208101500, 7208103000, 7208253000, 7208256000, 7208360030, 7208360060, 7208370030, 7208370060, 7211140090, 7219110000, 7219110030, 7219110060, 7219120002, 7219120006, 7219120021, 7219120026, 7219120045, 7219120051, 7219120056, 7219120066, 7219120071, 7219120081, 7219310010, 7225303005, 7225303050
Rails Standard
7302101010, 7302101035, 7302105020
Rails All Other
7302101015, 7302101025, 7302101045, 7302101055
Railroad Accessories
7302200000, 7302400000, 7302901000
Bars—Hot Rolled
7213200000, 7213200010, 7213200080, 7213990060, 7214100000, 7214300000, 7214300010, 7214300080, 7214910015, 7214910060, 7214910090, 7214990015, 7214990030, 7214990045, 7214990060, 7214990075, 7214990090, 7215901000, 7221000005, 7221000045, 7221000075, 7222110005, 7222110050, 7222190005, 7222190050, 7227200000, 7227200010, 7227200020, 7227200090, 7227200095, 7227906005, 7227906050, 7227906051, 7227906053, 7227906058, 7227906059, 7228201000, 7228308005, 7228308050, 7228400000, 7228606000, 7228800000
Bars—Light Shapes
7216100010, 7216100050, 7216210000, 7216220000, 7222403065, 7222403085, 7228703060, 7228703080
Bars—Reinforcing
7213100000, 7214200000
Bars-Cold Finished
7215100000, 7215100010, 7215100080, 7215500015, 7215500060, 7215500090, 7215903000, 7215905000, 7222200005, 7222200045, 7222200075, 7222300000, 7228205000, 7228505005, 7228505050, 7228608000
Tool Steel
7224100045, 7224900015, 7224900025, 7224900035, 7225200000, 7225301000, 7225305030, 7225305060, 7225401015, 7225401090, 7225405030, 7225405060, 7225501030, 7225501060, 7226200000, 7226910500, 7226911530, 7226911560, 7226912530, 7226912560, 7226921030, 7226921060, 7226923030, 7226923060, 7227100000, 7227901030, 7227901060, 7227902030, 7227902060, 7228100010, 7228100030, 7228100060, 7228302000, 7228304000, 7228306000, 7228501010, 7228501020, 7228501040, 7228501060, 7228501080, 7228601030, 7228601060, 7229100000
Standard Pipe
7304390016, 7304390020, 7304390024, 7304390036, 7304390048, 7304390062, 7304390076, 7304390080, 7304598010, 7304598015, 7304598030, 7304598045, 7304598060, 7304598080, 7306305025, 7306305028, 7306305032, 7306305040, 7306305055, 7306305085, 7306305090
Oil Country Goods
7304213000, 7304216030, 7304216045, 7304216060, 7304291010, 7304291020, 7304291030, 7304291040, 7304291050, 7304291060, 7304291080, 7304292010, 7304292020, 7304292030, 7304292040, 7304292050, 7304292060, 7304292080, 7304293010, 7304293020, 7304293030, 7304293040, 7304293050, 7304293060, 7304293080, 7304294010, 7304294020, 7304294030, 7304294040, 7304294050, 7304294060, 7304294080, 7304295015, 7304295030, 7304295045, 7304295060, 7304295075, 7304296015, 7304296030, 7304296045, 7304296060, 7304296075, 7305202000, 7305204000, 7305206000, 7305208000, 7306201030, 7306201090, 7306202000, 7306203000, 7306204000, 7306206010, 7306206050, 7306208010, 7306208050
Line Pipe
7304101020, 7304101030, 7304101045, 7304101060, 7304101080, 7304105020, 7304105050, 7304105080, 7305111030, 7305111060, 7305115000, 7305121030, 7305121060, 7305125000, 7305191030, 7305191060, 7305195000, 7306101010, 7306101013, 7306101014, 7306101015, 7306101019, 7306101050, 7306101053, 7306101054, 7306101055, 7306101059, 7306105010, 7306105013, 7306105014, 7306105015, 7306105019, 7306105050, 7306105053, 7306105054, 7306105055, 7306105059
Mechanical Tubing
7304313000, 7304316050, 7304390028, 7304390032, 7304390040, 7304390044, 7304390052, 7304390056, 7304390068, 7304390072, 7304511000, 7304515060, 7304591000, 7304596000, 7304598020, 7304598025, 7304598035, 7304598040, 7304598050, 7304598055, 7304598065, 7304598070, 7304905000, 7304907000, 7306301000, 7306305015, 7306305020, 7306305035, 7306501000, 7306505030, 7306505050, 7306505070, 7306605000, 7306607060
Pressure Tubing
7304316010, 7304390002, 7304390004, 7304390006, 7304390008, 7304515015, 7304515045, 7304592030, 7304592040, 7304592045, 7304592055, 7304592060, 7304592070, 7304592080, 7306305010, 7306505010
Stainless Pipe & Tubing
7304413005, 7304413015, 7304413045, 7304416005,7304416015, 7304416045, 7304490005, 7304490015, 7304490045, 7304490060, 7306401010, 7306401015, 7306401090, 7306405005, 7306405015, 7306405040, 7306405042, 7306405044, 7306405062, 7306405064, 7306405080, 7306405085, 7306405090, 7306607030
Pipe & Tubing Nonclassified
7304515005, 7305901000, 7305905000, 7306901000, 7306905000
Structural Pipe & Tubing
7304901000, 7304903000, 7305312000, 7305314000, 7305316000, 7306303000, 7306503000, 7306601000, 7306603000
Pipe for Piling
7305391000, 7305395000
Wire Drawn
7217101000, 7217102000, 7217103000, 7217104030, 7217104090, 7217105030, 7217105090, 7217106000, 7217107000, 7217108010, 7217108020, 7217108025, 7217108030, 7217108045, 7217108060, 7217108075, 7217108090, 7217109000, 7217201500, 7217203000, 7217204510, 7217204520, 7217204530, 7217204540, 7217204550, 7217204560, 7217204570, 7217204580, 7217206000, 7217207500, 7217301530, 7217301560, 7217303000, 7217304504, 7217304510, 7217304511, 7217304520, 7217304530, 7217304540, 7217304541, 7217304550, 7217304560, 7217304590, 7217306000, 7217307500, 7217905030, 7217905060, 7217905090, 7223001015, 7223001030, 7223001045, 7223001060, 7223001075, 7223005000, 7223009000, 7229200000, 7229200010, 7229200015, 7229200090, 7229901000, 7229905006, 7229905008, 7229905015, 7229905016, 7229905030, 7229905031, 7229905050, 7229905051, 7229909000
Black Plate
7209182510, 7209182520, 7209182550, 7209182580
Tin Plate
7210110000, 7210120000, 7212100000
Tin Free Steel
7210500000
Sheets Hot Rolled
7208106000, 7208260030, 7208260060, 7208270030, 7208270060, 7208380015, 7208380030, 7208380090, 7208390015, 7208390030, 7208390090, 7208406030, 7208406060, 7208530000, 7208540000, 7208900000, 7219130002, 7219130031, 7219130051, 7219130071, 7219130081, 7219140030, 7219140065, 7219140090, 7219230030, 7219230060, 7219240030, 7219240060, 7225307000, 7225407000
Sheets Cold Rolled
7209150000, 7209160030, 7209160060, 7209160070, 7209160090, 7209160091, 7209170030, 7209170060, 7209170070, 7209170090, 7209170091, 7209181530, 7209181560, 7209186000, 7209186020, 7209186090, 7209250000, 7209260000, 7209270000, 7209280000, 7209900000, 7210703000, 7219320005, 7219320020, 7219320025, 7219320035, 7219320036, 7219320038, 7219320042, 7219320044, 7219320045, 7219320060, 7219330005, 7219330020, 7219330025, 7219330035, 7219330036, 7219330038, 7219330042, 7219330044, 7219330045, 7219330070, 7219330080, 7219340005, 7219340020, 7219340025, 7219340030, 7219340035, 7219340050, 7219350005, 7219350015, 7219350030, 7219350035, 7219350050, 7219900010, 7219900020, 7219900025, 7219900060, 7219900080, 7225507000, 7225508010, 7225508015, 7225508085, 7225990010, 7225990090

Sheets & Strip Galv Hot Dipped
7210410000, 7210490030, 7210490090, 7210706060, 7212301030, 7212301090, 7212303000, 7212305000, 7225920000, 7226940000
Sheets & Strip Galv Electrolytic
7210300030, 7210300060, 7210706030, 7212200000, 7225910000, 7226930000
Sheets & Strip All Other Metalic CTD
7210200000, 7210610000, 7210690000, 7210706090, 7210906000, 7210909000, 7212500000, 7212600000
Sheets & Strip—Electrical
7225110000, 7225190000, 7226111000, 7226119030, 7226119060, 7226191000, 7226199000
Strip—Hot Rolled
7211191500, 7211192000, 7211193000, 7211194500, 7211196000, 7211197530, 7211197560, 7211197590, 7220121000, 7220125000, 7226917000, 7226918000
Strip—Cold Rolled
7211231500, 7211232000, 7211233000, 7211234500, 7211236030, 7211236060, 7211236075, 7211236085, 7211292030, 7211292090, 7211294500, 7211296030, 7211296080, 7211900000, 7212401000, 7212405000, 7220201010, 7220201015, 7220201060, 7220201080, 7220206005, 7220206010,7220206015, 7220206060, 7220206080, 7220207005, 7220207010, 7220207015, 7220207060, 7220207080, 7220208000, 7220209030, 7220209060, 7220900010, 7220900015, 7220900060, 7220900080, 7226925000, 7226927005, 7226927050, 7226928005, 7226928050, 7226990000

Annex III

Harmonized Tariff Codes that will be Removed from the SIMA System

7307915010, 7307915030, 7307915050, 7307915070, 7307923010, 7307923030, 7307929000, 7307933000, 7307936000, 7307939030, 7307939060, 7307995015, 7307995045, 7307995060

[FR Doc. 05–4971 Filed 3–10–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9188]

RIN 1545–BE01

Disclosure of Return Information to the Bureau of the Census

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTIONS: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to additions to the list of items of return information disclosed to the Bureau of the Census (Bureau). The regulation adds two items of return information for use in producing demographic statistics programs, including the Bureau's Small Area Income and Poverty Estimates (SAIPE). The temporary regulations also remove four items that the Bureau has indicated are no longer necessary. The text of these temporary regulations serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective March 10, 2005.

Applicability Date: For dates of applicability, *see* § 301.6103(j)(1)–1T(e).

FOR FURTHER INFORMATION CONTACT: James O'Leary, (202) 622–4580 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Under section 6103(j)(1), upon written request from the Secretary of Commerce, the Secretary of the Treasury is to furnish to the Bureau return information that is prescribed by Treasury regulations for the purpose of, but only to the extent necessary in, structuring censuses and national economic accounts and conducting related statistical activities authorized by law. Section 301.6103(j)(1)–1 of the regulations further defines such purposes by reference to 13 U.S.C. chapter 5 and provides an itemized description of the return information authorized to be disclosed for such purposes.

This document adopts temporary regulations that authorize the IRS to disclose the additional items of return information that have been requested by the Secretary of Commerce to the extent necessary in developing and preparing demographic statistics, including statutorily mandated Small Area Income and Poverty Estimates (SAIPE). The temporary regulations also remove certain items of return information that are enumerated in the existing regulations but that the Secretary of Commerce has indicated are no longer needed.

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Procedure and Administration Regulations (26 CFR part 301) relating to Internal Revenue Code (Code) section 6103(j)(1). The temporary regulations contain rules relating to the disclosure of return information reflected on returns to officers and employees of the Department of Commerce for structuring censuses and national economic accounts and conducting related statistical activities authorized by law.

Explanation of Provisions

By letter dated May 11, 2004, the Department of Commerce requested that additional items of return information be disclosed to the Bureau for purposes related to conducting the SAIPE program and used to estimate the number of school-aged children in poverty for each of the over 14,000 districts in the United States. Specifically, the Department of Commerce requested Earned Income and the number of Earned Income Tax Credit-eligible qualifying children. The request indicates that under the Improving America's Schools Act of 1994 (Public Law 103–382, 108 Stat. 3518 (October 20, 1994)), these estimates were mandated biennially, and under the No Child Left Behind Act of 2002 (Public Law 107–110, 115 Stat. 1425 (January 8, 2002)), they are required annually.

The regulations also remove four items of return information that the Bureau indicated it no longer requires. These items are: end-of-year code; months actively operated; total number of documents and the total amount reported on the Form 1096 (Annual Summary and Transmittal of U.S. Information Returns) transmitting Forms 1099–MISC (Miscellaneous Income); and Form 941 (Employer's Quarterly Federal Tax Return) indicator and business address on Schedule C (Profit or Loss From Business) of Form 1040. Accordingly, the temporary regulations have removed these items from the enumeration of return information to be disclosed to the Bureau.

Special Analyses

It has been determined that these temporary regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), please refer to the cross-reference notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these temporary regulations is James C. O'Leary, Office of the Associate Chief

Counsel (Procedure & Administration), Disclosure and Privacy Law Division.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Amendments to the Regulations

■ Accordingly, 26 CFR Part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

■ **Paragraph 1.** The authority citation for part 301 is amended by adding an entry in numerical order to read in part, as follows:

Authority: 26 U.S.C. 7805 * * *.
Section 301.6103(j)(1)–1T also issued under 26 U.S.C. 6103(j)(1); * * *

■ **Par. 2.** Section 301.6103(j)(1)–1 is amended by revising paragraphs (b)(1) introductory text and (b)(3) introductory text to read as follows:

§ 301.6103(j)(1)–1 Disclosures of return information to officers and employees of the Department of Commerce for certain statistical purposes and related activities.

* * * * *

(b)(1) [Reserved]. For further guidance, see § 301.6103(j)(1)–1T(b)(1).

* * * * *

(b)(3) [Reserved]. For further guidance, see § 301.6103(j)(1)–1T(b)(3).

* * * * *

■ **Par. 3.** Section 301.6103(j)(1)–1T is added to read as follows:

§ 301.6103(j)(1)–1T Disclosures of return information to officers and employees of the Department of Commerce for certain statistical purposes and related activities (temporary).

(a) [Reserved]. For further guidance, see § 301.6103(j)(1)–1(a).

(b) Disclosure of return information reflected on returns to officers and employees of the Bureau of the Census.

(1) Officers or employees of the Internal Revenue Service will disclose the following return information reflected on returns of individual taxpayers to officers and employees of the Bureau of the Census for purposes of, but only to the extent necessary in, conducting and preparing, as authorized by chapter 5 of title 13, United States Code, intercensal estimates of population and income for all geographic areas included in the population estimates program and demographic statistics programs, censuses, and related program evaluation:

(i) Taxpayer identity information (as defined in section 6103(b)(6) of the Internal Revenue Code), validity code with respect to the taxpayer identifying number (as described in section 6109), and taxpayer identity information of spouse and dependents, if reported.

(ii) Location codes (including area/district office and campus/service center codes).

(iii) Marital status.

(iv) Number and classification of reported exemptions.

(v) Wage and salary income.

(vi) Dividend income.

(vii) Interest income.

(viii) Gross rent and royalty income.

(ix) Total of—

(A) Wages, salaries, tips, etc.;

(B) Interest income;

(C) Dividend income;

(D) Alimony received;

(E) Business income;

(F) Pensions and annuities;

(G) Income from rents, royalties, partnerships, estates, trusts, etc.;

(H) Farm income;

(I) Unemployment compensation; and

(J) Total Social Security benefits.

(x) Adjusted gross income.

(xi) Type of tax return filed.

(xii) Entity code.

(xiii) Code indicators for Form 1040, Form 1040 (Schedules A, C, D, E, F, and SE), and Form 8814.

(xiv) Posting cycle date relative to filing.

(xv) Social Security benefits.

(xvi) Earned Income (as defined in section 32(c)(2)).

(xvii) Number of Earned Income Tax Credit-eligible qualifying children.

(b)(2) [Reserved]. For further guidance, see § 301.6103(j)(1)–1(b)(2).

(b)(3) Officers or employees of the Internal Revenue Service will disclose the following business related return information reflected on returns of taxpayers to officers and employees of the Bureau of the Census for purposes of, but only to the extent necessary in, conducting and preparing, as authorized by chapter 5 of title 13, United States Code, demographic and economic statistics programs, censuses, and surveys. (The "returns of taxpayers" include, but are not limited to: Form 941; Form 990 series; Form 1040 series and Schedules C and SE; Form 1065 and all attending schedules and Form 8825; Form 1120 series and all attending schedules and Form 8825; Form 851; Form 1096; and other business returns, schedules and forms that the Internal Revenue Service may issue.):

(i) Taxpayer identity information (as defined in section 6103(b)(6)) including parent corporation, shareholder, partner, and employer identity information.

(ii) Gross income, profits, or receipts.

(iii) Returns and allowances.

(iv) Cost of labor, salaries, and wages.

(v) Total expenses or deductions.

(vi) Total assets.

(vii) Beginning- and end-of-year inventory.

(viii) Royalty income.

(ix) Interest income, including portfolio interest.

(x) Rental income, including gross rents.

(xi) Tax-exempt interest income.

(xii) Net gain from sales of business property.

(xiii) Other income.

(xiv) Total income.

(xv) Percentage of stock owned by each shareholder.

(xvi) Percentage of capital ownership of each partner.

(xvii) Principal industrial activity code, including the business description.

(xviii) Consolidated return indicator.

(xix) Wages, tips, and other compensation.

(xx) Social Security wages.

(xxi) Deferred wages.

(xxii) Social Security tip income.

(xxiii) Total Social Security taxable earnings.

(xxiv) Gross distributions from employer-sponsored and individual retirement plans from Form 1099–R.

(b)(4) through (b)(6) [Reserved]. For further guidance, see § 301.6103(j)(1)–1(b)(4) through (b)(6).

(c) through (d) [Reserved]. For further guidance, see § 301.6103(j)(1)–1(c) and (d).

(e) *Effective date.* This section is applicable to disclosures to the Bureau of the Census on March 10, 2005.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: February 26, 2005.

Eric Solomon,

Acting Deputy Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 05–4869 Filed 3–10–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF JUSTICE

28 CFR Parts 67 and 83

[Docket No. OJP (OJP)–1306; AG Order No. 2759–2005]

RIN 1121–AA57

Government-Wide Debarment and Suspension (Nonprocurement) and Government-Wide Requirements for Drug-Free Workplace Grants

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice is finalizing without change the interim final rule with request for comments published at 68 FR 66534, on November 26, 2003. The interim final rule implemented changes to the government-wide nonprocurement debarment and suspension common rule (NCR) and the associated rule on drug-free workplace requirements. The NCR sets forth the common policies and procedures that Federal Executive branch agencies must use in taking suspension or debarment actions. It also establishes procedures for participants and Federal agencies in entering covered transactions.

DATES: This final rule is effective April 11, 2005.

FOR FURTHER INFORMATION CONTACT: Linda Fallowfield, Attorney Advisor, Office of the General Counsel, Office of Justice Programs, Department of Justice, 810 7th Street, NW., Washington, DC 20531. Telephone: (202) 305–2534. (This is not a toll-free number.) E-mail: *Linda.Fallowfield@usdoj.gov.*

SUPPLEMENTARY INFORMATION: On November 26, 2003, at 68 FR 65534, a number of Federal agencies jointly published a final government-wide nonprocurement debarment and suspension common rule (NCR). At that time, because the Department of Justice (the Department) had not previously proposed changes to the NCR along with the other participating agencies, the Department adopted the NCR on an interim final basis. This interim final rule also separated the Department's drug-free workplace requirements from the uniform requirements on debarment and suspension. The Department did not receive any comments and is now finalizing without change the common rule it adopted on November 26, 2003.

The NCR promotes consistency within the Federal Government and provides uniform requirements for debarment and suspension by Executive branch agencies to protect assistance, loans, benefits, and other nonprocurement activities from waste, fraud, abuse, and poor performance, similar to the system used for Federal procurement activities under Subpart 9.4 of the Federal Acquisition Regulations (FAR). Drug-free workplace requirements were moved from 28 CFR part 67 to 28 CFR part 83. This places the requirements nearer other requirements used predominantly by award officials.

Regulatory Certifications

Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866, "Regulatory Planning and Review," section 1(b), Principles of Regulation. The Department has determined that this rule is a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly this rule has been reviewed by the Office of Management and Budget.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation, and by approving it, certifies that this regulation will not have a significant economic impact on a substantial number of small entities for the following reasons: this rule addresses Federal agency procedures for suspension and debarment, and it clarifies current requirements under the Nonprocurement Common Rule for Debarment and Suspension by reorganizing information and presenting that information in a plain language, question-and-answer format.

Unfunded Mandates Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Paperwork Reduction Act

This rule does not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996. 5 U.S.C. 804. This rule will not result in: an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; 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.

List of Subjects

28 CFR Part 67

Administrative practice and procedure, Government contracts, Grant programs, Loan programs, Reporting and recordkeeping requirements, Technical assistance, Drug abuse.

28 CFR Part 83

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

■ Accordingly, the interim final rule amending 28 CFR Parts 67 and 83, which was published at 68 FR 66534 on November 26, 2003, is adopted as a final rule without change.

Dated: March 7, 2005.

Alberto R. Gonzales,

Attorney General.

[FR Doc. 05–4850 Filed 3–10–05; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 030405B]

Atlantic Highly Migratory Species; Bluefin Tuna Fisheries

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

ACTION: Closure.

SUMMARY: NMFS has determined that the available Angling category Atlantic bluefin tuna (BFT) quota for the 2004 fishing year (June 1, 2004 May 31, 2005) is projected to be reached by March 11, 2005. Therefore, the Angling category BFT fishery will close, coastwide, effective March 11, 2005. This action is

being taken to prevent overharvest of the adjusted Angling category quota of 299.6 metric tons (mt).

DATES: Effective 11:30 p.m., local time, March 11, 2005, through May 31, 2005.

FOR FURTHER INFORMATION CONTACT: HMS Management Division at 978–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas among the various domestic fishing categories and are specified annually under 50 CFR 635.23(b) and 635.27(a).

Angling Category Closure

NMFS is required, under 50 CFR 635.28 (a)(1), to file with the Office of the **Federal Register** for publication, notification of closure when a BFT quota is reached, or is projected to be reached. On and after the effective date and time of such closure notification, for the remainder of the fishing year, or for a specified period as indicated in the notification, fishing for, retaining, possessing, or landing BFT under that quota category is prohibited until the opening of the subsequent quota period, or until such date as specified in the notification.

The 2004 final initial BFT quota specifications issued pursuant to 635.27, set an Angling category quota of 76.5 mt to be harvested from the regulatory area during the 2004 fishing year (70 FR 10896, March 7, 2005). On December 10, 2004, NMFS transferred a total of 223.1 mt from the General category to the Angling category establishing an adjusted Angling category BFT quota of 299.6 mt for the 2004 fishing year (69 FR 71732). Based on the available Angling category quota and preliminary information regarding recreational BFT landings for the 2004 fishing year, NMFS projects that the available Angling category quota will be reached by March 11, 2005. Therefore, fishing for, retaining, possessing, or landing BFT by persons aboard vessels permitted in the Atlantic Highly Migratory Species (HMS) Angling, and HMS Charter/Headboat categories, must cease at 11:30 p.m. local time March 11, 2005, in all areas. The intent of this closure is to prevent overharvest of the available quota established for the Angling category. Atlantic HMS Angling and HMS Charter/Headboat category permit holders may tag and release BFT of all sizes while the Angling quota category is closed, subject to the requirements of the tag-and-release program at § 635.26.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action. Based on the available Angling category quota for the 2004 fishing year and the most recent information regarding recreational BFT landings, this closure is necessary to prevent overharvest of the adjusted Angling category quota.

This fishery is currently underway and delaying this action would be contrary to the public interest as it will result in additional recreational BFT landings, potentially contributing to an overharvest of the adjusted Angling category quota. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For all of the above reasons, there is good cause under 5 U.S.C. 553(d) to waive the delay in effectiveness of this action.

NMFS provides notification of closures by publishing the closure notice in the **Federal Register**, faxing notification to individuals on the HMS FAX Network and know fishery representatives, announcing the notice on the Atlantic Tunas Information Lines, posting the closure notice on www.nmfspermits.com, and announcing the notice over the NOAA Weather radio channel.

This action is being taken under 50 CFR 635.23(a)(4) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: March 7, 2005.

Alan D. Risenhoover

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

[FR Doc. 05–4832 Filed 3–8–05; 12:58 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 041126332–5039–02; I.D. 112204C]

Fisheries of the Exclusive Economic Zone Off Alaska; Gulf of Alaska; Final 2005 and 2006 Harvest Specifications for Groundfish; Correction

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

ACTION: Final rule; correction.

SUMMARY: This document corrects a February 24, 2005, final rule that implements 2005 and 2006 harvest specifications, reserves, and apportionments thereof, Pacific halibut prohibited species catch (PSC) limits, and associated management measures for the groundfish fishery of the Gulf of Alaska (GOA). Specifically, this document corrects errors in Tables 12 and 13 to the final specifications.

DATES: Effective at 1200 hrs, Alaska local time (A.l.t.), February 24, 2005, through 2400 hrs, A.l.t., December 31, 2006.

ADDRESSES: Copies of the Final Environmental Assessment and Final Regulatory Flexibility Analysis prepared for this action are available from Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Durall, or from the Alaska Region website at *www.fakr.noaa.gov*.

Copies of the final 2004 Stock Assessment and Fishery Evaluation report for the groundfish resources of the GOA, dated November 2004, are available from the North Pacific Fishery Management Council, West 4th Avenue, Suite 306, Anchorage, AK 99510–2252, (907–271–2809) or from its website at *www.fakr.noaa.gov/npfmc*.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228, or e-mail at *mary.furuness@noaa.gov*.

SUPPLEMENTARY INFORMATION: NMFS published 2005 and 2006 harvest specifications, reserves, and apportionments thereof, Pacific halibut PSC limits, and associated management measures for the groundfish fishery of the GOA on February 24, 2005 (70 FR 8958). That rule lists sideboard limitations for non-exempt American Fisheries Act catcher vessels in the GOA. This document corrects the final rule by reflecting accurately all of the

allocations and seasons for 2005 and 2006.

Correction

As published, final rule FR Doc. 05–3581, February 24, 2005 (70 FR 8958) contains errors and needs to be corrected. This action corrects Table 12 (70 FR 8972) and Table 13 (70 FR 8973) to change the dates for the pollock seasons. For the A Season, the dates are January 20 - March 10, and for the C Season, the dates are August 25 - October 1. The corrected Table 13 changes the species names for the second allocation for shortraker rockfish to rougheye rockfish and for the big and longnose skates allocation to longnose skates. Both tables are corrected and reprinted below for the convenience of all interested readers.

TABLE 12—FINAL 2005 GOA NON-EXEMPT AMERICAN FISHERIES ACT CATCHER VESSEL (CV) GROUNDFISH HARVEST SIDEBOARD LIMITATIONS

(Values are in metric tons)

Species	Apportionments and allocations by area/season/processor/gear	Ratio of 1995–1997 non-exempt AFA CV catch to 1995–1997 TAC	2005 TAC	2005 non-exempt AFA catcher vessel sideboard
Pollock	A Season (W/C areas only)			
	January 20 - March 10			
	Shumagin (610)	0.6112	5,035	3,077
	Chirikof (620)	0.1427	11,692	1,668
	Kodiak (630)	0.2438	4,148	1,011
	B Season (W/C areas only)			
	March 10 - May 31			
	Shumagin (610)	0.6112	5,035	3,077
	Chirikof (620)	0.1427	13,820	1,972
	Kodiak (630)	0.2438	2,021	493
	C Season (W/C areas only)			
	August 25 - October 1			
	Shumagin (610)	0.6112	10,155	6,207
	Chirikof (620)	0.1427	4,446	634
	Kodiak (630)	0.2438	6,274	1,530
	D Season (W/C areas only)			
	October 1 - November 1			
	Shumagin (610)	0.6112	10,155	6,207
	Chirikof (620)	0.1427	4,446	634
	Kodiak (630)	0.2438	6,275	1,530
	Annual			
	WYK (640)	0.3499	1,688	591
	SEO (650)	0.3499	6,520	2,281
Pacific cod	A Season[1]			
	January 1 - June 10			
	W inshore	0.1423	8,471	1,205
	W offshore	0.1026	941	97
	C inshore	0.0722	13,547	978
	C offshore	0.0721	1,505	109
	B Season[2]			
	September 1 - December 31			
	W inshore	0.1423	5,647	804
	W offshore	0.1026	628	64
	C inshore	0.0722	9,031	652
	C offshore	0.0721	1,003	72
	Annual			
	E inshore	0.0079	3,294	26
	E offshore	0.0078	366	3
Flatfish deep-water	W	0.0000	330	0
	C	0.0670	3,340	224
	E	0.0171	3,150	54
Rex sole	W	0.0010	1,680	2
	C	0.0402	7,340	295
	E	0.0153	3,630	56
Flathead sole	W	0.0036	2,000	7
	C	0.0261	5,000	131
	E	0.0048	3,390	16

TABLE 12—FINAL 2005 GOA NON-EXEMPT AMERICAN FISHERIES ACT CATCHER VESSEL (CV) GROUNDFISH HARVEST SIDEBOARD LIMITATIONS—Continued

(Values are in metric tons)

Species	Apportionments and allocations by area/season/processor/gear	Ratio of 1995–1997 non-exempt AFA CV catch to 1995–1997 TAC	2005 TAC	2005 non-exempt AFA catcher vessel sideboard
Flatfish shallow-water	W	0.0156	4,500	70
	C	0.0598	13,000	777
	E	0.0126	3,240	41
Arrowtooth flounder	W	0.0021	8,000	17
	C	0.0309	25,000	773
	E	0.0020	5,000	10
Sablefish	W trawl gear	0.0000	508	0
	C trawl gear	0.0720	1,450	104
	E trawl gear	0.0488	307	15
Pacific ocean perch	W	0.0623	2,567	160
	C	0.0866	8,535	739
	E	0.0466	2,473	115
Shortraker rockfish	W	0.0000	155	0
	C	0.0237	324	8
	E	0.0124	274	3
Rougheye rockfish	W	0.0000	188	0
	C	0.0237	557	13
	E	0.0124	282	3
Other rockfish	W	0.0034	40	0
	C	0.2065	300	62
	E	0.0000	330	0
Northern rockfish	W	0.0003	808	0
	C	0.0336	4,283	144
Pelagic shelf rockfish	W	0.0001	377	0
	C	0.0000	3,067	0
	E	0.0067	1,109	7
Thornyhead rockfish	W	0.0308	410	13
	C	0.0308	1,010	31
	E	0.0308	520	16
Big skates	W	0.0090	727	7
	C	0.0090	2,463	22
	E	0.0090	809	7
Longnose skates	W	0.0090	66	1
	C	0.0090	1,972	18
	E	0.0090	780	7
Other skates	GW	0.0090	1,327	12
Demersal shelf rockfish	SEO	0.0020	410	1
Atka mackerel	Gulfwide	0.0309	600	19
Other species	Gulfwide	0.0090	13,871	125

[1]The Pacific cod A season for trawl gear does not open until January 20.
[2]The Pacific cod B season for trawl gear closes November 1.

TABLE 13—FINAL 2006 GOA NON-EXEMPT AMERICAN FISHERIES ACT CATCHER VESSEL (CV) GROUNDFISH HARVEST SIDEBOARD LIMITATIONS

(Values are in metric tons)

Species	Apportionments and allocations by area/season/processor/gear	Ratio of 1995–1997 non-exempt AFA CV catch to 1995–1997 TAC	2006 TAC	2006 non-exempt AFA catcher vessel sideboard
Pollock	A Season (W/C areas only) January 20 - March 10			
	Shumagin (610)	0.6112	5,047	3,085
	Chirikof (620)	0.1427	11,719	1,672
	Kodiak (630)	0.2438	4,159	1,014
	B Season (W/C areas only) March 10 - May 31			
	Shumagin (610)	0.6112	5,047	3,085
	Chirikof (620)	0.1427	13,852	1,977
	Kodiak (630)	0.2438	2,026	494
	C Season (W/C areas only) August 25 - October 1			
	Shumagin (610)	0.6112	10,179	6,221
	Chirikof (620)	0.1427	4,457	636
	Kodiak (630)	0.2438	6,289	1,533
	D Season (W/C areas only) October 1 - November 1			
	Shumagin (610)	0.6112	10,179	6,221
	Chirikof (620)	0.1427	4,457	636
	Kodiak (630)	0.2438	6,288	1,533
	Annual			
	WYK (640)	0.3499	1,691	592
	SEO (650)	0.3499	6,520	2,281
Pacific cod	A Season[1] January 1 - June 10			
	W inshore	0.1423	7,450	1,060
	W offshore	0.1026	828	85
	C inshore	0.0722	11,914	860
	C offshore	0.0721	1,324	95
	B Season[2] September 1 - December 31			
	W inshore	0.1423	4,967	707
	W offshore	0.1026	552	51
	C inshore	0.0722	7,944	574
	C offshore	0.0721	882	64
	Annual			
	E inshore	0.0079	2,897	23
	E offshore	0.0078	322	3
Flatfish deep-water	W	0.0000	330	0
	C	0.0670	3,340	224
	E	0.0171	3,150	54
Rex sole	W	0.0010	1,680	2
	C	0.0402	7,340	295
	E	0.0153	3,630	56
Flathead sole	W	0.0036	2,000	7
	C	0.0261	5,000	131
	E	0.0048	3,212	15
Flatfish shallow-water	W	0.0156	4,500	70
	C	0.0598	13,000	777
	E	0.0126	3,240	41
Arrowtooth flounder	W	0.0021	8,000	17
	C	0.0309	25,000	773
	E	0.0020	5,000	10

TABLE 13—FINAL 2006 GOA NON-EXEMPT AMERICAN FISHERIES ACT CATCHER VESSEL (CV) GROUNDFISH HARVEST SIDEBOARD LIMITATIONS—Continued

(Values are in metric tons)

Species	Apportionments and allocations by area/season/processor/gear	Ratio of 1995–1997 non-exempt AFA CV catch to 1995–1997 TAC	2006 TAC	2006 non-exempt AFA catcher vessel sideboard
Sablefish	W trawl gear	0.0000	481	0
	C trawl gear	0.0720	1,374	99
	E trawl gear	0.0488	291	14
Pacific ocean perch	W	0.0623	2,525	157
	C	0.0866	8,375	725
	E	0.0466	2,392	111
Shortraker rockfish	W	0.0000	155	0
	C	0.0237	324	8
	E	0.0124	274	3
Rougheye rockfish	W	0.0000	188	0
	C	0.0237	557	13
	E	0.0124	282	3
Other rockfish	W	0.0034	40	0
	C	0.2065	300	62
	E	0.0000	330	0
Northern rockfish	W	0.0003	755	0
	C	0.0336	3,995	134
Demersal shelf rockfish	SEO	0.0020	410	1
Atka mackerel	Gulfwide	0.0309	600	19
Other species	Gulfwide	0.0090	13,525	122

[1]The Pacific cod A season for trawl gear does not open until January 20.
[2]The Pacific cod B season for trawl gear closes November 1.

All other information previously published remains the same.

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

Dated: March 7, 2005.

Rebecca Lent

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 05–4838 Filed 3–10–05; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 70, No. 47
Friday, March 11, 2005

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

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 25

[Docket No. 05–04]

RIN 1557–AB98

FEDERAL RESERVE SYSTEM

12 CFR Part 228

[Regulation BB; Docket No. R–1225]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 345

RIN 3064–AC89

Community Reinvestment Act Regulations

AGENCIES: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Joint notice of proposed rulemaking.

SUMMARY: The OCC, Board, and FDIC (collectively, "federal banking agencies" or "the Agencies") are issuing this notice of proposed rulemaking that would revise certain provisions of our rules implementing the Community Reinvestment Act (CRA). We plan to take this action in response to public comments received by the federal banking agencies and the Office of Thrift Supervision (OTS) on a February 2004 inter-agency CRA proposal and by the FDIC on its August 2004 CRA proposal. The current proposal would address regulatory burden imposed on some smaller banks by revising the eligibility requirements for CRA evaluation under the lending, investment, and service tests. Specifically, the proposal would provide a simplified lending test and a flexible new community development test for small banks with an asset size between $250 million and $1 billion. Holding company affiliation would not be a factor in determining which CRA evaluation standards applied to a bank. In addition, the proposal would revise the term "community development" to include certain community development activities, including affordable housing, in underserved rural areas and designated disaster areas.

DATES: Comments must be received by May 10, 2005.

ADDRESSES: Comments should be directed to:

OCC: You should include OCC and Docket Number 05–04 in your comment. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *OCC Web Site: http://www.occ.treas.gov.* Click on "Contact the OCC," scroll down and click on "Comments on Proposed Regulations."
- *E-mail Address: regs.comments@occ.treas.gov.*
- *Fax:* (202) 874–4448.
- *Mail:* Office of the Comptroller of the Currency, 250 E Street, SW., Mail Stop 1–5, Washington, DC 20219.
- *Hand Delivery/Courier:* 250 E Street, SW., Attn: Public Information Room, Mail Stop 1–5, Washington, DC 20219.

Instructions: All submissions received must include the agency name (OCC) and docket number or Regulatory Information Number (RIN) for this notice of proposed rulemaking. In general, the OCC will enter all comments received into the docket without change, including any business or personal information that you provide. You may review comments and other related materials by any of the following methods:

- *Viewing Comments Personally:* You may personally inspect and photocopy comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC. You can make an appointment to inspect comments by calling (202) 874–5043.
- *Viewing Comments Electronically:* You may request e-mail or CD–ROM copies of comments that the OCC has received by contacting the OCC's Public Information Room at *regs.comments@occ.treas.gov.*
- *Docket:* You may also request available background documents and project summaries using the methods described above.

Board: You may submit comments, identified by Docket No. R–1225, by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov.* Include docket number in the subject line of the message.
- *Fax:* 202/452–3819 or 202/452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, except as necessary for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FDIC: You may submit comments, identified by RIN number by any of the following methods:

- *Agency Web site: http://www.fdic.gov/regulations/laws/federal/propose.html.* Follow instructions for submitting comments on the Agency Web Site.
- *E-mail: Comments@FDIC.gov.* Include the RIN number in the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery/Courier:* Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.
- *Instructions:* All submissions received must include the agency name and RIN for this rulemaking. All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/propose.html*

including any personal information provided.

FOR FURTHER INFORMATION CONTACT:

OCC: Michael Bylsma, Director, or Margaret Hesse, Special Counsel, Community and Consumer Law Division, (202) 874–5750; Karen Tucker, National Bank Examiner, Compliance Division, (202) 874–4428; or Patrick T. Tierney, Attorney, Legislative and Regulatory Activities (202) 874–5090, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: William T. Coffey, Senior Review Examiner, (202) 452–3946; Catherine M.J. Gates, Oversight Team Leader, (202) 452–3946; Kathleen C. Ryan, Counsel, (202) 452–3667; or Dan S. Sokolov, Senior Attorney, (202) 452–2412, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

FDIC: Richard M. Schwartz, Counsel, Legal Division, (202) 898–7424; Susan van den Toorn, Counsel, Legal Division, (202) 898–8707; or Robert W. Mooney, Chief, CRA and Fair Lending Policy Section, Division of Supervision and Consumer Protection, (202) 898–3911; Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Background

Advance Notice of Proposed Rulemaking. In 1995, when the OCC, the Board, the OTS, and the FDIC (collectively, "federal banking and thrift agencies" or "four agencies") adopted major amendments to regulations implementing the Community Reinvestment Act, they committed to reviewing the amended regulations in 2002 for their effectiveness in placing performance over process, promoting consistency in evaluations, and eliminating unnecessary burden. (60 FR 22156, 22177, May 4, 1995). The review was initiated in July 2001 with the publication in the **Federal Register** of an advance notice of proposed rulemaking (66 FR 37602, July 19, 2001). The federal banking and thrift agencies indicated that they would determine whether and, if so, how the regulations should be amended to better evaluate financial institutions' performance under CRA, consistent with the Act's authority, mandate, and intent. The four agencies solicited comment on the fundamental issue of whether any change to the regulations would be beneficial or warranted, and on eight discrete aspects of the regulations. About 400 comment letters were received, most from banks and thrifts of varying sizes and their trade associations ("financial institutions") and local and national nonprofit community advocacy and community development organizations ("community organizations").

The comments reflected a consensus that certain fundamental elements of the regulations are sound, but demonstrated a disagreement over the need and reasons for change. Community organizations advocated that the regulations needed to be changed to reflect developments in the industry and marketplace; financial institutions were concerned principally with reducing burden consistent with maintaining or improving the regulations' effectiveness. In reviewing these comments, the federal banking and thrift agencies were particularly mindful of the need to balance the desire to make changes that might "fine tune" the regulations, with the need to avoid unnecessary and costly disruption to reasonable CRA policies and procedures that the industry has put into place under the current rules.

Joint Agency Regulatory Proposal to Address Small Institution Regulatory Burden and Illegal or Predatory Lending Practices. In February 2004, the federal banking and thrift agencies issued identical proposals to amend their respective CRA regulations to increase the limit on the asset size of institutions classified as "small institutions" that are eligible for streamlined CRA evaluations and exempt from CRA data reporting obligations. (69 FR 5729, Feb. 6, 2004). Under the current rule, a "small institution" is an institution that has less than $250 million in assets and is either independent or a member of a holding company with less than $1 billion in assets. The four agencies proposed to re-define a "small institution" as one with fewer than $500 million in assets. The holding company criterion would have been eliminated under the proposal.

The commenters were deeply split on the proposal. A majority of over 250 community bank commenters, and all of the trade associations commenting on behalf of community banks, urged the federal banking and thrift federal banking agencies to extend the proposed burden relief to all institutions with assets under $2 billion, or at least to all institutions with assets under $1 billion; a few favored the proposed $500 million threshold. Virtually every one of over 250 community group commenters strongly opposed changing the definition of "small institution" or exempting any more institutions from the three-part test (lending, services, and investments). These commenters urged that the threshold not be changed so that community development activities continue to be evaluated, as they are today, in banks with $250 million or more in assets.

The federal banking and thrift agencies also proposed to revise and clarify the regulations to provide that evidence of certain abusive and illegal credit practices will adversely affect an agency's evaluation of a bank's CRA performance, including evidence of a pattern or practice of extending home mortgage or consumer loans based predominantly on the foreclosure or liquidation value of the collateral by the institution, where the borrower cannot be expected to be able to make the payments required under the terms of the loan. The proposal clarified that a bank's evaluation will be adversely affected by such abusive or illegal credit practices regardless of whether the practices involve loans in the bank's assessment area(s) or in any other location or geography. It also provided that a bank's CRA evaluation can be adversely affected by evidence of such practices by any affiliate, if any loans of that affiliate have been considered in the institution's CRA evaluation.

While commenters differed in their reaction to many aspects of the proposal, many commenters, including community organizations and financial institutions, opposed—as either inadequate or inappropriate—the provision that evidence of collateral-based mortgage lending would adversely affect a bank's CRA evaluation.

Recent OTS Rulemaking. On August 18, 2004, the OTS published a final rule that expanded the category of "small savings associations" subject to OTS CRA regulations to those under $1 billion, regardless of holding-company affiliation. The OTS announced that it was taking this action on July 16, 2004, and that same day, the OCC and the Board announced separately that they would not proceed with their respective proposals. The Board formally withdrew its proposal. The OCC did not formally withdraw its proposal, but did not adopt it.

On November 24, 2004, the OTS issued another proposed rulemaking to revise the definition of "community development" to permit consideration of such activities in underserved non-metropolitan areas, and to solicit comment on the appropriate consideration of such community development activities in any areas affected by natural disasters or major community disruptions. The OTS

further solicited comment on providing substantial flexibility in the way that CRA ratings are assigned for institutions subject to the lending, investment, and service tests (savings associations with assets of $1 billion or more). Under the OTS proposal, 50% or more of a large savings association's CRA rating would be based on lending, and the remaining percentage would be based on any other type or types of CRA activity (services or investments) that the association elects to have evaluated. The OTS also asked for comment on whether it should eliminate the Investment Test entirely.

FDIC Proposal. On August 20, 2004, the FDIC issued a new proposal on the CRA evaluation of banks defined as "small." (69 FR 51611, Aug. 20, 2004) The FDIC's new proposal would expand the category of "small banks" to those under $1 billion, regardless of any holding-company size or affiliation. For small banks with assets between $250 million and $1 billion, the FDIC proposal would add to the five performance criteria of the current streamlined small bank test a new sixth criterion taking into account a bank's record of community development lending, investments, *or* services "based on the opportunities in the market and the bank's own strategic strengths." While these community development activities would not be a separately rated test, the FDIC requested comment on whether it should apply a separate community development test in addition to the existing streamlined performance criteria and on what weighting the community development test would have in assigning an overall performance rating. The FDIC also proposed to expand the definition of "community development" to include activities that benefit rural areas and individuals in rural areas.

The FDIC's proposal generated approximately 11,500 comment letters. These comments were sent by a wide spectrum of commenters, including over 4,000 from community bankers, over 1,500 from various community organizations, and over 5,000 from individuals. As with the February 2004 interagency proposal, the commenters were deeply divided on the issues presented in the August proposal. Nearly all of the comments received from bankers and banking organizations supported a change in the small bank dollar threshold, primarily as a way to reduce administrative burden. Bankers were mixed on the community development performance criterion. Some supported a community development criterion as an effective compromise, while others opposed the criterion altogether on one of two grounds: (1) Community development lending and investments are already part of the loan-to-deposit performance criterion assessing the level of lending activity [1] or (2) community development activities should be based on an overall subjective assessment, not an artificial test. Most of the banking commenters opposed making the community development test a separate test.

Community groups almost universally opposed any increase in the small bank threshold. These commenters asserted that the burden argument made by banks did not justify a change. This group also uniformly opposed the community development performance criterion on the ground that permitting banks to choose one or more lending, investment, and service activities would lead to cut backs in investments and services currently required under the large bank test. The community group commenters generally supported a separate community development test.

Commenters were mixed on the addition of "rural" to the definition of "community development." Some supported the proposal because it would permit CRA credit for such rural-based activities as funding local water projects, school construction, or rehabilitation of a Main Street retail district in rural areas lacking sufficient financial resources. Many commenters were concerned that the mere inclusion of the phrase "individuals who reside in rural areas" would permit banks to get CRA credit for loans, investments, or services to middle-class or wealthy individuals.

Discussion

The CRA requires the federal banking and thrift agencies to assess the record of each insured depository institution in meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with safe and sound operation of the institution and to take that record into account when the agency evaluates an application by the institution for a deposit facility.[2]

The federal banking agencies continue to believe that it is both worthwhile and possible to improve the CRA rules in ways that reduce unnecessary burden while at the same time maintaining and improving the effective implementation of the CRA. Moreover, we believe that it is important to take steps at this time to develop and propose rules to achieve these goals, and to work toward achieving standards that ultimately can apply on a uniform basis to all banks subject to the CRA. Therefore, the federal banking agencies request comment on proposed regulatory revisions that balance the objective of providing meaningful regulatory relief for additional community banks with the objectives of preserving and encouraging meaningful CRA activities by those same banks.

As noted above, commenters were divided on the merits of that portion of the February 2004 and August 2004 proposals that would have increased the limit on the size of banks that would be eligible for treatment as a "small bank." The comments in favor of the proposal focused on the potential regulatory relief for insured institutions, while those opposed expressed concern that the proposal would result in decreased community development activities in areas that are particularly in need of credit and investment, notably rural areas.

In light of these comments, the federal banking agencies request comment on this revised proposal. The new proposal addresses both the comments from community banks and comments from community organizations. It responds to community banks concerned about the reduction of undue regulatory burden by extending eligibility for streamlined lending evaluations and the exemption from data reporting to banks under $1 billion without regard to holding company assets. It addresses the concerns of community organizations that urged the federal banking and thrift agencies to continue to evaluate community development participation, by providing that the community development records of banks between $250 million and $1 billion would be separately evaluated and rated, but provides a more streamlined basis than the current rule for doing so. It responds to suggestions from both community banks and community organizations that the definition of "community development" is too confined by proposing a more flexible approach to the types of community development activities that would be considered, and by expanding the definition of community development activities in underserved rural areas and designated disaster areas. In short, the new proposal tries to strike a balance between burden reduction for community banks and effective evaluation of community development by those banks.

The key differences between this proposal and the February 2004 interagency proposal are three-fold. First, as with the FDIC's August 2004

[1] Some commenters also noted that, under existing regulations, small banks can elect to be evaluated under the large bank lending, investment, and service tests.

[2] 12 U.S.C. 2903.

proposal, the new proposal would raise the threshold for a "small bank" to banks with assets of less than $1 billion, not $500 million, regardless of any holding company size or affiliation. Unlike the prior proposals, the new proposal would provide an adjustment of the threshold for inflation, based on changes to the Consumer Price Index.

Second, the new proposal would add a flexible new community development test that would be separately rated in CRA examinations for banks with at least $250 million and less than $1 billion in assets (these banks will be referred to as "intermediate small banks"). Ratings for intermediate small banks would be based on a rating on this community development test and on a separate rating for the streamlined small bank lending test. An intermediate small bank would not be eligible for an overall rating of "satisfactory" unless it received ratings of "satisfactory" on both the lending and community development tests.

Third, the definition of "community development" would be expanded to encompass: (1) Affordable housing for individuals in underserved rural areas and designated disaster areas (in addition to low- or moderate-income individuals) and (2) community development activities that revitalize or stabilize underserved rural areas and designated disaster areas (in addition to low- or moderate-income areas).[3] The current definition of "community development," which hinges on targeting low- or moderate-income people or census tracts, has been criticized by community banks and community organizations alike for needlessly excluding rural areas that often do not have census tracts that meet the definition of "low- or moderate-income." Indeed, about 60% of non-metropolitan counties lack such low- and moderate-income tracts. As a result, many rural areas in need of community development activities are not in low- or moderate-income tracts.

The current definition of "community development" also does not explicitly provide that it encompasses activities in areas affected by disasters. For example, there has been unnecessary uncertainty about the CRA treatment of bank revitalization activities in areas affected by natural disasters such as hurricanes or in, for example, the commercial and residential areas surrounding the site of the World Trade Center. Affordable housing for individuals in underserved rural areas and in designated disaster areas, and activities that promote the revitalization and stabilization of such areas, such as for infrastructure improvements, community services, and small business development, are fully consistent with the goals and objectives of the CRA because these projects can benefit the entire community, including, but not limited to, low- or moderate-income individuals or neighborhoods.

[3] This represents a change from the FDIC's August 2004 proposal. In that proposal, FDIC proposed amending the prong of the definition of community development relating to community services. *See* 12 CFR 345.12(g)(2).

Size Threshold

Under the proposal, intermediate small banks would no longer have to report originations and purchases of small business, small farm, and community development loans. This change would account for most of the cost savings and paperwork burden reduction for intermediate small banks.

The proposal also would annually adjust the asset size for small and intermediate small banks based on changes to the Consumer Price Index. Using an index to adjust dollar figures for the effects of inflation is commonplace, and is used in other federal lending regulations, such as the Home Mortgage Disclosure Act. 12 U.S.C. 2801 *et seq.*

Community Development Test for Intermediate Small Banks

As stated above, comments were mixed on the FDIC's inquiry as to whether the community development test should be separated from the current small bank test. Many industry commenters preferred to have a community development criterion, which would permit a bank to engage in one or more community development activities, and opposed a separate community development test. On the other hand, many community organizations and others expressed concern that the criterion was overly flexible and would result in a narrow focus that would ignore a broad range of community needs, including investments.

The OCC, FDIC, and Board believe that the proposal for a separate community development rating presents an appropriate focus on community development activities for intermediate small banks and makes transparent the weight that community development performance receives in the overall rating. Under the proposed community development test for these "intermediate" small banks, community development loans, qualified investments, and community development services would be evaluated together, resulting in a single rating for community development performance. While the lending test for small banks permits consideration of community development lending and qualified investments "as appropriate," such activities by an intermediate small bank generally would be considered under the community development test. An intermediate small bank's rating for community development would play a significant role in the bank's overall rating, as would its rating on the separate test of the bank's lending. To ensure that community development performance and retail lending are appropriately weighted under the proposal, and given the flexibility that would be available to satisfy the community development test through a variety of activities, an intermediate small bank would have to achieve a rating of at least satisfactory on both tests to be assigned an overall rating of satisfactory.

The number and amount of community development loans, the number and amount of qualified investments, and the provision of community development services, by an intermediate small bank, and the bank's responsiveness through such activities to community development lending, investment, and services needs, would be evaluated in the context of the bank's capacities, business strategy, the needs of the relevant community, and the number and types of opportunities for community development activities. The federal banking agencies intend that the proposed community development test would be applied flexibly to permit a bank to apply its resources strategically to the types of community development activities (loans, investments, and services) that are most responsive to helping to meet community needs, even when those activities are not necessarily innovative, complex, or new.

As noted in the February 2004 proposal, some community banks face intense competition for a limited supply of qualified investments that are safe and sound and yield an acceptable return. Competition for scarce investments also may result in "churning," or the repeated purchase and sale, of the same pool of investments. To "fill the silo" of investments for purposes of the CRA investment test, these banks may have made or purchased investments that may not be meaningful or responsive to the needs of their community, whereas additional lending or provision of services by the bank could have been more responsive to local community development needs. The OCC, FDIC, and Board recognize that these constraints may affect the investment performance of particular banks, and believe that a more flexible community

development test for intermediate small banks provides a better framework to evaluate a bank's capacity, the types of investments that are reasonably available in a bank's community, and how a bank fosters community development goals in its assessment areas.

As part of the proposed community development test for intermediate small banks, the OCC, FDIC, and Board also anticipate that examiners would use their discretion, using performance context, to assign appropriate weight in a bank's current period rating to prior-period outstanding investments that reflect a substantial financial commitment or outlay by the bank designed to have a multi-year impact, in addition to investments made during the current examination cycle.

In providing this flexibility for intermediate small banks, it is not the intention of the federal banking agencies to permit a bank to simply ignore one or more categories of community development. Nor would the proposal prescribe any required threshold proportion of community development loans, qualified investments, and community development services for these banks. Instead, the OCC, FDIC, and Board would expect that a bank will appropriately assess the needs in its community, engage in different types of community development activities based on those needs and the bank's capacities, and that it will take reasonable steps to apply its community development resources strategically to meet those needs.

Under the proposal, retail banking services provided by intermediate small banks would no longer be evaluated in a separate service test. Instead, services for low- and moderate-income people would be taken into account in the community development test. Under that test, the federal banking agencies would consider bank services intended primarily to benefit low- and moderate-income people, such as low-cost bank accounts and banking services such as low-cost remittance services.

Giving banks more flexibility on how to apply their community development resources to respond to community needs through a more strategic use of loans, investments, and services is intended to reduce burden and make the evaluation of community banks' community development records more effective.

Community Development Definition

The regulations' present definition of "community development" has been criticized by community banks and community organizations alike for failing to recognize the unique community development needs of certain rural areas. The definition covers four categories of activities, three of which (affordable housing, community services, and economic development) are defined in terms of the activity's targeting of low- or moderate-income people or small businesses or farms, and one of which (revitalization and stabilization activities) is defined in terms of its targeting of low- or moderate-income census tracts. The OCC, FDIC, and Board propose to amend two of the categories—affordable housing and revitalization and stabilization activities—by adding references to individuals in "underserved rural areas" and in "designated disaster areas." [4]

In response to the FDIC's August 2004 proposal to revise the definition of "community development" to include the provision of affordable housing to individuals in rural areas (in addition to low- or moderate-income individuals under the current rule), several commenters noted that the provision of affordable housing was critical in certain rural areas. Some community organizations serving rural areas commented that the CRA process should promote affordable housing in rural areas across the country.

As described in the "Request for Comments" discussion below, the OCC, FDIC, and Board seek comment on a variety of approaches to identify the community development needs of rural areas. The approach reflected in the proposed amendments is based on the premise that the provision of *affordable* housing—in addition to activities that revitalize and stabilize underserved rural areas—may meet a critical need of individuals in certain underserved rural areas, even if those individuals may not meet the technical requirements of the definition of "low- or moderate-income" in the current regulation. The proposed amendment would clarify that bank support of affordable housing that benefits individuals in need of affordable housing in underserved rural areas will qualify as a community development activity.

With respect to the current definition covering revitalization and stabilization activities, this category does not address revitalization and stabilization activities in most rural counties, since most rural counties do not have any low- or moderate-income census tracts.[5] Under the CRA regulation, a tract's income classification derives from its relationship to the median family income of the state's rural, or non-metropolitan areas as a whole, which could be relatively low and declining. Community banks and community organizations have said that the tract-income limitation has made the definition of "community development" ineffective for addressing the needs of rural areas that do not have low- or moderate-income tracts, but are in decline, have been designated for redevelopment, or need revitalizing or stabilizing. This aspect of the proposed amendment to the definition of "community development" is designed to recognize the benefits of activities that revitalize and stabilize underserved rural areas that do not meet the technical definition of "low- or moderate-income" census tracts. Such activities might include, depending upon the circumstances, state or local infrastructure bonds and loans to construct healthcare facilities. They would not include, however, activities that benefit primarily higher-income individuals in underserved rural areas or rural areas that are not underserved. In evaluating the responsiveness of community development activities in underserved rural areas, examiners would give significant weight to factors such as the extent to which low- or moderate-income individuals benefited from the activities.

Under the revised community development definition, a "designated disaster area" is an area that has received an official designation as a disaster area.

[4] Staff interpretations of "affordable housing" and "revitalization and stabilization" can be found in Interagency Questions and Answers Regarding Community Reinvestment, (66 FR 36620, 36625–36626, July 12, 2001) (Q&A _.12(h)(1)–1, _.12(h)(4)–1).

[5] Under the definition of "low- or moderate-income" census tract in the CRA regulations, 57 percent of non-metropolitan counties have no low- or moderate-income tracts, compared to 13 percent of metropolitan counties. The reason for this disparity is that rural census tracts are drawn over relatively large geographic areas, often having relatively heterogeneous populations that, when averaged, tend toward the middle. This leads to a concentration of 72 percent of rural census tracts in the middle-income category, which leaves a small share (15 percent) in the low- and moderate-income categories. Moreover, because most rural counties have relatively few census tracts, the relatively few *low-* or *moderate-income* rural census tracts are distributed unevenly among rural counties. As would be expected, they also appear to be distributed unevenly among bank CRA assessment areas. About 42 percent of non-metropolitan assessment areas reported by large banks in 2003, compared to 14 percent of the metropolitan assessment areas they reported, lacked such tracts. (The regulation requires large banks to report their assessment areas; the assessment areas of small banks are not required to be reported.)

Effect of Certain Credit Practices on CRA Evaluations

The OCC, FDIC, and Board again propose to revise the regulations to address the impact on a bank's CRA rating of evidence of discrimination or other illegal credit practices. The regulations would provide that evidence of discrimination, or evidence of credit practices that violate an applicable law, rule, or regulation, will adversely affect an agency's evaluation of a bank's CRA performance. The regulations also would be revised to include an illustrative list of such practices, including evidence of discrimination against applicants on a prohibited basis in violation of, for example, the Equal Credit Opportunity (15 U.S.C. 1691 *et seq.*) or Fair Housing Acts (42 U.S.C. 3601 *et seq.*); evidence of illegal referral practices in violation of section 8 of the Real Estate Settlement Procedures Act (12 U.S.C. 2607); evidence of violations of the Truth in Lending Act (12 U.S.C. 1601 *et seq.*) concerning a consumer's right to rescind a credit transaction secured by a principal residence; evidence of violations of the Home Ownership and Equity Protection Act (15 U.S.C. 1639); and evidence of unfair or deceptive credit practices in violation of section 5 of the Federal Trade Commission Act (15 U.S.C. 45(a)(1)).[6] We believe that specifying examples of violations that give rise to adverse CRA consequences in the CRA regulations, rather than solely in interagency guidance on the regulations, will improve the usefulness of the regulations and provide critical information in primary compliance source material.

Under the proposal, a bank's evaluation will be adversely affected by such practices regardless of whether the practices involve loans in the bank's assessment area(s) or in any other location or geography. In addition, a bank's CRA evaluation also can be adversely affected by evidence of such practices by any affiliate, if any loans of that affiliate have been considered in the bank's CRA evaluation.

In response to comments on the February 2004 proposal, the federal banking agencies do not propose to include in the CRA regulations a provision that evidence of collateral-based lending also can adversely affect an agency's evaluation of a bank's CRA performance.

[6] Evidence of credit practices that violate other laws, rules or regulations, including a federal banking agency regulation or a state law, if applicable, also may adversely affect a bank's CRA evaluation.

Request for Comments

The OCC, FDIC, and Board welcome comments on any aspect of this proposal, particularly, those issues noted below.

- The federal banking agencies invite comment on whether other approaches would be more appropriate to addressing the CRA burdens and obligations of banks with less than $1 billion in assets. Is there another appropriate asset threshold to use when defining intermediate small banks, and, if so, why?
- We seek comment on the proposal to adjust the asset size for small and intermediate small banks on an ongoing basis, based on changes to the Consumer Price Index.
- Under the proposal, banks with assets between $250 million and $1 billion will no longer be required to report data on small business, small farm, and community development lending. The federal banking agencies seek comment specifically addressing whether and how the public has used the loan information that has been reported to date by such intermediate small banks (for example, by reference to specific studies on bank lending patterns that used the data), and whether other sources of data about this lending can be used for such purposes going forward.
- Does the proposal provide more flexibility in how an intermediate small bank may apply its community development resources through a more strategic use of loans, investments and services? Does the proposal to permit examiners to use performance context to give consideration in a current-period rating, to prior-period outstanding investments that reflect a substantial financial commitment by the bank, also provide more flexibility for intermediate small banks?
- Does the proposal to evaluate all community development activities of intermediate small banks under one test have the potential to make the evaluations of those banks' community development performance more effective than under the current regulation?
- Should the community development test for intermediate small banks be separately rated as proposed? If so, should an intermediate small bank be required to achieve a rating of at least "satisfactory" under both the small bank lending and community development tests to achieve an overall "satisfactory" CRA rating? Should the bank's community development test performance be weighted equally with its lending test performance in assigning an overall CRA rating? Would other ratings floors or weights be appropriate to provide greater flexibility in certain circumstances? If so, under what circumstances?
- The federal banking agencies seek comment on whether the existing definition of "community development" provides sufficient recognition for community services to individuals residing in underserved rural areas and designated disaster areas and, if not, how to encourage the provision of such services to persons in underserved rural areas and designated disaster areas that have the greatest need.[7]
- We also seek comment on the merits of the proposed treatment of the definition of "community development" in underserved rural and designated disaster areas and invite suggestions for alternatives.
- We seek comment on the proper way to define "rural." Should we adopt a definition and, if so, which one? For example, should all areas outside a metropolitan area be considered "rural"? Alternatively, should the federal banking agencies define rural consistent with the definition employed by the Census Bureau? The Census Bureau defines any territory or population not meeting its criteria for "urban" to be "rural." Are there other definitions the federal banking agencies should consider?
- We also seek comment on the proper way to define "underserved" when used in connection with rural areas. Should we adopt a definition and, if so, which one? For example, should the term refer solely to those rural areas showing signs of economic distress or lack of investment? If so, what indicia should the federal banking agencies use to identify such rural areas? Should we use criteria from other federal programs, such as the Community Development

[7] The FDIC's August NPRM added individuals in rural communities to the community services category. Comments were mixed in response to this part of that proposal. Some commenters expressed the concern that a broader definition would permit consideration of activities that benefit middle- and upper-income individuals. On the other hand, others stated that the regulations should recognize that some rural communities lack financial resources for economic and infrastructure improvement such as school construction, revitalizing Main Street, and maintaining or improving water and sewer systems. Banks are frequently called upon to help meet these needs. In light of these comments, this proposal would not change the definition of community development regarding community services provided to low- or moderate-income individuals. Rather, the proposal recognizes that activities that revitalize and stabilize underserved areas may also include many activities that benefit rural residents. We also seek comment on whether the definition of "community development" should be amended to explicitly include community services targeted to individuals in undeserved rural and designated disaster areas.

Financial Institutions Fund (CDFI) rules? Indicators used by the CDFI Fund to define "investment areas" include counties with (a) unemployment rates one-and-a-half times the national average, (b) poverty rates of 20% or more, or (c) population loss of 10 percent or more between the previous and most recent census, or a net migration loss of 5 percent or more over the five-year period preceding the most recent census.

- Should "underserved rural area" be defined in the regulation to also encompass those rural areas that have been targeted by a governmental agency for redevelopment, without regard to median income characteristics of the area?

- Should "underserved rural area" be limited to low- and moderate-income areas, without regard to whether those areas show signs of economic distress, lack of investment, or are targeted for redevelopment by a governmental agency? If so, should the OCC, FDIC, and Board adopt a different method than currently exists in the regulation for determining when a rural area is low- or moderate-income? For example, under the current regulations, the area must be a low- or moderate-income census tract, which the regulations define as a tract with median family income that does not exceed 80% of the statewide non-metropolitan median family income. Would raising the low- and moderate-income threshold in non-metropolitan communities from 80% of non-metropolitan median family income to some higher figure, such as 85%, 90%, or 100%, more appropriately identify underserved rural areas? Alternatively, would identifying another measure of median income instead of the non-metropolitan median income, such as the statewide median income, more appropriately define low- and moderate-income for purposes of defining underserved rural areas by reference to low- and moderate-income characteristics?

- As proposed, the definition of "community development" would encompass affordable housing for people who do not meet the regulatory definition of "low- or moderate-income" if, and only if, they reside in underserved rural areas. The federal banking agencies seek comment on whether the current regulatory definition of "low- or moderate-income individual" is unduly restrictive for purposes of identifying individuals in rural areas who need affordable housing. If so, in what ways?

Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act, Pub. L. 106–102, sec. 722, 113 Stat. 1338, 1471 (Nov. 12, 1999), requires the federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. We invite your comments on how to make the proposal easier to understand. For example:

- Have we organized the material to suit your needs? If not, how could this material be better organized?

- Are the requirements in the proposal clearly stated? If not, how could the regulation be more clearly stated?

- Does the proposal contain language or jargon that is not clear? If so, which language requires clarification?

- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes to the format would make the regulation easier to understand?

- What else could we do to make the regulation easier to understand?

Community Bank Comment Request

In addition, we invite your comments on the impact of this proposal on community banks. The federal banking agencies recognize that community banks operate with more limited resources than larger institutions and may present a different risk profile. Thus, the federal banking agencies specifically request comments on the impact of the proposal on community banks' current resources and available personnel with the requisite expertise, and whether the goals of the proposal could be achieved, for community banks, through an alternative approach.

Regulatory Flexibility Act

OCC and FDIC: Under section 605(b) of the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), the regulatory flexibility analysis otherwise required under section 604 of the RFA is not required if an agency certifies, along with a statement providing the factual basis for such certification, that the rule will not have a significant economic impact on a substantial number of small entities. The OCC and FDIC have reviewed the impact of this proposed rule on small banks and certify that the proposed rule will not have a significant economic impact on a substantial number of small entities.

The Small Business Administration (SBA) has defined "small entities" for banking purposes as a bank or savings institution with less than $150 million in assets. *See* 13 CFR 212.01. This proposed rule primarily affects banks with assets of at least $250 million and under $1 billion. The proposed amendments decrease the regulatory burden for banks within that asset range by relieving them of certain reporting and recordkeeping requirements applicable to larger institutions.

The proposal to eliminate the $1 billion holding company threshold as a factor in determining whether banks will be subject to the streamlined CRA examination or the more in-depth CRA examination applicable to larger institutions will impact a limited number of small banks, which are affiliated with holding companies with assets over $1 billion. The FDIC estimates that only 110 of approximately 5,300 FDIC-regulated banks had assets of under $150 million and were affiliated with a holding company with over $1 billion in assets. The OCC estimates that only 36 of approximately 2,000 OCC-regulated banks met these criteria. Because so few small banks will be affected by the proposed revisions to Parts 25 and 345, a regulatory flexibility analysis is not required. Nevertheless, the OCC and FDIC are willing, in response to any comments received regarding the proposal's economic impact on small banks with assets of under $150 million, to reevaluate the RFA certifications and, if appropriate, publish regulatory flexibility analyses in conjunction with the issuance of any final rule.

Board: Subject to certain exceptions, the Regulatory Flexibility Act (5 U.S.C. 601–612) (RFA) requires an agency to publish an initial regulatory flexibility analysis with a proposed rule whenever the agency is required to publish a general notice of proposed rulemaking for a proposed rule. The Supplementary Information describes the proposed regulations and the proposal's objectives. The Board, in connection with its initial regulatory flexibility analysis, requests public comment in the following areas.

A. Reasons for the Proposed Rule

As described in the **SUPPLEMENTARY INFORMATION** section, the Board, together with the other Agencies, seek to improve the effectiveness of the CRA regulations in placing performance over process, promoting consistency in evaluations, and eliminating unnecessary burden. The proposed rule is intended to reduce unnecessary burden while maintaining or improving CRA's effectiveness in evaluating performance.

B. Statement of Objectives and Legal Basis

The Supplementary Information describes the proposal's objectives. The legal basis for the proposed rule is section 806 of the CRA.

C. Description of Small Entities To Which the Rule Applies

The proposed rule would apply to all state-chartered banks that are members of the Federal Reserve System; there are approximately 932 such banks. The RFA requires the Board to consider the effect of the proposal on small entities, which are defined for RFA purposes as all banks with assets of less than $150 million. There are 473 state member banks with less than $150 million of assets. All but about 12 state member banks with assets of less than $150 million are already subject to a streamlined CRA process that is unaffected by this proposal. The rule would eliminate data reporting requirements for these 12 state member banks by eliminating holding-company affiliation as a disqualification for treatment as a "small bank" under the CRA regulations.

D. Projected Reporting, Recordkeeping and Other Compliance Requirements

The Board does not believe that the proposed rule imposes any new reporting or recordkeeping requirements, as defined in section 603 of the RFA. As noted, the rule would eliminate holding-company affiliation as a disqualification for treatment as a "small bank" under the CRA regulations. Accordingly, the rule would eliminate data reporting requirements for about 12 state member banks with assets of less than $150 million. As noted above, all other state member banks with assets under $150 million are already exempt from this reporting requirement.

The Board believes that the proposed revisions to the definition of "community development" would not place additional compliance costs or burdens on small institutions. Instead, this proposal would add greater flexibility to the definition in response to requests made by many small banks. The Board believes the same of the provisions regarding the effect of evidence of illegal credit practices on CRA evaluations. State banks of all sizes are already subject to laws against such practices, and the proposal would not affect that.

The Board seeks information and comment on whether application of the proposed rule would impose any costs, compliance requirements, or changes in operating procedures in addition to or which may differ from those arising from the application of the statute.

E. Identification of Duplicative, Overlapping, or Conflicting Federal Rules

The Board does not believe there are any federal statutes or regulations that would duplicate, overlap, or conflict with the proposed rule. The Board seeks comment regarding any statues or regulations, including state or local statutes or regulations, that would duplicate, overlap, or conflict with the proposed rule.

F. Discussion of Significant Alternatives

The proposed rule maintains the approach of the existing CRA regulations in exempting small entities from reporting requirements and providing for streamlined lending evaluations for small entities. A complete exemption of small entities from all of the CRA's requirements would be impermissible under the CRA statute. The Board welcomes comments on any significant alternatives that would minimize the impact of the proposed rule on small entities.

Executive Order 12866

The OCC has determined that this proposed rule is not a significant regulatory action under Executive Order 12866.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (2 U.S.C. 1532) (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC has determined that the proposal will not result in expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly, the proposal is not subject to section 202 of the Unfunded Mandates Act.

Paperwork Reduction Act

Request for Comment on Proposed Information Collection

In accordance with the requirements of the Paperwork Reduction Act of 1995, the Agencies may not conduct or sponsor, and the respondent is not required to respond to, an information collection (IC) unless it displays a currently valid Office of Management and Budget (OMB) control number (OCC, 1557–0160; Board, 7100–0197; and FDIC, 3064–0092).

The FDIC has obtained OMB-approval for the paperwork burden associated with its CRA regulation at 12 CFR Part 345 under OMB IC 3064–0092. The change in burden to IC 3064–0092 associated with this proposal to raise the threshold for small banks from those with under $250 million in assets to those with under $1 billion in assets was submitted to and approved by OMB in connection with a similar proposal published by the FDIC in August 2004 (69 FR 51611, Aug. 20, 2004). This interagency proposal would not, if adopted as final, result in any added change in burden to IC 3064–0092. Therefore, the FDIC is not required to make a submission to OMB under the Paperwork Reduction Act at this time. Nevertheless, the FDIC joins the OCC and the Board in seeking additional comment on the paperwork burden associated with the current proposal.

The Agencies give notice that, at the end of the comment period, the proposed collections of information, along with an analysis of the comments, and recommendations received, will be submitted to OMB for review and approval.

Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the Agencies' functions, including whether the information has practical utility;

(b) The accuracy of the estimates of the burden of the information collection, 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 information collection 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.

At the end of the comment period, the comments and recommendations

received will be analyzed to determine the extent to which the information collections should be modified prior to submission to OMB for review and approval. The comments will also be summarized or included in the Agencies' requests to OMB for approval of the collections. All comments will become a matter of public record.

Comments should be addressed to:

OCC: Mary H. Gottlieb or Camille Dixon, Office of the Comptroller of the Currency, Legislative and Regulatory Activities Division, Attention: Docket No. 05–04, 250 E Street, SW., Mailstop 8–4, Washington, DC 20219. Due to delays in paper mail in the Washington area, commenters are encouraged to submit their comments by fax to (202) 874–4889 or by e-mail to *camille.dixon@occ.treas.gov*.

Board: Comments should refer to Docket No. R–1225 and may be mailed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. Please consider submitting your comments through the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm*, by e-mail to *regs.comments@federalreserve.gov*, or by fax to the Office of the Secretary at (202) 452–3819 or (202) 452–3102. Rules proposed by the Board and other federal agencies may also be viewed and commented on at *http://www.regulations.gov*.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, except as necessary for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (C and 20th Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FDIC: Leneta G. Gregorie, Legal Division, Room MB–3082, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. All comments should refer to the title of the proposed collection. Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m., Attention: Comments/Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

Comments should also be sent to Mark D. Menchik, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, Washington, DC 20503. Comments may also be sent by e-mail to *Mark_D._Menchik@omb.eop.gov*.

Title of Information Collection:

OCC: Community Reinvestment Act Regulation—12 CFR 25.

Board: Recordkeeping, Reporting, and Disclosure Requirements in Connection with Regulation BB (Community Reinvestment Act).

FDIC: Community Reinvestment—12 CFR 345.

Frequency of Response: Annual.

Affected Public:

OCC: National banks.

Board: State member banks.

FDIC: State nonmember banks.

Abstract: This Paperwork Reduction Act section estimates the burden that would be associated with the regulations were the agencies to change the definition of "small institution" as proposed, that is, increase the asset threshold from $250 million to $1 billion and eliminate any consideration of holding-company size. The two proposed changes, if adopted, would make "small" approximately 1,522 insured depository institutions that do not now have that status. That estimate is based on data for all FDIC-insured institutions that filed Call Reports in 2004. Those data also underlie the estimated paperwork burden that would be associated with the regulations if the proposals were adopted by the agencies. The proposed change to amend the intermediate small bank performance standards to incorporate a separate community development test would have no impact on paperwork burden because the evaluation is based on information prepared by examiners.

Estimated Paperwork Burden under the Proposal:

OCC:

Number of Respondents: 1,877.

Estimated Time per Response: Small business and small farm loan register, 219 hours; Consumer loan data, 326 hours; Other loan data, 25 hours; Assessment area delineation, 2 hours; Small business and small farm loan data, 8 hours; Community development loan data, 13 hours; HMDA out-of-MSA loan data, 253 hours; Data on lending by a consortium or third party, 17 hours; Affiliated lending data, 38 hours; Request for designation as a wholesale or limited purpose bank, 4 hours; Strategic Plan, 275 hours; and Public file, 10 hours.

Total Estimated Annual Burden: 160,782 hours.

Board:

Number of Respondents: 934.

Estimated Time per Response: Small business and small farm loan register, 219 hours; Consumer loan data, 326 hours; Other loan data, 25 hours; Assessment area delineation, 2 hours; Small business and small farm loan data, 8 hours; Community development loan data, 13 hours; HMDA out-of-MSA loan data, 253 hours; Data on lending by a consortium or third party, 17 hours; Affiliated lending data, 38 hours; Request for designation as a wholesale or limited purpose bank, 4 hours; and Public file, 10 hours.

Total Estimated Annual Burden: 114,580 hours.

FDIC:

Number of Respondents: 5,296.

Estimated Time per Response: Small business and small farm loan register, 219 hours; Consumer loan data, 326 hours; Other loan data, 25 hours; Assessment area delineation, 2 hours; Small business and small farm loan data, 8 hours; Community development loan data, 13 hours; HMDA out-of-MSA loan data, 253 hours; Data on lending by a consortium or third party, 17 hours; Affiliated lending data, 38 hours; Request for designation as a wholesale or limited purpose bank, 4 hours; and Public file, 10 hours.

Total Estimated Annual Burden: 193,975 hours.

Executive Order 13132

The OCC has determined that this proposal does not have any Federalism implications, as required by Executive Order 13132.

List of Subjects

12 CFR Part 25

Community development, Credit, Investments, National banks, Reporting and recordkeeping requirements.

12 CFR Part 228

Banks, Banking, Community development, Credit, Investments, Reporting and recordkeeping requirements.

12 CFR Part 345

Banks, Banking, Community development, Credit, Investments, Reporting and recordkeeping requirements.

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons discussed in the joint preamble, part 25 of chapter I of title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 25—COMMUNITY REINVESTMENT ACT AND INTERSTATE DEPOSIT PRODUCTION REGULATIONS

1. The authority citation for part 25 continues to read as follows:

Authority: 12 U.S.C. 21, 22, 26, 27, 30, 36, 93a, 161, 215, 215a, 481, 1814, 1816, 1828(c), 1835a, 2901 through 2907, and 3101 through 3111.

2. In § 25.12, revise paragraphs (g)(1), (g)(4), and (u) to read as follows:

§ 25.12 Definitions.

* * * * *

(g) *Community development* means:

(1) Affordable housing (including multifamily rental housing) for low- or moderate-income individuals, individuals in underserved rural areas, or individuals located in designated disaster areas;

* * * * *

(4) Activities that revitalize or stabilize low- or moderate-income geographies, underserved rural areas, or designated disaster areas.

* * * * *

(u) *Small bank*—(1) *Definition.* Small bank means a bank that, as of December 31 of either of the prior two calendar years, had assets of less than $1 billion. Intermediate small bank means a small bank with assets of at least $250 million and less than $1 billion as of December 31 of both of the prior two calendar years.

(2) *Adjustment.* The dollar figures in paragraph (u)(1) of this section shall be adjusted annually and published by the OCC, based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for each twelve-month period ending in November, with rounding to the nearest million.

* * * * *

3. Revise § 25.26 to read as follows:

§ 25.26 Small bank performance standards.

(a) *Performance criteria*—(1) *Small banks with assets of less than $250 million.* The OCC evaluates the record of a small bank that is not, or that was not during the prior calendar year, an intermediate small bank, of helping to meet the credit needs of its assessment area(s) pursuant to the criteria set forth in paragraph (b) of this section.

(2) *Intermediate small banks.* The OCC evaluates the record of a small bank that is, or that was during the prior calendar year, an intermediate small bank, of helping to meet the credit needs of its assessment area(s) pursuant to the criteria set forth in paragraphs (b) and (c) of this section.

(b) *Lending test.* A small bank's lending performance is evaluated pursuant to the following criteria:

(1) The bank's loan-to-deposit ratio, adjusted for seasonal variation, and, as appropriate, other lending-related activities, such as loan originations for sale to the secondary markets, community development loans, or qualified investments;

(2) The percentage of loans and, as appropriate, other lending-related activities located in the bank's assessment area(s);

(3) The bank's record of lending to and, as appropriate, engaging in other lending-related activities for borrowers of different income levels and businesses and farms of different sizes;

(4) The geographic distribution of the bank's loans; and

(5) The bank's record of taking action, if warranted, in response to written complaints about its performance in helping to meet credit needs in its assessment area(s).

(c) *Community development test.* An intermediate small bank's community development performance also is evaluated pursuant to the following criteria:

(1) The number and amount of community development loans;

(2) The number and amount of qualified investments;

(3) The extent to which the bank provides community development services; and

(4) The bank's responsiveness through such activities to community development lending, investment, and services needs.

3a. Revise § 25.28, paragraph (c) to read as follows:

§ 25.28 Assigned ratings.

* * * * *

(c) *Effect of evidence of discriminatory or other illegal credit practices.*

(1) The OCC's evaluation of a bank's CRA performance is adversely affected by evidence of discriminatory or other illegal credit practices in any geography by the bank or in any assessment area by any affiliate whose loans have been considered as part of the bank's lending performance. In connection with any type of lending activity described in § 25.22(a), evidence of discriminatory or other credit practices that violate an applicable law, rule, or regulation includes, but is not limited to:

(i) Discrimination against applicants on a prohibited basis in violation, for example, of the Equal Credit Opportunity Act or the Fair Housing Act;

(ii) Violations of the Home Ownership and Equity Protection Act;

(iii) Violations of section 5 of the Federal Trade Commission Act;

(iv) Violations of section 8 of the Real Estate Settlement Procedures Act; and

(v) Violations of the Truth in Lending Act provisions regarding a consumer's right of rescission.

(2) In determining the effect of evidence of practices described in paragraph (c)(1) of this section on the bank's assigned rating, the OCC considers the nature, extent, and strength of the evidence of the practices; the policies and procedures that the bank (or affiliate, as applicable) has in place to prevent the practices; any corrective action that the bank (or affiliate, as applicable) has taken or has committed to take, including voluntary corrective action resulting from self-assessment; and any other relevant information.

4. In Appendix A to part 25, revise paragraph (d) to read as follows:

Appendix A to Part 25—Ratings

* * * * *

(d) *Banks evaluated under the small bank performance standards.*—(1) *Lending test ratings.*—(i) *Eligibility for a satisfactory lending test rating.* The OCC rates a small bank's lending performance "satisfactory" if, in general, the bank demonstrates:

(A) A reasonable loan-to-deposit ratio (considering seasonal variations) given the bank's size, financial condition, the credit needs of its assessment area(s), and taking into account, as appropriate, other lending-related activities such as loan originations for sale to the secondary markets and community development loans and qualified investments;

(B) A majority of its loans and, as appropriate, other lending-related activities, are in its assessment area;

(C) A distribution of loans to and, as appropriate, other lending-related activities for individuals of different income levels (including low- and moderate-income individuals) and businesses and farms of different sizes that is reasonable given the demographics of the bank's assessment area(s);

(D) A record of taking appropriate action, when warranted, in response to written complaints, if any, about the bank's performance in helping to meet the credit needs of its assessment area(s); and

(E) A reasonable geographic distribution of loans given the bank's assessment area(s).

(ii) *Eligibility for an "outstanding" lending test rating.* A small bank that meets each of the standards for a "satisfactory" rating under this paragraph and exceeds some or all of those standards may warrant consideration for a lending test rating of "outstanding."

(iii) *Needs to improve or substantial noncompliance ratings.* A small bank may also receive a lending test rating of "needs to improve" or "substantial noncompliance" depending on the degree to which its

performance has failed to meet the standard for a "satisfactory" rating.

(2) *Community development test ratings for intermediate small banks*—(i) *Eligibility for a satisfactory community development test rating.* The OCC rates an intermediate small bank's community development performance "satisfactory" if the bank demonstrates adequate responsiveness to the community development needs of its assessment area(s) or a broader statewide or regional area that includes the bank's assessment area(s) through community development loans, qualified investments, and community development services. The adequacy of the bank's response will depend on its capacity for such community development activities, its assessment area's need for such community development activities, and the availability of such opportunities for community development in the bank's assessment area(s).

(ii) *Eligibility for an outstanding community development test rating.* The OCC rates an intermediate small bank's community development performance "outstanding" if the bank demonstrates excellent responsiveness to community development needs in its assessment area(s) through community development loans, qualified investments, and community development services, as appropriate, considering the bank's capacity and the need and availability of such opportunities for community development in the bank's assessment area(s).

(iii) *Needs to improve or substantial noncompliance ratings.* An intermediate small bank may also receive a community development test rating of "needs to improve" or "substantial noncompliance" depending on the degree to which its performance has failed to meet the standards for a "satisfactory" rating.

(3) *Overall rating*—(i) *Eligibility for a satisfactory overall rating.* No intermediate small bank may receive an assigned overall rating of "satisfactory" unless it receives a rating of at least "satisfactory" on both the lending test and the community development test.

(ii) *Eligibility for an outstanding overall rating.* (A) An intermediate small bank that receives an "outstanding" rating on one test and at least "satisfactory" on the other test may receive an assigned overall rating of "outstanding."

(B) A small bank that is not an intermediate small bank that meets each of the standards for a "satisfactory" rating under the lending test and exceeds some or all of those standards may warrant consideration for an overall rating of "outstanding." In assessing whether a bank's performance is "outstanding," the OCC considers the extent to which the bank exceeds each of the performance standards for a "satisfactory" rating and its performance in making qualified investments and its performance in providing branches and other services and delivery systems that enhance credit availability in its assessment area(s).

(iii) *Needs to improve or substantial noncompliance overall ratings.* A small bank may also receive a rating of "needs to improve" or "substantial noncompliance" depending on the degree to which its performance has failed to meet the standards for a "satisfactory" rating.

* * * * *

Federal Reserve System

12 CFR Chapter II

Authority and Issuance

For the reasons set forth in the joint preamble, the Board of Governors of the Federal Reserve System proposes to amend part 228 of chapter II of title 12 of the Code of Federal Regulations as follows:

PART 228—COMMUNITY REINVESTMENT (REGULATION BB)

1. The authority citation for part 228 continues to read as follows:

Authority: 12 U.S.C. 321, 325, 1828(c), 1842, 1843, 1844, and 2901 *et seq.*

2. In § 228.12, revise paragraphs (g)(1), (g)(4), and (u) to read as follows:

§ 228.12 Definitions.

* * * * *

(g) *Community development* means:

(1) Affordable housing (including multifamily rental housing) for low-or moderate-income individuals, individuals in underserved rural areas, or individuals located in designated disaster areas;

* * * * *

(4) Activities that revitalize or stabilize low- or moderate-income geographies, underserved rural areas, or designated disaster areas.

* * * * *

(u) *Small bank*—(1) *Definition.* Small bank means a bank that, as of December 31 of either of the prior two calendar years, had assets of less than $1 billion. Intermediate small bank means a small bank with assets of at least $250 million and less than $1 billion as of December 31 of both of the prior two calendar years.

(2) *Adjustment.* The dollar figures in paragraph (u)(1) of this section shall be adjusted annually and published by the Board, based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for each twelve-month period ending in November, with rounding to the nearest million.

* * * * *

3. Revise § 228.26 to read as follows:

§ 228.26 Small bank performance standards.

(a) *Performance criteria*—(1) *Small banks with assets of less than $250 million.* The Board evaluates the record of a small bank that is not, or that was not during the prior calendar year, an intermediate small bank, of helping to meet the credit needs of its assessment area(s) pursuant to the criteria set forth in paragraph (b) of this section.

(2) *Intermediate small banks.* The Board evaluates the record of a small bank that is, or that was during the prior calendar year, an intermediate small bank, of helping to meet the credit needs of its assessment area(s) pursuant to the criteria set forth in paragraphs (b) and (c) of this section.

(b) *Lending test.* A small bank's lending performance is evaluated pursuant to the following criteria:

(1) The bank's loan-to-deposit ratio, adjusted for seasonal variation, and, as appropriate, other lending-related activities, such as loan originations for sale to the secondary markets, community development loans, or qualified investments;

(2) The percentage of loans and, as appropriate, other lending-related activities located in the bank's assessment area(s);

(3) The bank's record of lending to and, as appropriate, engaging in other lending-related activities for borrowers of different income levels and businesses and farms of different sizes;

(4) The geographic distribution of the bank's loans; and

(5) The bank's record of taking action, if warranted, in response to written complaints about its performance in helping to meet credit needs in its assessment area(s).

(c) *Community development test.* An intermediate small bank's community development performance also is evaluated pursuant to the following criteria:

(1) The number and amount of community development loans;

(2) The number and amount of qualified investments;

(3) The extent to which the bank provides community development services; and

(4) The bank's responsiveness through such activities to community development lending, investment, and services needs.

3a. Revise § 228.28(c) to read as follows:

§ 228.28 Assigned ratings.

* * * * *

(c) *Effect of evidence of discriminatory or other illegal credit practices.* (1) The Board's evaluation of a bank's CRA performance is adversely affected by evidence of discriminatory or other illegal credit practices in any geography by the bank or in any assessment area by any affiliate whose

loans have been considered as part of the bank's lending performance. In connection with any type of lending activity described in § 228.22(a), evidence of discriminatory or other credit practices that violate an applicable law, rule, or regulation includes, but is not limited to:

(i) Discrimination against applicants on a prohibited basis in violation, for example, of the Equal Credit Opportunity Act or the Fair Housing Act;

(ii) Violations of the Home Ownership and Equity Protection Act;

(iii) Violations of section 5 of the Federal Trade Commission Act;

(iv) Violations of section 8 of the Real Estate Settlement Procedures Act; and

(v) Violations of the Truth in Lending Act provisions regarding a consumer's right of rescission.

(2) In determining the effect of evidence of practices described in paragraph (c)(1) of this section on the bank's assigned rating, the Board considers the nature, extent, and strength of the evidence of the practices; the policies and procedures that the bank (or affiliate, as applicable) has in place to prevent the practices; any corrective action that the bank (or affiliate, as applicable) has taken or has committed to take, including voluntary corrective action resulting from self-assessment; and any other relevant information.

4. In Appendix A to part 228, revise paragraph (d) to read as follows:

Appendix A to Part 228—Ratings

* * * * *

(d) *Banks evaluated under the small bank performance standards.*—(1) *Lending test ratings.*—(i) *Eligibility for a satisfactory lending test rating.* The Board rates a small bank's lending performance "satisfactory" if, in general, the bank demonstrates:

(A) A reasonable loan-to-deposit ratio (considering seasonal variations) given the bank's size, financial condition, the credit needs of its assessment area(s), and taking into account, as appropriate, other lending-related activities such as loan originations for sale to the secondary markets and community development loans and qualified investments;

(B) A majority of its loans and, as appropriate, other lending-related activities, are in its assessment area;

(C) A distribution of loans to and, as appropriate, other lending-related activities for individuals of different income levels (including low- and moderate-income individuals) and businesses and farms of different sizes that is reasonable given the demographics of the bank's assessment area(s);

(D) A record of taking appropriate action, when warranted, in response to written complaints, if any, about the bank's performance in helping to meet the credit needs of its assessment area(s); and

(E) A reasonable geographic distribution of loans given the bank's assessment area(s).

(ii) *Eligibility for an "outstanding" lending test rating.* A small bank that meets each of the standards for a "satisfactory" rating under this paragraph and exceeds some or all of those standards may warrant consideration for a lending test rating of "outstanding."

(iii) *Needs to improve or substantial noncompliance ratings.* A small bank may also receive a lending test rating of "needs to improve" or "substantial noncompliance" depending on the degree to which its performance has failed to meet the standard for a "satisfactory" rating.

(2) *Community development test ratings for intermediate small banks*—(i) *Eligibility for a satisfactory community development test rating.* The Board rates an intermediate small bank's community development performance "satisfactory" if the bank demonstrates adequate responsiveness to the community development needs of its assessment area(s) or a broader statewide or regional area that includes the bank's assessment area(s) through community development loans, qualified investments, and community development services. The adequacy of the bank's response will depend on its capacity for such community development activities, its assessment area's need for such community development activities, and the availability of such opportunities for community development in the bank's assessment area(s).

(ii) *Eligibility for an outstanding community development test rating.* The Board rates an intermediate small bank's community development performance "outstanding" if the bank demonstrates excellent responsiveness to community development needs in its assessment area(s) through community development loans, qualified investments, and community development services, as appropriate, considering the bank's capacity and the need and availability of such opportunities for community development in the bank's assessment area(s).

(iii) *Needs to improve or substantial noncompliance ratings.* An intermediate small bank may also receive a community development test rating of "needs to improve" or "substantial noncompliance" depending on the degree to which its performance has failed to meet the standards for a "satisfactory" rating.

(3) *Overall rating*—(i) *Eligibility for a satisfactory overall rating.* No intermediate small bank may receive an assigned overall rating of "satisfactory" unless it receives a rating of at least "satisfactory" on both the lending test and the community development test.

(ii) *Eligibility for an outstanding overall rating.* (A) An intermediate small bank that receives an "outstanding" rating on one test and at least "satisfactory" on the other test may receive an assigned overall rating of "outstanding."

(B) A small bank that is not an intermediate small bank that meets each of the standards for a "satisfactory" rating under the lending test and exceeds some or all of those standards may warrant consideration for an overall rating of "outstanding." In assessing whether a bank's performance is "outstanding," the Board considers the extent to which the bank exceeds each of the performance standards for a "satisfactory" rating and its performance in making qualified investments and its performance in providing branches and other services and delivery systems that enhance credit availability in its assessment area(s).

(iii) *Needs to improve or substantial noncompliance overall ratings.* A small bank may also receive a rating of "needs to improve" or "substantial noncompliance" depending on the degree to which its performance has failed to meet the standards for a "satisfactory" rating.

* * * * *

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the joint preamble, the Board of Directors of the Federal Deposit Insurance Corporation proposes to amend part 345 of chapter III of title 12 of the Code of Federal Regulations to read as follows:

PART 345—COMMUNITY REINVESTMENT

1. The authority citation for part 345 continues to read as follows:

Authority: 12 U.S.C. 1814–1817, 1819–1820, 1828, 1831u and 2901–2907, 3103–3104, and 3108(a).

2. In § 345.12, revise paragraphs (g)(1), (g)(4), and (u) to read as follows:

§ 345.12 Definitions.

* * * * *

(g) *Community development* means:

(1) Affordable housing (including multifamily rental housing) for low- or moderate-income individuals, individuals in underserved rural areas, or individuals located in designated disaster areas;

* * * * *

(4) Activities that revitalize or stabilize low- or moderate-income geographies, underserved rural areas, or designated disaster areas.

* * * * *

(u) *Small bank*—(1) *Definition.* Small bank means a bank that, as of December 31 of either of the prior two calendar years, had assets of less than $1 billion. Intermediate small bank means a small bank with assets of at least $250 million and less than $1 billion as of December 31 of both of the prior two calendar years.

(2) *Adjustment.* The dollar figures in paragraph (u)(1) of this section shall be adjusted annually and published by the

FDIC, based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for each twelve-month period ending in November, with rounding to the nearest million.

* * * * *

3. Revise § 345.26 to read as follows:

§ 345.26 Small bank performance standards.

(a) *Performance criteria*—(1) *Small banks with assets of less than $250 million.* The FDIC evaluates the record of a small bank that is not, or that was not during the prior calendar year, an intermediate small bank, of helping to meet the credit needs of its assessment area(s) pursuant to the criteria set forth in paragraph (b) of this section.

(2) *Intermediate small banks.* The FDIC evaluates the record of a small bank that is, or that was during the prior calendar year, an intermediate small bank, of helping to meet the credit needs of its assessment area(s) pursuant to the criteria set forth in paragraphs (b) and (c) of this section.

(b) *Lending test.* A small bank's lending performance is evaluated pursuant to the following criteria:

(1) The bank's loan-to-deposit ratio, adjusted for seasonal variation, and, as appropriate, other lending-related activities, such as loan originations for sale to the secondary markets, community development loans, or qualified investments;

(2) The percentage of loans and, as appropriate, other lending-related activities located in the bank's assessment area(s);

(3) The bank's record of lending to and, as appropriate, engaging in other lending-related activities for borrowers of different income levels and businesses and farms of different sizes;

(4) The geographic distribution of the bank's loans; and

(5) The bank's record of taking action, if warranted, in response to written complaints about its performance in helping to meet credit needs in its assessment area(s).

(c) *Community development test.* An intermediate small bank's community development performance also is evaluated pursuant to the following criteria:

(1) The number and amount of community development loans;

(2) The number and amount of qualified investments;

(3) The extent to which the bank provides community development services; and

(4) The bank's responsiveness through such activities to community development lending, investment, and services needs.

3a. Revise § 345.28(c) to read as follows:

§ 345.28 Assigned ratings.

* * * * *

(c) *Effect of evidence of discriminatory or other illegal credit practices.* (1) The FDIC's evaluation of a bank's CRA performance is adversely affected by evidence of discriminatory or other illegal credit practices in any geography by the bank or in any assessment area by any affiliate whose loans have been considered as part of the bank's lending performance. In connection with any type of lending activity described in § 345.22(a), evidence of discriminatory or other credit practices that violate an applicable law, rule, or regulation includes, but is not limited to:

(i) Discrimination against applicants on a prohibited basis in violation, for example, of the Equal Credit Opportunity Act or the Fair Housing Act;

(ii) Violations of the Home Ownership and Equity Protection Act;

(iii) Violations of section 5 of the Federal Trade Commission Act;

(iv) Violations of section 8 of the Real Estate Settlement Procedures Act; and

(v) Violations of the Truth in Lending Act provisions regarding a consumer's right of rescission.

(2) In determining the effect of evidence of practices described in paragraph (c)(1) of this section on the bank's assigned rating, the FDIC considers the nature, extent, and strength of the evidence of the practices; the policies and procedures that the bank (or affiliate, as applicable) has in place to prevent the practices; any corrective action that the bank (or affiliate, as applicable) has taken or has committed to take, including voluntary corrective action resulting from self-assessment; and any other relevant information.

4. In Appendix A to part 345, revise paragraph (d) to read as follows:

Appendix A to Part 345—Ratings

* * * * *

(d) *Banks evaluated under the small bank performance standards*—(1) *Lending test ratings.*—

(i) *Eligibility for a satisfactory lending test rating.* The FDIC rates a small bank's lending performance "satisfactory" if, in general, the bank demonstrates:

(A) A reasonable loan-to-deposit ratio (considering seasonal variations) given the bank's size, financial condition, the credit needs of its assessment area(s), and taking into account, as appropriate, other lending-related activities such as loan originations for sale to the secondary markets and community development loans and qualified investments;

(B) A majority of its loans and, as appropriate, other lending-related activities, are in its assessment area;

(C) A distribution of loans to and, as appropriate, other lending-related activities for individuals of different income levels (including low- and moderate-income individuals) and businesses and farms of different sizes that is reasonable given the demographics of the bank's assessment area(s);

(D) A record of taking appropriate action, when warranted, in response to written complaints, if any, about the bank's performance in helping to meet the credit needs of its assessment area(s); and

(E) A reasonable geographic distribution of loans given the bank's assessment area(s).

(ii) *Eligibility for an "outstanding" lending test rating.* A small bank that meets each of the standards for a "satisfactory" rating under this paragraph and exceeds some or all of those standards may warrant consideration for a lending test rating of "outstanding."

(iii) *Needs to improve or substantial noncompliance ratings.* A small bank may also receive a lending test rating of "needs to improve" or "substantial noncompliance" depending on the degree to which its performance has failed to meet the standard for a "satisfactory" rating.

(2) *Community development test ratings for intermediate small banks*—(i) *Eligibility for a satisfactory community development test rating.* The FDIC rates an intermediate small bank's community development performance "satisfactory" if the bank demonstrates adequate responsiveness to the community development needs of its assessment area(s) or a broader statewide or regional area that includes the bank's assessment area(s) through community development loans, qualified investments, and community development services. The adequacy of the bank's response will depend on its capacity for such community development activities, its assessment area's need for such community development activities, and the availability of such opportunities for community development in the bank's assessment area(s).

(ii) *Eligibility for an outstanding community development test rating.* The FDIC rates an intermediate small bank's community development performance "outstanding" if the bank demonstrates excellent responsiveness to community development needs in its assessment area(s) through community development loans, qualified investments, and community development services, as appropriate, considering the bank's capacity and the need and availability of such opportunities for community development in the bank's assessment area(s).

(iii) *Needs to improve or substantial noncompliance ratings.* An intermediate small bank may also receive a community development test rating of "needs to improve" or "substantial noncompliance" depending on the degree to which its performance has failed to meet the standards for a "satisfactory" rating.

(3) *Overall rating*—(i) *Eligibility for a satisfactory overall rating.* No intermediate small bank may receive an assigned overall rating of "satisfactory" unless it receives a rating of at least "satisfactory" on both the lending test and the community development test.

(ii) *Eligibility for an outstanding overall rating.* (A) An intermediate small bank that receives an "outstanding" rating on one test and at least "satisfactory" on the other test may receive an assigned overall rating of "outstanding."

(B) A small bank that is not an intermediate small bank that meets each of the standards for a "satisfactory" rating under the lending test and exceeds some or all of those standards may warrant consideration for an overall rating of "outstanding." In assessing whether a bank's performance is "outstanding," the FDIC considers the extent to which the bank exceeds each of the performance standards for a "satisfactory" rating and its performance in making qualified investments and its performance in providing branches and other services and delivery systems that enhance credit availability in its assessment area(s).

(iii) *Needs to improve or substantial noncompliance overall ratings.* A small bank may also receive a rating of "needs to improve" or "substantial noncompliance" depending on the degree to which its performance has failed to meet the standards for a "satisfactory" rating.

* * * * *

Dated: February 22, 2005.

Julie L. Williams,

Acting Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, March 4, 2005.

Jennifer J. Johnson,

Secretary of the Board.

By order of the Board of Directors.

Dated at Washington, DC, this 22nd day of February, 2005.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 05–4797 Filed 3–10–05; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA 2005–20248; Airspace Docket No. 05–AWP–1]

RIN 2120–AA66

Proposed Establishment of Class D Airspace; Front Airport, Denver, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class D airspace at Front Range Airport, Denver, Co. An Airport Traffic Control Tower (ATCT) is being constructed at Front Range Airport, Denver, CO which will meet criteria for Class D airspace, Class D airspace is required when the ATCT is open, and to contain and protect Standard Instrument Approach Procedures (SIAPs) and other Instrument Flight Rules (IFR) operations at the airport. This action would establish Class D airspace extending upward from the surface to 8,000 feet Mean Sea Level (MSL) within a 5.1 nautical mile radius of the airport.

DATES: Comments must be received on or before April 11, 2005.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2005–20248/Airspace Docket No. 05–AWP–1, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Room 2010, 15000 Aviation Boulevard, Lawndale California, 90261.

FOR FURTHER INFORMATION CONTACT: Larry Tonish, Airspace Specialist, Airspace Branch, Air Traffic Division, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California; telephone (310) 725–6613.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2005–20248/Airspace Docket No. 05–AWP–1." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara.* Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class D airspace at Front Range Airport, Denver, CO. An ATCT is being constructed at Front Range Airport, and Class D airspace is required during the hours the ATCT is open. Class D controlled airspace is necessary for the safety of aircraft executing SIAPs and other IFR operations at Front Range Airport. Class D airspace will be effective during specified dates and times established in advance by a Notice to Airmen. The effective date and time will, thereafter be published in the Airport/Facility Directors.

Class D airspace designations for airspace areas extending upward from the surface of the earth are published in Paragraph 5000 of FAA Order 7400.9M, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ANM CO D Front Range Airport, Denver, CO [New]

Front Range Airport, Denver, CO

(Lat. 39°47′07″ N, long. 104°32′35″ W)

That airspace extending upward from the surface to 8,000 feet MSL within a 5.1 nautical mile radius of the Front Range Airport, Denver, CO, excluding the Denver International Airport Class B. This Class D airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Los Angeles, California, on January 27, 2005.

John Clancy,

Area Director, Western Terminal Operations, Western Terminal Area Office.

[FR Doc. 05–4134 Filed 3–10–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–20449; Airspace Docket No. 05–AAL–06]

Proposed Revision of Class E Airspace; Nome, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to revise the Class E airspace at Nome, AK. New Standard instrument approach procedures (SIAP's) are being published for Nome, AK. Additional Class E airspace is needed to contain aircraft executing instrument approaches at Nome Airport. Adoption of this proposal would result in additional Class E surface area and Class E airspace upward from 700 feet (ft.) and 1,200 ft. above the surface at Nome, AK.

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

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2005–20449/Airspace Docket No. 05–AAL–06, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Manager, Safety, Alaska Flight Services Operations, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

FOR FURTHER INFORMATION CONTACT: Jesse Patterson, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *Jesse.CTR.Patterson@faa.gov*. Internet address: *http://www.alaska.faa.gov/at*.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2005–20449/Airspace Docket No. 05–AAL–06." The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemaking's (NPRM's)

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web

page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to the Code of Federal Regulations (14 CFR part 71), by adding Class E airspace at Nome, AK. The intended effect of this proposal is to revise the Class E surface area and Class E airspace upward from 700 ft. and 1,200 ft above the surface to contain Instrument Flight Rules (IFR) operations at Nome, AK.

The FAA Instrument Flight Procedures Production and Maintenance Branch has developed four new SIAPs for the Nome Airport. The new approaches are (1) Area Navigation (Global Positioning System) (RNAV GPS) Runway (RWY) 3, original; (2) RNAV (GPS) RWY 10, original; (3) RNAV (GPS) RWY 28, original; and (4) Non-directional Beacon (NDB)–A, original. Revised Class E surface area and Class E controlled airspace extending upward from 700 ft. and 1,200 ft. above the surface of the Nome Airport would be created by this action. The proposed airspace is sufficient to contain aircraft executing the new instrument procedures for the Nome Airport.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as surface areas are published in paragraph 6002, and the Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9M, *Airspace Designations and Reporting Points*, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it proposes to revise Class E airspace sufficient to contain aircraft executing instrument approaches at Nome Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71— DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9M, *Airspace Designations and Reporting Points*, dated August 30, 2004, and effective September 16, 2004, is to be amended as follows:

* * * * *

Paragraph 6002 Class E airspace Designated as Surface Areas.

* * * * *

AAL AK E2 Nome, AK [Revised]

Nome Airport, AK
(Lat. 64°30′44″ N., long. 165°26′43″ W.)

Within a 4.1-mile radius of the Nome Airport and within 3.4 miles each side of the Nome Airport 106° bearing extending from the 4.1-mile radius to 13.2 miles east of the airport, and within 3.4 miles each side of the Nome Airport 288° bearing extending from the 4.1-mile radius to 6 miles west of the airport, and within 3.5 miles each side of the Nome Airport 229° bearing extending from the 4.1-mile radius to 6 miles west of the airport. This Class E airspace area is effective during the specific dates and time established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Nome, AK [Revised]

Nome Airport, AK
(Lat. 64°30′44″ N., long. 165°26′43″ W.)
Nome VORTAC
(Lat. 64°29′06″ N., long. 165°15′11″ W.)

That airspace extending upward from 700 feet above the surface within an 25-mile radius of the Nome Airport excluding that airspace beyond 12-miles of the shoreline; and that airspace extending upward from 1,200 feet above the surface within an 77.4-mile radius of the Nome VORTAC, excluding that airspace beyond 12-miles of the shoreline.

* * * * *

Issued in Anchorage, AK, on March 4, 2005.

Anthony M. Wylie,

Acting Area Director, Alaska Flight Services Area Office.

[FR Doc. 05–4650 Filed 3–10–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

[REG–160315–03]

RIN 1545–BC89

Sickness or Accident Disability Payments

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that provide guidance regarding the treatment of payments made on account of sickness or accident disability under a workers' compensation law for purposes of the Federal Insurance Contributions Act (FICA).

DATES: Written and electronic comments must be received by June 9, 2005.

ADDRESSES: Send submissions to: CC: PA:LPD: PR (REG–160315–03), room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–160315–03), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayer may submit comments electronically, via the IRS Internet site at *http://www.irs.gov/regs* or via Federal Rulemaking Portal at *http://www.regulations.gov* (IRS and REG–160315–03).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, David Ford of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), (202) 622–6040; concerning submissions of comments, the hearing and/or to be placed on the building access list to attend the hearing, LaNita M. VanDyke, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to 26 CFR part 31 under section 3121 of the Internal Revenue Code (the Code.) Section 3121(a)(2)(A) of the Code excepts from "wages" for FICA tax purposes payments to an employee or any of his dependents on account of sickness or accident disability only if the payments are received under a "workmen's compensation law", hereinafter referred to as a workers" compensation law. The amendment to the regulations provides that for purposes of section 3121(a)(2)(A) a workers' compensation law includes a statute in the nature of a workers' compensation act.

Explanation of Provisions

Current Law

Section 3121(a) defines wages for FICA purposes as all remuneration for employment unless specifically excepted. Section 3121(a)(2)(A) excepts from wages the amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) made to or on behalf of, an employee or any of his dependents under a plan or system established by an employer which makes provision for his employees generally (or for his employees generally and their dependents) or for a class or classes of his employees (or for a class or classes of his employees and their dependents), on account of sickness or accident disability, but only if the employee receives the payments under a workers' compensation law. Section 3121(a)(4) provides that wages does not include any payment on account of sickness or accident disability made by an employer to or on behalf of an employee after the expiration of 6 calendar months following the last calendar month in which the employee worked for the employer. Thus, unless made under a workers' compensation law, payments received on account of sickness or accident disability are wages subject to FICA during the first 6 months the employee is out of work.

Prior to its amendment by section 3(b)(1) of Public Law 97–123, (95 Stat. 1659 1982–6 I.R.B. 7)) (the 1981 Act), section 3121(a)(2)(B), the predecessor to section 3121(a)(2)(A), excluded from wages any payments made under a plan or system established by an employer on account of sickness or accident disability. There was no requirement that payments be made under a workers' compensation law. Thus, the 1981 Act narrowed the sick pay exclusion by limiting the exclusion from FICA to payments made under a worker's compensation law. Section 3(e) of the 1981 Act did not amend the Code, but specifies for purposes of section 3121(a) of the Code that a payment under a workers' compensation law does not include a payment made pursuant to a State temporary disability insurance law.

On July 6, 1982, the IRS issued Temporary regulations (TD 7823, 47 FR 29225, July 6, 1982). Section 32.1(a)(1) of the Temporary Employment Tax Regulations follows the amendments made by the 1981 Act providing that payments on account of sickness or accident disability are excluded from wages for FICA purposes only if paid under a workers' compensation law. Section 32.1(a)(1). Further, Section 32.1(c) provides that a payment under a workers' compensation law does not include a payment made pursuant to a State temporary disability insurance law. Thus, such payments are wages for FICA purposes. The temporary regulations do not address the FICA tax treatment of payments made under a statute in the nature of a workers' compensation act.[1]

For income tax purposes, section 104(a)(1) provides that gross income does not include amounts received under workers' compensation acts as compensation for personal injuries or sickness. Section 1.104–1(b) of the Income Tax Regulations states that section 104(a)(1) of the Code excludes from gross income amounts received by an employee under a workers' compensation act or under a statute in the nature of a workers' compensation act that provides compensation to the employee for personal injury or sickness incurred in the course of employment.

The IRS takes the position that gross income for income tax purposes is a separate concept from wages for purposes of FICA. Furthermore, exclusions from wages for FICA purposes are to be construed narrowly. Thus, amounts that are excluded from gross income, in the absence of a specific statutory or regulatory exclusion from wages, constitute wages for FICA.

Pursuant to the income tax regulations, payments made under a statute in the nature of a workers' compensation act are excluded from gross income under section 104. However, there is no regulation at present addressing whether such payments are excluded from wages for FICA purposes.

Through 1989, the IRS issued several private letter rulings concluding that payments made under a statute in the nature of a workers' compensation act were excluded from gross income and exempt from FICA. In 1990, based on the Service's position that the exclusion from gross income did not necessarily

[1] To provide guidance relating to changes made by the Act the IRS published Revenue Procedure 82–20 (1982–1 C.B. 466), which provided in Q&A 1 that payments under a statute in the nature of a workers' compensation act were excluded from FICA. Rev. Proc 82–20 was obsoleted by Revenue Procedure 95–43 (1995–2 C.B. 412), which provides that the temporary regulations generally restate the guidance in Q&A–1 through Q&A–9 of Rev. Proc. 82–20.

result in an exclusion from wages, and the absence of a regulation on point, the IRS reversed its ruling position with respect to FICA, holding that payments made under a statute in the nature of a workers' compensation act are included in wages, until the employee has been absent from work in excess of six months; once the employee has been absent from work for more than six months, the payments are excluded from FICA by section 3121(a)(4).

Questions have arisen concerning the FICA tax treatment of payments made under a statute in the nature of a workers' compensation act to employees of States and local governments who are not eligible to receive payments under a workers' compensation law. Accordingly, the IRS and Treasury are seeking to provide rules to clarify the treatment of such payments during the first six months the employee is out of work.

Under the proposed regulations, payments made under a statute in the nature of a workers' compensation act will be treated as having been made under a workers' compensation law and, therefore, will be excluded from wages for FICA purposes. Thus, the regulations adopt the same position that was published in Rev. Proc. 82–20, the most contemporaneous guidance to the legislation that created the current statutory scheme. The proposed regulations thus align the interpretation of what constitutes payments received under a workers' compensation law for purposes of section 3121(a)(2)(A) with the interpretation of amounts received under a workers' compensation law for purposes of section 104(a)(1).

These proposed regulations are intended to address only the treatment of payments under a statute in the nature of a workers' compensation act for FICA purposes. The existing temporary regulations under section 31.1 which address the FICA treatment of payments under a workers' compensation law also provide guidance to third parties making payments on account of sickness or accident disability. Treasury and the IRS are not proposing any changes to the regulations with respect to the FICA treatment of third-party sick pay. To the extent it is necessary to modify the temporary regulations to harmonize them with these proposed regulations, the third-party sick pay provisions will be preserved. To the extent necessary, future guidance will also address the treatment of payments on account of sickness or accident disability for Federal Unemployment Tax Act and Railroad Retirement Tax Act purposes.

Proposed Effective Date

It is proposed that these regulations apply to payments made on or after the date the proposed regulation is published as Final in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. In addition, because no collection of information is imposed on small entities, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on the impact on small business.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on all aspects of the proposed regulations and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is David Ford of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt/Government Entities). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 31

Employment taxes and collection of income at the source.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 31 is proposed to be amended as follows:

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT THE SOURCE

Paragraph 1. The authority section for part 31 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *.

Par. 2. Section 31.3121(a)(2)–1 is amended by:

1. Revising the section heading.
2. Removing paragraph (a)(1).
3. Redesignating paragraphs (a)(2) through (a)(4) as (a)(1) through (a)(3), respectively.
4. Revising newly designated paragraph (a)(1).
5. Redesignating paragraph (d) as paragraph (f).
6. Adding new paragraphs (d) and (e).

The revisions and additions are as follows:

§ 31.3121(a)(2)–1 Payments on account of sickness or accident disability, medical or hospitalization expenses, or death.

(a) * * *

(1) Sickness or accident disability of an employee or any of his dependents, only if payment is received under a workers' compensation law;

* * * * *

(d) *Workers' compensation law.* (1) For purposes of paragraph (a)(1) of this section, a payment made under a workers' compensation law includes a payment made pursuant to a statute in the nature of a workers' compensation act.

(2) For purposes of paragraph (a)(1) of this section, a payment made under a workers' compensation law does not include a payment made pursuant to a State temporary disability insurance law.

(3) If an employee receives a payment on account of sickness or accident disability that is not made under a workers' compensation law or a statute in the nature of a workers' compensation act, the payment is not excluded from wages as defined by section 3121(a)(2)(A) even if the payment must be repaid if the employee receives a workers' compensation award or an award under a statute in the nature of a workers' compensation act with respect to the same period of absence from work.

(4) If an employee receives a payment on account of non-occupational injury sickness or accident disability such payment is not excluded from wages, as defined by section 3121(a)(2)(A).

(e) *Examples.* The following examples illustrate the principles of paragraph (d) of this section:

Example 1. A local government employee is injured while performing work-related

activities. The employee is not covered by the State workers' compensation law, but is covered by a local government ordinance that requires the local government to pay the employee's full salary when the employee is out of work as a result of an injury incurred while performing services for the local government. The ordinance does not limit or otherwise affect the local government's liability to the employee for the work-related injury. The local ordinance is not a workers' compensation law, but it is in the nature of a workers' compensation act. Therefore, the salary the employee receives while out of work as a result of the work-related injury is excluded from wages under section 3121(a)(2)(A).

Example 2. The facts are the same as in Example 1 except that the local ordinance requires the employer to continue to pay the employee's full salary while the employee is unable to work due to an injury whether or not the injury is work-related. Thus, the local ordinance does not limit benefits to instances of work-related disability. A benefit paid under an ordinance that does not limit benefits to instances of work-related injuries is not a statute in the nature of a workers' compensation act. Therefore, the salary the injured employee receives from the employer while out of work is wages subject to FICA even though the employee's injury is work-related.

Example 3. The facts are the same as in Example 1 except that the local ordinance includes a rebuttable presumption that certain injuries, including any heart attack incurred by a firefighter or other law enforcement personnel is work-related. The presumption in the ordinance does not eliminate the requirement that the injury be work-related in order to entitle the injured worker to full salary. Therefore, the ordinance is a statute in the nature of a workers' compensation act, and the salary the injured employee receives pursuant to the ordinance is excluded from wages under section 3121(a)(2)(A).

* * * * *

Mark E. Matthews,

Deputy Commissioner of Services and Enforcement.

[FR Doc. 05–4382 Filed 3–10–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–147195–04]

RIN 1545–BE08

Disclosure of Return Information to the Bureau of the Census

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of **Federal Register**, the IRS is issuing temporary regulations relating to additions to, and deletions from, the list of items of return information disclosed to the Bureau of the Census (Bureau) for use in producing demographic statistics programs, including the Bureau's Small Area Income and Poverty Estimates (SAIPE). These temporary regulations provide guidance to IRS personnel responsible for disclosing the information. The text of these temporary regulations published in the Rules and Regulation section of this issue of the **Federal Register** serves as the text of the proposed regulations.

DATES: Written and electronic comments and requests for a public hearing must be received by June 9, 2005.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–147195–04), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–148864–03), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC or sent electronically, via the IRS Internet site at: *http://www.irs.gov/regs* or via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS and REG–148864–03).

FOR FURTHER INFORMATION CONTACT: Concerning submission of comments, Treena Garrett, (202) 622–7180 (not a toll-free number); concerning the temporary regulations, James O'Leary, (202) 622–4580 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Under section 6103(j)(1), upon written request from the Secretary of Commerce, the Secretary of the Treasury is to furnish to the Bureau of the Census (Bureau) return information that is prescribed by Treasury regulations for the purpose of, but only to the extent necessary in, structuring censuses and national economic accounts and conducting related statistical activities authorized by law. Section 301.6103(j)(1)–1 of the regulations provides an itemized description of the return information authorized to be disclosed for this purpose. Periodically, the disclosure regulations are amended to reflect the changing needs of the Bureau for data for its statutorily authorized statistical activities.

This document contains proposed regulations authorizing IRS personnel to disclose additional items of return information that have been requested by the Secretary of Commerce, and to remove certain items of return information that are enumerated in the existing regulations but that the Secretary of Commerce has indicated are no longer needed.

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Procedure and Administration Regulations (26 CFR part 301) relating to Internal Revenue Code (Code) section 6103(j). The temporary regulations contain rules relating to the disclosure of return information reflected on returns to officers and employees of the Department of Commerce for structuring censuses and national economic accounts and conducting related statistical activities authorized by law.

The text of the temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the proposed regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic and written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and Treasury Department specifically request comments on the clarity of the proposed regulations and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person that timely submits comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register.**

Drafting Information

The principal author of these regulations is James C. O'Leary, Office of the Associate Chief Counsel (Procedure & Administration), Disclosure and Privacy Law Division.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 is amended in part, by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *.

Section 301.6103(j)(1)–1 also issued under 26 U.S.C. 6103(j)(1); * * *.

Par. 2. In § 301.6103(j)(1)–1 paragraphs (b)(1), (b)(3), and (e) are revised to read as follows:

§ 301.6103(j)(1)–1 Disclosure of return information to officers and employees of the Department of Commerce for certain statistical purposes and related activities.

* * * * *

[The text of proposed paragraphs (b)(1), (b)(3) and (e) are the same as the text of § 301.6103(j)(1)–1T(b)(1), (b)(3), and (e) published elsewhere in this issue of the **Federal Register.**]

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 05–4868 Filed 3–10–05; 8:45 am]

BILLING CODE 4830–01–P

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 546 and 552

[GSAR ANPR 2005–N01]

General Services Administration Acquisition Regulation; Waiver of Consequential Damages and "Post Award" Audit Provisions.

AGENCY: Office of the Chief Acquisition Officer, General Services Administration (GSA).

ACTION: Advance notice of proposed rulemaking and notice of public meeting.

SUMMARY: The General Services Administration (GSA) is requesting comments from both Government and industry on whether the General Services Administration Acquisition Regulation (GSAR) should be revised to include a waiver of consequential damages for contracts awarded for commercial item under the FAR. GSA is also requesting comments on whether "post award" audit provisions should be included in its Multiple Award Schedules (MAS) contracts and Governmentwide acquisition contracts (GWACs).

DATES: *Comment Date*: Comments are due on or before March 25, 2005.

ADDRESSES: Submit comments identified by GSAR ANPR 2005–N01 by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web Site: *http://www.acqnet.gov/GSAM/gsamproposed.html*. Click on the GSAR ANPR number to submit comments.
- E-mail: *gsaranpr.2005–N01@gsa.gov*. Include GSAR ANPR 2005–N01 in the subject line of the message.
- Fax: 202–501–4067.
- Mail: General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW, Room 4035, ATTN: Laurieann Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite GSAR ANPR 2005–N01 in all correspondence related to this case. All comments received will be posted without change to *http://www.acqnet.gov/far/ProposedRules/proposed.htm*, including any personal information provided.

Public Meeting: The meeting will be held on April 14, 2005, from 9 a.m. to 4:00 p.m. EST.

To facilitate discussions at the public meeting, interested parties are encouraged to provide, no later than March 25, 2005 written comments on issues they would like addressed at the meeting. There will be no record kept of this meeting, any comments to be made a part of the administrative record must be in writing and must be submitted to GSA at the address below within two weeks following the public meeting.

The meeting will be held at the General Services Administration, National Capital Region, 301 7th and D Street, SW, Washington, DC 20407, Auditorium. Participants are encouraged to check the Web site prior to the public meeting to ensure the location has not changed. Interested parties may register and submit electronic comments at *http://www.acqnet.gov/GSAM/gsamproposed.html*.

Special Accommodations: The public meeting is physically accessible to people with disabilities. Request for sign language interpretation or other auxiliary aids should be directed to Ernest Woodson, at 202–501–3775, at least 5 working days prior to the meeting date.

FOR FURTHER INFORMATION CONTACT: Mr. Ernest Woodson, Procurement Analyst, Contract Policy Division, 202–501–3775.

SUPPLEMENTARY INFORMATION:

Background

Currently, FAR Part 12, Acquisition of Commercial Items, prescribes polices and procedures unique to the acquisition of commercial items under FAR Part 12. FAR Part 12 implements the Government's preference for the acquisition of commercial items as contained in Title VIII of the Federal Acquisition Streamlining Act of 1994 by establishing policies more closely resembling those of the commercial marketplace. The clause, FAR 52.212–4, Contract Terms and Conditions—Commercial Items, that includes terms and conditions applicable to each acquisition procured under FAR Part 12 is, to the maximum extent practicable, consistent with customary commercial practices. The clause includes a provision, FAR 52.212–4(p), Limitation of liability, that provides; "Except as otherwise provided by an express warranty, the Contractor will not be liable to the Government for consequential damages resulting from any defect or deficiencies in accepted items." Also, FAR 12.302(b) allows the contracting officer to tailor the clause at FAR 52.212–4 to adapt to market conditions for each commercial acquisition. In addition to the limitation of liability clause and the provision at FAR 12.302, Federal contracts typically include a broad range of standard contract clauses such as warranties and liquidated damages that provide exclusive remedies for nonperformance that limit the Government to the specific remedies set forth in the clause.

Likewise, the Contract Disputes Act of 1978 provides for the resolution of any failure on the part of the Government and the contractor to reach agreement on any request for equitable adjustment, claim, appeal, or action arising under or relating to a Government contract to be a dispute to be resolved in accordance with FAR 52.233–1, Disputes.

Notwithstanding specific adjustments and other remedies provided in Government contracts for contractor deficiencies or nonperformance, concerns have been raised that—

• FAR clause 52.212–4(p) and the "tailoring" provision at FAR 12.302, do not reach the level of commercial standards and that unlimited consequential or other incidental or special damages are not necessary and are, in fact, counterproductive to efficient procurement, raising costs and establishing barriers to commercial companies considering whether to do business with the Federal Government;

• Although FAR 12.302 permits contracting officers to tailor the limitation of liability clause at FAR 52.212–4(p), some companies assert that contracting officers are unwilling to do so, leaving contractors with a take-it or leave-it option and contracts that deviate from the commercial marketplace, making contractors in general less willing to sign on to such contracts;

• The commercial practice, unlike FAR 52.212–4(p), that waives liability for consequential damages resulting from any defect or deficiencies in accepted items, provides for a complete wavier of consequential damages;

• Contractors would make risk decisions and negotiate Government contracts without having to add an uncertainty premium as to liability protection, if FAR Part 12 were appropriately amended to reflect commercial practices; and

• Contractors also request that we make the waiver of consequential damages for commercial products and services available under other provisions of the FAR.

Similarly, the General Accounting Office and periodically GSA's IG raise concerns regarding GSA's right to access and examine contractor records after contract award. GSA's primary vehicle for conducting post-award audits is GSAR 552.215–70, Examination of Records by GSA, that gives the Administrator of GSA, or any duly authorized representative, typically the GSA Inspector General's Office of Audits, access to and the right to examine contractor records relating to over billings, billing errors, compliance with the Industrial Funding Fee (IFF) clause of the contract, and compliance with the Price Reduction Clause under MAS contracts.

In addition to the GSA Examination of Records clause, GSA may use a number of other authorities to conduct a post-award review of a contractor's records. These other authorities include FAR 52.212–5 which authorizes the Comptroller General of the United States to access and examine a contractor's directly pertinent records involving transactions related to the contract; GSAR 515.209–70(b) that permits a contracting officer to modify the GSA Examination of Records Clause to define the specific area of audit (e.g., the use or disposition of Government-furnished property, compliance with price reduction clause, etc.), and the right of the GSA Inspector General to issue subpoenas for contractor records under the Inspector General Act of 1978.

Contractors' major concerns with GSA's post-award audit authority include complaints that they are too broad and not consistent with commercial contract practices.

In consideration of the above concerns, we have questions as to how the taxpayer may benefit from any revisions to the GSAR to address contractor concerns regarding limitation of liability or post-award audits. We are also interested in learning what, if any, impact the Services Acquisition Reform Act of 2002 and 2003 has on the issue of revising the GSAR to address limitations of liability.

In this advance notice of proposed rulemaking and notice of public meeting, GSA is seeking input from both Government and industry on whether the GSAR should be revised to waive consequential damages in the purchase of commercial items under FAR Parts 12, 13, 14, and 15 and whether GSA should modify its policy and practices with regard to the addition of post award audit clauses into contracts it awards.

Dated: March 4, 2005.

Rodney P. Lantier,

Acting Senior Procurement Executive, Office of the Chief Acquisition Officer, General Services Administration.

[FR Doc. 05–4766 Filed 3–10–05; 8:45 am]

BILLING CODE 6820–61–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 050302053–5053–01; I.D. 022805C]

RIN 0648–AS24

Fisheries of the Northeastern United States; Proposed 2005 Specifications for the Spiny Dogfish Fishery

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes specifications for the spiny dogfish fishery for the 2005 fishing year, which is May 1, 2005, through April 30, 2006. The implementing regulations for the Spiny Dogfish Fishery Management Plan (FMP) require NMFS to publish specifications for the upcoming fishing year and to provide an opportunity for public comment. The intent of this rulemaking is to specify the commercial quota and other management measures, such as possession limits, to rebuild the spiny dogfish resource.

DATES: Public comments must be received (see **ADDRESSES**) no later than 5 p.m., EST, on March 28, 2005.

ADDRESSES: Comments on the proposed specifications should be sent:

• Mail: Paper, disk, or CD-ROM comments should be sent to Patricia A. Kurkul, Regional Administrator, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930–2298. Mark on the outside of the envelope, "Comments—2005 Spiny Dogfish Specifications."

• FAX: Fax comments to (978) 281–9135.

• E-mail: E-mail comments to *DOG2005@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: "Comments–2005 Dogfish specifications."

• Comments may also be submitted electronically through the Federal e-Rulemaking portal: *http://www.regulations.gov*.

Copies of supporting documents used by the Joint Spiny Dogfish Committee and the Spiny Dogfish Monitoring Committee; the Environmental Assessment, Regulatory Impact Review, Initial Regulatory Flexibility Analysis (EA/RIR/IRFA); and the Essential Fish Habitat Assessment (EFHA) are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building, Room 2115, 300 South Street, Dover, DE 19904. The EA, RIR, IRFA, and EFHA are accessible via the Internet at *http://www.nero.noaa.gov/nero/*.

FOR FURTHER INFORMATION CONTACT: Eric Jay Dolin, Fishery Policy Analyst, (978)281–9259, fax (978)281z69135.

SUPPLEMENTARY INFORMATION:

Background

Spiny dogfish were declared overfished by NMFS on April 3, 1998, and added to that year's list of overfished stocks in the *Report on the Status of the Fisheries of the United States*, prepared pursuant to section 304 of the Magnuson-Stevens Fishery

Conservation and Management Act (Magnuson-Stevens Act). Consequently, the Magnuson-Stevens Act required the preparation of measures to end overfishing and to rebuild the spiny dogfish stock. A joint FMP was developed by the Mid-Atlantic and New England Fishery Management Councils (Councils) during 1998 and 1999. The Mid-Atlantic Fishery Management Council (MAFMC) was designated as the administrative lead on the FMP.

The regulations implementing the FMP at 50 CFR part 648, subpart L, outline the process for specifying annually the commercial quota and other management measures (e.g., minimum or maximum fish sizes, seasons, mesh size restrictions, possession limits, and other gear restrictions) for the spiny dogfish fishery to achieve the annual target F specified in the FMP. The target F for the 2005 fishing year is not to exceed 0.08.

The Spiny Dogfish Monitoring Committee (Monitoring Committee), comprised of representatives from states; MAFMC staff; New England Fishery Management Council (NEFMC) staff; NMFS staff; and two non-voting, ex-officio industry representatives (one each from the MAFMC and NEFMC regions) is required to review annually the best available information and to recommend a commercial quota and other management measures necessary to achieve the target F for the upcoming fishing year. The Council's Joint Spiny Dogfish Committee (Joint Committee) then considers the Monitoring Committee's recommendations and any public comment in making its recommendation to the two Councils. Afterwards, the MAFMC and the NEFMC make their recommendations to NMFS. NMFS reviews those recommendations to assure they are consistent with the FMP, and may modify them if necessary. NMFS then publishes proposed measures for public comment.

Monitoring Committee Recommendations

The Monitoring Committee met on September 24, 2004, and developed recommendations for the 2005 fishery based on stock conditions estimated from the latest stock status updates. According to the latest (2004) spring survey values, the 3–year moving average of total stock biomass decreased from 916 million lb (415 million kg) in 2001–2003 to 857 million lb (389 million kg) in 2002–2004. Mature female biomass decreased from 144 million lb (65.3 million kg) in 2001–2003 to 132 million lb (59.9 million kg) in 2002–2004. Pup abundance, however, increased from 338 thousand lb (153,314 kg) in 2001–2003 to 1.440 million lb (653,173 kg) in 2002–2004.

Although the FMP stipulates a target fishing mortality rate of F=0.08 for the upcoming fishing year, the 37th Northeast Regional Stock Assessment Review Committee (SARC — September 2003) recommended that total removals not exceed the amount corresponding to F=0.03 ($F_{rebuild}$). The F=0.08 target stipulated in the FMP was based on the expectation, in 1999, that mature female biomass would recover to 90 percent SSB_{max} by 2003. The management advice provided by the 37th SARC was based on its review of the 2003 stock assessment, and stated that, "given the low current spawning biomass, poor recruitment and reduced pup survivorship, the SARC recommends total removals (landings, discards, Canadian catch) below those derived from the estimated rebuilding F (0.03). Targeting females should be avoided."

Because the updated stock status information reviewed by the Monitoring Committee indicated that mature female biomass had not increased in 2004 compared to 2003 estimates, the Monitoring Committee could find no biological justification for deviating from the advice of the 37th SARC. The Monitoring Committee, therefore, recommended maintaining the status quo management measures for the upcoming fishing year to encourage the rebuilding of the mature female biomass. These measures are: an annual incidental catch quota of 4 million lb (1.81 million kg) divided into two semi-annual quota periods (quota period 1 (May 1, 2005 October 31, 2005) = 2.316 million lb (1.05 million kg), and quota period 2 (November 1, 2005 April 30, 2006) = 1.684 million lb (763,849 kg)), and possession limits of 600 lb (272 kg) for quota period 1 and 300 lb (136 kg) for quota period 2 (vessels are prohibited from landing more than the specified amount in any one calendar day).

Joint Committee Recommendations

The Joint Committee met on October 4, 2004, and recommended that, for the 2005 fishing year (May 1, 2005 April 30, 2006), the Councils adopt a quota of 4 million lb (1.81 million kg), and that possession limits be set at 1,500 lb (680 kg) of male spiny dogfish (i.e., a prohibition on the possession of female spiny dogfish) for the entire year. In the view of the Joint Committee, the increased possession limits would accommodate the high volume demand required by the processing sector of the spiny dogfish fishery, while the prohibition on possession of female spiny dogfish would help protect that component of the stock. At its October 4, 2004, meeting, the MAFMC reviewed the Monitoring Committee and Joint Committee recommendations, and adopted the Joint Committee's recommended specifications for the 2005 fishing year. The NEFMC, on the other hand, at its November 18, 2004, meeting, endorsed the Monitoring Committee's recommendations; namely, maintaining the status quo.

Alternative Adopted by the Atlantic States Marine Fisheries Commission (ASMFC)

On November 9, 2004, the ASFMC Spiny Dogfish and Coastal Shark Management Board approved specifications for the 2005 fishing year, which are the same as the Federal status quo.

Proposed 2005 Measures

NMFS reviewed both Councils' recommendations and concluded that maintaining the status quo, which is the same as the Monitoring Committee's recommendation, would better assure that the target F is not exceeded. NMFS proposes a commercial spiny dogfish quota of 4 million lb (1.81 million kg) for the 2005 fishing year to be divided into two semi-annual periods as follows: 2,316,000 lb (1.05 million kg) for quota period 1 (May 1, 2005 - Oct. 31, 2005); and 1,684,000 lb (763,849 kg) for quota period 2 (Nov. 1, 2005 - April 30, 2006). In addition, NMFS proposes to maintain possession limits of 600 lb (272 kg) for quota period 1, and 300 lb (136 kg) for quota period 2, to discourage a directed fishery. The directed fishery has traditionally targeted large, mature female spiny dogfish, the stock component that is most in need of protection and rebuilding. Maintaining the limits of 600 lb (272 kg) and 300 lb (136 kg) for quota periods 1 and 2, respectively, would allow for the retention of spiny dogfish caught incidentally while fishing for other species, but discourage directed fishing and, therefore, provide protection for mature female spiny dogfish.

Maintaining the status quo would also be consistent with the measures being implemented under the ASMFC's Interstate Fishery Management Plan in state waters. This would have the benefit of establishing consistent management measures in Federal and state jurisdictions.

Classification

This action is authorized by 50 CFR part 648 and has been determined to be

not significant for purposes of E.O. 12866.

The Council prepared an IRFA, as required by section 603 of the Regulatory Flexibility Act, which describes the economic impacts this proposed rule, if adopted, would have on small entities. A copy of the IRFA can be obtained from the Council or NMFS (see **ADDRESSES**) or via the Internet at *http://www.nero.noaa.gov*. A summary of the analysis follows:

Statement of Objective and Need

A description of the reasons why this action is being considered, and the objectives of and legal basis for this action, is contained in the preamble to this proposed rule and is not repeated here.

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

All of the potentially affected businesses are considered small entities under the standards described in NMFS guidelines because they have gross receipts that do not exceed $3.5 million annually. Information from the 2003 fishing year was used to evaluate impacts of this action, as that is the most recent year for which data are complete. According to unpublished NMFS permit file data, 3,025 vessels possessed Federal spiny dogfish permits in 2003, while 94 of these vessels contributed to overall landings.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

This action does not contain any new collection-of-information, reporting, recordkeeping, or other compliance requirements. It does not duplicate, overlap, or conflict with any other Federal rules.

Minimizing Significant Economic Impacts on Small Entities

The IRFA considered three alternatives. The action recommended in this proposed rule includes a commercial quota of 4 million lb (1.81 million kg), and possession limits of 600 lb (272 kg) during quota period 1 and 300 lb (136 kg) during quota period 2. Alternative 2 evaluates the MAFMC proposal, which would set a 4–million-lb (1.81 million kg) quota, with possession limits of 1,500 lb (680 kg) of male-only spiny dogfish in both quota periods. Alternative 3 evaluates the impact of having no management measures (no action).

Because, under Alternative 1, the specifications would remain unchanged, revenues from dogfish harvest under this alternative should be equivalent to the status quo, except for changes in market value. Note, however, that the 2003 quota (4.00 million lb (1.81 million kg)) is 27.0 percent more than what was actually landed (3.14 million lb (1.42 million kg)). Therefore, unlike previous years, in which the quota was exceeded, the federally permitted fleet should not experience a decrease in dogfish fishing opportunity, were this alternative to be implemented.

In addition to the quota of 4.0 million lb (1.81 million kg), Alternative 1 includes continuation of status quo possession limits of 600 lb (272 kg) in quota period 1 and 300 (176 kg) during quota period 2 in 2004. Continuation of these possession limits in 2005 is, therefore, not expected to result in significant revenue loss. These very low possession limits were recommended for the explicit purpose of eliminating the directed harvest of spiny dogfish. While the short-term economic impacts of the status quo possession limits are negative relative to higher possession limits (Alternative 2) or an unregulated fishery (Alternative 3), Alternative 1 rebuilds the stock fastest and thus economic and social benefits of a recovered stock will be realized more quickly.

No gross revenue impacts are anticipated as a function of the Alternative 2 quota relative to the status quo/Alternative 1, since the recommended quotas are identical. Additionally, the potential for increases in revenue from the larger possession limit allowance is precluded by the implementation of status quo possession limits by the ASMFC. This leaves the male-only possession restriction as the only potential source of revenue impacts under Alternative 2. The likelihood of a directed male-only spiny dogfish fishery developing in the Exclusive Economic Zone is low, since the fact that females attain a larger maximum size makes them more generally marketable. As such, it likely that retention of spiny dogfish in the Exclusive Economic Zone will decrease under Alternative 2. This would represent a slight loss, given that an estimated 1.8 percent of the total 2003 spiny dogfish landings came from the Exclusive Economic Zone. As such, it is unlikely that this alternative will produce significant revenue impacts.

Given that no quota is specified in Alternative 3, landings are expected to return to the levels approximately equal to those observed in the unregulated period of the fishery (about 25 million lb (11.3 million kg)). This would constitute a 525–percent increase in landings compared to the status quo (4.0 million lb (1.81 million kg)) and a 696–percent increase in landings compared to actual 2003 landings (3.14 million lb (1.42 million kg). Although the short-term social and economic benefits of an unregulated fishery would be much greater than those associated with Alternatives 1 and 2, fishing mortality is expected to rise above the threshold level that allows the stock to replace itself such that stock rebuilding could not occur. In the long term, unregulated harvest would lead to depletion of the spiny dogfish population, which would eventually eliminate the spiny dogfish fishery altogether.

Dated: March 7, 2005.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 05–4840 Filed 3–10–05; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 70, No. 47
Friday, March 11, 2005

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

March 7, 2005.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submissions@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 collectin of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal and Plant Health Inspection Service

Title: Importation of Restricted and Controlled Animal and Poultry Products and Byproducts, Organisms, and Vectors into the U.S.

OMB Control Number: 0579–0015.

Summary of Collection: Disease prevention is the most effective method for maintaining a healthy animal population and enhancing the Animal and Plant Health Inspection Service (APHIS) ability to compete in the world market of animals and animal products trade. The Veterinary Service, a program in APHIS enforces regulations that pertain to the importation of restricted animal byproducts and controlled materials into the United States and the prevention of foreign animal disease incursions into the United States. The regulations under which APHIS conducts these disease prevention activities are contained in title 9, chapter 1, subchapter D, parts 94, 95, and 122 of the Code of Federal Regulations. APHIS colelcts information using several forms.

Need and Use of the Information: APHIS will collect information to ensure that imported items do not present a disease risk to the livestock and poultry populations of the United States. The information collected will provide APHIS with critical information concerning the origin and history of the items destined for importation into the United States. Without the information, the United States would be at risk of an exotic disease incursion.

Description of Respondents: Business or other for-profit; Individuals or households; Not for-profit institutions; Local, or tribal Government.

Number of Respondents: 10,008.

Frequency of Responses: Recordkeeping; Reporting; On occasion.

Total Burden Hours: 32,000.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 05–4767 Filed 3–10–05; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

March 8, 2005.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Agricultural Marketing Service

Title: Tobacco Reports.

OMB Control Number: 0581–0004.

Summary of Collection: The Tobacco Statistics Act of 1929 (7 U.S.C. 501–508) provides for the collection and publication of statistics of tobacco by

USDA with regard to quantity of leaf tobacco in all forms in the United States and Puerto, owned by or in the possession of dealers, manufacturers, growers' cooperative associations, and others with the exception of the original growers of the tobacco. The information furnished under the provisions of this Act shall be used only for statistical purposes for which it is supplied.

Need and Use of the Information: The basic purpose of the information collection is to ascertain the total supply of unmanufactured tobacco available to domestic manufacturers and to calculate the amount consumed in manufactured tobacco products. This data is also used for the calculation of production quotas for individual types of tobacco and for price support calculations. Without the information USDA would not be able to disseminate marketing information as directed and authorized in the Act.

Description of Respondents: Business or other for-profit.

Number of Respondents: 76.

Frequency of Responses: Reporting: quarterly.

Total Burden Hours: 278.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 05–4809 Filed 3–10–05; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket Number FV–04–307]

United States Standards for Grades of Cucumbers

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice; withdrawal.

SUMMARY: The Agricultural Marketing Service (AMS) is withdrawing the notice soliciting comments on its proposal to amend the voluntary United States Standards for Grades of Cucumbers. After reviewing and considering the comments received, the Agency has decided not to proceed with this action.

EFFECTIVE DATE: March 11, 2005.

FOR FURTHER INFORMATION CONTACT: David Priester, Standardization Section, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 1661 South Building, STOP 0240, Washington, DC 20250–0240, Fax (202) 720–8871 or call (202) 720–2185; e-mail *David.Priester@usda.gov.* The United States Standards for Grades of Cucumbers are available either through the address cited above or by accessing the Fresh Products Branch Web site at *http://www.ams.usda.gov/standards/stanfrfv.htm.*

Background

At a 2003 meeting with the Fruit and Vegetable Industry Advisory Committee, AMS was asked to review all the fresh fruit and vegetable grade standards for usefulness in serving the industry. AMS had identified the United States Standards for Grades of Cucumbers for a possible revision. The United States Standards for Grades of Cucumbers were last amended March 1, 1958.

On June 25, 2004, a notice requesting comments on the possible revision of the standards by incorporating industry terms as well as other changes was published in the **Federal Register** (69 FR 35572) with the comment period ending August 24, 2004.

Three comments were received during the official period for comment. One comment from a consumer did not support revising the standard. One comment from an industry member supported the inclusion of industry terms. The commenter stated, "I feel we should have two categories for Super Selects: #1 criteria being a 66–76 count and a #2 criteria being a 56–65 count." However, another industry member commented, "That the terms Super Select, Select, Small, Large and Plain are commonly used by the industry to convey the desired size, quality and condition of cucumbers but that the criteria for these terms are not consistently defined. This commenter noted that the meaning is often interpreted differently by various trading partners." This industry member further stated, "* * * that wholesale receivers and the greater produce industry would be better served if current trading practices were supported by a system of U.S. grade standards that establish reasonable parameters for size, consistency of size within packs and provide more meaningful definitions for quality and condition." However, the commenter did not include those definitions.

While some members of the industry agree that a consistency of size and specific count ranges would promote orderly marketing, different segments within the industry are divided over the meanings of industry terms. In view of the lack of any substantial consensus as to whether the proposed inclusion of industry terms would meet the needs of the entire industry, the notice is being withdrawn. The withdrawal of this notice will provide industry representatives with an opportunity for further discussions in the areas of mutual concern.

After reviewing and considering the comments received, the Agency has decided not to proceed with the action. Therefore, the notice published June 25, 2004 (69 FR 35572), is withdrawn.

Authority: 7 U.S.C. 1621–1627.

Dated: March 7, 2005.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 05–4810 Filed 3–10–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket Number FV–04–311]

United States Standards for Grades of Kale

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice; request for public comment.

SUMMARY: The Agricultural Marketing Service (AMS) of the Department of Agriculture (USDA) is soliciting comments on it's proposal to revise the United States Standards for Grades of Kale. This action is being taken at the request of the Fruit and Vegetable Industry Advisory Committee, which asked AMS to review the grade standards for possible revision. AMS is proposing to revise the standards to allow percentages to be determined by count rather than weight. AMS is also proposing to revise the application of tolerances for packages which contain less than 15 specimens. Additionally, based on a request from an industry group, the North American Perishable Agriculture Receivers (NAPAR), AMS is proposing to allow the standards to be used for kale leaves and bunches of leaves in addition to kale plants. The proposed revision would bring the standards for kale in line with current marketing practices, thereby improving the usefulness in serving the industry.

DATES: Comments must be received by May 10, 2005.

ADDRESSES: Interested persons are invited to submit written comments to the Standardization Section, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Ave. SW., Room 1661, South Building, Stop 0240, Washington, DC 20250–0240; Fax (202)

720–8871, E-mail *FPB.DocketClerk@usda.gov.*

Comments should make reference to the dates and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours. The United States Standards for Grades of Kale are available either through the address cited above or by accessing the Fresh Products Branch Web site at *http://www.ams.usda.gov/standards/stanfrfv.htm.*

FOR FURTHER INFORMATION CONTACT: David L. Priester, at the above address or call (202) 720–2185; E-mail *David.Priester@usda.gov.*

SUPPLEMENTARY INFORMATION: Section 203(c) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627), as amended, directs and authorizes the Secretary of Agriculture "to develop and improve standards of quality, condition, quantity, grade and packaging and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices * * *." AMS is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities and makes copies of official standards available upon request. The United States Standards for Grades of Fruits and Vegetables not connected with Federal Marketing Orders or U.S. Import Requirements no longer appear in the Code of Federal Regulations, but are maintained by USDA/AMS/Fruit and Vegetable Programs.

AMS is proposing to revise the voluntary U.S. Standards for Grades of Kale using procedures that appear in Part 36 Title 7 of the Code of Federal Regulations (7 CFR Part 36). These standards were last revised in 1934.

Background

Prior to undertaking research and other work associated with revision of the grade standards, AMS published a notice in the **Federal Register** (69 FR 58879) on October 1, 2004, soliciting comments on the possible revision to the United States Standards for Grades of Kale.

In response to our request for comments, AMS received one comment from an industry group, NAPAR. The comment was in favor of the proposed revision.

The proposed revision will allow percentages to be determined by count rather than weight. AMS is also proposing to revise the application of tolerances for packages which contain less than 15 specimens. This change will allow double the tolerances specified, and that at least one defective specimen may be permitted in any sample, as long as the average for the entire lot is within the tolerance specified for the grade.

AMS also received a request from NAPAR to allow the standards to be used for kale leaves and bunched kale leaves in addition to kale plants. Currently the standards only apply to kale plants. This proposal will bring the standards for kale in line with current marketing practices, thereby, improving the usefulness of the standards in serving the industry.

The official grade of a lot of kale covered by these standards is determined by the procedures set forth in the Regulations Governing Inspection, Certification, and Standards of Fresh Fruits, Vegetables and Other Products (Sec. 51.1 to 51.61).

This notice provides for a 60-day comment period for interested parties to comment on changes to the standard.

Authority: 7 U.S.C. 1621–1627.

Dated: March 7, 2005.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 05–4813 Filed 3–10–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket Number FV–04–304]

United States Standards for Grades of Mangos

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice; request for public comment.

SUMMARY: The Agricultural Marketing Service (AMS) of the Department of Agriculture (USDA) is soliciting comments on the proposed voluntary U.S. Standards for Grades of Mangos. Members of the Fruit and Vegetable Industry Advisory Committee, the Fresh Produce Association of the Americas and other members of the mango industry have requested this action to be taken. The proposed standards would provide industry with a common language and uniform basis for trading, thus promoting orderly and efficient marketing of mangos.

DATES: Comments must be received by May 10, 2005.

ADDRESSES: Interested persons are invited to submit written comments to the Standardization Section, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Room 1661, South Building, Stop 0240, Washington, DC 20250–0240, fax (202) 720–8871, e-mail *FPB.DocketClerk@usda.gov.* Comments should make reference to the dates and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours and on the Internet.

The draft of the United States Standards for Grades of Mangos is available by accessing AMS's home page on the Internet at: *http://www.ams.usda.gov/fv/fpbdocketlist.htm.*

FOR FURTHER INFORMATION CONTACT: David L. Priester, at the above address or call (202) 720–2185, e-mail *David.Priester@usda.gov.*

SUPPLEMENTARY INFORMATION: Section 203(c) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627), as amended, directs and authorizes the Secretary of Agriculture "to develop and improve standards of quality, condition, quantity, grade and packaging and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices * * *." AMS is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities and makes copies of official standards available upon request. The United States Standards for Grades of Fruits and Vegetables not connected with Federal Marketing Orders or U.S. Import Requirements, no longer appear in the Code of Federal Regulations, but are maintained by the USDA/AMS/Fruit and Vegetable Programs.

AMS is proposing to establish voluntary U.S. Standards for Grades of Mangos using the procedures that appear in part 36 title 7 of the Code of Federal Regulations (7 CFR part 36).

Background

On December 16, 2003, AMS published a notice in the **Federal Register** (68 FR 69984) soliciting comments for the possible development of U.S. Standards for Grades of Mangos. AMS received seven comments, one from a foreign government agency, two from trade organizations, three from importers, and one from growers and exporters. All of these comments supported the creation of U.S. standards.

Based on those comments, AMS has developed proposed grade standards for mangos. These standards contain sections pertaining to grades, sizes,

tolerances, application of tolerances, definitions, and a table of defects. This proposal would establish the following grades as well as a tolerance for each grade: U.S. Fancy, U.S. No. 1 and U.S. No. 2. In addition, a proposed "Application of Tolerances" section and "Size Requirements" section with a table listing size designations would also be established. AMS is proposing to define "Injury," "Damage," "Serious damage," along with specific basic requirements and other defects. Also proposed is a "Classification of Defects" section, in a table format, which would list some of the various defects affecting mangos and proposed scoring guides for the particular grade involved. AMS is soliciting comments on the proposed U.S. Standards for Grades of Mangos and the probable impact on growers, processors, and distributors.

According to AMS' Market News Branch Summaries referenced in the Fresh Fruit and Vegetable Shipments Report, from 1993 through 2003 mango importation continued to steadily increase in the U.S. Recently, the mango industry stressed the need for U.S. standards which would provide a uniform basis for trading mangos that are imported, exported, or marketed domestically.

The adoption of these proposed standards would provide the rapidly growing mango industry with U.S. grade standards similar to those extensively in use by the fresh produce industry to assist in orderly marketing of other commodities.

The official grade of a lot of mangos covered by these standards will be determined by the procedures set forth in the Regulations Governing Inspection, Certification, and Standards of Fresh Fruits, Vegetables and Other Products (Sec. 51.1 to 51.61).

This notice provides for a 60 day comment period for interested parties to comment on the proposed U.S. Standards for Grades of Mangos.

Authority: 7 U.S.C. 1621–1627.

Dated: March 7, 2005.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 05–4811 Filed 3–10–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket Number FV–04–309]

United States Standards for Grades of Persian (Tahiti) Limes

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice; request for public comment.

SUMMARY: The Agricultural Marketing Service (AMS), is soliciting comments on its proposal to revise the United States Standards for Grades of Persian (Tahiti) Limes. Specifically, AMS is proposing to revise the color and juice requirements. The proposed revision would simplify the two requirements in the standards which are complex and difficult to apply. These changes would bring the lime standards in line with other citrus standards, thereby, improving the usefulness in serving the industry.

DATES: Comments must be received by May 10, 2005.

ADDRESSES: Interested persons are invited to submit written comments to the Standardization Section, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Ave. SW., Room 1661 South Building, Stop 0240, Washington, DC 20250–0240, fax (202) 720–8871, E-mail *FPB.DocketClerk@usda.gov*. Comments should make reference to the dates and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours. The U.S. Standards for Grades of Persian (Tahiti) Limes are available either from the above address or the Fresh Products Branch Web site page at: *http://www.ams.usda.gov/standards/limes.pdf*.

FOR FURTHER INFORMATION CONTACT: David L. Priester, at the above address or call (202) 720–2185, E-mail *David.Priester@usda.gov*.

SUPPLEMENTARY INFORMATION: Section 203(c) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627), as amended, directs and authorizes the Secretary of Agriculture "to develop and improve standards of quality, condition, quantity, grade and packaging and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices * * *." AMS is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities and makes copies of official standards available upon request. The United States Standards for Grades of Fruits and Vegetables that are not requirements of Federal Marketing Orders or U.S. Import Requirements, no longer appear in the Code of Federal Regulations, but are maintained by USDA, AMS, Fruit and Vegetable Programs.

AMS is proposing to revise the voluntary U.S. Standards for Grades of Persian (Tahiti) Limes using the procedures that appear in Part 36 Title 7 of the Code of Federal Regulations (7 CFR Part 36). These standards were last revised in 1958.

Background

Prior to undertaking research and other work associated with revision of the grade standards, AMS decided to seek public comments on the petition. A notice requesting comments on the possible revision of the U.S. Standards for Grades of Persian (Tahiti) Limes was published in the June 25, 2004, **Federal Register** (69 FR 35572).

In response to the request for comments, AMS received two comments. One comment from a private individual which did not support the revision. One comment from a national association of produce receivers favored the revision.

Based on the comments received and information gathered, AMS is proposing to revise the standards for limes following the standard format for U.S. Grade Standards. The proposed revisions would remove the requirements related to color which specify the percentage of the lime surface that shall have good green color. The standard also specify's that limes which fail to meet a grade due to blanching shall be designated as "Mixed Color" and limes that fail to meet a grade because of turning yellow due to ripening shall be designated as "Turning." Also, the proposed revision would remove the juice content requirement. This will result in limes with lesser color and juice content to be scored as defects using the existing "Damage" and "Serious Damage" definitions for "Blanching," "Yellow Color" and "Dryness or Mushy Condition." Therefore, when individual limes fail to meet the above requirements, they will be scored as defects against a given U.S. grade, and if the number of defects exceeds the total grade tolerance, the limes would fail to meet the U.S. grade. This proposal will bring the standards for limes in line with the other U.S. standards for citrus. AMS believes that

changing these requirements is warranted to better serve the industry. The official grades of limes covered by these standards are determined by procedures set forth in the Regulations Governing Inspection, Certification and Standards of Fresh Fruits and Vegetables and Other Products (Sec. 51.1 to 51.61).

This notice provides for a 60-day comment period for interested parties to comment on the proposed revision of the U.S. Standards for Grades of Persian (Tahiti) Limes.

Authority: 7 U.S.C. 1621–1627.

Dated: March 7, 2005.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 05–4815 Filed 3–10–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket Number FV–05–302]

United States Standards for Grades of Snap Beans

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS), prior to undertaking research and other work associated with revising official grade standards, is soliciting comments on the possible revisions to the United States Standards for Grades of Snap Beans. At a 2003 meeting with the Fruit and Vegetable Industry Advisory Committee, AMS was asked to review all the fresh fruit and vegetable grade standards for usefulness in serving the industry. As a result, AMS has identified that the standard may need to be modified to allow percentages to be determined by count and not weight. Additionally, AMS is seeking comments regarding any other revisions that may be necessary to better serve the industry.

DATES: Comments must be received by May 10, 2005.

ADDRESSES: Interested persons are invited to submit written comments to the Standardization Section, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Ave. SW., Room 1661 South Building, Stop 0240, Washington, DC 20250–0240; Fax (202) 720–8871, E-mail *FPB.DocketClerk@usda.gov*. Comments should make reference to the dates and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours. The United States Standards for Grades of Snap Beans is available either through the address cited above or by accessing the Fresh Products Branch Web site at *http://www.ams.usda.gov/standards/stanfrfv.htm*.

FOR FURTHER INFORMATION CONTACT: David L. Priester, at the above address or call (202) 720–2185; E-mail *David.Priester@usda.gov*.

SUPPLEMENTARY INFORMATION: Section 203(c) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627), as amended, directs and authorizes the Secretary of Agriculture "to develop and improve standards of quality, condition, quantity, grade and packaging and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices * * *." AMS is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities and makes copies of official standards available upon request. The United States Standards for Grades of Fruits and Vegetables not connected with Federal Marketing Orders or U.S. Import Requirements, no longer appear in the Code of Federal Regulations, but are maintained by USDA/AMS/Fruit and Vegetable Programs.

AMS is proposing to revise the voluntary United States Standards for Grades of Snap Beans using procedures that appear in Part 36 Title 7 of the Code of Federal Regulations (7 CFR Part 36). These standards were last revised in 1990.

Background

At a 2003 meeting with the Fruit and Vegetable Industry Advisory Committee, AMS was asked to review all the fresh fruit and vegetable grade standards for usefulness in serving the industry. AMS has identified the United States Standards for Grades of Snap Beans for a possible revision. As a result, AMS has identified that the standard may need to be modified to allow percentages to be determined by count and not weight. However, prior to undertaking detailed work to develop proposed revisions to the standards, AMS is soliciting comments on the possible revision to the standards and the probable impact on distributors, processors, and growers. Additionally, AMS is seeking comments regarding any other revisions that may be necessary to better serve the industry.

This notice provides for a 60-day comment period for interested parties to comment on changes to the standards. Should AMS conclude that there is a need for the revisions of the standards, the proposed revisions will be published in the **Federal Register** with a request for comments in accordance with 7 CFR Part 36.

Authority: 7 U.S.C. 1621–1627.

Dated: March 7, 2005.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 05–4816 Filed 3–10–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket Number FV–05–301]

United States Standards for Grades of Strawberries

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice; request for public comment.

SUMMARY: The Agricultural Marketing Service (AMS), of the Department of Agriculture, is soliciting comments on a proposal to revise the United States Standards for Grades of Strawberries. AMS has received a petition from the California Strawberry Commission (CSC), requesting that the current standards be modified to allow percentages be determined on the basis of count and not volume. Additionally, AMS is seeking comments regarding any other revisions that may be necessary to better serve the industry.

DATES: Comments must be received by May 10, 2005.

ADDRESSES: Interested persons are invited to submit written comments to the Standardization Section, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Ave. SW., Room 1661 South Building, Stop 0240, Washington, DC 20250–0240; Fax (202) 720–8871, E-mail *FPB.DocketClerk@usda.gov*. Comments should make reference to the dates and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours. The United States Standards for Grades of Strawberries are available either through the address cited above or by accessing the Fresh Products Branch Web site at *http://www.ams.usda.gov/standards/stanfrfv.htm*.

FOR FURTHER INFORMATION CONTACT: David L. Priester, at the above address

or call (202) 720–2185, E-mail *David.Priester@usda.gov.*

SUPPLEMENTARY INFORMATION: Section 203(c) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627), as amended, directs and authorizes the Secretary of Agriculture "to develop and improve standards of quality, condition, quantity, grade and packaging and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices * * *." AMS is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities and makes copies of official standards available upon request. The United States Standards for Grades of Fruits and Vegetables not connected with Federal Marketing Orders or U.S. Import Requirements, no longer appear in the Code of Federal Regulations, but are maintained by USDA/AMS/Fruit and Vegetable Programs.

AMS is proposing to revise the voluntary United States Standards for Grades of Strawberries using procedures that appear in Part 36 Title 7 of the Code of Federal Regulations (7 CFR Part 36). These standards were last revised in 1965.

Background

AMS received a petition from the CSC requesting a revision to the United States Standards for Grades of Strawberries. The standards are established under the authority of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627). The petitioner represents more than 700 strawberry growers, shippers, and processors.

The petitioner is requesting that USDA revise the standards to allow that percentages be determined on the basis of count and not volume. Currently the standards state that the percentages of defects will be determined on the basis of volume. The volume is determined by counting the berries in a sample, and then dividing the total number of berries into 100 percent. The resulting number will be the percentage by volume of the average size berry in the sample. For example, in a sample that has 25 berries the average size berry will be equal to 4 percent with smaller berries representing less and larger berries representing more of the percentage by volume in the sample. Industry believes determining percentages by count will simplify tolerance determination.

Prior to undertaking detailed work to develop a proposed revision to the standard, AMS is soliciting comments on the petition submitted to revise the United States Standards for Grades of Strawberries.

This notice provides for a 60-day comment period for interested parties to comment on changes to the standards. Should AMS conclude that revisions are needed, the Agency will develop a proposed revised standard that will be published in the **Federal Register** with a request for comments in accordance with 7 CFR Part 36.

Authority: 7 U.S.C. 1621–1627.

Dated: March 7, 2005.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 05–4812 Filed 3–10–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket Number FV–04–308]

United States Standards for Grades of Sweet Peppers

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice, request for public comment.

SUMMARY: The Agricultural Marketing Service (AMS), of the Department of Agriculture (USDA) is soliciting comments on it's proposal to revise the United States Standards for Grades of Sweet Peppers. This action is being taken at the request of the Fruit and Vegetable Industry Advisory Committee, which asked AMS to review the grade standards for possible revision. AMS is proposing to revise the standards to report decay affecting the stems under the serious damage tolerance in all grades instead of the more restrictive tolerance of two percent for decay. Additionally, AMS is proposing to amend the similar varietal requirement to allow mixed colors and/or types when designated as speciality packs and remove the unclassified category. AMS is proposing to remove the requirement to re-designate lots of sweet peppers as "Mixed Color" in the grade statement when peppers fail to meet the color requirement. AMS is also proposing to include the Mixed Color designation as an option for any lot of sweet peppers intentionally packed with peppers of different color. The proposed revisions would bring the standards for sweet peppers in line with current marketing practices, thereby improving the usefulness of the standards in serving the industry.

DATES: Comments must be received by May 10, 2005.

ADDRESSES: Interested persons are invited to submit written comments to the Standardization Section, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Ave. SW., Room 1661 South Building, Stop 0240, Washington, DC 20250–0240; fax (202) 720–8871, e-mail *FPB.DocketClerk@usda.gov.* Comments should make reference to the dates and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours. The United States Standards for Grades of Sweet Peppers are available either through the address cited above or by accessing the Fresh Products Branch Web site at: *http://www.ams.usda.gov/standards/stanfrfv.htm.*

FOR FURTHER INFORMATION CONTACT: David L. Priester, at the above address or call (202) 720–2185; e-mail *David.Priester@usda.gov.*

SUPPLEMENTARY INFORMATION: Section 203(c) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627), as amended, directs and authorizes the Secretary of Agriculture "to develop and improve standards of quality, condition, quantity, grade and packaging and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices * * *." AMS is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities and makes copies of official standards available upon request. The United States Standards for Grades of Fruits and Vegetables not connected with Federal Marketing Orders or U.S. Import Requirements, no longer appear in the Code of Federal Regulations, but are maintained by USDA/AMS/Fruit and Vegetable Programs.

AMS is proposing to revise the voluntary U.S. Standards for Grades of Sweet Peppers using procedures that appear in Part 36 Title 7 of the Code of Federal Regulations (7 CFR Part 36). These standards were last revised in 1989.

Background

Prior to undertaking research and other work associated with revision of the grade standards, AMS published a notice in the **Federal Register** (69 FR 33345) on June 15, 2004, soliciting comments on the possible revision to the United States Standards for Grades of Sweet Peppers.

In response to our request for comments, AMS received three

comments from industry groups. One comment was in favor of the proposed revisions of the standard and two comments were opposed.

One comment from an industry association which represents growers, packers and shippers is in favor of the proposal to amend the United States Standards for Grades of Sweet Peppers by separating the scoring and reporting of decay affecting the walls and calyxes from decay affecting the stems only. The proposed tolerances would allow decay affecting the stems only to be scored under the serious damage tolerance in all grades, and decay affecting the walls and/or calyxes shall continue to be scored under the more restrictive tolerance of two percent for decay.

AMS also received one comment from an industry group which represents receivers. The comment did not support the proposed revision to the decay tolerance. The commenter stated that all decay has a serious negative impact on the appearance and marketability of the product and requested not to change the decay tolerances. AMS also received one comment from an industry association which represents producers. The commenter proposes that decay affecting the stems and calyxes should not be scored against any grade, and should only be noted on the inspectors's notesheet and not reported on the certificate. AMS has reviewed stem decay affecting various commodities and believes the proposed changes would bring sweet peppers in line with other grade standards with regards to stem decay. Decay affecting the stem only does not affect the edible portion of the pepper, and does not affect the marketability to the same degree as decay affecting the walls and/or calyx. AMS believes a revision to the decay tolerance is warranted to better serve the industry.

Further, AMS requested comments on the use of color terms "chocolate" and "suntan" which are trade terms used by the industry to describe the color of some peppers. AMS received one comment regarding trade terms for color. The comment does not support including the industry terms into the grade standards. The commenter believes the use of such terms will result in a dispute over nearly every shipment. In view of the above, AMS does not recommend inclusion of such trade terms into the existing grade standard.

AMS received one comment requesting the grade standards designate how hybrid varieties which turn several colors should be scored. Currently the standard allows characteristic color other than green to be specified in connection with the grade. Additionally, when peppers fail to meet the color requirements of the grade for green lots or specified color, they are designated as Mixed Color. Current marketing practices for specialty packs which include mixed colors and/or types of sweet peppers would not meet the similar varietal characteristic requirements for all grades in the standards. Accordingly, AMS is proposing to amend the similar varietal requirement to allow mixed colors and/or types of sweet peppers when designated as a mixed or speciality pack.

AMS requested comments on industry terms for size based on 1⅑ bushel containers. As a result, AMS received one comment in favor of developing size requirements. The commenter requested that a requirement for fairly uniform be added to the standard. This would require that sweet peppers could not exceed ½ inch in diameter variance within containers and the diameter of peppers should not exceed the length of the pepper, otherwise the pepper is misshapen. AMS believes these requirements would be too restricting and would cause confusion by combining fairly uniform with shape requirements. The commenter also requested size definitions (small, medium, large, extra large and jumbo) for peppers packed in 1⅑ bushel containers which are based on a count per container, as well as minimum diameters for each category. The size classifications requested did not represent all ranges between size classifications and included minimum diameters which do not meet the current minimum diameters for the U.S. Fancy and U.S. No. 1 grades. These terms would not be applicable to 11, 15 and 25 pound containers which are commonly used in today's market. Further, the commenter requested marking requirements which would require all cartons to be clearly marked by count and/or size, and establish the size of a standard box, however, the comment did not recommend a standard size box. The current standard contains three grades. The U.S. Fancy and U.S. No. 1 grades contain minimum length and diameter requirements. Additionally, inspections of sweet peppers may be based on specified size and count per container or other contract specifications upon request. AMS believes it would be impractical to apply such requirements due to the various varietal characteristics of sweet peppers regarding shape and size, and the lack of a standardized container.

AMS proposes to eliminate the unclassified category. This section is not a grade and only serves to show that no grade has been applied to the lot. Since this designation is rarely used and may create some confusion in the marketplace, it should be discontinued.

The official grade of a lot of sweet peppers covered by these standards are determined by the procedures set forth in the Regulations Governing Inspection, Certification, and Standards of Fresh Fruits, Vegetables and Other Products (Sec. 51.1 to 51.61).

This notice provides for a 60-day comment period for interested parties to comment on changes to the standards.

Authority: 7 U.S.C. 1621–1627.

Dated: March 7, 2005.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 05–4814 Filed 3–10–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

New Mexico Collaborative Forest Restoration Program Technical Advisory Panel

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The New Mexico Collaborative Forest Restoration Program Technical Advisory Panel will meet in Albuquerque, New Mexico. The purpose of the meeting is to provide recommendations to the Register Forest, USDA Forest Service Southwestern Region, on which forest restoration grant proposals submitted in response to the Collaborative Forest Restoration Program Request For Proposals best meet the objectives of the Community Forest Restoration Act (Title VI, Pub. L. 106–393).

DATES: The meeting will be held April 25–29, 2005, beginning at 1 p.m. on Monday, April 25 and ending at approximately 4 p.m. on Friday, April 29.

ADDRESSES: The meeting will be held at the Nativo Lodge, 6000 Pan American Freeway NE., Albuquerque, NM 87109, (505) 798–4300. Written comments should be sent to Walter Dunn, at the Cooperative and International Forestry Staff, USDA Forest Service, 333 Broadway SE., Albuquerque, NM 87102. Comments may also be sent via e-mail to *wdunn@fs.fed.us,* or via facsimile to Walter Dunn at (505) 842–3165.

All comments, including names and address when provided, are place in the record and are available for public inspection and copying. The public may

inspect comments received at the Cooperative and International Forestry Staff, USDA Forest Service, 333 Broadway SE., Albuquerque, or during the Panel meeting at the Nativo Lodge, 6000 Pan American Freeway NE., Albuquerque, NM.

FOR FURTHER INFORMATION CONTACT: Walter Dunn, Designated Federal Official, at (505) 842–3425, Elaine Waterbury, at (505) 842–3881, or Angela Sandoval, at (505) 842–3289. Cooperative and International Forestry Staff, USDA Forest Service, 333 Broadway SE., Albuquerque, NM 87102.

Individuals who use telecommunications devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 betweeen 8 a.m. and 8 p.m., eastern standard time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Panel discussion is limited to Forest Service staff and Panel members. However, project proponents may respond to questions of clarification from Panel members or Forest Service staff. Persons who wish to bring Collaborative Forest Restoration Program grant proposal review matters to the attention of the Panel may file written statements with the Panel staff before or after the meeting. Public input sessions will be provided and individuals who submitted written statements prior to the public input sessions will have the opportunity to address the Panel at those sessions.

Dated: March 4, 2005.

Lucai M. Turner,

Deputy Regional Forester.

[FR Doc. 05–4804 Filed 3–10–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Glenn/Colusa County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Glenn/Colusa County Resource Advisory Committee (RAC) will meet in Willows, California. Agenda items to be covered include: (1) introductions, (2) approval of minutes, (3) public comment, (4) project proposal/possible action, (5) Web site update, (6) national RAC meeting, (7) general discussion, (8) next agenda.

DATES: The meeting will be held on March 28, 2005, from 1:30 p.m. and end at approximately 4:30 p.m.

ADDRESSES: The meeting will be held at the Mendocino National Forest Supervisor's Office, 825 N. Humboldt Ave., Willows, CA 95988. Individuals wishing to speak or propose agenda items must send their names and proposals to Jim Giachino, DFO, 825 N. Humboldt Ave., Willows, CA 95988.

FOR FURTHER INFORMATION CONTACT: Bobbin Gaddini, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, P.O. Box 164, Elk Creek, CA 95939. (530) 968–1815; e-mail *ggaddini@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by March 25, 2005, will have the opportunity to address the committee at those sessions.

Dated: March 7, 2005.

James Barry,

Acting Designated Federal Official.

[FR Doc. 05–4802 Filed 3–10–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Alpine County, CA, Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Alpine County Resource Advisory Committee (RAC) will meet on Monday, April 25, at 18:00 at the Diamond Valley School for business meetings. The purpose of the meeting is to discuss issues relating to implementing the Secure Rural Schools and Community Self-Determination Act of 2000 (Payment to States) and expenditure of Title II funds. The meetings are open to the public.

DATES: Monday, April 25, 2005, at 18:00 hours.

ADDRESSES: The meeting will be held at the Diamond Valley School, 35 Hawkside Drive, Markleeville, California 96120. Send written comments to Franklin Pemberton, Alpine County RAC coordinator, c/o USDA Forest Service, Humboldt-Toiyabe N.F., Carson Ranger District 1536 So. Carson Street, Carson City, NV 89701.

FOR FURTHER INFORMATION CONTACT: Alpine Co. RAC Coordinator, Frank Pemberton at (775)–884–8150; or Gary Schiff, Carson District Ranger and Designated Federal Officer, at (775)–884–8100, or electronically to *fpemberton@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The Meeting is open to the public. Council discussion is limited to Forest Service staff and Council members. However, persons who wish to bring urban and community forestry matters to the attention of the council may file written statements with the Council staff before and after the meeting.

Dated: January 29, 2005.

Robert L. Vaught,

Forest Supervisor.

[FR Doc. 05–4805 Filed 3–10–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by May 10, 2005.

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

- E-mail: RUSComments@usda.gov. Include in the subject line of the message "0572–0051." The e-mail must identify, in the text of the message, the name of the individual (and name of the entity if applicable) who is submitting the comment.
- Mail: Addressed to Richard Annan, Director, Program Development and Regulatory Analysis, Rural Utilities Service, United States Department of Agriculture, 1400 Independence Avenue, SW., STOP 1522, Washington, DC 20250–1522.
- Hand Delivery/Courier: Addressed to Richard Annan, Director, Program Development and Regulatory Analysis,

Rural Utilities Service, United States Department of Agriculture, 1400 Independence Avenue, SW., Room 5168–S, Washington, DC 20250–1522.

FOR FURTHER INFORMATION CONTACT: Richard Annan, Director, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Ave., SW., STOP 1522, Room 5168 South Building, Washington, DC 20250–1522. Telephone: (202) 720–0784. FAX: (202) 720–4120.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB for revision and extension.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent via the methods that appear in the **ADDRESSES** section of this notice.

Title: Request for Mail List Data, RUS Form 87.

OMB Control Number: 0572–0051.

Type of Request: Revision of a currently approved information collection.

Abstract: The RUS Form 87 is used for both the Electric and Telecommunications programs of RUS to obtain the names and addresses of the borrowers' officials with whom RUS must communicate directly in order to administer the Agency's lending programs. Changes occurring at the borrower's annual meeting (*e.g.* the selection of board members, managers, attorneys, certified public accountants, or other officials) make necessary the collection of necessary. Additional hours are being added to the information collection package to cover yearly submission by all borrowers.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .25 hour per response.

Respondents: Business or other for-profit; Not-for-profit institutions.

Estimated Number of Respondents: 1,383.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 346 hours.

Copies of this information collection can be obtained from Michele Brooks, Program Development and Regulatory Analysis, at (202) 690–1078. FAX: (202) 720–4120

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: March 4, 2005.

Raymond P. Marchiori,

Acting Administrator, Rural Utilities Service.

[FR Doc. 05–4770 Filed 3–10–05; 8:45 am]

BILLING CODE 3410–15–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments Must Be Received On or Before: April 10, 2005.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Sheryl D. Kennerly, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *SKennerly@jwod.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions. If the Committee approves the proposed additions, the entities of the Federal Government identified in the notice for each product or service will be required to procure the products and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following products and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

Product/NSN: Net, Cargo, Tiedown, 1670–00–969–4103 (Top), 1670–00–996–2780 (Side)
NPA: Clark County Board of Mental Retardation & Developmental Disabilities, Springfield, OH
Contracting Activity: Support Equipment & Vehicle Contracting Division, Robins AFB, Georgia

Services

Service Type/Location: Custodial & Grounds Maintenance. Richard L. Roudebush VA Medical Center (At the following Locations), Basement, 2nd Floor, Outbuildings, Parking Garage, 1481 W. Tenth Street, Indianapolis, Indiana, Building 7, 2669 Cold Springs Road, Indianapolis, Indiana
NPA: GW Commercial Services, Inc., Indianapolis, Indiana
Contracting Activity: VA Medical Center, Indianapolis, Indiana
Service Type/Location: Mailing Services, Government Printing Office—Laurel Warehouse, 8610 & 8660 Cherry Lane, Laurel, Maryland
NPA: Alliance, Inc., Baltimore, Maryland

Contracting Activity: Government Printing Office, Washington, DC

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 05–4835 Filed 3–10–05; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Addition and Deletions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from Procurement List.

SUMMARY: This action adds to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List products previously furnished by such agencies.

EFFECTIVE DATE: April 10, 2005.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Sheryl D. Kennerly, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *SKennerly@jwod.gov.*

SUPPLEMENTARY INFORMATION:

Addition

On January 7 2005, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (70 FR 1413) of proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action will result in authorizing small entities to furnish the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

End of Certification

Accordingly, the following service is added to the Procurement List:

Service

Service Type/Location: Laundry Service, Fort Eustis, Fort Eustis, Virginia.
NPA: Louise W. Eggleston Center, Inc., Norfolk, Virginia.
Contracting Activity: Army Contracting Agency/NRCC Installation Division, Fort Eustis, VA.

Deletions

On September 3, 2004, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (69 FR 53884) of proposed deletions to the Procurement List. After consideration of the relevant matter presented, the Committee has determined that the products listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products deleted from the Procurement List.

End of Certification

Accordingly, the following products are deleted from the Procurement List:

Products

Product/NSN: Assembly of Kit Camouflage Support System; 1080–00–108–1173, 1080–00–179–6025, 1080–00–556–4954, 1080–01–179–6024.
NPA: Lighthouse for the Blind, St. Louis, Missouri.
Contracting Activity: U.S. Army Communications-Electronic Command, Ft. Monmouth, NJ.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 05–4836 Filed 3–10–05; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Office of the Secretary

[Docket No. 050214038–5038–01]

Strengthening America's Communities Advisory Committee

AGENCY: Office of the Secretary, Department of Commerce

ACTION: Extension of deadline for submitting nominations.

SUMMARY: On March 1, 2005, the Department of Commerce (the "Department") published a notice in the **Federal Register** (70 FR 9916) announcing the formation of the Strengthening America's Communities Advisory Committee (the "Committee") and soliciting nominations for persons to serve on the Committee. The March 1, 2005 notice provides that all nominations of potential members must be received by the Department no later than 4 p.m. (EST) on March 11, 2005. The March 1, 2005 notice also provides additional information concerning the Committee and membership on the Committee. This notice extends the deadline for submitting nominations of potential members until 4 p.m. (EST) on March 25, 2005, in order to provide the public with more time to consider and submit nominations. Other than extending the deadline for submitting nominations, the evaluation criteria for selecting members and the specific instructions for submitting nominations contained in the March 1, 2005 notice shall continue to apply.

DATES: Nominations must be received by the Department at the address listed below no later than 4 p.m. (EST) on March 25, 2005.

ADDRESSES: Nominations of potential members may be submitted by (i) postal mail, (ii) facsimile, or (iii) e-mail. Please submit nominations by postal mail to David A. Sampson, Assistant Secretary for Economic Development, Economic Development Administration, Department of Commerce, Room 7800, 1401 Constitution Avenue, NW., Washington, DC 20230. Nominations may be submitted via facsimile to (202) 273–4723; all facsimiles should be addressed to the attention of Assistant

Secretary for Economic Development David A. Sampson. E-mail submissions must be addressed to *saci@eda.doc.gov* and should include all nomination materials (including attachments) in a single transmission. The Department strongly encourages applicants to submit nominations by facsimile or e-mail. Nominations sent by postal mail may be substantially delayed in delivery, since all postal mail sent to the Department is subject to extensive security screening.

FOR FURTHER INFORMATION CONTACT: The Office of Chief Counsel, Economic Development Administration, Department of Commerce, Room 7005, 1401 Constitution Avenue, NW., Washington DC 20230, telephone (202) 482–4687.

SUPPLEMENTARY INFORMATION: On February 3, 2005, the Secretary of Commerce (the "Secretary") and the Secretary of Housing and Urban Development jointly announced the President's Strengthening America's Communities Initiative (the "Initiative"). The Initiative proposes to transfer and consolidate 18 Federal economic and community development programs from the Departments of Agriculture, Commerce, Health and Human Services, Housing and Urban Development and Treasury within the Department, ultimately comprising a $3.71 billion unified grant program.

On February 9, 2005, the President's Domestic Policy Council requested the Secretary form the Committee. The objectives and duties of the Committee will be to provide advice and recommendations to the Secretary, and to develop a comprehensive written report of policy parameters to assist in implementing the Initiative, including advising on its legislation, regulations and other guidance. The Committee's report will encompass all aspects of the envisioned Initiative, including policy findings and declarations, organizational structure, eligibility, program delivery, monitoring and performance measures. The Committee is expected to deliver its report to the Secretary by May 31, 2005. Thereafter, the Committee may be asked to advise the Secretary on additional issues relating to the Initiative.

The Committee is intended to have a balanced membership from diverse backgrounds and geographical regions, including the private sector, state, local and tribal government officials, community-based organizations, academia and the research community. Nominees should possess an extensive knowledge of, and background in, the fields of rural or urban economic or community development. Nominees should also possess recognized development policy expertise and excellent leadership, communication and organizational skills. The evaluation criteria for selecting members and the specific instructions for submitting nominations contained in the March 1, 2005 notice shall continue to apply. Additional information on the Initiative is available on the Department's Web site at *http://www.commerce.gov/SACI/index.htm.*

Privacy Act

Section 301 of title 5 United States Code and 15 CFR part 4, subpart B authorize and govern collection of this information. The primary use of this information is to allow officials of the Department and its operating units to review applications and to conduct vetting of applicants to make decisions concerning the nomination or re-nomination of candidates for membership on the Committee. Records may be disclosed under the following routine use circumstances: (1) To any Federal, state, or local agency maintaining civil, criminal, or other relevant enforcement information, if necessary to obtain information relevant to a Department decision concerning the assignment, hiring, or retention of an individual; the issuance of a security clearance; the letting of a contract; or the issuance of a license, grant, or benefit. (2) To any Federal, state, local, or foreign agency charged with the responsibility of investigating or prosecuting any violation or potential violation of law or contract, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute or contract, rule, regulation, or order, to protect the interests of the Department. (3) To any Federal, state, local, or international agency, in response to its request, in connection with the assignment, hiring, or retention of an individual, the issuance of a security clearance, the reporting of an investigation of an individual, the letting of a contract, or any other benefit of the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decisions on the matter. (4) To a Member of Congress submitting a request involving an individual when the individual has requested assistance from the Member with respect to the subject matter of the record. (5) To the Department of Justice in connection with determining whether disclosure is of the record is required under the Freedom of Information Act.

Collection of this information, including your Social Security number is voluntary but failure to furnish it will result in your application not being considered. Collection of your Social Security number is authorized under Executive Order No. 9397. The Department will use this number to distinguish you from other members of the public who may have the same or similar name.

Dated: March 8, 2005.

Theodore W. Kassinger,

Deputy Secretary of Commerce.

[FR Doc. 05–4905 Filed 3–10–05; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–850]

Notice of Final Determination of Sales at Less Than Fair Value: Live Swine From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On October 20, 2004, the Department of Commerce published a preliminary determination in the antidumping duty investigation of live swine from Canada. We gave interested parties an opportunity to comment on the preliminary determination. Based upon the results of verification and our analysis of the comments received, we have made certain changes. We continue to find that live swine from Canada were sold in the United States below normal value during the period of investigation. The final weighted-average dumping margins are listed below in the section entitled "Continuation of Suspension of Liquidation."

DATES: *Effective Date:* March 11, 2005.

FOR FURTHER INFORMATION CONTACT: Cole Kyle or Andrew Smith, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1503 or (202) 482–1276, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 20, 2004, the Department of Commerce ("the Department") published in the **Federal Register** the preliminary determination in its investigation of live swine from Canada. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination:*

Live Swine From Canada, 69 FR 61639 (October 20, 2004) ("*Preliminary Determination*").

Since the *Preliminary Determination*, the following events have occurred:

On October 25, 2004, Excel requested that the Department reconsider its preliminary decision to rescind its selection of Excel as a mandatory respondent in this investigation.

On November 3, 2004, the Department decided to verify Excel's questionnaire responses.

On November 29, 2004, Premium Pork Canada, Inc. ("Premium Pork") withdrew from this investigation.

In November and December 2004, and January 2005, we conducted verifications of the sales and cost of production ("COP") questionnaire responses submitted by Ontario Pork Producers' Marketing Board ("Ontario Pork"), Hytek, Inc. ("Hytek"), and Excel Swine Services, Inc. ("Excel") at each company's headquarters and at certain farm locations. We issued verification reports in January 2005.

We received case and rebuttal briefs from the Illinois Pork Producers Association, the Indiana Pork Advocacy Coalition, the Iowa Pork Producers Association, the Minnesota Pork Producers Association, the Missouri Pork Association, the Nebraska Pork Producers Association, Inc., the North Carolina Pork Council, Inc., the Ohio Pork Producers Council, and 119 individual producers of live swine [1] (collectively, hereinafter, "the petitioners"), Excel, Hytek, Ontario Pork, and Baxter Transport, Ltd., J. Quintaine & Son, Ltd., and Zantingh Swine Inc.

[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, LL 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.

Scope of Investigation

The merchandise covered by this investigation is all live swine ("swine" or "subject merchandise") from Canada except breeding stock 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 0103.91.00 and 0103.92.00.

Specifically excluded from this scope are breeding stock, including U.S. Department of Agriculture ("USDA") certified purebred breeding stock and all other breeding stock. The designation of the product as "breeding stock" indicates the acceptability of the product for use as breeding live swine. This designation is presumed to indicate that these products are being used for breeding stock only. However, should the petitioners or other interested parties provide a reasonable basis to believe or suspect that there exists a pattern of importation of such products for other than this application, end-use certification for the importation of such products may be required.

Although the *HTSUS* headings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Scope Comments

In the *Notice of Initiation of Antidumping Duty Investigation: Live Swine from Canada*, 69 FR 19815 (April 14, 2004) ("*Initiation Notice*"), we invited comments on the scope of this proceeding. On May 4, 2004, we received a request from the GOC to amend the scope of this investigation and the companion countervailing duty ("CVD") investigation. Specifically, the GOC requested that the scope be amended to exclude hybrid breeding stock. According to the GOC, domestic producers use hybrid breeding stock instead of purebred stock to strengthen their strains of swine. The GOC stated that no evidence was provided of injury, or threat of injury, to the domestic live swine industry from the importation of hybrid breeding stock. Furthermore, the GOC noted that the petition excluded USDA certified purebred breeding swine from the scope of the above-mentioned investigations. The GOC argued that the documentation which accompanies imported hybrid breeding swine makes it easy to distinguish hybrid breeding swine from other live swine.

On August 4, 2004, the petitioners submitted a response to the GOC's scope exclusion request and proposed modified scope language. The petitioners stated they did not oppose the GOC's request to exclude hybrid breeding stock, but were concerned about the potential for circumvention of any CVD or antidumping duty ("AD") order on live swine from Canada through non-breeding swine entering the domestic market as breeding stock. Thus, the petitioners proposed modified scope language that would require end-use certification if the petitioners or other interested parties provide a reasonable basis to believe or suspect that there exists a pattern of importation of such products for other than this application. Moreover, on July 30, 2004, the petitioners submitted a request to the International Trade Commission ("ITC") to modify the *HTSUS* by adding a statistical breakout that would separately report imports of breeding animals other than purebred breeding animals, allowing the domestic industry to monitor the import trends of hybrid breeding stock.

On August 9, 2004, both the GOC and the respondent companies submitted comments to respond to the petitioners' proposed revised scope. Both the GOC and the respondent companies stated that they generally agreed with the petitioners' modified scope language, with the two following exceptions: (1) They contended that the petitioners' language setting forth the mechanics of any end use certification procedure was premature and unnecessary, and (2) they argued that the petitioners' language stating that "all products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope" was unnecessary because the physical description of the merchandise in scope remains determinative.

On August 12, 2004, the petitioners submitted a response to the August 9,

2004 comments from the GOC and the respondents. The petitioners reiterated their support for their proposed modification to the scope language. They argued that (1) their proposed language had been used before by the Department in other proceedings; (2) since U.S. importers bear the burden of paying the duties, the importers should be required to certify to the end use of the product; and (3) with the petitioners' concerns about circumvention, the "physical description" language provided an important clarification that all live swine except for the excluded products are included in the scope.

As further discussed in the August 16, 2004 memorandum entitled "*Scope Exclusion Request: Hybrid Breeding Stock*" (on file in the Department's Central Records Unit in Room B–099 of the main Department building ("CRU")), we preliminarily revised the scope in both the AD and companion CVD proceedings based on the above scope comments. *See Preliminary Determination*, 69 FR 61639, 61640–61641, and *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Live Swine from Canada*, 69 FR 51800, 51801–51802 (August 23, 2004). No further scope comments were received from any party subsequent to these preliminary determination. Thus, we have adopted the revised scope from the *Preliminary Determination* for this final determination. The revised scope language is included in the "Scope of Investigation" section, above.

Period of Investigation

The period of investigation ("POI") is January 1, 2003, through December 31, 2003. This period corresponds to the four most recent fiscal quarters prior to the filing of the petition on March 5, 2004.

Facts Otherwise Available

Section 776(a)(2) of the Act provides that the Department shall apply "facts otherwise available" if, *inter alia*, a respondent (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form or manner requested by the Department. subject to subsections (c)(1) and (e) of Section 782; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified.

Section 782(e) of the Act further provides that the Department shall not decline to consider information that is submitted by an interested party and that is necessary to the determination but does not meet all the applicable requirements established by the Department if (1) the information is submitted by the deadline established for its submission; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by the Department with respect to the information; and (5) the information can be used without undue difficulties.

Premium Pork responded to the Department's questionnaires and otherwise participated in this investigation until November 29, 2004, two weeks before Premium Pork's scheduled verification. On November 29, 2004, Premium Pork withdrew from this investigation because of its impending dissolution. *See* Premium Pork's November 29, 2004 withdrawal letter. Premium Pork's receivers stated that its companies would "not continue their current integrated operations" after its asset sales were completed. *Id.* The Department has not received any further communication from Premium Pork.

In applying facts otherwise available, section 776(b) of the Act provides that the Department may use an inference adverse to the interests of a party that has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information. *See, e.g, Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil.*, 67 FR 55792, 55794–96 (August 30, 2002). Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103–316, at 870 (1994) ("*SAA*").

In this case, Premium Pork ultimately failed to cooperate to the best of its ability because it failed to participate in verification. Therefore, the Department finds that in selecting from among the facts otherwise available, an adverse inference is warranted. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Warmwater Shrimp from Brazil*, 69 FR 76910 (December 23, 2004) and accompanying *Issues and Decision Memorandum* at Comment 22 (the Department applied total adverse facts available where the respondent withdrew from the investigation prior to verification) and *Notice of Final Determination of Sales at Less than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985, 42986 (July 12, 2000) (the Department applied total adverse facts available where the respondent failed to respond to the antidumping questionnaires).

As adverse facts available, we have assigned Premium Pork a margin of 18.87 percent, the highest price-to-price margin alleged in the petition, in accordance with section 776(b)(1). Section 776(b) of the Act notes that an adverse facts available rate may include reliance on information derived from: (1) The petition; (2) a final determination in the investigation; (3) any previous review; or (4) any other information placed on the record. Thus, the statute does not limit the specific sources from which the Department may obtain information for use as facts available. The *SAA* recognizes the importance of adverse facts available as an investigative tool in antidumping proceedings. The Department's potential use of adverse facts available provides the only incentive to foreign exporters and producers to respond to the Department's questionnaires. *See SAA* at 868.

Section 776(c) of the Act mandates that the Department, to the extent practicable, shall corroborate secondary information (such as petition data) using independent sources reasonably at its disposal. In accordance with the law, the Department, to the extent practicable, will examine the reliability and relevance of the information used.

To corroborate the margin assigned to Premium Pork, we compared the normal values and U.S. prices submitted by the petitioners, as amended by the Department in the April 7, 2004, *Initiation Checklist*, to data submitted by the respondents for whom we are calculating a margin. *See* March 4, 2004, memorandum, "Final Determination of Live Swine from Canada: Corroboration Memorandum." This comparison corroborates and supports the reliability of the selected margin.

With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin inappropriate. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin (*see, e.g., Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (February 22,

1996) (where the Department disregarded the highest margin as adverse facts available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin)). Therefore, we also examined whether any information on the record would discredit the selected rate as reasonable facts available for Premium Pork. No such information exists. In particular, there is no information that might lead to a conclusion that a different rate would be more appropriate.

Accordingly, we have assigned Premium Pork the rate of 18.87 percent as total adverse facts available. This is consistent with section 776(b) of the Act which states that adverse inferences may include reliance on information derived from the petition.

Fair Value Comparisons

We calculated constructed export price, export price, and normal value based on the same methodologies used in the *Preliminary Determination* and in our November 3, 2004, calculations [2] for Excel, with the following exceptions:

Ontario Pork

We used the sales databases submitted by Ontario Pork after verification, which include the minor corrections presented at verification. We revised Ontario Pork's advertising expenses. *See Decision Memorandum* at Comment 6. We did not include the U.S. direct selling expense that we included in the *Preliminary Determination*. *See Decision Memorandum* at Comment 7. We revised Ontario Pork's reported crossing fees based on information contained in Ontario Pork's verification exhibits. *See* Memorandum to File, "Ontario Pork Producers' Marketing Board Final Determination Calculation Memorandum," dated March 4, 2005.

Excel

We used the U.S. database submitted by Excel after verification in our margin calculations, which includes the minor corrections presented at verification. In addition, we disregarded sales of substandard merchandise. *See Decision Memorandum* at Comment 51. *See* Memorandum to File, "Excel Swine Service, Inc. Final Determination Calculation Memorandum," dated March 4, 2005.

Hytek

We used the databases submitted by Hytek after verification, which include the minor corrections presented at verification. For Hytek's U.S. sales, we accounted for an additional billing adjustment and direct selling expense which were presented as minor corrections at verification. In our product comparisons, we prevented matches between U.S. sales of isoweans and home market sales of spent boars. *See* Memorandum to File, "Hytek, Ltd. Final Determination Calculation Memorandum," dated March 4, 2005.

Cost of Production and Constructed Value

We calculated the cost of production ("COP") and constructed value ("CV") for Ontario Pork, Hytek, and Excel based on the same methodologies used in the *Preliminary Determination*, and in our November 3, 2004, calculations [3] for Excel, except for those changes noted in the Memorandum to Neal M. Halper, "Cost of Production and Constructed Value Adjustments for the Final Determination—Ontario Pork Producers' Marketing Board Cost Respondents," dated March 4, 2005; Memorandum to Neal M. Halper, "Cost of Production and Constructed Value Calculation Adjustments for the Final Determination—Excel Swine Services, Inc./Riverbend Colony of Hutterian Bretheren Trust, Rainbow Colony of Hutterian Bretheren Trust, and Big Boulder Creek Farms Ltd.," dated March 4, 2005; and Memorandum to Neal M. Halper, "Cost of Production and Constructed Value Adjustments for the Final Determination—Hytek Ltd.," dated March 4, 2005.

Home Market Sales Disregarded

Pursuant to section 773(b)(1) of the Act, where less than 20 percent of a respondent's sales of a given product during the POI were at prices less than the COP, we do not disregard any below-cost sales of that product because we determine that in such instances the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP, we determine that the below-cost sales represent "substantial quantities" within an extended period of time, in accordance with section 773(b)(1)(A) of the Act. In such cases, we also determine whether such sales were made at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1)(B) of the Act.

With respect to Ontario Pork and Hytek, for certain products, more than 20 percent of the comparison market sales were at prices less than the COP and, thus, the below-cost sales were made within an extended period of time in substantial quantities. In addition, these sales were made at prices that did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

Verifications

As provided in section 782(i)(1) of the Act, we verified the information submitted by the respondents during November and December, 2004, and January, 2005. We used standard verification procedures, including examination of relevant accounting and production records, as well as original source documents provided by the respondents.

Analysis of Comments Received

All issues raised in the petitioners' and the respondents' case and rebuttal briefs are addressed in the March 4, 2005, *Issues and Decision Memorandum for the Final Determination in the Antidumping Duty Investigation of Live Swine from Canada* ("*Decision Memorandum*") which is hereby adopted by this notice. Attached to this notice as an appendix is a list of the issues that the petitioners and the respondents have raised and to which we have responded in the *Decision Memorandum*. Parties can find a complete discussion of all issues raised in these investigations and the corresponding recommendations in this public memorandum, which is on file in the Department's CRU. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at *http://ia.ita.doc.gov/frn/summary/list.htm*. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

[2] *See* Memorandum to File, "Export Price Calculation Memorandum for Excel Swine Services, Inc./Riverbend Colony Hutterian Brethren Trust, Rainbow Colony Hutterian Brethren Trust, and Big Boulder Creek Farms, Ltd.," dated November 3, 2004, and Memorandum to File, "Cost of Production and Constructed Value Calculation Memorandum—Excel Swine Services, Inc./Riverbend Colony Hutterian Brethren Trust, Rainbow Colony Hutterian Brethren Trust, and Big Boulder Creek Farms, Ltd.," dated November 3, 2004.

[3] *See* Memorandum to File, "Export Price Calculation Memorandum for Excel Swine Services, Inc./Riverbend Colony Hutterian Brethren Trust, Rainbow Colony Hutterian Brethren Trust, and Big Boulder Creek Farms, Ltd.," dated November 3, 2004, and Memorandum to File, "Cost of Production and Constructed Value Calculation Memorandum—Excel Swine Services, Inc./Riverbend Colony Hutterian Brethren Trust, Rainbow Colony Hutterian Brethren Trust, and Big Boulder Creek Farms, Ltd.," dated November 3, 2004.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B)(ii) of the Act, we are directing the U.S. Customs and Border Protection ("CBP") to continue to suspend liquidation of all imports of subject merchandise from Canada, except merchandise produced and exported by Hytek, that are entered, or withdrawn from warehouse, for consumption on or after October 20, 2004, the date of publication of the *Preliminary Determination* in the **Federal Register**. The CBP shall continue to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated in the chart below. For Hytek, because its estimated weighted-average final dumping margin is *de minimis*, we are directing CBP to terminate suspension of liquidation of Hytek's entries and refund all bonds and cash deposits posted on subject merchandise produced by Hytek. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin
Ontario Pork Producers' Marketing Board.	12.68 percent.
Hytek, Inc	0.53 percent (*de minimis*).
Premium Pork Canada, Inc.	18.87 percent (AFA).
Excel Swine Services, Inc.	4.64 percent.
All Others	10.63 percent.[4]

[4] We excluded the *de minimis* margin and the margin based on adverse facts available from the calculation of the all-others rate. *See* Section 735(c)(5)(A) of the Act.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission ("ITC") of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threatening material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury, does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order.

This notice also serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: March 4, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Appendix

General Issues

Comment 1: Perishable Agricultural Products
Comment 2: Net Income Stabilization Account
Comment 3: Allocation of Total Production Costs

Company Specific Issues

Premium Pork

Comment 4: Premium Pork Withdrawal

Ontario Pork

Comment 5: Monthly Price-Averaging
Comment 6: Advertising Expenses
Comment 7: Bank Charges
Comment 8: Credit Expenses
Comment 9: Freight Expenses

Ontario Pork Farm A

Comment 10: Cost of Feed
Comment 11: Imputed Labor Costs
Comment 12: Cost of Breeding Stock
Comment 13: Denominator Used for the General and Administrative Expense Ratio
Comment 14: Breeding Stock Salvage Value
Comment 15: Sows Supplied by Affiliates
Comment 16: Hogs Used for Personal Consumption
Comment 17: Per-unit Finishing Costs Adjusted by the Feeders Sold
Comment 18: Farm A's Change in Inventory Values
Comment 19: Livestock Purchases in the Indirect Cost Allocation
Comment 20: Lease of Crop Land
Comment 21: Optional Inventory Adjustment
Comment 22: Additional Accrued Cost Items
Comment 23: G&A Expenses
Comment 24: Interest Rates

Ontario Pork Farm B

Comment 25: Affiliated Feed Company
Comment 26: Tile Drainage
Comment 27: Interest Income Earned on NISA and Risk Management Funding
Comment 28: Prepaid Feed Costs
Comment 29: Donated Hogs
Comment 30: Misallocated Costs
Comment 31: Reconciliation Error
Comment 32: Imputed Labor
Comment 33: Interest Expense for Loan
Comment 34: Interest Income

Ontario Pork Farm C

Comment 35: Claimed Offsets for Subsidies
Comment 36: Failure to Report all Feed Costs
Comment 37: Capitalized Feed Costs
Comment 38: Errors Revealed During Verification Should be Corrected
Comment 39: Proper Treatment of "Credit to Barn Quality" Account
Comment 40: G&A Expenses
Comment 41: Collapsing the Operations of Affiliated Suppliers

Ontario Pork Farm D

Comment 42: Costs Related to Transporting Hogs to the Farm
Comment 43: Vaccination Costs of Resold Isoweans
Comment 44: Cost of Feed Produced by the Partners
Comment 45: Price of Corn Set by the Partners for November and December 2003
Comment 46: Depreciation Cost
Comment 47: G&A Offset for Land Rental Income
Comment 48: Labor Allocation
Comment 49: G&A Expenses Related to Fines

Excel

Comment 50: Mandatory Respondent Status
Comment 51: Sales Exclusions
Comment 52: Fertilizer as a Credit to the Cost of Producing Live Swine

Excel Rainbow Colony

Comment 53: Production Quantity
Comment 54: Insurance Premiums
Comment 55: Accrued Labor Costs
Comment 56: Productive Assets Quantity
Comment 57: Disputed Fertilizer Purchases
Comment 58: Startup Adjustment

Excel Riverbend Colony

Comment 59: Foreign Exchange Expense
Comment 60: GST Audit Adjustment
Comment 61: Labor

Excel Big Boulder

Comment 62: Rental Income G&A Offset
Comment 63: Fiscal Year G&A and Financial Expense Ratios
Comment 64: Insurance and Donations

Hytek

Comment 65: CEP Profit
Comment 66: Further Manufacturing Costs
Comment 67: Certain Payments to Owners
Comment 68: Interest Income

[FR Doc. E5–1029 Filed 3–10–05; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–806]

Silicon Metal From Brazil: Notice of Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

DATES: Effective Date: March 11, 2005.

FOR FURTHER INFORMATION CONTACT: Maisha Cryor or Steven Ryan, at (202)

482–5831 or (202) 482–0065, respectively; Import Administration, AD/CVD Operations, Office 4, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Background

On August 24, 2004, the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on silicon metal from Brazil. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 69 FR 52857 (August 30, 2004). The period of review is July 1, 2003, through June 30, 2004.

Extension of Time Limit for Preliminary Results of Review

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), the Department shall make a preliminary determination in an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the date of publication of the order. The Act further provides, however, that the Department may extend that 245-day period to 365 days if it determines it is not practicable to complete the review within the foregoing time period. The preliminary results of this antidumping duty administrative review of silicon metal from Brazil are currently scheduled to be completed on April 2, 2005. However, the Department finds that it is not practicable to complete the preliminary results in this administrative review of silicon metal from Brazil within this time limit because additional time is needed to fully address issues relating to affiliation, treatment of value added taxes, reconciliation of costs to financial statements and the calculation of the total cost of manufacturing, as well as to conduct mandatory verifications of the questionnaire responses and supplemental questionnaire responses.

Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time limit for completion of the preliminary results of this review until August 1, 2005, which is the next business day after 365 days from the last day of the anniversary month of the date of publication of the order. The deadline for the final results of this administrative review continues to be 120 days after the publication of the preliminary results.

This notice is issued and published in accordance with section 751(a)(3)(A) of the Act.

Dated: March 7, 2005.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–1027 Filed 3–10–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–851]

Final Negative Countervailing Duty Determination: Live Swine from Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce has made a final determination that countervailable subsidies are not being provided to producers or exporters of live swine from Canada.

EFFECTIVE DATE: March 11, 2005.

FOR FURTHER INFORMATION CONTACT: Melani Miller Harig, Stephen Cho, Daniel J. Alexy, and Marc Rivitz, AD/CVD Operations, Office 1, Import Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–0116, (202) 482–3798, (202) 482–1540, and (202) 482–1382, respectively.

SUPPLEMENTARY INFORMATION:

Petitioners

The petitioners in this investigation are 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").

Case History

The following events have occurred since the publication of the preliminary determination in the **Federal Register** on August 23, 2004. *See Preliminary Negative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Live Swine from Canada*, 69 FR 51800 (August 23, 2004) ("Preliminary Determination").

On September 9, 2004, the petitioners submitted comments on the upcoming verifications.

On September 14, 2004, the petitioners submitted arguments relating to certain requests made by the Government of Canada ("GOC") for business proprietary treatment in its questionnaire responses. The GOC filed a response to this submission on September 22, 2004.

On September 17 and 27, 2004, Sureleen–Albion Agra Inc. ("Sureleen")/Bujet Sow Group ("BSG") and Hytek Ltd. ("Hytek"), respectively, submitted new factual information and corrections to their previous responses. The GOC also submitted revised information from its questionnaire responses on October 5, 2004.

From September 27, 2004 through October 8, 2004, and October 18, 2004 through October 21, 2004, we conducted verification of the questionnaire responses submitted by the GOC; the Governments of Ontario, Manitoba, Saskatchewan, and Alberta; Sureleen/BSG; Hytek; Premium Pork Canada Inc.; Hart Feeds Limited; Elite Swine Inc./Maple Leaf Foods Inc.; Park View Colony Farms Ltd.; and Willow Creek

[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.

Colony Ltd. We also verified the information submitted by M & F Trading Inc., Maximum Swine Marketing, and Excel Swine Services, the three trading companies/cooperatives covered by this investigation, as part of the verification of the GOC and the provincial governments.

We received case briefs from the petitioners and the Government of Saskatchewan on January 7, 2005. The respondents (collectively) and the petitioners submitted rebuttal briefs on January 14, 2005. We held a hearing in this investigation on January 19, 2005. Public transcripts from this hearing are available in the Department of Commerce's ("Department") Central Records Unit in Room B–099 of the main Department building ("CRU").

Period of Investigation

The period for which we are measuring subsidies, or the period of investigation, is calendar year 2003.

Scope of Investigation

The merchandise covered by this investigation is all live swine ("swine" or "subject merchandise") from Canada except breeding stock 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 0103.91.00 and 0103.92.00.

Specifically excluded from this scope are breeding stock, including U.S. Department of Agriculture ("USDA") certified purebred breeding stock and all other breeding stock. The designation of the product as "breeding stock" indicates the acceptability of the product for use as breeding live swine. This designation is presumed to indicate that these products are being used for breeding stock only. However, should the petitioners or other interested parties provide a reasonable basis to believe or suspect that there exists a pattern of importation of such products for other than this application, end–use certification for the importation of such products may be required.

Although the *HTSUS* headings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Scope Comments

In the *Notice of Initiation of Countervailing Duty Investigation: Live Swine From Canada*, 69 FR 19818 (April 14, 2004), we invited comments on the scope of this proceeding. On May 4, 2004, we received a request from the GOC to amend the scope of this investigation and the companion antidumping duty ("AD") investigation. Specifically, the GOC requested that the scope be amended to exclude hybrid breeding stock. According to the GOC, domestic producers use hybrid breeding stock instead of purebred stock to strengthen their strains of swine. The GOC stated that no evidence was provided of injury, or threat of injury, to the domestic live swine industry from the importation of hybrid breeding stock. Furthermore, the GOC noted that the petition excluded USDA certified purebred breeding swine from the scope of the above–mentioned investigations. The GOC argued that the documentation which accompanies imported hybrid breeding swine makes it easy to distinguish hybrid breeding swine from other live swine.

On August 4, 2004, the petitioners submitted a response to the GOC's scope exclusion request and proposed modified scope language. The petitioners stated they did not oppose the GOC's request to exclude hybrid breeding stock, but were concerned about the potential for circumvention of any AD or countervailing duty ("CVD") order on live swine from Canada through non–breeding swine entering the domestic market as breeding stock. Thus, the petitioners proposed modified scope language that would require end–use certification if the petitioners or other interested parties provide a reasonable basis to believe or suspect that there exists a pattern of importation of such products for other than this application. Moreover, on July 30, 2004, the petitioners submitted a request to the International Trade Commission ("ITC") to modify the *HTSUS* by adding a statistical breakout that would separately report imports of breeding animals other than purebred breeding animals, allowing the domestic industry to monitor the import trends of hybrid breeding stock.

On August 9, 2004, both the GOC and the respondent companies submitted comments to respond to the petitioners' proposed revised scope. Both the GOC and the respondent companies stated that they generally agreed with the petitioners' modified scope language, with the two following exceptions: 1) they contended that the petitioners' language setting forth the mechanics of any end use certification procedure was premature and unnecessary, and 2) they argued that the petitioners' language stating that "all products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope" was unnecessary because the physical description of the merchandise in scope remains determinative.

On August 12, 2004, the petitioners submitted a response to the August 9, 2004 comments from the GOC and the respondents. The petitioners reiterated their support for their proposed modification to the scope language. They argued that 1) their proposed language had been used before by the Department in other proceedings; 2) since U.S. importers bear the burden of paying the duties, the importers should be required to certify to the end use of the product; and 3) with the petitioners' concerns about circumvention, the "physical description" language provided an important clarification that all live swine except for the excluded products are included in the scope.

As further discussed in the August 16, 2004 memorandum entitled "*Scope Exclusion Request: Hybrid Breeding Stock*" (on file in the Department's CRU), we preliminarily revised the scope in both the CVD and companion AD proceedings based on the above scope comments. *See Preliminary Determination*, 69 FR 81800, 51801–51802, and *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Live Swine from Canada*, 69 FR 61639, 61640–61641 (October 20, 2004). No further scope comments were received from any party subsequent to these preliminary determinations. Thus, we have adopted the revised scope from the *Preliminary Determination* for this final determination. The revised scope language is included in the "Scope of Investigation" section, above.

Injury Test

Because Canada is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act effective January 1, 1995 ("the Act"), the ITC is required to determine whether imports of the subject merchandise from Canada materially injure, or threaten material injury to, a U.S. industry. On May 10, 2004, the ITC transmitted to the Department its preliminary determination that there is a reasonable indication that an industry in the United States is being materially injured by reason of imports from Canada of the subject merchandise. *See Live Swine From Canada*, 69 FR 26884 (May 14, 2004).

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the March 4, 2005 "Issues and Decision Memorandum" from Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration ("*Decision Memorandum*"), which is hereby adopted by this notice. Attached to this notice as an appendix is a list of the issues which parties have raised and to which we have responded in the *Decision Memorandum*. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum, which is on file in the CRU. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Internet at http://ia.ita.doc.gov/frn/ under the heading "Canada." The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Suspension of Liquidation

In the *Preliminary Determination*, the total net countervailable subsidy rate was de minimis and, therefore, we did not suspend liquidation. For the final determination, because the rate remains *de minimis*, we are not directing U.S. Customs and Border Protection to suspend liquidation of live swine from Canada.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination.

Return or Destruction of Proprietary Information

This notice serves as the only reminder to parties subject to Administrative Protective Order ("APO") of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO.

This determination is published pursuant to sections 705(d) and 777(i) of the Act.

Dated: March 4, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Appendix

List of Comments and Issues in the Decision Memorandum

Comment 1: Specificity
Comment 2: Green Box Claims
Comment 3: Agricultural Income Disaster Assistance Program Recurring vs. Nonrecurring
Comment 4: Quebec Farm Income Stabilization Insurance/Agricultural Revenue Stabilization Insurance Program
Comment 5: Saskatchewan Short–Term Hog Loan Program
Comment 6: Saskatchewan Livestock and Horticultural Facilities Incentives Program

[FR Doc. E5–1030 Filed 3–10–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[Docket No. 970424097–5061–08]

Market Development Cooperator Program (MDCP)

AGENCY: International Trade Administration (ITA), Department of Commerce.

ACTION: Notice and request for applications.

SUMMARY: ITA is soliciting U.S. export promotion projects to be conducted by eligible entities for periods of up to three years. Project award periods normally begin between October 1, 2005 and January 1, 2006, but may begin as late as April 1, 2006. MDCP awards help to underwrite the start-up costs of new export ventures that export multipliers are often reluctant to undertake without Federal Government support. MDCP aims to develop, maintain and expand foreign markets for non-agricultural goods and services produced in the United States.

DATES: Proposals must be received by ITA no later than 5 p.m. EST, April 25, 2005. A public meeting to discuss the competition will be held on March 18, 2005, at 2 p.m. in Room 6059 at the address indicated below.

ADDRESSES: Proposals must be submitted to ITA, U.S. Department of Commerce, HCHB 3215; Washington, DC 20230, or via e-mail to *MDCPMail@ita.doc.gov*. The full funding opportunity announcement and the application kit for this request for applications are available at *http://www.export.gov/mdcp*, or by contacting Brad Hess at 202–482–2969.

FOR FURTHER INFORMATION CONTACT: Interested parties who are unable to access information via Internet or who have questions may contact Mr. Brad Hess by mail (see **ADDRESSES**), by phone at 202–482–2969, by fax at 202–482–4462, or via Internet at *Brad_Hess@ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Access: The full funding opportunity announcement for MDCP is available at *http://www.export.gov/mdcp*.

Funding Availability: Approximately $2,000,000 will be available through this announcement for fiscal year 2005. Awards are limited to $400,000 each. ITA anticipates making five to nine awards, depending on the amounts requested and the availability of funds.

Statutory Authority: 15 U.S.C. 4723.

CFDA: 11.112, Market Development Cooperator Program.

Eligibility: Trade associations, state departments of trade and their regional associations, and non-profit industry organizations, including export multiplier organizations such as World Trade Centers, centers for international trade development and small business development centers are eligible to apply for an MDCP award.

Cost Sharing Requirements: Two dollars for every federal dollar. The first dollar must be cash. The rest of the match may be cash or in kind.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of federal programs."

Evaluation and Selection Procedures: After receiving the applications, ITA will screen each one to determine the applicant's eligibility to receive an award. After receiving all applications, a selection panel composed of ITA managers will review the applications using the evaluation criteria below, score them, and forward a ranked funding recommendation to the Assistant Secretary for Manufacturing and Services. The Assistant Secretary makes the final selection of award winners, justifying any deviation from the selection panel's ranked recommendation.

Evaluation Criteria: The selection panel reviews each eligible application based on five evaluation criteria. The evaluation criteria scores assigned by the panel determine which applications are recommended for funding. The evaluation criteria are listed below.

(1) Export Success Potential (20%). This is the potential of the project to generate export success stories and/or export initiatives in both the short-term and medium-term.

(2) Performance Measures (20%). Applicants must provide quantifiable estimates of how the project will increase or enhance the U.S. industry's export presence in the foreign market(s).

(3) Partnership and Priorities (20%). This criterion indicates the degree to which the project initiates or enhances partnership with ITA and the degree to which the proposal furthers or is compatible with ITA's priorities.

(4) Creativity and Capacity (20%). Applicants demonstrate creativity, innovation, and realism in the project work plan as well as their institutional capacity to carry out the work plan.

(5) Budget and Sustainability (20%). This criterion indicates the reasonableness and effectiveness of the itemized budget for project activities, the amount of the cash match that is readily available, and the probability that the project can be continued on a self-sustained basis after the completion of the award.

The five criteria together constitute the application score. At 20 points per criterion, the total possible score is 100.

Selection Factors: The Assistant Secretary may deviate from the selection panel's ranked recommendation only based on the following factors: (1) Scores of individual selection panel members and the selection panel's written assessments, (2) Degree to which applications satisfy ITA priorities, (3) Geographic distribution of the proposed awards, (4) Diversity of industry sectors and overseas markets covered by the proposed awards, (5) Diversity of project activities represented by the proposed awards, (6) Avoidance of redundancy and conflicts with the initiatives of other federal agencies, and (7) Availability of funds.

The ITA priorities referred to under Evaluation Criteria (3) and Selection Factor (2) are listed below. ITA is interested in receiving proposals to promote U.S. exports that include, but are not limited to, projects that: (1) Improve the competitiveness of U.S. manufacturing and service industries by addressing impediments to innovation and cost reduction; (2) Increase competitiveness of U.S. industries by addressing non-tariff barriers, especially those related to standards; (3) Capitalize on trade opportunities resulting from trade agreements; (4) Increase overall export awareness and awareness of ITA programs and services among U.S. companies, by making SMEs export-ready or by facilitating deal-making; (5) Ensure compliance with trade agreements; (6) Increase the competitiveness of U.S. industries by developing commercial infrastructure in emerging economies; (7) Develop non-traditional approaches to creating demand for the products/services developed from new U.S. technologies; and (8) Support the Administration's broader foreign policy objectives through trade-related initiatives.

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of December 30, 2004 (69 FR 78389) are applicable to this solicitation.

Paperwork Reduction Act

This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Standard Forms 424 and 424A, 424B, SF–LLL, and CD–346 has been approved by OMB under the respective control numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046, and 0605–0001. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

Executive Order 12866

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

Executive Order 13132 (Federalism)

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Administrative Procedure Act/ Regulatory Flexibility Act

Prior notice and an opportunity for public comments are not required by the Administrative Procedure Act or any other law for this notice concerning grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Dated: March 7, 2005.

Robert W. Pearson,

Director, Office of Planning, Coordination and Management, Manufacturing and Services, International Trade Administration, Department of Commerce.

[FR Doc. E5–1026 Filed 3–10–05; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Business Development Mission Afghanistan

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice to business development mission to Afghanistan, April 24–27, 2005.

SUMMARY: The International Trade Administration of the U.S. Department of Commerce is organizing a business development mission to Afghanistan on April 24–27, 2005. The mission will assist U.S. businesses exploring trade and investment opportunities in Afghanistan. A senior U.S. Department of Commerce official will lead a delegation of approximately 10 to 15 U.S.-based senior executives of small, medium, and large U.S. firms. Companies may represent, but are not limited to, the following priority sectors: construction, telecommunications, agribusiness, energy, and financial services. The mission will include briefings from U.S. Embassy staff and Afghan Government officials, prearranged one-on-one meetings, and a networking reception. The mission will reaffirm the U.S. Government's support towards bilateral relations and seek to expand opportunities for U.S. companies in Afghanistan.

FOR FURTHER INFORMATION CONTACT: Office of Global Trade Programs, Room 2012, Department of Commerce, Washington, DC 20230; Tel: (202) 482–4457; Fax: (202) 482–0178.

SUPPLEMENTARY INFORMATION:

Business Development Mission, Afghanistan; April 24–27, 2005.

Mission Statement

I. Description of the Mission

The International Trade Administration of the U.S. Department of Commerce is organizing a business development mission to Afghanistan on April 24–27, 2005. The mission will assist U.S. businesses exploring trade and investment opportunities in Afghanistan. A senior U.S. Department of Commerce official will lead a delegation of approximately 10 to 15 U.S.-based senior executives of small, medium, and large U.S. firms. Companies may represent, but are not limited to, the following priority sectors: construction, telecommunications, agribusiness, energy, and financial services. The mission will include briefings from U.S. Embassy staff and

Afghan Government officials, prearranged one-on-one meetings, and a networking reception. The mission will reaffirm the U.S. Government's support towards bilateral relations and seek to expand opportunities for U.S. companies in Afghanistan.

II. Commercial Setting for the Mission

Since the Taliban's fall from power in late 2001, Afghanistan is undergoing a transformation thanks to the United States and the international community. The Afghan Government seeks to revive the economy in order to improve the lives of Afghans, create jobs, attract foreign investment, and earn desperately needed hard currency. The agricultural, energy, housing, light industries and trading sectors present significant needs for development.

Although economic statistics on Afghanistan may not be reliable, the International Monetary Fund reports the gross domestic product (GDP) is estimated at $4.4 billion, and GDP per capita is about $250 per year. The estimated GDP growth rate for 2003–2004 was 16%, following a growth rate of 20% for 2002–2003. Economic recovery from more than twenty war-ravaged years is most visible in agriculture, construction and services sectors, driven by the international reconstruction effort.

The Afghan Government is taking many steps to build the mechanisms necessary for a viable commercial environment. The Afghan Government passed new investment and commercial banking laws to facilitate commercial and banking transactions. The Afghan Government created a "one-stop shop" for investors to receive necessary documents and other information for establishing a business venture in Afghanistan. With assistance from the U.S. Agency for International Development, the Ministry of Finance has embarked on an aggressive strategy to simplify and improve customs and border procedures to further facilitate trade between Afghanistan and the world. The Afghan Government is also working with the international community to reform the judicial system.

The basic business infrastructure, including telecommunications, commercial regulations and office support, is slowly improving. Given the tenuous security situation throughout the country, there is a shortage of insurance options for transporters and investors. The first of three industrial parks is scheduled to open in the Spring 2005.

U.S. Department of Commerce Assistant Secretary William H. Lash, III visited Kabul in August 2004. He was encouraged to see the progress in reconstruction, the potential for U.S. companies, and the entrepreneurial spirit of the Afghans. It is for this reason the mission is being planned.

III. Goals for the Mission

The mission aims to further U.S. commercial policy objectives and to advance specific U.S. business interests. The mission will

- Assess the commercial climate as well as export and investment opportunities in Afghanistan;
- Advance mission participants' specific business interests by introducing them to key Afghan government officials and potential business partners;
- Encourage continued progress in economic development in Afghanistan; and Enhance the dialogue between government and industry on issues affecting the development of bilateral commercial relations.

IV. Scenario for the Mission

The business development mission will expose participants to high-level contacts and provide access to the Afghan market. U.S. Embassy officials will provide a detailed briefing on the economic, commercial and political climate as well as current investment and reconstruction opportunities. Meetings will be arranged with appropriate government ministries, including the Afghan Investment Support Agency, the Ministries of Commerce, and Foreign Affairs, as well as sectoral ministries.

In addition to private sector representatives, U.S. Government economic agencies may also participate.

Timetable

The precise schedule will depend on the availability of local government and business officials and the specific goals of the mission participants. The tentative trip itinerary will be as follows:

Sunday, April 24, 2005:

Arrive in Kabul; Overview; Briefing by U.S. Embassy.

Monday, April 25, 2005:

Briefings by: Afghanistan Investment Support Agency/Ministry of Commerce; U.S. Agency for International Development and possible prime contractors; Ministry of Finance; Ministry of Foreign Affairs; One-on-one meetings with sectoral ministries.

Tuesday, April 26, 2005:

Meetings with Afghan businesses, Afghan-American Chamber of Commerce, and Afghanistan International Chamber of Commerce; One-on-one meetings with sectoral ministries.

Wednesday, April 27, 2005:

Briefings by: World Bank representatives; Asian Development Bank representatives. Depart Kabul.

V. Criteria for Participant Selection

The recruitment and selection of private sector participants for this mission will be conducted according to the "Statement of Policy Governing Department of Commerce-Overseas Trade Missions" established in March 1997. Approximately 10 to 15 companies will be selected for the mission according to the criteria set out below.

Eligibility: Participating companies must be incorporated or otherwise organized in the United States. A company is eligible to participate if the products and/or services that it will promote (a) are manufactured or produced in the United States; or (b) if manufactured or produced outside the United States, are marketed under the name of a U.S. firm and have at least 51 percent U.S. content of the value of the finished good or service.

Selection Criteria: Companies will be selected for participation in the mission on the basis of

- Consistency of company's goals with the scope and desired outcome of the mission;
- Relevance of a company's business and product line to the identified growth sectors;
- Rank of the designated company representative;
- Past, present, or prospective relevant international business activity;
- Diversity of company size, type, location, demographics, and traditional under-representation in business; and
- Timely receipt of the company's signed and completed application, participation agreement, and participation fee.

Recruitment will begin immediately and will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade missions calendar (*http://www.ita.doc.gov/doctm/tmcal.html*), the Afghanistan Investment and Reconstruction Task Force Web site (*http://www.export.gov/afghanistan*), and press releases to the general and trade media. Promotion of the mission will also take place through the involvement of U.S. Export Assistance Centers and relevant trade associations.

An applicant's partisan, political activities (including political contribution) are entirely irrelevant to the selection process. The fee to

participate in this mission has not yet been determined, but will be approximately USD 1,500. The fees will not cover travel expenses and lodging. Recruitment begins immediately and will close on March 31, 2005, in order to ensure sufficient time to obtain in-country appointments for applicants selected to participate in the mission. Applications received after that date will be considered only if space and scheduling constraints permit. The mission Web site (*http://www.export.gov/afghanistan/events*) will share information as it becomes available.

Disclaimer: Trade mission participants participate in the trade mission and undertake related travel at their own risk and are advised to obtain insurance accordingly. Any question regarding insurance coverage must be resolved by the participant and its insurer of choice. Trade mission participants and their companies, on behalf of themselves and any of their respective officers, employees or agents, agree to release, indemnify and hold harmless the U.S. Government from liability for any illness, injury, loss of life, or damage or loss of property, suffered by themselves or their respective officers, employees or agents, occasioned by or connected with participation in the trade mission. The U.S. Government does not make any representations or guarantees as to the safety or security of participants. Companies should consult the State Department's travel warning for Afghanistan: *http://travel.state.gov/travel/afghanistan_warning.html*. The U.S. Government does not make any representations or guarantees as to the success of the trade mission.

Contact Information: Jana Nelhybel, Afghanistan Investment and Reconstruction Task Force, U.S. Department of Commerce, Washington, DC 20230. Tel: (202) 482–1812. Fax: (202) 482–0980. E-mail: *AfghanInfo@ita.doc.gov*.

Dated: March 7, 2005.

Peter Hale,

Director, Office of Policy Coordination.

[FR Doc. E5–1024 Filed 3–10–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No.: 050301051–5051–01]

NIST Center for Neutron Research Financial Assistance Program; Availability of Funds

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The National Institute of Standards and Technology (NIST) announces that the NIST Center for Neutron Research (NCNR) Financial Assistance Program is soliciting applications for financial assistance for FY 2005. The *NCNR Financial Assistance Program* will offer financial assistance in the field of Neutron Research and Spectroscopy specifically aimed at developing new instrumentation for Neutron Research, conducting collaborative research with NIST scientists, and assisting visiting researchers at the NCNR.

DATES: All applications, paper and electronic, must be received at the address listed below no later than 5 p.m. Eastern Standard Time on April 1, 2005. Late applications will not be reviewed nor considered.

ADDRESSES: Paper applications must be submitted to: Kim Stavish, National Institute of Standards and Technology, NIST Center for Neutron Research, STOP 8560, Gaithersburg, Maryland 20899–8560, phone (301) 975–2672. Electronic applications and associated proposal information should be uploaded to *http://grants.gov*.

FOR FURTHER INFORMATION CONTACT: For complete information about this program and instructions for applying by paper or electronically, read the Federal Funding Opportunity (FFO) Notice at *http://www.grants.gov*. A paper copy of the FFO may be obtained by calling (301) 975–6328. Technical questions should be addressed to: Dr. Dan Neumann, at NCNR, 100 Bureau Drive, MS 8562, Gaithersburg, MD 20899–8562, or at Tel: (301) 975–5252; E-mail: *Dan.Neumann@nist.gov*. Grants Administration questions should be addressed to: Joyce Brigham, NIST Grants and Agreements Management Division; Tel: (301) 975–6328; *joyce.brigham@nist.gov*. For assistance with using *http://grants.gov contact support@grants.gov*.

SUPPLEMENTARY INFORMATION:

Catalog of Federal Domestic Assistance Name and Number: Measurement and Engineering Research and Standards—11.609.

Program Description: The primary program objectives of the financial assistance program in Neutron Research are to develop new areas of neutron instrumentation with emphasis on cold neutrons; to explore and develop new areas of neutron scattering science, with emphasis on macromolecular science, condensed matter physics, and chemistry; to assist and train facility users in their research; and to conduct other outreach and educational activities that advance the use of neutrons by U.S. university and industrial scientists. This will entail stationing scientific staff at the NCNR who, in collaboration with NIST and visiting scientists, advance these objectives.

Funding Availability: Proposals will be considered for cooperative agreements with durations of up to five years, subject to the availability of funds, satisfactory progress, and the continuing relevance to the objectives of the NIST Center for Neutron Research. The anticipated level of funding is up to $3,500,000 per year and one or more awards may be approved. Between one and five awards are likely.

NIST will give preference to full-scope proposals. However applicants may choose to submit proposals covering full or partial amounts of the funding available. Partial funding proposals may be limited to specific program objectives. NIST will determine whether to fund one award for the full amount; to divide available funds into multiple awards of any size, and negotiate scopes of work and budgets as appropriate; or not to select any proposal for funding, upon completing the selection process described below.

Statutory Authority: 15 U.S.C. 272 (b)(4,7) and (c)(8,10,16,17,19).

Eligibility: The NCNR Financial Assistance Program is open to U.S. institutions of higher education.

Review and Selection Process: All applications received in response to this announcement will be reviewed to determine whether or not they are complete and responsive to the scope of the stated program objectives. Incomplete or non-responsive applications will not be reviewed for technical merit. The Program will retain one copy of each non-responsive application for three years for record keeping purposes. The remaining copies will be destroyed.

Responsive proposals will be reviewed by an independent, objective panel composed of at least four individuals who are knowledgeable

about neutron scattering research, neutron spectroscopy, and neutron scattering instrumentation. This panel will conduct a technical review of proposals based on the evaluation criteria listed above. If non-Federal reviewers are used, any advice provided will be on an individual basis, not as a consensus.

The NCNR Director, serving as the Selection Official, will make the award selection. In making the award selection, the NCNR Director will take into consideration the panels' technical evaluation. The NCNR Director, as the selecting official, may choose a proposal out of rank order based upon one or more of the following factors: (1) Availability of funds, (2) redundancy, (3) balance/distribution of funds by research areas described above in the Program description of this Notice, (4) program objectives described above in the Program Description section of this Notice, (5) logistical concerns, and (6) preference for full-scope proposals. If an award is made to an applicant that deviates from the scores of the reviewers, the NCNR Director shall justify the selection in writing based on selection factors described above. The NCNR Director may select all, none, or some of the applications for funding.

The final approval of selected applications and award of financial assistance will be made by the NIST Grants Officer based on compliance with application requirements as published in this notice, compliance with applicable legal and regulatory requirements, compliance with Federal policies that best further the objectives of the Department of Commerce, and whether the recommended applicants appear to be responsible. Applicants may be asked to modify objectives, work plans, or budgets and provide supplemental information required by the agency prior to award. The award decision of the Grants Officer is final. Applicants should allow up to 90 days processing time.

Unsuccessful applicants will be notified in writing. The Program will retain one copy of each unsuccessful application for three years for record keeping purposes. The remaining copies will be destroyed.

Evaluation Criteria: For the NCNR Financial Assistance Program, the technical reviewers will use the following criteria to evaluate the proposals:

1. Qualifications and experience of the Principle Investigator in neutron scattering research, as demonstrated by extensive publications and invited lectures in condensed matter physics, chemistry, material science, macromolecular science or related fields (10%).

2. Qualifications and experience of the proposed university staff in neutron scattering research or in related scientific or engineering areas that are key to the activities contained in the proposal, as demonstrated by resumes of staff proposed for this program (25%).

3. Quality of the proposed research and development plan and its potential impact on neutron scattering science, particularly in the areas of macromolecular science, condensed matter physics, and chemistry (20%).

4. Quality of the plan in terms of providing research assistance to U.S. neutron researchers using the NCNR facilities, including related training, education, and outreach (30%).

5. Quality of the plan to integrate university staff effectively into the activities of the NCNR facility, including establishing robust communications between the university and the NCNR (10%).

6. Cost effectiveness of the plan (5%).

Cost Share Requirements: There is no cost sharing nor matching requirement for this program.

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements: The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of December 30, 2004 (69 FR 78389) is applicable to this announcement. On the form SF–424, the applicant's 9-digit Dun and Bradstreet Data Universal Numbering System (DUNS) number must be entered in the Applicant Identifier block (68 FR 38402).

Collaborations with NIST Employees: All applications should include a description of any work proposed to be performed by an entity other than the applicant, and the cost of such work should ordinarily be included in the budget.

If an applicant proposes collaboration with NIST, the statement of work should include a statement of this intention, a description of the collaboration, and prominently identify the NIST employee(s) involved, if known. Any collaboration by a NIST employee must be approved by appropriate NIST management and is at the sole discretion of NIST. Prior to beginning the merit review process, NIST will verify the approval of the proposed collaboration. Any unapproved collaboration will be stricken from the proposal prior to the merit review.

Use of NIST Intellectual Property: If the applicant anticipates using any NIST-owned intellectual property to carry out the work proposed, the applicant should identify such intellectual property. This information will be used to ensure that no NIST employee involved in the development of the intellectual property will participate in the review process for that competition. In addition, if the applicant intends to use NIST-owned intellectual property, the applicant must comply with all statutes and regulations governing the licensing of Federal government patents and inventions, described at 35 U.S.C. sec. 200–212, 37 CFR part 401, 15 CFR 14.36, and in section 20 of the Department of Commerce Pre-Award Notification Requirements, 69 FR 78389 (December 30, 2004). Questions about these requirements may be directed to the Counsel for NIST, 301–975–2803.

Any use of NIST-owned intellectual property by a proposer is at the sole discretion of NIST and will be negotiated on a case-by-case basis if a project is deemed meritorious. The applicant should indicate within the statement of work whether it already has a license to use such intellectual property or whether it intends to seek one.

If any inventions made in whole or in part by a NIST employee arise in the course of an award made pursuant to this notice, the United States government may retain its ownership rights in any such invention. Licensing or other disposition of NIST's rights in such inventions will be determined solely by NIST, and include the possibility of NIST putting the intellectual property into the public domain.

Paperwork Reduction Act: The standard forms in the application kit involve a collection of information subject to the Paperwork Reduction Act. The use of Standard Forms 424, 424A, 424B, SF-LLL, and CD–346 have been approved by OMB under the respective Control Numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046, and 0605–0001.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

Research Projects Involving Human Subjects, Human Tissue, Data or Recordings Involving Human Subjects: Any proposal that includes research involving human subjects, human tissue, data or recordings involving

human subjects must meet the requirements of the Common Rule for the Protection of Human Subjects, codified for the Department of Commerce at 15 CFR part 27. In addition, any proposal that includes research on these topics must be in compliance with any statutory requirements imposed upon the Department of Health and Human Services (DHHS) and other Federal agencies regarding these topics, all regulatory policies and guidance adopted by DHHS, FDA, and other Federal agencies on these topics, and all Presidential statements of policy on these topics.

On December 3, 2000, the U.S. Department of Health and Human Services (DHHS) introduced a new Federal-wide Assurance of Protection of Human Subjects (FWA). The FWA covers all of an institution's Federally supported human subjects research, and eliminates the need for other types of Assurance documents. The Office for Human Research Protections (OHRP) has suspended processing of multiple project assurance (MPA) renewals. All existing MPAs will remain in force until further notice. For information about FWAs, please see the OHRP Web site at *http://ohrp.osophs.dhhs.gov/humansubjects/assurance/fwas.htm.*

In accordance with the DHHS change, NIST will continue to accept the submission of human subjects protocols that have been approved by Institutional Review Boards (IRBs) possessing a current, valid MPA from DHHS. NIST also will accept the submission of human subjects protocols that have been approved by IRBs possessing a current, valid FWA from DHHS. NIST will not issue a single project assurance (SPA) for any IRB reviewing any human subjects protocol proposed to NIST.

On August 9, 2001, the President announced his decision to allow Federal funds to be used for research on existing human embryonic stem cell lines as long as prior to his announcement (1) the derivation process (which commences with the removal of the inner cell mass from the blastocyst) had already been initiated and (2) the embryo from which the stem cell line was derived no longer had the possibility of development as a human being. NIST will follow guidance issued by the National Institutes of Health at *http://ohrp.osophs.dhhs.gov/humansubjects/guidance/stemcell.pdf* for funding such research.

Research Projects Involving Vertebrate Animals: Any proposal that includes research involving vertebrate animals must be in compliance with the National Research Council's "Guide for the Care and Use of Laboratory Animals" which can be obtained from National Academy Press, 2101 Constitution Avenue, NW., Washington, DC 20055. In addition, such proposals must meet the requirements of the Animal Welfare Act (7 U.S.C. 2131 *et seq.*), 9 CFR parts 1, 2, and 3, and if appropriate, 21 CFR part 58. These regulations do not apply to proposed research using pre-existing images of animals or to research plans that do not include live animals that are being cared for, euthanized, or used by the project participants to accomplish research goals, teaching, or testing. These regulations also do not apply to obtaining animal materials from commercial processors of animal products or to animal cell lines or tissues from tissue banks.

Limitation of Liability: In no event will the Department of Commerce be responsible for proposal preparation costs if these programs fail to receive funding or are cancelled because of other agency priorities. Publication of this announcement does not oblige the agency to award any specific project or to obligate any available funds.

Executive Order 12866: This funding notice was determined to be not significant for purposes of Executive Order 12866.

Executive Order 13132 (Federalism): It has been determined that this notice does not contain policies with federalism implications as that term is defined in Executive Order 13132.

Executive Order 12372: Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

Administrative Procedure Act/ Regulatory Flexibility Act: Notice and comment are not required under the Administrative Procedure Act (5 U.S.C. 553) or any other law, for rules relating to public property, loans, grants, benefits or contracts (5 U.S.C. 553 (a)). Because notice and comment are not required under 5 U.S.C. 553, or any other law, for notices relating to public property, loans, grants, benefits or contracts (5 U.S.C. 553(a)), a Regulatory Flexibility Analysis is not required and has not been prepared for this notice, 5 U.S.C. 601 *et seq.*

Dated: March 3, 2005.

Hratch G. Semerjian,

Acting Director, NIST.

[FR Doc. 05–4847 Filed 3–10–05; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Advanced Technology Program Advisory Committee

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Advanced Technology Program Advisory Committee, National Institute of Standards and Technology (NIST), will meet Tuesday, March 22, 2005, from 9 a.m. to 3 p.m. The Advanced Technology Program Advisory Committee is composed of nine members appointed by the Director of NIST; who are eminent in such fields as business, research, new product development, engineering, education, and management consulting. The purpose of this meeting is to review and make recommendations regarding general policy for the Advanced Technology Program (ATP), its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. The agenda will include presentations on Insights from the Task Force on Innovation; Science and Technology in Austria: Small County, Great Expectations; Survey of ATP Applicants 2002; and Insights from "Innovate America: National Innovation Initiative Report. A discussion scheduled to begin at 1 p.m. and to end at 3 p.m. on March 22, 2005, on ATP budget issues will be closed. Agenda may change to accommodate Committee business. All visitors to the National Institute of Standards and Technology site will have to pre-register to be admitted. Please submit your name, time of arrival, e-mail address and phone number to Donna Paul no later than Friday, March 18 and she will provide you with instructions for admittance. Ms. Paul's e-mail address is *donna.paul@nist.gov* and her phone number is 301/975–2162.

DATES: The meeting will convene Tuesday, March 22, at 9 a.m. and will adjourn at 3 p.m. on Tuesday, March 22, 2005.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Administration Building, Employees' Lounge, Gaithersburg,

Maryland 20899. Please note admittance instructions under **SUMMARY** paragraph.

FOR FURTHER INFORMATION CONTACT: Donna Paul, National Institute of Standards and Technology, Gaithersburg, Maryland 20899–4700, telephone number (301) 975–2162.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on December 27, 2004, that portions of the meeting of the Advanced Technology Program Advisory Committee which involve discussion of proposed funding of the Advanced Technology Program may be closed in accordance with 5 U.S.C. 552b(c)(9)(B), because that portion will divulge matters the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency actions.

Dated: March 8, 2005.

Hratch G. Semerjian,

Acting Director.

[FR Doc. 05–4841 Filed 3–10–05; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Public Forum for U.S. Standards Strategy

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Meeting/workshop notice.

SUMMARY: The National Institute of Standards and Technology (NIST) will host, in conjunction with the American National Standards Institute, a public workshop from 9 a.m. to noon on April 15, 2005, at the Department of Commerce, Herbert C. Hoover Building, 14th Street and Constitution Ave., NW., Washington, DC. The purpose of the workshop is to raise awareness of the effort currently underway to complete the United States Standards Strategy; to engage stakeholders in a dialogue of its principles, strategic initiatives and tactics; and to invite public comment. The results of the workshop discussions will be included in a compilation of public comments and considered in a final draft of the U.S. Standards Strategy. There is no charge for the workshop, but pre-registration is required. To register electronically, please send an e-mail message containing the attendee's name, title, organization, telephone, telefax and e-mail address to *nancy.evans@nist.gov* or call 301–975–4000.

DATES: The workshop will begin on April 15, 2005, at 9 a.m. and conclude at noon.

ADDRESSES: The workshop will be held at the Department of Commerce, Herbert C. Hoover Building, 14th Street and Constitution Avenue, NW., Washington, DC. Please note admittance instructions under **SUMMARY** paragraph.

FOR FURTHER INFORMATION CONTACT: Mary Saunders, Chief, Standards Services Division, 100 Bureau Drive/MS 2100, Gaithersburg, MD 20899–2100, phone: (301) 975–4000 or e-mail *ssd@nist.gov*. For information on the draft U.S. Standards Strategy, refer to the Web site at *http://www.ansi.org/usss*.

SUPPLEMENTARY INFORMATION: The United States Standards Strategy is a revision of the National Standards Strategy for the United States (NSS) (first edition—August 2000). The NSS was developed by a committee of private and public sector stakeholders in the U.S. standards system, under the sponsorship of the American National Standards Institute (ANSI). It was intended to serve as a strategic framework to help guide standards-related activities impacting trade, market-access, emerging national priorities, and more. Strategic and tactical initiatives contained within this framework were developed so that they could then be used by diverse interests to meet their respective national and individual organizational objectives. In mid-2004, ANSI convened a committee to review and revise the NSS. More than 100 representatives of industry; small, medium and large enterprise; standards developers and consortium; consumer groups; and federal and state government have participated in the review process. An initial draft of the second edition of the Strategy was issued for public review and comment in March 2005 (to access the draft text, refer to the Web site *http://www.ansi.org/usss*).

Dated: March 7, 2005.

Hratch G. Semerjian,

Acting Director.

[FR Doc. 05–4849 Filed 3–10–05; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 030105B]

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Notice of final determination and discussion of underlying biological analysis.

SUMMARY: NMFS has evaluated the joint resource management plan (RMP) for harvest of Puget Sound chinook salmon provided by the Puget Sound Treaty Tribes and the Washington Department of Fish and Wildlife (WDFW) pursuant to the protective regulations promulgated for Puget Sound chinook salmon under the Endangered Species Act (ESA). The RMP specifies the management of commercial, recreational and tribal salmon fisheries and steelhead net fisheries that potentially affect listed Puget Sound chinook salmon from May 1, 2004, through April 30, 2010.

The co-managers propose that the resource management plan be in effect for six years, from May 1, 2004, through April 30, 2010. However, a biological opinion issued by NMFS on June 10, 2004, titled "Effects of Programs Administered by the Bureau of Indian Affairs supporting tribal salmon fisheries management in Puget Sound and Puget Sound salmon fishing activities authorized by the U.S. Fish and Wildlife Services during the 2004 fishing season", is effective through April 30, 2005. Therefore, NMFS' evaluation and determination under the ESA 4(d) rule will only address May 1, 2005 to April 30, 2010, of the proposed duration of the RMP. This document serves to notify the public that NMFS, by delegated authority from the Secretary of Commerce (Secretary), has determined pursuant to the Tribal Rule and the government-to-government processes therein that implementing and enforcing the RMP from May 1, 2005, to April 30, 2010, will not appreciably reduce the likelihood of survival and recovery of the Puget Sound chinook salmon Evolutionarily Significant Unit (ESU).

DATES: The final determination on the take limit was made on February 28, 2005.

ADDRESSES: Sustainable Fisheries Division, National Marine Fisheries

Service, 7600 Sand Point Way NE, Seattle, WA 98115–0070.

FOR FURTHER INFORMATION CONTACT: Susan Bishop at: 206/526–4587, or e-mail: *susan.bishop@noaa.gov* regarding the RMP.

SUPPLEMENTARY INFORMATION: This notice is relevant to the Puget Sound chinook salmon (*Oncorhynchus tshawytscha*) ESU.

Electronic Access

The full texts of NMFS' determination and the final Evaluation are available on the Internet at the NMFS, Sustainable Fisheries Division web site at: *http://www.nwr.noaa.gov/1sustfsh/limit6/index.htinl.*

Background

In March, 2004, the Puget Sound Treaty Tribes and the WDFW (co-managers) provided a jointly developed RMP that encompasses Strait of Juan de Fuca and Puget Sound salmon fisheries affecting the Puget Sound chinook salmon ESU. The RMP is effective from May 1, 2004, through April 30, 2010. Harvest objectives specified in the RMP account for fisheries-related mortality of Puget Sound chinook throughout its migratory range, from Oregon and Washington to Alaska. The RMP also includes implementation, monitoring and evaluation procedures designed to ensure fisheries are consistent with these objectives. On April 15, 2004, at 69 FR 19975, NMFS published a notice of availability for public review and comment in the **Federal Register**, on its evaluation of how the Puget Sound chinook RMP addressed the criteria in section 223.203 (b)(4) of the ESA 4 (d) rule (65 FR 42422).

As required by section 223.203 (b)(6) of the ESA 4 (d) rule, NMFS must determine pursuant to 50 CFR 223.209 and pursuant to the government to government processes therein whether the RMP for Puget Sound chinook would appreciably reduce the likelihood of survival and recovery of the Puget Sound chinook and other affected threatened ESUs. NMFS must take comments on how the RMP addresses the criteria in section 223.203 (b)(4) in making that determination.

Discussion of the Biological Analysis Underlying the Determination

The RMP's approach to establishing management objectives is risk averse and progressive, including (1) management objectives, based on natural production and natural spawning, have been established for the majority of naturally producing populations which historically had self-sustaining chinook populations and for which data is available. These management units represent the entire range of life history types (races) and geographic distribution that comprise the Puget Sound chinook salmon ESU; (2) the RMP derives exploitation rates based on conservative, quantifiable standards directly related to recovery, which take into account scientific uncertainty; (3) in isolating the effect of harvest on survival and recovery, the approach is valuable in ensuring that harvest actions do not impede recovery, regardless of the contribution of the hatcheries, habitat, hydropower.. At the same time, the approach is linked to the other hatcheries, habitat, hydropower by taking into account current environmental and habitat conditions; (4) the proposed objectives are generally consistent with NMFS' rebuilding exploitation rates (RER), population standards previously used to assess the likelihood of survival and recovery of the Puget Sound chinook salmon ESU. These standards included an assessment of the long-term effects of exploitation rates at these levels; (5) the RMP includes specific and integrated monitoring programs to maintain and improve population assessment methodologies as well as to evaluate the effectiveness of harvest management actions and objectives. The RMP also includes provisions for an annual report. This report will assess compliance with, parameter validation of, and effectiveness of the RMP objectives.

A more detailed discussion of NMFS' evaluation is on the Sustainable Fisheries Division web site (see Electronic Access, under the heading, **SUPPLEMENTARY INFORMATION**).

Summary of Comments Received in Response to the Proposed Evaluation and Pending Determination

NMFS published a notice in the **Federal Register** announcing the availability of its Proposed Evaluation and Pending Determination (PEPD) on the RMP for public review and comment on April 15, 2004 (69 FR 19975). The comment period closed on May 17, 2004. Three commenters provided comments to NMFS on the PEPD during this public comment period. NMFS has reviewed the comments received and discussed the substantive issues with the co-managers. Several of the comments were addressed and reflected in NMFS' final Evaluation and Recommended Determination (ERD). The co-managers made no modifications to the RMP based on public comments received on NMFS' PEPD.

Comments received from the public in response to the NMFS announcement of the PEPD for review are summarized as follows:

On Tuesday, May11, 2004, NMFS received e-mail comments from Mr. Robert Hayman of the Skagit River System Cooperative. The comments were submitted in the form of electronic versions of three documents: "NMFSFinalE&DComments504.doc"; "BYExplRateCalcs2004 PopStatFix 404.xls"; and "SkgtSFCkProjectn4E&D404.xls". Under the implementation of the RMP, the projected range of exploitation rates for the Skagit summer/fall chinook salmon management unit was estimated to be 48 to 56 percent (Table 3 in the PEPD). The PEPD qualified this projection by stating that this range of exploitation rates probably overestimates the actual rates under the RMP. Mr. Hayman agreed with this assessment and requested that his three documents be included as part of the public record on the PEPD "so that they are available if further elaboration is needed about the Evaluation and Determination's assessment of Skagit summer/fall chinook." No change to the PEPD was necessary.

On Tuesday, May11, 2004, NMFS received comments from Mr. Sam Wright. Mr. Wright commented that the Final Environmental Impact Statement (FEIS) should be completed prior to soliciting public review comments on the PEPD. Mr. Wright's comments were primarily directed at the Draft Environmental Impact Statement (DEIS). The comments addressed the alternatives of the DEIS and proposed an additional alternative, which he referred to as Alternative 1A. He asked that these comments on the DEIS be incorporated by reference. Mr. Wright provided no other direct comments on the PEPD. The discussion on the various alternatives is not directly applicable to the PEPD. Mr. Wright's comments pertaining to the DEIS were addressed in the FEIS process.

On Monday, May 17, 2004, through e-mail, NMFS received comments on the PEPD from the Washington Trout (WT). The commenter recommends that NMFS substantively revise the PEPD before a final determination is developed. The structure of the WT's comments was presented in nine identified sections. These sections were: Introduction; Minimum Fishery Regime; Management Objectives and Indicators; Recovery Exploitation Rates; Upper Management Thresholds; Low Abundance Thresholds; Critical Exploitation Rate Ceiling; Critical Exploitation Rate Ceiling; and Other Issues of Concern. In responding to the WT's comments, NMFS will use a similar structure.

Response to Comments

Introduction Comments

Comment 1: In the introduction section, the commenter requested that the PEPD: (1) provide a detailed explanation of key terms and concepts employed in the RMP. The commenter stated that the PEPD employs important legalistic and technical-biological terms and concepts without ever attempting to explain them; (2) provide a detailed and critical description and assessment of the key assumptions made by the RMP; (3) clearly describe and characterize the several kinds of risk that the harvest regime may pose to populations of the listed Evolutionarily Significant Unit (ESU) and to the ESU as a whole; (4) characterize relevant and critical uncertainties with methods used in the PEPD; (5) evaluate whether the proposed fishery regime(s) is(are) described in sufficient detail to permit a clear assessment of the extent to which the regime is risk-averse to potential impacts on populations of the listed ESU; (6) clearly describe and explain the extent to which the proposed harvest regime is risk-averse to harmful impacts on individual populations of the listed ESU and the ESU as a whole; and, (7) require the RMP to employ clearly articulated impact-threshold targets to be attained (or to be avoided), with clearly articulated management actions that will be taken in response when critical thresholds are not attained (or not avoided), and clear time frames for taking corrective actions and for achieving the desired targets of the corrective actions.

Response: NMFS found these comments too general in nature and lacking necessary specifics to properly respond. NMFS assumes, given that that these comments were in the "introduction" section, that many of these comments will be addressed by responding to the more specific comments that followed in other sections. For a general response, as required in section (b)(6)(iii) of the Endangered Species Act of 1973 (ESA) section 4(d) rule for listed Puget Sound chinook salmon (referred hereafter as the ESA 4(d) rule). the RMP, in NMFS' opinion, must adequately address eleven criteria under section (b)(4)(i) in Limit 4. The criteria under Limit 4 section (b)(4)(i) are summarized in Table 1, page 3 of the PEPD. Compliance with these criteria does not necessarily require the most conservative response. The RMP proposes implementation of restrictions to the fishery-related mortality to each Puget Sound chinook salmon population or management unit. The RMP's restrictions to the cumulative fishery-related mortality are expressed as: (1) a rebuilding exploitation rate; (2) an upper management threshold; (3) a low abundance threshold; and (4) a critical exploitation rate ceiling (Table 2 of the PEPD). For select management units, Appendix A: Management Unit Status Profiles of the RMP describes how these thresholds or exploitation rate limits were derived. NMFS did not necessarily evaluate the RMP's definition of terms or the assumptions the co-managers used in developing the RMP's mortality limits. In the PEPD, NMFS compared the proposed RMP's mortality limits, regardless of their basis, to the NMFS-derived critical and viable threshold standards. NMFS used the best data available to estimate these critical and viable thresholds for each population. The PEPD also evaluated the effects of implementing the RMP's mortality limits. The co-managers, in cooperation with NMFS, modeled the anticipated impacts of implementing the proposed RMP's mortality limits. The modeling used risk-averse assumptions in determining potential impacts and the resultant escapement. The modeling assumed the fishing regime under the RMP would closely resemble that planned for 2003, and modeled those fishing regulations for the southern United States (SUS). The modeling also assumed a range of intercepting fisheries to include the highest Canadian harvest allowed under the 1999 Pacific Salmon Treaty (PST) agreement, as well as those in 2003. The modeled range of Puget Sound chinook salmon abundance was bounded by the 2003 forecast abundance and a 30 percent reduction from that level for all populations. The anticipated results of implementing the RMP were compared against the criteria outlined under Limit 6 of the ESA 4(d) rule. NMFS' approach in its evaluation is conservative, and takes into consideration the uncertainty of the data. Through its evaluation of the RMP, NMFS Northwest Region's Sustainable Fisheries Division concluded that the RMP adequately addressed all the criteria outlined in the ESA 4(d) Rule, including implementing and enforcing the RMP, and would not appreciably reduce the likelihood of survival and recovery of the Puget Sound Chinook Salmon ESU. Information provided in the PEPD, along with the information included and available by reference, provides the reviewer the information necessary to evaluate NMFS' risk criteria used to reach this conclusion.

Comment 2: The commenter expressed concern regarding the PEPD's conclusion that the RMP "would not appreciably reduce the likelihood of survival and recovery of the Puget Sound Chinook Salmon ESU." The commenter believes that this finding reflects an opaque standard, open to any number of subjective interpretations, including the most minimal.

Response: This language in question in the PEPD is taken directly from section (b)(6)(i) of the ESA 4(d) rule. The ESA 4(d) rule states that "...the [take] prohibitions of paragraph (a) of this section relating to threatened species of salmonids ..... do not apply to actions undertaken in compliance with a resource management plan ..... provided that: (i) The Secretary has determined ..... that implementing and enforcing the joint tribal/state plan will not appreciably reduce the likelihood of survival and recovery of affected threatened ESUs" (50 CFR. 223.203(b)(6)). Some of the criteria outlined in the ESA 4(d) rule require NMFS to evaluate the RMP's impacts on individual populations. One of the criteria for Limit 6 of the ESA 4(d) rule is that harvest actions that impact populations at or above their viable thresholds must maintain the population or management unit at or above that level. Overall, along with other on-going habitat and hatchery programs, the results of harvest actions since the ESA listing of the Puget Sound Chinook Salmon ESU appear to be maintaining these populations above the viable threshold levels as required by the ESA 4(d) rule. Another criterion for Limit 6 of the ESA 4(d) rule is that fishing-related mortality on populations above critical levels, but not at viable levels (as demonstrated with a high degree of confidence), must not appreciably slow achievement to viable function. The criterion for populations at or below their critical thresholds is that fishing-related mortality on the population must not appreciably increase genetic and demographic risks facing the population, and does not preclude achievement of viable functions, unless the RMP demonstrates the likelihood of survival and recovery of the entire ESU in the wild would not be appreciably reduced by greater risks to an individual population. Only one population in the ESU, the North Fork Nooksack River population, is considered to be below its critical threshold (see Table 9 of the PEPD). For the North Fork Nooksack River population, NMFS concludes that the risk to the population will remain within acceptable limits as a result of

the implementation of the RMP. as required by the ESA 4(d) Rule, for a population below their critical level. However, the ESU, not the individual populations within the ESU, is the listed entity under the ESA. Through its evaluation of the RMP, NMFS Northwest Region's Sustainable Fisheries Division concluded that the RMP would not appreciably reduce the likelihood of survival and recovery of the Puget Sound Chinook Salmon ESU.

Minimum Fishery Regime Comments

Comment 3: The commenter believes that the PEPD introduces factors that appear to be extra-biological mitigation for various and specific anticipated risks to the ESU imposed by the RMP, including what appears to be consideration of the need for a fair distribution of the burden of conservation. The commenter suggests that the relationship of the RMP to Canadian and Alaskan fisheries appears to be NMFS' most explicit attempt in the PEPD to distribute the conservation burden fairly.

Response: As required in section (b)(6)(iii) of the ESA 4(d) rule, the RMP must adequately address 11 criteria under section (b)(4)(i) in Limit 4. How the conservation burden was distributed among the various sections is not one of the 11 criteria used to evaluate the RMP under the ESA 4(d) rule. However, to provide the reviewer a better understanding of the RMP, the PEPD did present the co-managers' perspective on certain aspects of the RMP. From the co-managers' perspective, the Minimum Fishery Regime proposed in the RMP addresses conservation concerns "while still allowing a reasonable harvest of non-listed salmon" (page 17 of the RMP). The PEPD (page 5) incorrectly alludes that it is the co-managers' perspective that the RMP represents a fair distribution of the burden of conservation. Reference to the co-manager's perspective that the RMP represents a fair distribution of the burden of conservation was removed from the ERD. However, NMFS did not evaluate the co-managers' perspective of the minimum fisheries regime. NMFS evaluated the effects of the proposed action, in this case the implementation of Puget Sound fisheries under the abundance and non-SUS fisheries anticipated in the next five years. In evaluating the effects of the action, Canadian impacts are considered in the baseline.

Comment 4: The commenter believes that the recognition of tribal treaty rights would mandate the acceptance of a base level of fisheries that must always be allowed, under any circumstance. It was of concern to the commenter that the RMP would propose that there was no conceivable circumstance potentially faced by the ESU that would warrant the complete restriction of fishery impacts on an individual management unit.

Response: NMFS evaluated the RMP based on what is likely to occur over the next five fishing seasons, May 1, 2005, to April 30, 2010, the remaining duration of the RMP. To approve the RMP under the ESA 4(d) rule, NMFS must conclude that the RMP adequately address the criteria outlined in the ESA 4(d) rule, including the criterion that implementing the RMP will not appreciably reduce the likelihood of survival and recovery of the Evolutionarily Significant Unit in the wild, over the entire period of time the proposed harvest management strategy affects the population. Compliance with these criteria does not necessarily require the most conservative response. In the PEPD, the anticipated results of implementing the RMP were compared against the criteria outlined under Limit 6 of the ESA 4(d) rule. Through its evaluation of the RMP, NMFS Northwest Region's Sustainable Fisheries Division concluded that the RMP adequately addressed all the criteria outlined in the ESA 4(d) rule, including implementation and that enforcing the RMP would not appreciably reduce the likelihood of survival and recovery of the Puget Sound Chinook Salmon ESU. The "complete restriction of fishery impacts on an individual management unit" was not necessary to meet the criteria outlined under Limit 6 of the ESA 4(d) rule. If impacts under the implementation of the RMP are greater than expected, NMFS can withdraw the ESA 4(d) Rule determination or ask the co-managers to adjust fisheries to reduce impacts.

In recognition of tribal management authority and the Federal Government's trust responsibility to the tribes, NMFS is committed to considering their judgment and expertise regarding the conservation of trust resources. Consistent with this commitment and as a matter of policy, NMFS has sought, where there is appropriate tribal management, to work with tribal managers to provide limited tribal fishery opportunities, so long as the risk to the population remains within acceptable limits.

Comment 5: The commenter suggests that the minimum fisheries regime proposed in the RMP will not result in significant reductions in either the total exploitation impacts experienced by management units, or the Southern United States (SUS) or pre-terminal SUS exploitation rates. The commenter believes that this inadequacy conflicts with the RMP's characterization of the minimum fisheries regime as "extraordinary fisheries conservation measures" designed to "minimize" impacts on management units from fisheries.

Response: NMFS did not evaluate the RMP's characterization of the minimum fisheries regime. The anticipated results of implementing the RMP, not the RMP's characterization of the minimum fisheries regime, were compared against the criteria outlined under Limit 6 of the ESA 4(d) rule. Compliance with these criteria does not necessarily require the most conservative response. The RMP proposes implementation of restrictions to the fishery-related mortality to each Puget Sound chinook salmon population or management unit. The RMP's limits to the cumulative fishery-related mortality are expressed as: (1) a rebuilding exploitation rate; (2) an upper management threshold; (3) a low abundance threshold; and (4) a critical exploitation rate ceiling (Table 2 of the PEPD). The co-managers, in cooperation with NMFS, modeled the anticipated impacts of implementing the RMP, which uses these four harvest mortality limits in combination to manage the fisheries. Table 3 of the PEPD provides the anticipated range of exploitation rates and anticipated escapements for Puget Sound chinook salmon under the implementation of the RMP. In addition, in the RMP, the co-managers also presented data that suggest that significant reductions in the exploitation rate in some systems have not resulted in substantially higher returns of natural-origin chinook salmon. Although, this has not been conclusively demonstrated for many populations, it is suggestive that habitat, not fishery-related mortality, may be the limiting factor on production in some systems.

Comment 6: The commenter states that the description of the various SUS exploitation rates is confusing. As an example, the commenter suggests that a comparison of Table 2 with Table 5 fails to clarify what, if any, the changes in fishery regimes would occur under the minimum fishery regime.

Response: For most management units, the RMP's critical exploitation rate ceiling imposes an upper limit on southern United States (SUS) exploitation rates when spawning escapement for a management unit is projected to fall below its low abundance threshold or if Canadian fisheries make it difficult or impossible to achieve the RMP's rebuilding

exploitation rate. The co-managers define "impossible" if the northern fisheries by themselves impose an exploitation rate above the rebuilding exploitation rate or reduce abundance so that either the upper management threshold or the low abundance threshold could not be achieved even with zero SUS fishing. The co-managers define "difficult" if, in order to achieve a total exploitation rate less than the rebuilding exploitation rate, or escapement above the upper management threshold, SUS fisheries directed at abundant un-listed chinook and other species would have to be constrained (W. Beattie, NWIFC, e-mail to K. Schultz, NMFS, August 6, 2004). The RMP provides a general description of the fisheries that will represent the lowest level of fishing mortality on listed chinook salmon proposed by the co-managers. A general description of these minimal fisheries is outlined in Appendix C: Minimum Fisheries Regime of the RMP. In modeling the fisheries, instances where the RMP's critical exploitation rate ceiling was imposed on a management unit can be identified by reviewing the anticipated escapement or exploitation rates. If the anticipated escapement was below the RMP's low abundance threshold or if the exploitation rate was greater than the RMP's rebuilding exploitation rate, then the modeling exercise imposed the RMP's critical exploitation rate ceiling. Table 2 in the PEPD are the RMP's management objectives (rebuilding exploitation rate, upper management threshold, low abundance thresholds, and the critical exploitation rate ceiling), by management units and populations. Table 2 in the PEPD shows the change in the exploitation rate under the RMP's rebuilding exploitation rate and the exploitation rate under the minimum fishery regime, the critical exploitation rate ceiling. Table 5 in the PEPD are the most likely total exploitation rates, southern United States (SUS) exploitation rates, and escapements within the modeled forecasts under the implementation of the RMP by Puget Sound chinook salmon management unit or population. To assist the reader, a column was added to Table 5 of the ERD and to the tables in Appendix A of the ERD that identify the management units in which the RMP's critical exploitation rate ceiling for that management unit was implemented during modeling.

Comment 7: The commenter stated that under the RMP's minimum fishery regime, additional conservation measures on the SUS fisheries may be considered by the co-managers "where analysis can demonstrate that additional conservation measures in fisheries would contribute substantially to recovery of a management unit ". The commenter suggests that the RMP and the PEPD make no attempt to define or identify what would constitute a "substantial" contribution to recovery.

Response: The co-managers propose that where analysis can demonstrate that additional conservation measures in fisheries would contribute substantially to recovery of a management unit, the co-managers may, at their discretion, and in concert with other specific habitat and enhancement actions, implement them (see page 34 of the RMP). The need to define or identify what would constitute a substantial contribution to recovery is not needed to evaluate the RMP under Limit 6 of the ESA 4(d) rule. The co-managers, in cooperation with NMFS, have modeled the anticipated impacts of the implementation of the RMP. Appendix A of the PEPD contains the model run results. The analysis of the anticipated results of implementing the RMP, without the inclusion of these possible additional conservation measures in fisheries, was evaluated against the criteria under Limit 6 of the ESA 4(d) rule. If the actual escapement outcome during the next five years is below that modeled, NMFS will meet with the co-managers to discuss possible additional management actions the co-managers may take. Additionally, NMFS may reconsider revoking the ESA 4(d) determination. However, the co-managers have instituted additional management measures under low abundance conditions in the past to decrease fishery impacts. The demonstrated willingness of the co-managers to constrain fisheries over the past 15 years, without certainty of substantial benefit to the ESU, gives NMFS some confidence in their future response to a population with a declining status.

Comment 8: Table 2 of the PEPD summarizes the relationship between the various management objectives and exploitation rates for each management unit. The commenter believes that Table 2 is confusing and potentially misleading. In Table 2, some of the RERs [rebuilding exploitation rates] are expressed as pre-terminal SUS and SUS rates, without clearly identifying that the rate does not include impacts from Canadian and Alaskan Fisheries.

Response: The categorization of the exploitation rates within the Table 2 of the PEPD is clearly identified as either total, southern United States (SUS), or pre-terminal southern United States (PT SUS). Additionally, Footnote 2 of Table 2 of the PEPD reads, in part, as follows: "The SUS fishery includes all fisheries south of the border with Canada that may harvest listed Puget Sound chinook salmon. The SUS fishery includes both pre-terminal SUS and terminal SUS fisheries. The co-managers define a pre-terminal fishery as a "fishery that harvests significant numbers of fish from more than one region of origin" (page 65 of the RMP). The co-managers define a terminal fishery as a "fishery, usually operating in an area adjacent to or in the mouth of a river, which harvests primarily fish from the local region of origin, but may include more than one management unit" (page 65 of the RMP). The terminal SUS fisheries will vary by management unit and may occur in freshwater and marine areas." A similar description of the categorization of the exploitation rates can be found within the main body of the PEPD, on page 7.

Comment 9: The commenter suggested that the RMP's critical exploitation rate ceilings are "driven by policy considerations" and not by biological (i.e., conservation) considerations. The commenter believes that these "policy considerations" are not described in the RMP and that their legal basis is not explicitly described, explained, and/or justified.

Response: Although the RMP's critical exploitation rate ceilings were primarily based on policy concerns, biological and conservation considerations were also taken into account by the co-managers in developing the ceilings. All other harvest mortality limits in the RMP (rebuilding exploitation rates, upper management thresholds, and low abundance thresholds) were derived using biological consideration rather than policy-driven parameters. NMFS compared the proposed RMP's mortality limits, regardless of their basis, to the NMFS-derived standards. NMFS' evaluation focused on the effects of implementing the RMP's mortality limits. The co-managers, in cooperation with NMFS, modeled the anticipated impacts of implementing the RMP. A description of the co-managers' policy considerations used to develop the RMP's critical exploitation rate ceilings was not needed to evaluate the impacts of the RMP under Limit 6 of the ESA 4(d) rule. In recognition of tribal management authority and the Federal Government's trust responsibility to the tribes, NMFS is committed to considering their judgment and expertise regarding the conservation of trust resources. Consistent with this commitment and as a matter of policy, NMFS has sought, where there is appropriate tribal management, to work

with tribal managers to provide limited tribal fishery opportunities, so long as the risk to the population remains within acceptable limits.

Management Objectives and Indicators Comments

Comment 10: The commenter states that the RMP proposes to manage harvest on the basis of the status of individual populations. The commenter suggests that the substance of the proposed regime overstates the extent to which the RMP is supportive of recovery within five management units: Nooksack, Skagit Summer/Fall chinook, Skagit spring chinook, Stillaguamish, and Snohomish. The commenter believes that in none of these four [five] management units is the maximum ("recovery") exploitation rate based directly upon an estimate of the maximum allowable rate sustainable by the weakest component stock. The commenter believes that this reliance on management unit rates contradicts the claim by the RMP and the PEPD that the RMP proposes a harvest management regime in which exploitation rates are restricted by the weakest component population.

Response: For most management units with multiple populations, the objectives in the RMP are based on the management for the weakest component (e.g. see Appendix A: Management Unit Status Profile of the RMP for the Snohomish Management Unit). In NMFS' evaluation of the RMP, the management unit's anticipated exploitation rate was applied to all populations within that management unit. When available, the anticipated exploitation rates on individual populations were compared to the corresponding population-specific NMFS-derived rebuilding exploitation rates. NMFS also derived a rebuilding exploitation rate for the Nooksack Management Unit, which contains two populations, because data was insufficient to develop a population-specific rebuilding exploitation rates. In this case, the anticipated exploitation rates for the Nooksack Management Unit were compared to the corresponding management unit-specific NMFS-derived rebuilding exploitation rate. Additionally, the anticipated population-specific escapements were compared to NMFS-derived critical and viable thresholds or to the generic guidance provided by the Viable Salmonid Populations document (VSP) (NMFS 2000b as cited in the PEPD). This approach evaluates the anticipated impacts of the RMP on weakest component population within each management unit. Results showed that the NMFS-derived rebuilding exploitation rates for the weakest population within a given management units were generally met and often below the NMFS-derived rebuilding exploitation rates. However, it also needs to be noted that although populations contribute fundamentally to the structure and diversity of the ESU, it is the ESU, not an individual population, which is the listed entity under the ESA.

Recovery Exploitation Rates Comments

Comment 11: The commenter stated that the PEPD inappropriately references the draft risk assessment procedure (RAP) document of May 30, 2000. The commenter suggested that the method described in this citation was superceded by a method described in a document titled "Viable Risk Assessment Procedure". The commenter indicated that the latter document employed a harvest model more suitable for population viability modeling needed to assess harvest impacts on listed salmon populations.

Response: The method outlined in NMFS' document titled "A risk assessment procedure for evaluating harvest mortality of Pacific salmonids," dated May 30, 2000, is commonly referred to as the RAP model. Subsequent updates and improvements to the original RAP model resulted in the current model, known as the Viable Risk Assessment Procedure (VRAP) model. The VRAP model is what NMFS used to derive the rebuilding exploitation rates to evaluate the RMP. Unlike the RAP model, the VRAP model lacks complete documentation. However, the method used by NMFS to derive the rebuilding exploitation rates using the VRAP model are accurately described in NMFS' RAP document, as cited in the PEPD. The ERD was modified to make this clearer to the reader.

Comment 12: The commenter challenges the PEPD's assertion that harvest at or below NMFS-derived RERs "will not appreciably reduce the likelihood of rebuilding that population, assuming current environmental conditions based on specific risk criteria". The commenter suggests that no details are provided by NMFS regarding assumptions and calculations in support of this finding. Consequently, the commenter believes that it is impossible for the reviewer to know what "specific risk criteria" were employed, and to thereby judge the appropriateness of NMFS' finding.

Response: As stated on page 25 in the PEPD, NMFS-derived rebuilding exploitation rates were developed by using a simulation model to identify an exploitation rate for an individual population that meets specific criteria related to both survival and recovery, given the specified thresholds and estimated spawner/recruit parameters. The simulation used the population-specific threshold levels to identify an exploitation rate that met the following criteria: (a) the percentage of escapements less than the critical threshold value increase by less than five percentage points relative to no fishing, and either (b) the escapement at the end of the 25–year simulation exceeded the viable threshold at least 80 percent of the time or (c) the percentage of escapements less than the viable escapement threshold at the end of the 25–year simulation differed from the no-fishing baseline by less than 10 percentage points. The PEPD references Appendix C: Technical Methods – Derivation of Chinook Management Objectives and Fishery Impact Modeling Methods of the draft environmental impact statement (DEIS) on the proposed determination for a detailed explanation of rebuilding exploitation rate derivation. The PEPD also references NMFS' RAP modeling document, cited as NMFS 2000a, for additional information on how NMFS derived these rebuilding exploitation rates. Information provided in the PEPD, along with the information included and available by reference, provides the reviewer the information necessary to ability to evaluate NMFS' risk criteria.

Upper Management Thresholds Comments

Comment 13: The commenter suggests that there is little real data available to the co-managers or NMFS on which to base firm, robust estimates of the current carrying capacity. The commenter stated that any estimate of a critical management threshold such as the maximum sustainable harvest (MSH) escapement level will inevitably be extremely uncertain. The commenter believes that it is extremely risky to employ such an uncertain point estimate as a management target, without at least acknowledging the uncertainty, which in practical terms should mean adjusting the target in a conservative direction relative to the risks associated with the uncertainty. The commenter believes that the PEPD fails to raise or discuss any critical considerations of these kinds about the approach taken by the RMP for estimating these escapement reference points and employing them in the proposed harvest management regime.

Response: In the PEPD, NMFS used the best estimate of the level of

escapement that produces maximum sustainable yield (MSY) of the system. This level of escapement was referred to as the viable threshold in the evaluation. NMFS completed a comprehensive analysis to derive viable thresholds for a subset of Puget Sound chinook salmon populations (Table 8 of the PEPD). These viable thresholds are based on a spawner-recruit analysis of historical catch and escapement data and include environmental variants. NMFS used these viable thresholds to determine the NMFS-derived rebuilding exploitation rates. The NMFS-derived rebuilding exploitation rates were set so that escapement would meet or exceed the viable threshold at least 80 percent of the time at the end of 25 years. By using at least 80 percent, one would on average obtain an escapement level greater than the MSY. During this fishery impact simulation modeling, NMFS assumed low marine survival rates for the salmon populations, which is conservative and risk adverse. Additionally, the RMP's rebuilding exploitation rates or escapement goals may be modified in response to the most current information about the productivity and status of populations, or in response to better information about management error. There is also uncertainty in the risk analysis simulation about actual exploitation rates beyond the duration of the RMP. The NMFS-derived rebuilding exploitation rates are based on simulations over a more conservative 25–year period, whereas the RMP's duration is for a much shorter duration. In other words, NMFS compared the RMP to NMFS' standards which were developed on simulations assuming fish would be harvested at a given rate over a 25–year period. NMFS' approach in evaluating the RMP is conservative and considers the uncertainty of the data and simulation outcomes.

Comment 14: The commenter suggests that the impact of past (over-) harvest on aggregate stocks (management units) is not taken into consideration in the estimation of stock-recruitment relationships.

Response: Development of data with which to manage Puget Sound chinook salmon has been an ongoing effort. Work towards a comprehensive approach to Puget Sound salmon harvest began in the late 1980s. A comprehensive chinook salmon management plan was implemented initially in 1997 by the co-managers. Revisions to the management framework have been made in subsequent years as new information became available. Subsequent Puget Sound chinook salmon escapements indicate that the reduced exploitation rates and other harvest management actions resulting from the implementation of these harvest plans have contributed to the stabilization and increase in Puget Sound chinook salmon escapement. The RMP has replaced the old escapement goals with rebuilding exploitation rates for several management units, and updated the escapement goals for others. However, the role of past harvest in current condition of the resource is not the primary consideration of the PEPD. The focus of the NMFS' evaluation is whether implementing and enforcing the proposed action will not appreciably reduce the likelihood of survival and recovery of the Puget Sound Chinook Salmon ESU over a range of possible abundance and fishing conditions anticipated in the next five years. In the PEPD, NMFS evaluated the RMP's response to low abundance and concluded that implementing and enforcing the RMP would not appreciably reduce the likelihood of survival and recovery of the Puget Sound Chinook Salmon ESU.

Comment 15: The commenter states that the RMP establishes upper management thresholds for populations or management units using methods such as "standard spawner-recruit calculations , empirical observations of relative escapement levels and catches, or Monte Carlo simulations that buffer for error and variability ". The commenter suggests that the RMP's harvest thresholds, derived through these simulations, are not appropriately risk-averse.

Response: The co-managers' method in establishing the RMP's upper management thresholds is risk-averse by acknowledging and attempting to account for known uncertainties. Many of the RMP's upper management thresholds were derived where sufficient data was available to use the classic spawner-recruit functions, augmented by incorporating environmental covariates. In addition, the spawner-recruit functions are fit by applying deviates from predicted calendar year escapements to observed escapements rather than the deviates of the estimated returns to predicted returns. Additionally, in the PEPD, NMFS compared the RMP's upper management thresholds to the NMFS-derived or VSP-derived viable thresholds and found that they were similarly conservative and risk-averse.

Comment 16: The commenter believes that the NMFS should not accept a 20–percent probability of not attaining a viable threshold within four to eight chinook generations.

Response: The NMFS-derived rebuilding exploitation rates were set to result in attainment of the viable threshold in at least 80 percent of the simulation runs by the end of 25 years (see response to Comment 13). NMFS' use of 25 years is conservative, as four to eight generations (number of generations in 25 years) is not a very long time to expect a population to respond to a change. Additionally, by using at least 80–percent as a condition, one would on average obtain an escapement level greater than this floor. NMFS' use of an 80 percent chance of achieving the viable threshold is reasonable. This approach is conservative considering uncertainty of the data and simulations.

Comment 17: The commenter believes that inability to detect a difference between harvest and no harvest regimes should not suffice as a justification for harvesting [declining] stocks.

Response: One of the criteria that must be adequately addressed to approve the RMP under the ESA 4(d) rule is that NMFS must conclude that implementing the RMP will not appreciably reduce the likelihood of survival and recovery of Puget Sound Chinook Salmon ESU (emphasis added). In its evaluation, NMFS estimated the impacts on the populations within the Puget Sound Chinook Salmon ESU under a no-harvest regime and compares those results to the impacts associated with implementing the RMP. This comparison is necessary to assess whether or not implementation of the RMP will appreciably reduce the likelihood of survival and recovery of affected threatened ESU than if the action did not occur. NMFS-derived rebuilding exploitation rates were developed by using a simulation model to identify an exploitation rate for an individual population that meets specific criteria related to both survival and recovery, given the specified thresholds and estimated spawner/recruit parameters. The simulation used the population-specific threshold levels to identify an exploitation rate that met certain conditions (see response to Comment 12). One of those conditions is whether the percentage of escapements less than the critical threshold value increase by less than five percentage points relative to the baseline. The baseline assumes no salmon fisheries. This approach recognizes that a population may improve or decline irrespective of the proposed action being evaluated. In situations where freshwater or estuarine survival is severely compromised by degraded habitat, even the total elimination of the harvest may not

improve the population's productivity or status. If the risk assessment concludes that the percentage probability of escapements falling below the critical threshold will increase by less than five percentage points relative to the baseline, then it is reasonable to conclude that implementing the RMP will not appreciably reduce the likelihood of survival of Puget Sound Chinook Salmon ESU. The focus of NMFS' evaluation is on whether the difference is appreciable between the impacts associated with the implementation of the RMP and those that would still occur under the baseline.

Comment 18: The commenter believes that the PEPD relies upon questionable and controversial estimates of current habitat capacity to justify estimates of upper management thresholds.

Response: NMFS uses the best data available and continues to encourage the co-managers to improve and expand their data collection. Habitat capacity estimation is accomplished using several methods, and comparisons between results from the different methods are made to help evaluate the RMP. See response to Comment 19.

Comment 19: The commenter suggests that the PEPD relies on Ecosystem Diagnosis and Treatment (EDT) modeling estimates of spawner-recruit functions to argue that "further harvest constraint will not, by itself, effect an increase above the asymptote associated with current productivity, until habitat conditions improve." The commenter believes that the EDT model has received very critical reviews from the Salmon Recovery Science Review Panel and from the Columbia Basin Independent Science Advisory Panel.

Response: Calculating a rebuilding exploitation rate ideally requires knowledge of a spawner-recruit relationship based on escapement, age composition, coded-wire tag distribution, environmental parameters, and management error. These types of data are available for several management units (Table 8 of the PEPD). For populations with insufficient data to develop a spawner-recruit relationship, generic guidance from the VSP paper or, when available, analyses of habitat capacity (such as the EDT methodology) have been used to assist NMFS in evaluating the RMP's proposed thresholds. NMFS uses the best scientific data available in this evaluation. Habitat capacity is difficult to measure and estimation is now accomplished by several different methods. NMFS acknowledge that all models have strengths and weaknesses. NMFS has made appropriate comparisons of the models and their outputs to help evaluate the RMP's upper management thresholds.

Low Abundance Thresholds Comments

Comment 20: The commenter states that the RMP defines a low abundance threshold as "a spawning escapement level, set intentionally above the point of biological instability, which triggers extraordinary fisheries conservation measures" to minimize fishery related impacts and increase spawning escapement. The commenter believes that the RMP's claim that the low abundance thresholds are set above the point of biological instability is misleading.

Response: As required in section (b)(6)(iii) of the ESA 4(d) rule, the RMP must adequately address eleven criteria under section (b)(4)(i) in Limit 4. The analysis of the anticipated results of implementing the RMP, not the RMP's characterization, was compared against the criteria defined under Limit 6 of the ESA 4(d) rule (see response to Comment 5). After taking into account uncertainty, the critical threshold is defined as a point under current conditions below which: (1) depensatory processes are likely to reduce the population below replacement; (2) the population is at risk from inbreeding depression or fixation of deleterious mutations; or (3) productivity variation due to demographic stochasticity becomes a substantial source of risk (see page 15 of NMFS 2000b as cited in the PEPD). NMFS-derived critical thresholds ranged from 200 to 1,650 fish. These critical thresholds may be revised as additional information becomes available on how an individual population responds to low abundance. NMFS finds that the RMP's low abundance thresholds are generally set at or above what are considered to be critical thresholds (point of biological instability) for the chinook populations based on a survey of the literature and population-specific assessments. However, NMFS recognizes these thresholds are likely to vary over time as habitat conditions change.

Comment 21: The commenter believes that the SUS exploitation rates will generally increase when the minimum fishery regime (equating to the RMP's critical exploitation rate ceiling) is triggered. This might occur under circumstances when total abundances are low enough that escapements are projected to be below a population or management unit's low abundance threshold. This outcome is relative to the circumstance when the regime is triggered due to the total RER being exceeded even though escapements are expected to be above the low abundance threshold.

Response: For most management units, the RMP's critical exploitation rate ceiling imposes an upper limit on SUS exploitation rates when spawning escapement for a management unit is projected to fall below its low abundance threshold or if Canadian fisheries make it difficult or impossible to achieve the RMP's rebuilding exploitation rate. Modeling exercises by the co-managers demonstrate the potential for imposing the RMP's critical exploitation rate ceiling for several management units for the duration of the RMP (see response to Comment 6). The proposed critical exploitation rates are ceilings that are not to be exceeded. The commenter suggests the SUS exploitation rates will be increased to meet the ceiling when the RMP's critical exploitation rate ceiling is imposed. This is not NMFS' understanding of the co-managers' plans for implementing the RMP, nor was this outcome used as an assumption in how the fisheries were modeled. During modeling, if the SUS fisheries' impacts were already below the RMP's critical exploitation rate ceiling, the co-managers in modeling future fisheries did not increase the impacts of the SUS fisheries to reach this ceiling. If impacts under the implementation of the RMP are greater than expected, NMFS can withdraw the ESA 4(d) rule determination or ask the co-managers to adjust the fisheries' impacts.

Comment 22: The biological importance of the low abundance thresholds was also of concern to the commenter. The commenter suggested that neither the RMP nor the PEPD clearly define the "point of biological instability" (critical threshold) or provide a clear quantitative explanation of how the proposed low abundance threshold levels are determined. The commenter further suggested that the PEPD does not provide any evidence that the RMP's low abundance thresholds are set far enough above putative points of biological instability to provide a precautionary and properly risk-averse margin of safety when they are crossed from above.

Response: See response to Comment 20.

Comment 23: The commenter stated that the RMP defines the point of instability as "that level of abundance (i.e., spawning escapement) that incurs substantial risk to genetic integrity, or exposes the population to depensatory mortality factors." The commenter believes that with other critical terms employed in the RMP and the PEPD, no

explanation is provided or even attempted regarding what is meant by a "substantial" risk or how such a level of risk is determined.

Response: NMFS did not evaluate the RMP's definition of the point of instability. NMFS' evaluation focused on the effects of implementing the RMP's mortality limits, regardless of their basis. In the PEPD, NMFS compared the RMP's low abundance thresholds against NMFS-derived or VSP-derived critical thresholds threshold (see response to Comment 20 for NMFS' definition of a critical threshold). The co-managers' basis in the development of the RMP's low abundance thresholds was not needed to make this comparison. In the PEPD, NMFS concludes that the RMP's low abundance thresholds are generally set at or above what are defined as, or considered to be, the critical thresholds.

Critical Exploitation Rate Ceiling Comments

Comment 24: The commenter expressed concern that the application of an exploitation-rate ceiling in response to crossing a critical-abundance threshold from above would be based on policy objectives rather than biological considerations.

Response: See responses to Comments 9 and 21.

Comment 25: The commenter expressed concern about an apparent disconnect between the descriptions of the Critical ER (exploitation rate) Ceilings and their apparent actual effects on impact rates. The commenter suggested that no discussion is offered in the PEPD on how a minimally acceptable level of access was determined, who determined it, or why.

Response: The RMP does include discussion on how a minimally acceptable level of access was determined. See responses to Comments 5 and 21.

Comment 26: The commenter suggested that the association of the Critical ER Ceilings with RERs and the low abundance thresholds creates the implication of a two-tiered harvest regime for each MU (management unit), with separate impact-rate schedules above and below the thresholds. However, there is little indication that the provisions of the RMP would necessarily affect any significant difference in overall impacts on an MU, no matter what level of abundance it reaches, or whether or not Critical ER Ceilings are imposed.

Response: See response to Comment 5 and 21.

Other Issues of Concern Comments

Comment 27: The commenter believes that the range of variability in chinook salmon productivity is not fully considered. The commenter suggests that the PEPD uncritically accepts the likely range of abundances of adult chinook returns under the six-year RMP implementation period chosen by the co-managers for their modeling of the impacts of implementing the RMP. The commenter believes that the PEPD fails to require that the co-managers adopt more risk-averse modeling assumptions in estimating the likely impacts on listed chinook of the implementation of the RMP.

Response: As mentioned earlier, Table 3 of the PEPD provides the anticipated range of exploitation rates and anticipated escapements for Puget Sound chinook salmon under the implementation of the RMP. Two variables were used in the modeling of the future fisheries to provide these anticipated ranges of exploitation rates and anticipated escapements. These modeling variables were abundance of returning salmon and impacts associated with the level of Canadian fisheries. The range of abundance was chosen by NMFS in consultation with the co-managers and based on an examination of abundance and survival conditions in past years. The modeled salmon abundance in 2003 was used to estimate the upper end of the annual abundance returns under the implementation of the RMP. A 30–percent reduction in the 2003 abundance was used to represent the lower range of modeled returns. This range of modeled abundance is similar to the variation in observed abundance for the ESU over the last fourteen years. However, this range is considered conservative given the increasing escapement trend in recent years. Given the general trend of stable to increasing abundance, it is likely that if the actual abundance in the next five years falls outside this range, the actual abundance would most likely be greater. Under the implementation of the RMP, it is unclear if Canadian conservation actions will continue or if impacts will increase to maximum levels allowed under the Pacific Salmon Treaty. In modeling the Canadian fisheries, the impacts similar to fisheries in 2003 were used to represent the lower range of anticipated impacts. Maximum harvest levels allowed under the Pacific Salmon Treaty were modeled to represent the upper range of impacts associated with Canadian fisheries. Fisheries can not go above this level under the terms of the Pacific Salmon Treaty. The evaluation used the modeling based on the maximum harvest levels under the Pacific Salmon Treaty as the most likely to occur within this range. Canadian impacts, under the agreement of the Pacific Salmon Treaty, may not be greater than the level assumed as the most likely to occur.

Comment 28: The commenter believes negative impacts of hatchery chinook salmon on natural-origin chinook salmon are ignored, misinterpreted, or inappropriately accepted. The commenter expressed that the Kendall Creek Hatchery is currently operating without ESA take authorization. The commenter suggests that the PEPD's assertions that the Kendall Creek hatchery population "retains the genetic characteristics of the wild population," or that hatchery production at Kendall Creek "buffers genetic and demographic risks" to wild North Folk (NF) Nooksack River chinook salmon are precisely the assertions that NMFS has yet to make any determination over.

Response: In its recent proposed revision of the Puget Sound chinook salmon ESA listing, NMFS has proposed that the Kendal Creek Hatchery population be determined to be part of the Puget Sound Chinook Salmon ESU 69 Fed. Reg. 33102, 33129 (June 14, 2004). NMFS has proposed the Kendall Creek Hatchery chinook population conservation-directed program may provide substantial benefits to VSP parameters for the North Fork Nooksack River spring chinook salmon population (see section 6.2.1 of the Salmonid Hatchery Inventory and Effects Evaluation Report, An Evaluation of the Effects of Artificial Propagation on the Status and Likelihood of Extinction of West Coast Salmon and Steelhead Under the Federal Endangered Species Act, as posted on the NMFS, NWR's web-site at: *http://www.nwr.noaa.gov/1srd/Prop_Determins/Inv_Effects_Rpt/6_PSoundChinook.pdf*, as accessed on December 15, 2004). The North Fork Nooksack River spring chinook salmon population is a unique population that will likely be considered important for recovery of the Puget Sound Chinook Salmon ESU to a viable level. The program likely benefits the abundance, diversity, and spatial structure of the North Fork Nooksack River population. NMFS and the co-managers recognize that the Kendall Creek hatchery-origin fish spawning in the South Fork Nooksack River are a risk, not a benefit to the South Fork Nooksack River population. This was one of the reasons that the co-managers reduced the Kendall Creek early chinook salmon hatchery production by 50 percent in

2003 (W. Beattie, NWIFC, e-mail to K. Schultz, NMFS, August 6, 2004). However, the Kendall Creek Hatchery, and the other chinook hatchery programs in Puget Sound are currently under review by NMFS for our evaluation and determination under limit 6 of the ESA 4(d) rule. Therefore, this finding regarding the Kendall Creek Hatchery chinook population is considered preliminary. The ERD was modified to reflect that the Puget Sound hatchery programs are being reviewed by a separate Limit 6 determination of the ESA 4(d) rule.

Comment 29: The commenter believes that the RMP lacks clarity in describing how it recognizes "Viable" and "Critical" concepts.

Response: See response to Comment 20 for NMFS' definition of a critical threshold, which is consistent with the VSP paper for a critical threshold. The regulations in the ESA 4(d) Rule require that the RMP must use the concepts of "viable" and "critical" thresholds in a manner so that fishery management actions; (1) recognize significant differences in risk associated with viable and critical population threshold states, and (2) respond accordingly to minimize long-term risks to population persistence. The RMP defines its own upper management and low abundance thresholds, but these are readily comparable to the NMFS-derived or VSP-derived viable and critical thresholds. The ESA 4(d) rule also requires that harvest actions that impact populations that are currently at or above their viable thresholds must maintain the population or management unit at or above that level. Fishing-related mortality on populations above critical levels but not at viable levels (as demonstrated with a high degree of confidence) must not appreciably slow rebuilding to viable function. Fishing-related mortality to populations functioning at or below their critical thresholds must not appreciably increase genetic and demographic risks facing the population and must be designed to permit achievement of viable functions, unless the RMP demonstrates the likelihood of survival and recovery of the entire ESU in the wild would not be appreciably reduced by greater risks to an individual population. Table 9 in the PEPD is the post-listing threshold classification and escapement trend since listing for Puget Sound chinook salmon populations. In the PEPD, NMFS found the RMP was responsive to the populations' status, when compared to the critical or viable thresholds, as required by the ESA 4(d) rule.

Comment 30: The commenter believes that there is a lack of consistency between the PEPD and RMP. The commenter received and reviewed information from WDFW regarding the co-managers' 2004 fishing plan, outlining model predictions of expected impacts and escapements for all management units. The commenter suggested that several of the exploitation-rate and escapement predictions fall well outside the range of likely impacts and escapements described in Table 3 of the PEPD.

Response: NMFS, in cooperation with the co-managers, have modeled the anticipated impacts of the implementation of the RMP. NMFS recognized that in this modeling exercise, conservative assumptions were made and that there was always the possibility that in any individual year the results could be different than the range of possibilities considered. In recent years, the post-season assessment has generally shown that estimated exploitation rates are lower than pre-season projections, with the escapement often higher than predicted pre-season (W. Beattie, NWIFC, e-mail to K. Schultz, NMFS, August 6, 2004). If impacts under the implementation of the RMP are greater than expected, NMFS can withdraw the ESA 4(d) rule determination or ask the co-managers to adjust fisheries to reduce impacts. Generally, the 2004 pre-season modeled escapement results are within or greater than the range of predicted escapements in the PEPD. This can be, in part, attributed to the use of risk-averse modeling assumptions in modeling impacts and the resultant escapement under the RMP. (see response to Comment 27).

References

A complete list of all references cited herein is available upon request (see **ADDRESSES**), or through the documents available on the Sustainable Fisheries web site (see Electronic Access, under the heading **SUPPLEMENTARY INFORMATION**).

Authority

Under section 4 of the ESA, NMFS, by delegated authority from the Secretary, is required to adopt such regulations as it deems necessary and advisable for the conservation of the species listed as threatened. The ESA salmon and steelhead 4 (d) rule (65 FR 42422, July 10, 2000) specifies categories of activities that are adequately regulated to provide for the conservation of listed salmonids and sets out the criteria for such activities. The rule further provides that the prohibitions of paragraph (a) of the rule do not apply to actions undertaken in compliance with a RMP developed jointly by the State of Washington and the Tribes and determined by NMFS to be in accordance with the salmon and steelhead 4 (d) rule (65 FR 42422, July 10, 2000).

Dated: March 4, 2005.

Maria Boroja,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 05–4839 Filed 3–10–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 030602141–5057–16; I.D. 012505A]

Availability of Grants Funds for Fiscal Year 2005/Extension of Application Deadline

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

ACTION: Notice.

SUMMARY: The NMFS publishes this notice to extend the application deadline for the Western Pacific Demonstration Projects initiative. The original solicitation was published in the **Federal Register** on February 1, 2005. NOAA extends the application deadline for this initiative from March 15, 2005, to April 4, 2005, to provide the public more time to submit proposals. All other requirements for this solicitation remain the same.

DATES: Application packages must be received by 5 p.m. Hawaii standard time on April 4, 2005.

ADDRESSES: The address for submitting proposals electronically is: *http://www.grants.gov/*. (Electronic submission is strongly encouraged).

Paper submissions should be sent to the following address: Western Pacific Demonstration Projects Coordinator, National Marine Fisheries Service, Pacific Islands Regional Office, 1601 Kapiolani Blvd, Honolulu, HI 96814 ATTN: WPDP Federal Program Officer.

FOR FURTHER INFORMATION CONTACT: Scott W.S. Bloom, phone: 808–973–2935 ext. 218, fax: 808–973–2941, or e-mail: *scott.bloom@noaa.gov*.

SUPPLEMENTARY INFORMATION: This notice extends the solicitation period of the Western Pacific Demonstration Projects initiative announced in the

Federal Register on February 1, 2005 (70 FR 5161).

Dated: March 8, 2005.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 05–4837 Filed 3–10–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 030705C]

New England Fishery Management Council; Public Meeting

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

ACTION: Public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a three-day Council meeting on March 29–31, 2005, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Tuesday, March 29, 2005, beginning at 9 a.m. and on Wednesday and Thursday, March 30 and 31, beginning at 8:30 a.m.

ADDRESSES: The meeting will be held at the Hotel Viking, One Bellevue Avenue, Newport, RI 02840; telephone (401) 847–3300. Requests for special accommodations should be addressed to the New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone (978) 465–0492.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council, (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Tuesday, March 29, 2005

Following introductions, the Council will receive reports from the Council Chairman, Executive Director, the NMFS Regional Administrator, Northeast Fisheries Science Center and Mid-Atlantic Fishery Management Council liaisons, NOAA General Counsel, representatives of the U.S. Coast Guard, NMFS Enforcement and the Atlantic States Marine Fisheries Commission. Additional reports to the Council will address the recent Gear Conflict Workshop held by members of the fishing industry and an update on the New England Fleet Visioning Project. During the morning session, the Council will receive two briefings on ecosystem approaches to fisheries management, followed by a question and answer period.

Following a lunch break, there will be an opportunity to review and comment on the draft proposed rule for Framework Adjustment 17 to the Sea Scallop Fishery Management Plan (FMP). During this discussion, there will be a particular focus on the "power down" provision for scallop general category vessel that are required to carry vessel monitoring systems. There will be initial Council action on Framework Adjustment 1 to the Spiny Dogfish FMP, a modification to the plan that would allow multi-year specifications to be set for the fishery. At the end of the day, NOAA Fisheries staff will brief the Council on the alternatives contained in the Draft Environmental Impacts Statement for the Atlantic Large Whale Take Reduction Plan and the potential impact of the proposed measures on Council fishery management plans.

Wednesday, March 30, 2005

During the Wednesday morning session, the Council Executive Director will provide a report on a draft Council Conservation and Management Policy. Following Council comments and possible approval of the policy, the remainder of the day will be used to address bycatch issues. Specifically, the Council's Bycatch Committee will discuss bycatch reduction measures for the herring, whiting and groundfish fisheries. The Council will make final decisions concerning which measures would be the most appropriate to implement through a possible framework adjustment, or alternatively, through Emergency Action, Flexible Area Action System, or other vehicle. If the Council agrees to implement measures through a framework, final action could be taken at this meeting to approve measures for inclusion in the Northeast Multipspecies and/or Herring FMPs.

Thursday, March 31, 2005

The morning session will begin with a summary of the activities currently underway and associated with development of EFH Omnibus Amendment #2. An open period for public comments on subjects not otherwise listed on the agenda also will be provided. A report from the Groundfish Committee will follow. Issues to be addressed include final action on Framework Adjustment 41 to the Northeast Multispecies FMP (access to Closed Area I hook gear sector/haddock special access program for non-sector vessels) a report on the development of the biennial framework adjustment for fishing years 2005–2006 and recommendations for the Eastern U.S. Canada Area for fishing year 2005.

Although other non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subjects of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: March 8, 2005.

Emily Menashes,

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

[FR Doc. E5–1025 Filed 3–10–05; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Denial of Commercial Availability Request under the United States-Caribbean Basin Trade Partnership Act (CBTPA), African Growth and Opportunity Act (AGOA), and the Andean Trade Promotion and Drug Eradication Act (ATPDEA)

March 7, 2005.

AGENCY: The Committee for the Implementation of Textile Agreements (CITA).

ACTION: Denial of the request alleging that certain anti-microbial elastomeric filament yarn, of the specifications below, classified in under subheadings 5402.49.9005 and 5404.10.8005 of the Harmonized Tariff Schedule of the United States (HTSUS), cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA, AGOA, and ATPDEA.

SUMMARY: On January 3, 2005 the Chairman of CITA received a petition from Alston & Bird, LLP, on behalf of Ge-Ray Fabrics, Inc., alleging that certain anti-microbial elastomeric filament yarn, of the specifications

below, classified in under subheadings 5402.49.9005 and 5404.10.8005 of the Harmonized Tariff Schedule of the United States (HTSUS), cannot be supplied by the domestic industry in commercial quantities in a timely manner. The petition requested that knit apparel articles from such yarns or from U.S. formed fabrics containing such yarns, be eligible for preferential treatment under the African Growth and Opportunity Act (AGOA), the U.S. - Caribbean Basin Trade Partnership Act (CBTPA), and the Andean Trade Promotion and Drug Eradication Act (ATPDEA).

FOR FURTHER INFORMATION CONTACT: Shikha Bhatnagar, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 112(b)(5)(B) of the AGOA; Section 213(b)(2)(A)(v)(II) of the Caribbean Basin Economic Recovery Act, as added by Section 211(a) of the CBTPA; Sections 1 and 6 of Executive Order No. 13191 of January 17, 2001; Presidential Proclamations 7350 and 7351 of October 4, 2000; Section 204 (b)(3)(B)(ii) of the ATPDEA, Presidential Proclamation 7616 of October 31, 2002, Executive Order 13277 of November 19, 2002, and the United States Trade Representative's Notice of Redelegation of Authority and Further Assignment of Functions of November 25, 2002.

Background

The AGOA, the CBTPA, and the ATPDEA provide for quota- and duty-free treatment for qualifying textile and apparel products. Such treatment is generally limited to products manufactured from yarns and fabrics formed in the United States or a beneficiary country. The AGOA, the CBTPA, and the ATPDEA also provide for quota- and duty-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more beneficiary countries from fabric or yarn that is not formed in the United States, if it has been determined that such fabric or yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner. In Executive Order No. 13191 (66 FR 7271) and pursuant to Executive Order No. 13277 (67 FR 70305) and the United States Trade Representative's Notice of Redelegation of Authority and Further Assignment of Functions (67 FR 71606), CITA has been delegated the authority to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the AGOA, the CBTPA, or the ATPDEA. On March 6, 2001, CITA published procedures that it will follow in considering requests (66 FR 13502).

On January 3, 2005 the Chairman of CITA received a petition from Alston & Bird, LLP, on behalf of Ge-Ray Fabrics, Inc., alleging that certain anti-microbial elastomeric filament yarn in under subheadings 5402.49.9005 and 5404.10.8005 of the Harmonized Tariff Schedule of the United States (HTSUS), cannot be supplied by the domestic industry in commercial quantities in a timely manner. The petition requested that knit apparel articles from such yarns or from U.S. formed fabrics containing such yarns, be eligible for preferential treatment under the AGOA, the CBTPA, and the ATPDEA.

On January 10, 2005, CITA published a Federal Register notice requesting public comments on the request, particularly with respect to whether these yarns can be supplied by the domestic industry in commercial quantities in a timely manner. See Request for Public Comments on a Commercial Availability Request under the African Growth and Opportunity Act (AGOA), Caribbean Basin Trade Partnership Act (CBTPA), and the Andean Trade Promotion and Drug Eradication Act (ATPDEA), 70 FR 1694 (January 10, 2005). On January 26, 2005, CITA and USTR offered to hold consultations with the House Ways and Means Committee and the Senate Finance Committee, but no consultations were requested. We also requested advice from the U.S. International Trade Commission and the relevant Industry Trade Advisory Committees.

CITA found that anti-microbial elastomeric yarn can be supplied by the domestic industry in commercial quantities and in a timely manner. Specifically, CITA found that there are several domestic manufacturers who currently produce the subject yarns and are capable of producing the subject yarn, or a substitutable yarn with the same characteristics, in commercial quantities and in a timely manner.

On the basis of currently available information and our review of this request, CITA has determined that there is domestic capacity to supply the subject product, or a substitutable product, in commercial quantities in a timely manner. Ge-Ray's request is denied.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E5–1028 Filed 3–10–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meeting date change.

SUMMARY: On Tuesday, February 1, 2005 (70 FR 5169) the Department of Defense announced open meetings of the Defense Science Board (DSB) Task Force on Manufacturing Technology. These meetings will now be closed to the public. Both meetings will be held at Strategic Analysis Inc., 3601 Wilson Boulevard, Suite 600, Arlington, VA.

Dated: March 7, 2005.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–4785 Filed 3–10–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Army

Army Educational Advisory Committee

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 (5 U.S.C. App. I), announcement is made of the following committee meeting:

Name of Committee: U.S. Army War College Subcommittee of the Army Education Advisory Committee.

Dates of Meeting: April 28, 2005, and April 29, 2005.

Place of Meeting: U.S. Army War College, 122 Forbes Avenue, Carlisle, PA, Command Conference Room, Root Hall, Carlisle Barracks, Pennsylvania 17013.

Time of Meeting: 8:30 a.m.–5 p.m.

Proposed Agenda: Receive information briefings; conduct discussions with the Commandant and staff and faculty; table and examine online College issues; assess resident and distance education programs, self-study techniques, assemble a working group for the concentrated review of institutional policies and a working group to address committee membership and charter issues; propose strategies and recommendations that will continue the momentum of Federal accreditation success and guarantee compliance with regional accreditation standards.

FOR FURTHER INFORMATION CONTACT: To request advance approval or obtain

further information, contact Colonel Kevin T. Connelly.

SUPPLEMENTARY INFORMATION: This meeting is open to the public. Any interested person may attend, appear before, make a presentation, or file statements with the Committee after receiving advance approval for participation.

Kevin T. Connelly,

Colonel, U.S. Army, Designated Federal Official.

[FR Doc. 05–4820 Filed 3–10–05; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Department of the Army is proposing to alter a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on April 11, 2005 unless comments are received which result in a contrary determination.

ADDRESSES: Department of the Army, Freedom of Information/Privacy Division, U.S. Army Records Management and Declassification Agency, ATTN: AHRC–PDD–FPZ, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 428–6497.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on February 1, 2005, to the House Committee on Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: March 7, 2005.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

A0040–5 DASG

SYSTEM NAME:

Occupational Health Records (March 27, 2003, 68 FR 14959).

CHANGES:

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Add to entry "and ergonomic evaluations".

CATEGORIES OF RECORDS IN THE SYSTEM:

Add to entry "gender, pay plan and grade," and "ergonomic evaluations," and "job requirements, physical demands".

* * * * *

PURPOSE(S):

Add to entry "ergonomic recommendations and corrections".

* * * * *

RECORD SOURCE CATEGORIES:

Add "individual" to entry.

* * * * *

A0040–5 DASG

SYSTEM NAME:

Occupational Health Records.

SYSTEM LOCATION:

U.S. Army Medical Command, 1216 Stanley Road, Suite 25m Fort Sam Houston, TX 78234–5053.

U.S. Army Center for Health Promotion and Preventive Medicine, 5158 Blackhawk Road, Aberdeen Proving Ground, MD 21010–5403.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty army, their family members, U.S. Army Reserve, National Guard on active duty or in drill status, U.S. Military Academy and Reserve Officer Training Corps cadets, when engaged in directed training, foreign national military assigned to Army components, Department of the Army civilian and non-appropriated fund personnel employed by the Army for whom specific occupational health examinations and ergonomic evaluations have been conducted and/or requested.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number, date and place of birth, marital status, gender, pay plan and grade, dates of medical surveillance tests and ergonomic evaluations and their results, job requirements, physical demands, documents reflecting the training, experience and certification to work within hazardous environments, including personnel monitoring results and work are monitoring readings. Exposures to chemicals, radiation, physical environment, non-human primates, and similar and related documents; personnel protective equipment and medical programs required to limit exposure to environmental safety and health hazards are also included.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 5 U.S.C. 7902, Safety Programs; 29 U.S.C. 668, Programs of Federal Agencies; 29 CFR 1910, Occupational Safety and Health Standards; Army Regulation 40–5, Preventive Medicine; E.O. 12223, Occupational Safety Health Programs for Federal Employees; and E.O. 9397 (SSN).

PURPOSE(S):

To maintain a permanent record of work places, training, exposures, medial surveillance, ergonomic recommendations and corrections, and any medical care provided for eligible individuals.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information may be disclosed to appropriate Government agencies whose responsibility falls within the occupational health statutes identified under 'Authority' above.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, printouts, magnetic tapes and electronic storage media.

RETRIEVABILITY:

By individual's name and/or Social Security Number.

SAFEGUARDS:

Access to all records is restricted to designated individuals whose official duties dictate an official need to know. Information in automated media is further protected from unauthorized access in locked rooms. All individuals afforded access are given periodic orientations concerning sensitivity of personal information and requirement to prevent unauthorized disclosure.

RETENTION AND DISPOSAL:

Records are maintained by employing office until employee is separated at which time records are filed with the individual personnel record for 30 years. GB agent records maintain for 40 years then destroy.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Information Officer, Office of the Surgeon General, U.S. Army Medical Command, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to Chief Information Officer, Office of the Surgeon General, U.S. Army Medical Command, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013, or to the Patient Administrator at the appropriate medical treatment facility.

For ergonomic evaluations the individual should address written inquiries to the Commander, U.S. Army Center for Health Promotion and Preventive Medicine, 5158 Blackhawk Road, Aberdeen, MD 21010–5403.

Individual must provide full name, Social Security Number, current address, telephone number, details of last location of record or employment, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to Chief Information Officer, Office of the Surgeon General, U.S. Army Medical Command, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013, or to the Patient Administrator at the appropriate medical treatment facility.

For ergonomic evaluations the individual should address written inquiries to the Commander, U.S. Army Center for Health Promotion and Preventive Medicine, 5158 Blackhawk Road, Aberdeen, MD 21010–5403.

Individual must provide full name, Social Security Number, current address, telephone number, details of last location of record or employment, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial determination are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From individuals and Army Medical records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 05–4786 Filed 3–10–05; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Withdrawal of Notice for Preparation of a Draft Supplemental Environmental Impact Statement to the July 2002 Final Dredged Material Management Plan and Environmental Impact Statement, McNary Reservoir and Lower Snake River Reservoirs, in the States of Oregon, Washington, and Idaho

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Notice.

SUMMARY: The Walla Walla District of the U.S. Army Corps of Engineers (Corps) is withdrawing its intent to prepare a Supplemental Environmental Impact Statement (SEIS) to the July 2002 Final Dredged Material Management Plan (DMMP) and Environmental Impact Statement (EIS): McNary Reservoir and Lower Snake River Reservoirs (DMMP/EIS). The Notice of Intent was for the SEIS published in the **Federal Register** on June 5, 2003 (68 FR 33684). The Corps is now re-evaluating channel maintenance needs and has determined that an SIES is not appropriate at this time.

FOR FURTHER INFORMATION CONTACT: Mr. Jack Sands, Program Manager, Walla Walla District, Corps of Engineers, CENWW–PM–PPM, 201 North Third Avenue, Walla Walla, WA 99362, phone (509) 527–7287, or Ms. Sandra Simmons, Environmental Coordinator, Walla Walla District, Corps of Engineers, CENWW–PD–EC, 201 North Third Avenue, Walla Walla, WA 99362, phone (509) 527–7265.

SUPPLEMENTARY INFORMATION: The DMMP/EIS defined the programmatic approach the Corps planned to follow for the next 20 years for maintaining the congressionally authorized navigation channel by managing sediment deposition, dredging, and disposing of dredged material removed from those reaches of the Columbia, Snake, and Clearwater Rivers that make up that portion of the Columbia/Snake Rivers Inland Navigation Waterway within the Walla Walla District boundaries. The DMMP/EIS also addressed the need to provide flow conveyance at the confluence of the Snake and Clearwater Rivers at Lewiston, Idaho, as dredging has been used to maintain adequate flow conveyance in this area. The DMMP/EIS considered four alternatives: (1) No Action (No Change), Maintenance Dredging with In-Water Disposal; (2) Maintenance Dredging with In-Water Disposal to Create Fish Habitat and a 3-Foot levee Raise; (3) Maintenance Dredging with Upland Disposal and a 3-Foot Levee Raise; and (4) Maintenance Dredging with Beneficial Use of Dredged Material and a 3-Foot Levee Raise. This supplement was to reorganize and clarify information already included in the DMMP/EIS, expand the discussions and evaluations of measures considered in the DMMP/EIS, incorporate new information and data collected subsequent to the issuance of the DMMP/EIS, and modify alternatives, including the preferred alternative. When completed and approved, this SEIS, along with the DMMP/EIS, was to constitute the Corps' long-term programmatic plan for maintaining the congressionally-authorized navigation channel within the Walla Walla District.

The DMMP/EIS and additional environmental compliance documentation addressing navigation channel maintenance were challenged in court. Preliminary injunctions resulting from these challenges halted planned maintenance activities. The Corps is currently reviewing the previous documentation and will issue a new Notice of Intent, if applicable, announcing future environmental compliance that addresses navigation

channel and sediment management in the Walla Walla District.

Randy L. Glaeser,

LTC, EN, Commanding.

[FR Doc. 05–4819 Filed 3–10–05; 8:45 am]

BILLING CODE 3710–GC–M

DEPARTMENT OF EDUCATION

List of Approved "Ability-to-Benefit" (ATB) Tests and Passing Scores

AGENCY: Department of Education.

ACTION: Update notice.

SUMMARY: The Secretary provides an update to the list of ATB tests to include the WorkKeys Program test—Forms Reading for Information: A01AA, A02AA, C01AA, D10AA, and Applied Mathematics: A01BB, A02BB, C01BB, and D01BB. The Secretary has approved the WorkKeys Program test and its passing scores under section 484(d) of the Higher Education Act of 1965, as amended (HEA), and the implementing regulations in 34 CFR Part 668, Subpart J. An institution may use the WorkKeys Program test as an approved ATB test to determine if a student who does not have a high school diploma or its recognized equivalent is eligible to receive funds under any title IV, HEA program. The title IV, HEA programs include the Federal Pell Grant, Federal Family Education Loan, William D. Ford Federal Direct Loan, Federal Perkins Loan, Federal Work-Study, Federal Supplemental Educational Opportunity Grant, and the Leveraging Educational Assistance Partnership (LEAP) programs.

FOR FURTHER INFORMATION CONTACT: David Morgan, U.S. Department of Education, Federal Student Aid, Union Center Plaza, 830 First Street, NE., Washington, DC 20202–5345. Telephone: (202) 377–4033.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain a copy of this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION: The Secretary is amending the list of approved ATB tests and passing scores that was published in the **Federal Register** on May 11, 2004 (69 FR 26087) by adding the WorkKeys Program test and its passing scores. The list was published under the authority of section 484(d) of the Higher Education Act of 1965, as amended (HEA) and the regulations the Secretary promulgated to implement that section in 34 CFR Part 668, Subpart J.

List of approved tests and passing scores: For the convenience of all interested parties, we list below all approved ATB tests and their passing scores that may be used as approved ATB tests.

1. ASSET Program: Basic Skills Tests (Reading, Writing, and Numerical)—Forms B2, C2, D2 and E2.

Passing Scores: The approved passing scores on this test are as follows: Reading (35), Writing (35), and Numerical (33).

Publisher: The test publisher and the address, contact person, telephone, and fax number of the test publisher are: American College Testing (ACT), Placement Assessment Programs, 2201 North Dodge Street, P.O. Box 168, Iowa City, Iowa 52243, Contact: Dr. John D. Roth, Telephone: (319) 337–1030. Fax: (319) 337–1790.

2. Career Programs Assessment (CPAT) Basic Skills Subtests (Language Usage, Reading and Numerical)—Forms B and C.

Passing Scores: The approved passing scores on this test are as follows: Language Usage (42), Reading (43), and Numerical (41).

Publisher: The test publisher and the address, contact person, telephone, and fax number of the test publisher are: American College Testing (ACT), Placement Assessment Programs, 2201 North Dodge Street, P.O. Box 168, Iowa City, Iowa 52243, Contact: Dr. John D. Roth, Telephone: (319) 337–1030. Fax: (319) 337–1790.

3. COMPASS Subtests: Prealgebra/Numerical Skills Placement, Reading Placement, and Writing Placement.

Passing Scores: The approved passing scores on this test are as follows: Prealgebra/Numerical (25), Reading (62), and Writing (32).

Publisher: The test publisher and the address, contact person, telephone, and fax number of the test publisher are: American College Testing (ACT), Placement Assessment Programs, 2201 North Dodge Street, P.O. Box 168, Iowa City, Iowa 52243, Contact: Dr. John D. Roth, Telephone: (319) 337–1030, Fax: (319) 337–1790.

4. Combined English Language Skills Assessment (CELSA), Forms 1 and 2.

Passing Scores: The approved passing scores on this test are as follows: CELSA Form 1 (90) and CELSA Form 2 (90).

Publisher: The test publisher and the address, contact person, telephone, and fax number of the test publisher are: Association of Classroom Teacher Testers (ACTT), 1187 Coast Village Road, PMB 378, Montecito, California 93108–2794, Contact: Pablo Buckelew, Telephone: (805) 569–0734, Fax: (805) 569–0004.

Note: The CELSA test is approved only for certain students whose native language is not English as provided in 34 CFR 668.153(a)(2).

5. Computerized Placement Tests (CPTs)/Accuplacer (Reading Comprehension, Sentence Skills, and Arithmetic).

Passing Scores: The approved passing scores on this test are as follows: Reading Comprehension (55), Sentence Skills (60), and Arithmetic (34).

Publisher: The test publisher and the address, contact person, telephone, and fax number of the test publisher are: The College Board, 45 Columbus Avenue, New York, New York 10023–6992, Contact: Ms. Suzanne Murphy, Telephone: (405) 842–9891, Fax: (405) 842–9894.

6. *Descriptive Tests:* Descriptive Tests of Language Skills (DTLS) (Reading Comprehension, Sentence Structure and Conventions of Written English)—Forms M–K–3KDT and M–K–3LDT; and Descriptive Tests of Mathematical Skills (DTMS) (Arithmetic)—Forms M–K–3KDT and M–K–3LDT.

Passing Scores: The approved passing scores on this test are as follows: Reading Comprehension (108), Sentence Structure (9), Conventions of Written English (309), and Arithmetic (506).

Publisher: The test publisher and the address, contact person, telephone, and fax number of the test publisher are: The College Board, 45 Columbus Avenue, New York, New York 10023–6992, Contact: Ms. Suzanne Murphy, Telephone: (405) 842–9891, Fax: (405) 842–9894.

7. Wonderlic Basic Skills Test (WBST)—Verbal Forms VS–1 & VS–2, Quantitative Forms QS–1 & QS–2.

Passing scores: The approved passing scores on this test are as follows: Verbal (200) and Quantitative (210).

Publisher: The test publisher and the address, contact person, and telephone, and fax number of the test publisher are: Wonderlic Personnel Test, Inc., 1795 N. Butterfield Road, Libertyville, IL 60048, Contact: Mr. David Tenber, Telephone: (877) 605–9499, Fax: (847) 680–9492.

8. WorkKeys Program—Reading for Information Forms A01AA, A02AA, C01AA & D10AA; Applied Mathematics Forms A01BB, A02BB, C01BB, & D01BB.

Passing scores: The approved passing scores on this test are as follows:

Reading for Information—Forms A01AA (76), A02AA (75), C01AA (77) & D10AA (77);

Applied Mathematics—Forms A01BB (73), A02BB (74), C01BB (73) & D01BB (73).

Publisher: The test publisher and the address, contact person, and telephone, and fax number of the test publisher are: American College Testing (ACT), WorkKeys Development, Professional Development Services, 101 ACT Drive, P.O. Box 168, Iowa City, Iowa 52243–0168, Contact: Dr. A. Candace Noble, Telephone: (319) 337–1296, Fax: (319) 337–1229.

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To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO) toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Program Authority: 20 U.S.C. 1091(d).

Dated: March 8, 2005.

Theresa S. Shaw,

Chief Operating Officer, Federal Student Aid.

[FR Doc. 05–4870 Filed 3–10–05; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Notice

AGENCY: United States Election Assistance Commission.

ACTION: Notice of public meeting agenda.

DATE AND TIME: Tuesday, March 22, 2005, 10 a.m.–12 noon.

PLACE: U.S. Election Assistance Commission, 1225 New York Avenue, NW., Suite 1100, Washington, DC 2005 (Metro Stop: Metro Center).

AGENDA: The Commission will receive reports on the following: Title II Requirements Payments Update; Technical Guidelines Development Committee Update; Election Day Survey Analysis Update; Other Administrative Matters. The Commission will receive presentations on the following: The Role of the United States Election Assistance Commission as a Clearinghouse.

FOR FURTHER INFORMATION CONTACT: Bryan Whitener, Telephone: (202) 566–3100.

Gracia M. Hillman,

Chair, U.S. Election Assistance Commission.

[FR Doc. 05–4983 Filed 3–9–05; 2:05 pm]

BILLING CODE 6820–YN–M

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Energy Conservation Program for Consumer Products: Representative Average Unit Costs of Energy

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice.

SUMMARY: In this notice, the Department of Energy (DOE or Department) is forecasting the representative average unit costs of five residential energy sources for the year 2005 pursuant to the Energy Policy and Conservation Act. The five sources are electricity, natural gas, No. 2 heating oil, propane, and kerosene.

DATES: *Effective Date:* The representative average unit costs of energy contained in this notice will become effective April 11, 2005 and will remain in effect until further notice.

FOR FURTHER INFORMATION CONTACT: Samuel Johnson, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–0854, *sam.johnson@ee.doe.gov.*

Francine Pinto, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mail Station GC–72, 1000 Independence Avenue, SW., Washington, DC 20585–0103, (202) 586–7432, *Francine.pinto@hq.doe.gov.*

Thomas DePriest, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mail Station GC–72, 1000 Independence Avenue, SW., Washington, DC 20585–0103, (202) 586–2946, *thomas.depriest@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: Section 323 of the Energy Policy and Conservation Act (Act) (42 U.S.C. 6291–6309) requires that DOE prescribe test procedures for the determination of the estimated annual operating costs or other measures of energy consumption for certain consumer products specified in the Act. (42 U.S.C. 6293) These test procedures are found in Title 10 of the Code of Federal Regulations (CFR) part 430, subpart B.

Section 323(b) of the Act requires that the estimated annual operating costs of a covered product be calculated from measurements of energy use in a representative average use cycle or period of use and from representative average unit costs of the energy needed to operate such product during such cycle. (42 U.S.C. 6293(b)) The section further requires that DOE provide information to manufacturers regarding the representative average unit costs of energy. (42 U.S.C. 6293(b)(4)) This cost information should be used by manufacturers to meet their obligations under section 323(c) of the Act. Most notably, these costs are used to comply with Federal Trade Commission (FTC) requirements for labeling. Manufacturers are required to use the revised DOE representative average unit costs when the FTC publishes new ranges of comparability for specific covered products, 16 CFR part 305. Interested parties can also find information covering the FTC labeling requirements at *http://www.ftc.gov/appliances.*

The Department last published representative average unit costs of residential energy for use in the Energy Conservation Program for Consumer Products Other Than Automobiles on January 27, 2004 (69 FR 3907). Effective April 11, 2005, the cost figures published on January 27, 2004, will be superseded by the cost figures set forth in this notice.

The Department's Energy Information Administration (EIA) has developed the 2004 representative average unit after-tax costs found in this notice. The representative average unit after-tax costs for electricity, natural gas, No. 2 heating oil, and propane are based on simulations used to produce the October 2004, EIA *Short-Term Energy Outlook,* and reflect the mid-price scenario. The representative average unit after-tax costs for kerosene are derived from their prices relative to that of heating oil, based on 1999–2003 averages for these two fuels. The source for these price data is the October 2004, *Monthly Energy Review* DOE/EIA–0035(2004/10). The *Short-Term Energy Outlook* and the *Monthly Energy Review* are available at the National Energy Information Center, Forrestal Building, Room 1F–048, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8800. These publications can also be found on the EIA website at *http://www.eia.doe.gov.*

The 2005 representative average unit costs under section 323(b)(4) of the Act are set forth in Table 1, and will become

effective April 11, 2005. They will remain in effect until further notice.

Issued in Washington, DC, on March 7, 2005.

David K. Garman,

Assistant Secretary, Energy Efficiency and Renewable Energy.

TABLE 1.—REPRESENTATIVE AVERAGE UNIT COSTS OF ENERGY FOR FIVE RESIDENTIAL ENERGY SOURCES (2005)

Type of energy	Per million Btu [1]	In commonly used terms	As required by test procedure
Electricity	$26.55	9.06¢/kWh [2 3]	$.0906/kWh.
Natural Gas	10.92	$1.092/therm [4] or $11.23/MCF [5 6]	.00001092/Btu.
No. 2 Heating Oil	12.68	$1.76/gallon [7]	.00001268/Btu.
Propane	16.94	$1.55/gallon [8]	.00001694/Btu.
Kerosene	16.32	$2.20/gallon [9]	.00001632/Btu.

[1] Btu stands for British thermal units.
[2] kWh stands for kilowatt hour.
[3] 1 kWh = 3,412 Btu.
[4] 1 therm = 100,000 Btu. Natural gas prices include taxes.
[5] MCF stands for 1,000 cubic feet.
[6] For the purposes of this table, one cubic foot of natural gas has an energy equivalence of 1,028 Btu.
[7] For the purposes of this table, one gallon of No. 2 heating oil has an energy equivalence of 138,690 Btu.
[8] For the purposes of this table, one gallon of liquid propane has an energy equivalence of 91,333 Btu.
[9] For the purposes of this table, one gallon of kerosene has an energy equivalence of 135,000 Btu.

[FR Doc. 05–4768 Filed 3–10–05; 8:45 am]
BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6661–4]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the **Federal Register** dated April 2, 2004 (69 FR 17403).

Draft EISs

ERP No. D–AFS–B65011–00 Rating LO, White Mountain National Forest, Propose Land and Resource Management Plan, Forest Plan Revision Implementation, Carroll, Coos and Grafton Counties, NH and Oxford County, ME.

Summary: EPA expressed a lack of objection to the project as proposed.

Final EIS

ERP No. D–COE–F36166–OH Rating EC2, Mill Creek, Ohio Flood Damage Reduction Project, To Reduce Damages to Communities, Hamilton County, OH.

Summary: EPA expressed concern because the proposed channel modification may cause a change to the designated use for Mill Creek, and that the change would require updating and modifying the current Total Maximum Load (TMDL) report and use designation(s) of the stream, and the Draft EIS did not provide detail information regarding the protocols that will be used to determine if the soils to be excavated are contaminated, the method of removal, and the disposal of those soils.

ERP No. D–FHW–E40803–TN Rating EC2, TN–397 (Mack Hatcher Parkway Extension) Construction from US–31 (TN–6, Columbia Avenue) South of Franklin to US–341 (TN–106, Hillsboro Road) North of Franklin, Williamson County and the City of Franklin, TN.

Summary: EPA expressed concern related to direct and indirect impacts to water quality and historic properties, and recommended mitigation measures and additional monitoring to prevent further degradation of impaired water bodies in the project area.

ERP No. D–FRC–B03011–MA Rating EU3, Weaver's Cove Liquefied Natural Gas (LNG) Project, Construct and Operate Onshore Liquefied Natural Gas Import and Interstate Natural Gas Transmission Facilities, Falls River, Bristol County, MA.

Summary: EPA commented that the proposed project would have significant, avoidable, and unsatisfactory impacts to the resources and habitats of Mount Hope Bay and the Taunton River. EPA also recommended that a supplemental EIS be prepared due to the inadequate information about the dredging and disposal program, the limited scope of alternatives, and an inadequate analysis of impacts.

ERP No. D–FRC–B03012–RI Rating EC2, KeySpan Liquefied Natural Gas (LNG) Facility Upgrade Project, Construction and Operation, and Algonquin Gas Transmission Project, Proposal for Site, Construct and Operate a New Natural Gas Pipeline, Coast Guard Permit, U.S. Army COE Section 10 and 404 Permits, Providence County, RI and New England.

Summary: EPA expressed concerns about the need for additional mitigation and about the analysis of air quality, ballast water, cumulative impacts and environmental justice.

ERP No. D–IBR–K39089–CA Rating EC2, Folsom Dam Road Access Restriction Project, Control Access to Folsom Dam, City of Folsom, CA.

Summary: EPA expressed concerns about the indirect effects from the project's changes in traffic patterns my result in significant localized impacts in air quality, environmental justice, and cultural resources.

ERP No. D–NIH–B81009–MA Rating EC2, National Emerging Infectious Diseases Laboratories, Construction of a National Biocontainment Laboratory, BioSquare Research Park, Boston University Medical Center Campus, Boston, MA.

Summary: EPA expressed concerns related to air quality issues, cumulative impacts, and environmental justice.

ERP No. D–NPS–B65012–ME Rating LO, Schoodic General Management Plan Amendment, Implementation, Acadia National Park, ME.

Summary: EPA had no objection to the proposed project.

ERP No. D–NPS–K65276–AZ Rating EC2, Chiricahua National Monument

Fire Management Plan (FMP), Implementation, AZ.

Summary: EPA expressed concerns about water quality impacts and requested additional information on water quality, mitigation, and monitoring.

ERP No. D–NRC–B06005–CT Rating EC2, GENERIC—License Renewal of Nuclear Plants for the Millstone Power Station, Units 2 and 3, Supplement 22 to NUREG–1437, Implementation, New London County, CT.

Summary: EPA expressed concern about operational and cumulative impacts, and requested additional information be prepared in the FEIS to address these concerns.

ERP No. DC–IBW–K24017–00 Rating LO, South Bay International Wastewater Treatment Plan (SBIWTP), To Address Treatment Alternatives from Tijuana, Mexico that cross into United States/Mexico Border in San Diego County, CA.

Summary: EPA has no objections to this project and supports continuing inter-agency coordination to comply with the Clean Water Act and protect public health and the environment in the San Diego border region.

Final EISs

ERP No. F–BLM–K65274–NV, Las Vegas Valley Disposal Boundary Project, Disposal and Use of Public Land under the Management of (BLM), Implementation, Clark County, NV.

Summary: EPA's previous issues have been resolved; therefore, EPA has no objection to the action as proposed.

ERP No. F–BLM–L65440–OR Upper Deschutes Resource Management Plan, Implementation, Deschutes, Klamath, Jefferson and Cook Counties, OR.

Summary: EPA continues to recommend that water quality be a focus in management of the area and that 303(d) listed streams be restored. EPA supports the flexible management strategy of the Preferred Alternative and recommends that degraded allotments be taken out of use until revegetated.

ERP No. F–FHW–C40159–NJ Penns Neck Area Transportation Service Improvements, Phase I Archeological Survey, US 1, Sections 2S and 3J, Funding, West Windsor and Princeton Townships, Mercer County, and Plainsboro Township, Middlesex County, NJ.

Summary: EPA's previous concerns have been resolved; therefore, EPA has no objection to the proposed action.

ERP No. FA–FTA–C40046–NY Erie Canal Harbor Project (formerly known as the Buffalo Inner Harbor Development Project) Updated Information on the Original Project, City of Buffalo, Erie County, NY.

Summary: EPA had no objection to the project.

ERP No. F1–FHW–F40356–WI US 10 Highway Improvements between Marshfield and Appleton, Trestik Road—CTH"K" (Stevens Point Bypass), Funding and COE Section 404 Permit, Portage County, WI.

Summary: EPA continues to express concern about wetlands mitigation and the need to provide additional cumulative impact analysis.

Dated: March 8, 2005.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 05–4873 Filed 3–10–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6661–3]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/*

Weekly receipt of Environmental Impact Statements

Filed February 28, 2005 Through March 4, 2005

Pursuant to 40 CFR 1506.9.

EIS No. 050083, Final EIS, NPS, VA, Petersburg National Battlefield General Management Plan, Implementation, Petersburg, VA, Wait Period Ends: April 11, 2005, Contact: Bob Kirby (804) 732–3571.

EIS No. 050084, Draft EIS, FRC, WA, Capacity Replacement Project, Construction and Operation of 79.5 miles Pipeline; Modify 5 Existing Compressor Stations, U.S. Army COE 10 and 404 Permits, Whatcom, Skagit, Snohomish, King, Pierce and Thurston Counties, WA, Comment Period Ends: April 25, 2005, Contact: Thomas Russo 1–866 208–3372.

EIS No. 050085, Final EIS, FRC, CA, Stanislaus Rivers Projects, Relicensing of Hydroelectric Projects: Spring Gap-Stanislaus FERC No. 2130; Beardsley/Donnells FERC No. 2005; Tulloch FERC No. 2067; and Donnells-Curtis Transmission Line FERC No. 2118, Tuolumne and Calaveras Counties, CA, Wait Period Ends: April 11, 2005, Contact: Susan O'Brien (202) 502–8449.

EIS No. 050086, Draft EIS, AFS, WY, Dean Project Area, Proposes to Implement Multiple Resource Management Actions, Black Hills National Forest, Bearlodge Ranger District, Sundance, Crook County, WA, Comment Period Ends: April 25, 2005, Contact: Steve Kozel (307) 283–1361.

EIS No. 050087, Draft Supplement, BLM, NV, Ruby Hill Mine Expansion—East Archimedes Project, Extension of Existing Open Pit, Expansion of Two Existing Waste Rock Disposal Areas, Plan-of-Operations Permit, Eureka County, NV, Comment Period Ends: April 25, 2005, Contact: Caleb Hiner (775) 635–4052.

EIS No. 050088, Final EIS, NOA, Reef Fish Fishery Management Plan (FMP) Amendment 23, To Set Vermilion Snapper Sustainable Fisheries Act Targets and Thresholds and to Establish a Plan to End Overfishing and Rebuild the Stock, Implementation, Gulf of Mexico, Wait Period Ends: April 11, 2005, Contact: Dr. Roy E. Crabtree (727) 570–5305.

EIS No. 050089, Draft EIS, FHW, CA, Los Banos Bypass Project, Construct from CA–152 in Merced County beginning near Volta Road west of Los Banos, bypassing Los Banos, ending near the Santa Fe Grade Road, U.S. Army COE Section 404 Permit, Merced County, CA, Comment Period Ends: May 6, 2005, Contact: Mahfoud Licha (916) 498–5866.

EIS No. 050090, Draft Supplement, IBR, CA, Battle Creek Salmon and Steelhead Restoration Project, To Address New Significant Information, Habitat Restoration in Battle Creek and Tributaries, License Amendment Issuance, Implementation, Tehama and Shasta Counties, CA, Comment Period Ends: April 25, 2005, Contact: Mary Marshall (916) 978–5248.

EIS No. 050091, Draft EIS, FRC, TX, LA, Golden Pass Liquefied Natural Gas (LNG) Import Terminal and Natural Gas Pipeline Facilities, Construction and Operation, Jefferson, Orange, Newton Counties, TX and Calcasieu Parish, LA, Comment Period Ends: April 25, 2005, Contact: Thomas Russo 1–866–208–3372.

EIS No. 050092, Final EIS, AFS, OR, Lemolo Watershed Projects, Updated and New Information concerning Recommendations Steamed from the Diamond Lake/Lemolo Lake Watershed Analysis, (WA), Implementation, Umpqua National Forest, Diamond Lake Ranger District, Douglas County, OR, Wait Period Ends: April 11, 2005, Contact: Rick Abbott (541) 498–2531.

EIS No. 050093, Draft EIS, NOA, CA, Monterey Accelerated Research Systems (MARS) Cabled Observatory,

Proposes to Install and Operate an Advanced Undersea Cabled Observatory, Monterey Bay, Pacific Ocean Offshore of Moss Landing, Monterey County, CA, Comment Period Ends: April 26, 2005, Contact: Deirdre Hall (831) 647–4207.

EIS No. 050094, Draft EIS, COE, WA, ID, Lower Snake River Navigation Maintenance, To Perform Routine Maintenance of the Federal Navigation Channel and Berthing Areas, Lower Snake and Clearwater Rivers, WA and ID, Comment Period Ends: April 25, 2005, Contact: Jack Sands (509) 527–7287. This document is available on the Internet at: *http://www.nww.usace.army.mil/channel_maint/one-year/default.htm.*

EIS No. 050095, Draft EIS, FTA, CA, Warm Springs Extension, Proposing 5.4 Mile Extension of the BART System in the City of Fremont, Funding, San Francisco Bay Area Rapid Transit District, Alameda County, CA, Comment Period Ends: April 25, 2005, Contact: Lorraine Lerman (415) 744–2735.

EIS No. 050096, Draft EIS, NRC, IL, Early Site Permit (ESP) at the Exelon ESP Site, Application for ESP on One Additional Nuclear Unit, within the Clinton Power Station (CPS), NUREG–1815, DeWitt County, IL, Comment Period Ends: April 25, 2005, Contact: Thomas Kenyon (301) 415–1120.

EIS No. 050097, Final EIS, FRC, TX, Cheniere Corpus Christi Liquefied Natural Gas (LNG) Project, To Provide Facilities for the Importation, Storage and Vaporization of Liquefied Natural Gas, Nueces and San Patricio Counties, TX, Wait Period Ends: April 11, 2005, Contact: Thomas Russo 1–866–208–3372.

EIS No. 050098, Final EIS, FAA, PA, Philadelphia International Airport Project, Proposed Runway 17–35 Extension Project, Funding, NPDES Permit and U.S. Army COE Section 404 Permit, Philadelphia, PA, Wait Period Ends: April 11, 2005, Contact: Susan McDonald (717) 730–2841. This document is available on the Internet at: *http://www.PHLrunway17–35eis.com*

Amended Notices

EIS No. 040544, Draft Supplement, FHW, UT, Legacy Parkway Project, Construction from I215 at 2100 North in Salt Lake City to I–15 and U.S. 89 near Farmington, Updated Information, Funding and US Army COE Section 404 Permit, Salt Lake and Davis Counties, UT, Comment Period Ends: March 21, 2005, Contact: Gregory Punske (801) 963–0182. Revision of the **Federal Register** Notice Published on 12/03/2005: CEQ Comment Period Ending on 3/4/2005 has been Extended to 3/21/2005.

EIS No. 050012, Draft EIS, IBR, CA, Central Valley Project Long-Term Water Service Contract Renewals—American River Division, Proposes to Renew Long-Term Water Service Contracts, Sacramento, Placer and El Dorado Counties, CA, Comment Period Ends: March 21, 2005, Contact: David Robinson (916) 989–7179. Revision of the **Federal Register** Notice Published on 1/21/2005: CEQ Comment Period Ending 3/7/2005 has been Extended to 3/21/2005.

EIS No. 050022, Draft EIS, AFS, WA, Methow Transmission Project, Construction of New Transmission Line or Reconstruction an Existing Line; Okanogan and Wenatchee National Forests, Methow Valley Ranger District, Okanogan County, WA, Due: March 31, 2005, Contact: Jan Flatten (509) 826–3277. Revision of the **Federal Register** Notice Published on 1/28/2005: CEQ Review Period Ending 3/15/2005 has been extended to 3/31/2005.

EIS No. 050071, Final EIS, FHW, MI, I–94/Rehabilitation Project, Transportation Improvements to a 6.7 mile portion of I–94 from east I–96 west end to Conner Avenue on the east end, Funding and NPDES Permit, City of Detroit, Wayne County, MI, Due: April 29, 2005, Contact: Adbelmoez Abdalla (517) 702–1820. Revision of the **Federal Register** Notice Published on 02/2/054: CEQ Comment Period Ending 3/28/2005 has been Extended to 4/29/2005.

Dated: March 8, 2005.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 05–4874 Filed 3–10–05; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE US

[Public Notice 73]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Export-Import Bank of the U.S.

ACTION: Notice and request for comments.

SUMMARY: The Export-Import Bank, as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments should be received on or before April 11, 2005, to be assured of consideration.

ADDRESSES: Direct all comments to David Rostker, Office of Management and Budget, Office of Information and Regulatory Affairs, NEOB Room 10202, Washington, DC 20503, (202) 395–3897.

SUPPLEMENTARY INFORMATION:

Titles and Form Numbers: Short-Term Multi-Buyer Export Credit Insurance Policy Application. EIB 92–50.

OMB Number: 3048–0009.

Type of Review: Revision of 1 of 7 forms in a currently approved collection. This review affects only the form noted above.

Need and Use: The information requested enables the applicant to provide Ex-Im Bank with the information necessary to obtain legislatively required assurance of repayment and fulfills other statutory requirements.

Affected Public: The form affects entities involved in the export of U.S. goods and services, including exporters, insurance brokers, and non-profit or state and local governments acting as facilitators.

Estimated Annual Responses: 500.

Estimated Time Per Respondent: ½ hour.

Estimated Annual Burden: 250.

Frequency of Reporting or Use: Applications submitted one time, renewals annually.

Dated: March 7, 2005.

Solomon Bush,

Agency Clearance Officer.

BILLING CODE 6690–01–M

EXPORT IMPORT BANK OF THE UNITED STATES

SHORT-TERM MULTI-BUYER EXPORT CREDIT INSURANCE POLICY APPLICATION

Applicant: _____ dba:_____
Address: _____
Phone: _____ Fax: _____ E-Mail: _____ Website: _____
Contact: _____ Title: _____ E-Mail: _____ Phone: _____
Brokerage:_____ Broker Contact:_____

(optional) Is the majority ownership of your business represented by ___ women or ___ an ethnic minority?

How did you learn about Ex-Im Bank? ___ Ex-Im Bank Regional Office ___Broker ___Bank ___ U.S. Export Assistance Center ___ Ex-Im Bank City/State Partner ___ Other (describe):_____

1. Primary reason for application: ☐ risk mitigation ☐ financing ☐ extend more competitive terms

2. Do you have a credit line with a financial institution (exclude overdraft protection and credit cards) ☐ YES ☐ NO

3. Do you have an SBA or Ex-Im Bank Working Capital Loan or are you applying for one? SBA ☐ YES ☐ NO EXIM ☐ YES ☐ NO

4. Total number of your employees and those at companies with whom you are affiliated: _____

5. Average total of annual export credit sales over the last two years for you and your affiliates:$_____

6. Do you wish to insure export credit sales made by your affiliates? (If yes, please refer to "additional named insured" eligibility criteria in question # 24. Answers to all remaining questions must include eligible affiliates you wish to add.)

7. Product and/or services to be exported & NAICS (if known): _____

8. Do you sell Capital Goods to foreign manufacturers or producers? ☐ YES ☐ NO (if yes, attach explanation)

9. Are the products to be covered under the policy:

- Manufactured or reconditioned in the U.S.? ☐Yes ☐No
- Made or reconditioned with more than 50% U.S. content? ☐Yes ☐No
- Shipped from the U.S.? ☐Yes ☐No
- Sold to Military entities or Security Forces? ☐No ☐Yes
- Used to support Nuclear Energy? ☐No ☐Yes
- Environmentally Beneficial? ☐Yes ☐No
- Supporting Renewable Energy? ☐Yes ☐No
- On the U.S. Munitions List? (part 121 of title 22 of the Code of Federal Regulations) ☐No ☐Yes

Note: Your buyers, their guarantors (if any), and end users of the products must be in countries where Ex-Im Bank is able to provide support, see Ex-Im's Country Limitation Schedule (CLS) at www.exim..gov . There may not be trade measures or sanctions against them under Section 201 Trade Act of 1974 . For a list of products and countries with Anti-Dumping or Countervailing Duty sanctions, see Anti-Dumping or Countervailing Sanctions).

10. Policy Payment Limit Requested: $_____ (maximum export credit receivables outstanding at any one time)

11. Buyer Types: ____% Manufacturers ____% Wholesalers/Traders ____% Retailers ____%Service Providers

12. Projected # of buyers to whom you will offer export credit terms:_____

Enter the percentage of export credit sales by payment and term type projected for the next twelve months:

Payment Type	Terms (# of days)							
	Sight	1-30	31-60	61-90	91-120	121-180	181-270	271-360
CAD/SDDP	___%							
Unconfirmed L/C	___%	___%	___%	___%	___%	___%	___%	___%
Open account/draft	___%	___%	___%	___%	___%	___%	___%	___%

13. Export Credit Portfolio (enter amounts for the next 12 months. If more than 9 countries, enter the balance in "all other").

Country	Export Credit Sales	Country	Export Credit Sales
	$		$
	$		$
	$		$
	$		$
	$	"all other countries"	$

15. Identify your three largest buyers:

Name	Country	Export Credit Sales (next 12 months)
_____	_____	$_____
_____	_____	$_____
_____	_____	$_____

16. Year you began: a) exporting? _____
b) exporting on credit terms (other than cash in advance or confirmed letters of credit)?_____

17. For the last three years what were your total export credit:
(include factored or insured receivables and attach any comments)

sales $_____
write-offs $_____
# of accounts written-off _____

18. Highest average amount of export receivables outstanding over the last twelve months: $_____

19. Total export receivables outstanding: $_____ at ___/___/___ (date should be within 30 days of the application)

$_____	$_____	$_____	$_____	$_____
current	1-60 days past due	61-90 days past due	91-180 days past due	> 180 days past due

20. Number of buyers past due more than 60 days for $10,000 or more: _____

21. For each buyer over 60 days past due for $10,000 or more, attach an explanation including name of buyer, country, amount past due, due date, and reason for past due.

22. Name(s) of export credit decision maker(s):	Title(s):	Years of Credit Experience	Years of Foreign Credit Exp.
_____	_____	_____	_____
_____	_____	_____	_____

23. Please submit the following as Attachments:
- Credit Report on your company dated within 6 months of the application or attach a check for $35 payable to Ex-Im Bank.
- Your financial statements for the two most recent completed fiscal years (with notes if available)
- Descriptive product brochures (if available).
- Other pertinent information you wish to include.

24. **Special Coverages** Required: If "none" check ☐ N/A

☐ **Add Additional Named Insureds (ANI's).** Credit decisions of each affiliate listed must be centralized with the Applicant and each affiliate must invoice export credit sales in their own name (or tradestyle); if either is not applicable, please attach an explanation. Questions 7-25 should include export sales of prospective ANI's.

Are the products of each affiliate the same as the applicant's products listed in question 4 of this application? ☐Yes ☐No

Affiliate Company/Trade style	Street Address/City / State / Country	NAICS Code	Relationship to Applicant

☐ **Services (Please attach a copy of your sample services contract)** Services must be: performed by U.S. based personnel or those temporarily domiciled overseas, and billed (invoiced) separately from any product sales.

☐ **Enhanced Assignment** of small business insurance policy proceeds. This is exporter performance risk protection that may be offered to lenders willing to finance Ex-Im Bank insured receivables. **Applicant Please Attach:**

- Written bank reference describing your relationship to date and size of existing credit line.
- 2 written trade references from principal commercial suppliers.
- For applications with policy limits over $500,000, financial statements must be audited or CPA reviewed with notes.

☐ **Other** (please specify):_____

_____

25. Please complete the **Exclusion Worksheet on page 5** to request coverage exclusion of any export credit sales.

CERTIFICATIONS

The Applicant (it) CERTIFIES and ACKNOWLEDGES to the Export-Import Bank of the United States (the Bank) that:

a) it is either organized, or registered to do **business, in the United States**.

b) it and each additional named insured applicant **has not entered into any contract of insurance** or indemnity in respect of any case of loss covered by the Export Credit Insurance Policy or Loss chargeable to a deductible under such Policy, and the applicant will not enter into any such contract of insurance or indemnity without the Bank's consent in writing.

c) neither it nor any of its principals is currently, nor has been within the preceding three years:

- debarred, suspended or declared ineligible from participating in any Covered Transaction or
- formally proposed for debarment, with a final determination still pending;
- voluntarily excluded from participation in a Covered Transaction; or
- indicted, convicted or had a civil judgment rendered against it

for any of the offenses listed in the Regulations governing Debarment and Suspension as defined in the Government Wide Nonprocurement Debarment and Suspension Regulations; Common Rule 53 Fed. Reg. 19204 (1988). It further certifies that it has not nor will it knowingly enter into any agreement in connection with this Policy with any individual or entity that has been subject to any of the above.

d) it is not delinquent on any amount due and owing to the U.S. Government, its agencies, or instrumentalities as of the date of this application.

e) it shall complete and submit standard form-LLL, "Disclosure Form to Report Lobbying" to the Bank (31 USC 1352), if any funds have been paid or will be paid to any person for influencing or attempting to influence i) an officer or employee of any agency, ii) a Member of Congress or a Member's employee, or iii) an officer or employee of Congress in connection with this Policy. This does not apply to insurance broker commissions paid by the Bank.

f) it has not, and will not, engage in any activity in connection with this Policy that is a violation of the **Foreign Corrupt Practices Act of 1977** (15 USC Sec. 78dd-1, et seq.) which provides for civil and criminal penalties against individuals who directly or indirectly make or facilitate corrupt payments to foreign officials to obtain or keep business. To the best of its knowledge, the performance by the parties of their respective obligations covered or to be covered under this Policy does not and will not violate any applicable law.

g) transfer of financial records included in this application to private parties or another U.S. Government authority will not be authorized except as permitted under the **Right of Financial Privacy Act of 1978** (12 USC 3401).

h) the information is being requested under the authority of the **Export-Import Bank Act of 1945** (12 USC 635 et. seq.); disclosure of this information is mandatory **and failure to provide the requested information may** result in the Bank being unable to determine eligibility for the Policy. The information collected will be analyzed to determine the ability of the participants to perform and pay under the Policy. The Bank may not require the information, and applicants are not required to respond, unless a currently valid OMB control number is displayed on this form. The information collected will be held confidential subject to the **Freedom of Information Act** (5 USC 552) and the **Privacy Act of 1974** (5 USC 552a), except as required to be disclosed pursuant to applicable law. **The public burden** reporting for this collection of information is estimated to average 1 hour per response, including time for reviewing instructions, searching existing data sources, gathering the data needed, and completing and reviewing the collection of information. Send **comments** regarding the burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden, to Office of Management and Budget, Paperwork Reduction Project OMB# 3048-0009, Washington, D.C. 20503.

i) the representations made and the facts stated in the application for said Policy are true, to the best of it's knowledge and belief, and it has not misrepresented or omitted any material facts relevant to said representations. It agrees that this application shall form a part of the Policy, if issued, and the truth of the representations and facts, and performance of every undertaking in this application shall be a condition precedent to any coverage under such Policy. It further understands that this certification is subject to the penalties for fraud against The U.S. Government (18 USC 1001).

(Signature) (Print Name and Title) (Date)

SMALL BUSINESS POLICIES APPLICANT CERTIFICATION

"We are an entity which together with our affiliates had average annual export credit sales during our preceding two fiscal years not exceeding $5,000,000, excluding sales made on terms of confirmed irrevocable letters of credit (CILC) or cash in advance (CIA)."

(Signature)

NOTICES

The applicant is hereby notified that information requested by this application is done so under authority of the **Export-Import Bank Act of 1945**, as amended (12 USC 635 et. seq.); provision of this information is mandatory and failure to provide the requested information may result in Ex-Im Bank being unable to determine eligibility for support. The information provided will be reviewed to determine the participants' ability to perform and pay under the transaction referenced in this application. Ex-Im Bank may not require the information and applicants are not required to provide information requested in this application unless a currently valid OMB control number is displayed on this form (see upper right of each page).

Public Burden Statement: Reporting for this collection of information is estimated to average 1 hour per response, including reviewing instructions, searching data sources, gathering information, completing, and reviewing the application. Send comments regarding the burden estimate, including suggestions for reducing it, to Office of Management and Budget, Paperwork Reduction Project OMB# 3048-0009, Washington, D.C. 20503.

The information provided will be held confidential subject to the **Freedom of Information Act** (5 USC 552) the **Privacy Act of 1974** (5 USC 552a), and the **Right to Financial Privacy Act of 1978** (12 USC 3401), except as otherwise required by law. Note that the Right to Financial Privacy Act of 1978 provides that Ex-Im Bank may transfer financial records included in an application for an insurance policy, or concerning a previously approved insurance policy, to another Government authority as necessary to process, service or foreclose on an insurance policy, or collect on a defaulted insurance policy.

Send, or ask your insurance broker or city/state participant to review and send this application to the Ex-Im Bank Regional Office nearest you. Please refer to Ex-Im Bank's website at http://www.exim.gov for Regional Office addresses. Alternatively, email your application and attachments to Ex-Im Bank at exim.applications@exim.gov, or fax it to (202) 565-3675.

Ex-Im Bank reserves the right to request additional information upon review of the application. Please refer to Ex-Im Bank's Short Term Credit Standards (EIB 99-09) to determine the likelihood of approval of a policy.

MULTIBUYER POLICY: EXCLUSIONS WORKSHEET

Instructions:

- Select and list the sales you wish to exclude. Add additional pages, if needed.
- Sign the certification.
- "Non-Standard" Exclusions must be Ex-Im Bank authorized, and are available only for multibuyer policies with deductibles.
- All endorsed exclusions are locked-in for the policy period.
- Premiums must be paid on all "Reportable Transactions" as required by the insurance policy except for the endorsed exclusions.

STANDARD EXCLUSIONS

☐ Unconfirmed Irrevocable Letters of Credit
☐ Sales to Subsidiaries and Affiliates
☐ Any Invoice of $10,000 or less
☐ Payments at Sight (SDDP or CAD)
☐ Sales to Canada
☐ None requested

NON-STANDARD EXCLUSIONS

(for Reasonable Spread of Risk "RSOR" Multibuyer policies) ☐ Not Requested

Instructions: Please provide the complete information for each desired exclusion category.

☐ **A. Sales to "Top Corporates" (Companies with revenues > $100,000,000):**

Buyer Name	City/Country	Total Annual Credit Sales	Payment Terms

☐ **B. Sales to "Prime Customers" (they paid you prompt <0-60 slow> for three consecutive years):**

Buyer Name	City/Country	Total Annual Credit Sales	Payment Terms

☐ **C. Exclude all sales to country (ies):**

Country	Total Annual Credit Sales

CERTIFICATIONS

The representations made and the facts stated in this worksheet for the endorsement of sales exclusions are true, to the best of my knowledge and belief, and I have not misrepresented or omitted any material facts relevant to said representations. It is agreed that this worksheet shall form a part of the Policy, if issued, and the truth of the representations and facts, and performance of every undertaking in this worksheet shall be a condition precedent to any coverage under such Policy. I further understand that this certification is subject to the penalties for fraud against The U.S. Government (18 USC 1001).

(Applicant) (Print Name and Title)

(Broker) (Signature) (Date)

[FR Doc. 05–4765 Filed 3–10–05; 8:45 am]
BILLING CODE 6690–01–C

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 25, 2005.

A.Federal Reserve Bank of Atlanta (Andre Anderson, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Financial Corporation of Louisiana Employee Stock Ownership Plan and Argent Trust, Crowley, Louisiana; to acquire voting shares of Financial Corporation of Louisiana, Crowley, Louisiana, and thereby indirectly acquire voting shares of First National Bank of Louisiana, Crowley, Louisiana, and Rayne State Bank & Trust Company, Rayne, Louisiana.

B. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. David Buford, Stephen Buford, Sam Buford, Ernest Dillard, Sheila Dillard, Aaron Dillard, and Hannah Dillard, all of Tulsa, Oklahoma; Sharon Linsenmeyer, Beatrice, Nebraska; and Sarah Dillard, Tampa, Florida; to acquire voting shares of Healthcare Bancorp, Inc., and thereby indirectly acquire voting shares of First BankCentre, both of Broken Arrow, Oklahoma.

Board of Governors of the Federal Reserve System, March 7, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–4788 Filed 3–10–05; 8:45 am]
BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 4, 2005.

A. Federal Reserve Bank of San Francisco (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105-1579:

1. Pacific Coast National Bancorp, San Clemente, California; to become a bank holding company by acquiring 100 percent of the voting shares of Pacific Coast National Bank, San Clemente, California (in organization).

Board of Governors of the Federal Reserve System, March 7, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–4787 Filed 3–10–05; 8:45 am]
BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS–0990–New]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New Collection, Regular.

Title of Information Collection: Prevention Communication Formative Research.

Form/OMB No.: OS–0990–New.

Use: This information will be used as formative research to develop messages and materials in support of the development of disease prevention and health promotion information, including the 2005 Dietary Guidelines. It is necessary to obtain consumer input to better understand the information needs, attitudes and beliefs of the audience in order to tailor messages, as well as to assist with clarity, understandability and acceptace of prototyped messages and materials. This generic clearance request describes data collection activities involving a limited set of consumer interviews, focus groups, Web concept testing, and usability and effects testing of prevention content.

Frequency: Reporting and on occasion.

Affected Public: Individuals or households.

Annual Number of Respondents: 1,742.

Total Annual Responses: 1,742.

Average Burden Per Response: 2.4.

Total Annual Hours: 4,200.

To obtain copies of the supporting statement and any related forms for the

proposed paperwork collections referenced above, access the HHS Web site address at *http://www.hhs.gov/oirm/infocollect/pending/* or e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *naomi.cook@hhs.gov* , or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the Desk Officer at the address below: OMB Desk Officer: John Kraemer, OMB Human Resources and Housing Branch, Attention: (OMB #0990–NEW), New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: March 4, 2005.

Robert E. Polson,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 05–4778 Filed 3–10–05; 8:45 am]

BILLING CODE 4168–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–05–0424X]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 371–5976 or send an e-mail to *omb@cdc.gov*. Send written comments to CDC Desk Officer, Human Resources and Housing Branch by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

Evaluating Tools for Health Promotion and Disease Prevention—New—Office of Genomics and Disease Prevention (OGDP), Centers for Disease Control and Prevention (CDC).

Background

Although family history is a risk factor for most chronic diseases of public health significance, it is underutilized in the practice of preventive medicine and public health for assessing disease risk and influencing early detection and prevention strategies. It has been known for years that people who have close relatives with certain diseases (such as heart disease, diabetes, and cancers), are more likely to develop those diseases themselves. Geneticists have long recognized the value of family history for discovering inherited disorders, usually the result of single gene mutations. Although single gene disorders are typically associated with a large magnitude of risk, they account for a small proportion of individuals with a genetic risk for common, chronic diseases. Most of the genetic susceptibility to these disorders is the result of multiple genes interacting with multiple environmental factors. Family history is more than genetics; it reflects the consequences of inherited genetic susceptibilities, shared environment, shared cultures and common behaviors. All of these factors are important when estimating disease risk. In early 2002, the CDC Office of Genomics and Disease Prevention (OGDP) in collaboration with several CDC programs and NIH institutes began an initiative to develop a family history tool for identifying apparently healthy people who may be at increased risk for a number of common diseases. The major activities of this initiative have included: (1) Reviews of the literature for approximately 25 diseases; (2) assessments of family history tools currently in use or under development; (3) a meeting of experts to provide input into the process; (4) development of criteria for determining which diseases to include in the tool; (5) development of a framework for evaluating a family history tool and the development of a tool.

As a result of this initiative, a personal computer-based familial risk assessment tool was developed to be used as a public health strategy to improve health and prevent disease. The assessment tool is called, "Family Healthware." This tool will be used to collect information about the disease history of a person's first- and second-degree relatives (mother, father, children, siblings, grandparents, aunts, and uncles), use family history information to assess risk for common diseases of adulthood, and influence early detection and prevention strategies. The current version of the tool focuses on six diseases—heart disease, stroke, diabetes, and colorectal, breast, and ovarian cancers.

The proposed project is a study to evaluate the clinical utility of the "Family Healthware" tool by determining whether family history risk assessment, stratification, and personalized prevention messages have any impact on health behaviors, and use of medical services. In 2003, CDC awarded funding to three research centers to collaborate on a study set in primary care clinics to assess the clinical utility of the family history tool. Eligibility for the study will be determined by a brief screening test completed by patients from the primary care clinic. It is anticipated that only a small number will be ineligible to continue since the majority of patients will be pre-screened for eligibility based on a medical record review prior to the screening test.

The primary care clinics affiliated with the three research centers will be randomized into two groups. Patients participating in the study will all complete the pre-test, post-test and family history tool, however, the order in which they do so is dependent upon the group to which they are randomized. In the intervention group, patients attending the primary care clinics will be asked to complete the family history tool and a pre-test that includes an assessment of risk factors, preventive behaviors, use of medical services, and perception of risk. The patients will be provided with an assessment of their familial risk (average, above average, much above average) for each of the six diseases and information about preventive measures (e.g., diet, exercise, screening tests) that is tailored to their level of familial risk for each of the six diseases. After 6 months, the patients will be asked to complete a post-test that assesses their risk factors, use of medical services, interest in modifying health behaviors, and changes in risk perception. In the control group, patients will initially complete the pre-test only (not the family history tool) and will be given standard public health messages about preventing the six diseases of interest (messages will not be tailored to risk level). After 6 months, the patients in the control group will also complete the post-test and the family history tool. Physicians will complete a post-visit assessment if they have a visit with a participating patient during the course of the study.

The purpose of having patients in the control group complete the family history tool post intervention is so that the analysis can be stratified by familial risk level in both patient groups. The hypothesis to be tested in this study is that patients who are provided with personalized prevention messages based on an assessment of their family history of disease will be more motivated to make behavior changes and use preventive health services. There is no cost to respondents participating in this

study other than their time. The estimated annualized burden is 5,922 hours.

ANNUALIZED BURDEN TABLE

Type of respondents	Number of respondents	Type of response	Frequency of response	Average time per response (in hrs)
Patients	4180	Screening	1	2/60
		Questionnaire (pre-test and post-test)	2	30/60
		Family Healthware™ Tool	1	20/60
Physicians	140	Post Visit Assessment	30	3/60

Dated: March 7, 2005.

Betsey Dunaway,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 05–4803 Filed 3–10–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control; Special Emphasis Panel: Grants for Education Programs in Occupational Safety and Health, Request for Applications (RFA) OH–05–001

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Grants for Education Programs in Occupational Safety and Health, Request for Applications (RFA) OH–05–001.

Times and Dates: 8 a.m.–6 p.m., March 28, 2005 (Closed).

Place: Embassy Suites Hotels, 1900 Diagonal Road, Alexandria, VA 23114, telephone 703.684.5900.

Status: The meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Request for Applications OH–05–001.

For Further Information Contact: S. Price Connor, Ph.D., Scientific Review Administrator, Office of Extramural Programs, National Institute for Occupational Safety and Health, CDC, 1600 Clifton Road, NE, MS–E74, Atlanta, GA 30333, Telephone 404–498–2530.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: March 4, 2005.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 05–4808 Filed 3–10–05; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for Environmental Health/Agency for Toxic Substances and Disease Registry

The Program Peer Review Subcommittee of the Board of Scientific Counselors (BSC), National Center for Environmental Health (NCEH)/Agency for Toxic Substances and Disease Registry (ATSDR): Teleconference

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), NCEH/ATSDR announces the following subcommittee meeting:

Name: Program Peer Review Subcommittee (PPRS).

Time and Date: 12:30 p.m.–2 p.m., April 4, 2005.

Place: The teleconference will originate at the National Center for Environmental Health/Agency for Toxic Substances and Disease Registry in Atlanta, Georgia. Please see **Supplementary Information** for details on accessing the teleconference.

Status: Open to the public, teleconference access limited only by availability of telephone ports.

Purpose: Under the charge of the Board of Scientific counselors (BSC), NCEH/ATSDR, the Program Peer Review Subcommittee establishes and monitors working groups of technical experts that perform program peer reviews of NCEH and ATSDR. The Subcommittee, working with the NCEH/ATSDR, Office of Sciences (OS), will establish the schedule and process for program peer reviews, nominate working group members, review summary reports and recommendations, and report back to the Board. The OS will establish agency policy for program peer review and directly support each working group by collating program documents, and organizing the working groups review and site visit. Each NCEH/ATSDR program eligible for review will be reviewed every 5 years according to CDC/ATSDR policy.

Matters To Be Discussed: The teleconference agenda will include a review of action items from the previous meeting, discussion and updates on the program peer review process, and the draft outline of a generic self-assessment process.

Agenda items are tentative and subject to change as priorities changes.

Supplementary Information: This conference call is scheduled to begin at 12:30 p.m. Eastern Standard Time. To participate in the teleconference, please dial (877) 315–6535 and enter conference code 383520.

For Further Information Contact: Drue Barrett, Ph.D., Executive Secretary, PRRS, NCEH/ATSDR, M/S E–28, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone 404 498–0003.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and ATSDR.

Dated: March 4, 2005.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 05–4806 Filed 3–10–05; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–R–211, CMS–R–306, CMS–R–185, and CMS–R–238]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the

Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; Title of Information Collection: Model Application Template for State Child Health Plan Under Title XXI of the Social Security Act, State Children's Health Insurance Program, and Model Application Template and Instructions; *Use:* States are required to submit Title XXI plans and amendments for approval by the Secretary pursuant to Section 2102 of the Social Security Act in order to receive funds for initiating and expanding health insurance coverage for uninsured children. The model application template is used to assist States in submitting a State Child Health Plan and amendments to that plan; *Form Number:* CMS–R–211 (OMB#: 0938–0707); *Frequency:* Quarterly and annually; *Affected Public:* State, local or tribal government; *Number of Respondents:* 40; *Total Annual Responses:* 40; *Total Annual Hours:* 3,200.

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Restraint and Seclusion Standards for Psychiatric Residential Treatment Facilities; *Use:* Psychiatric residential treatment facilities are required to report deaths, serious injuries and attempted suicides to State Medicaid Agency and Protection and Advocacy Organization. They are also required to provide residents restraint and seclusion policy in writing, and to document resident record of all activities involving use of restraint and seclusion. *Form Number:* CMS–R–306 (OMB#: 0938–0833); *Frequency:* On occasion; *Affected Public:* Business or other for-profit and not-for-profit institutions; *Number of Respondents:* 500; *Total Annual Responses:* 1,199,000; *Total Annual Hours:* 713,250.

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Granting and Withdrawal of Deeming Authority to Private Nonprofit Accreditation Organizations and of State Exemption Under State Laboratory Program and Supporting Regulations in 42 CFR 493.551–493.557; *Use:* The information required is necessary to determine whether a private accreditation organization's or State licensure program's standards and accreditation/licensure process is equal to or more stringent than those of CLIA; *Form Number:* CMS–R–185 (OMB#: 0938–0686); *Frequency:* As needed; *Affected Public:* Not-for-profit institutions, business or other for-profit, and State, local or tribal government; *Number of Respondents:* 8; *Total Annual Responses:* 76; *Total Annual Hours:* 768.

4. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Inpatient Psychiatric Services for Individuals Under Age 21 and Supporting Regulations in 42 CFR 441.151 and 441.152; *Use:* Certification requirements in Section 441.152 require that the certification of need for inpatient psychiatric services include documented clinical evidence that serves as the basis for the certification of need for inpatient psychiatric care. Section 1905(h)(1)(B) requires physicians and other personnel qualified to make determinations, with respect to mental health conditions and the treatment thereof, certify the need for care which they have determined to be necessary on an inpatient basis; *Form Number:* CMS–R–238 (OMB#: 0938–0754); *Frequency:* Recordkeeping; *Affected Public:* State, local or tribal government, not-for-profit institutions and business or other for-profit; *Number of Respondents:* 80,000; *Total Annual Responses:* 80,000; *Total Annual Hours:* 1.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://www.cms.hhs.gov/regulations/pra/*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office on (410) 786–1326.

Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Christopher Martin, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: March 4, 2005.

John P. Burke, III,

CMS Paperwork Reduction Act Reports Clearance Officer, Office of Strategic Operations and Regulatory Affairs, Regulations Development Group.

[FR Doc. 05–4886 Filed 3–10–05; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10143, CMS–R–295, CMS–R–79, and CMS–R–10]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Monthly State File of Medicaid/Medicare Dual Eligible Enrollees and Supporting Regulations in 42 CFR 423.900 through 423.910; *Use:* The monthly file of dual eligible enrollees will be used to determine those duals with drug benefits for the phased-down State contribution process required by the Medicare Modernization Act of 2003 (MMA). Section 103(a)(2) of the MMA addresses the phased-down State contribution (PDSC) process for the Medicare program. The reporting of the Medicare/Medicaid dual eligibles on

a monthly basis is necessary to implement those provisions, and to Support Part D subsidy determinations and auto-assignment of individuals to Part D plans. The PDSC is a partial recoupment from the States of ongoing Medicaid drug costs for dual eligibles assumed by Medicare under MMA, which absent the MMA would have been paid for by the States; *Form Number:* CMS–10143 (OMB#: 0938–NEW); *Frequency:* Recordkeeping and Monthly reporting; *Affected Public:* State, Local or Tribal Government; *Number of Respondents:* 51; *Total Annual Responses:* 612; *Total Annual Hours:* 10,710.

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare CAHPS Disenrollment Surveys and Supporting Regulations in 42 CFR 417.126, 417.470, 422.64, and 422.210; *Use:* This survey helps Medicare track a variety of consumer satisfaction measures relating to Medicare beneficiaries who leave their MA plans. The Centers for Medicare & Medicaid Services (CMS) has a responsibility to its Medicare beneficiaries to require that care provided by managed care organizations under contract to CMS is of high quality. One way of ensuring high quality care is through the development of performance measures and standardized satisfaction surveys that enable CMS to gather the data needed to evaluate the care provided to Medicare beneficiaries; *Form Number:* CMS–R–295 (OMB#: 0938–0779); *Frequency:* Quarterly; *Affected Public:* Individuals or Households; *Number of Respondents:* 44,200; *Total Annual Responses:* 41,697; *Total Annual hours:* 17,823.

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Payment Adjustment for Sole Community Hospitals and Supporting Regulations in 42 CFR 412.92; Form No.: CMS–R–79 (OMB# 0938–0477); Use: This collection provides that if a hospital that is classified as a sole community hospital (SCH) experiences, due to circumstances beyond its control, a decrease of more than 5 percent in its total number of discharges compared to the immediately preceding cost reporting period, the hospital may apply for a payment adjustment. To qualify for this adjustment to its payment rate an SCH must submit documentation, including cost information as requested by CMS, to the intermediary; *Frequency:* On occasion; *Affected Public:* Not-for-profit institutions, Business or other for-profit, and State, Local or Tribal Government; *Number of Respondents:* 40; Total Annual Responses: 40; Total Annual Hours: 160.

4. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Information Collection Requirements Contained in BPD–718: Advance Directives (Medicare and Medicaid) and Supporting Regulations in 42 CFR 417.436, 417.801, 422.128, 430.12, 431.20, 431.107, 438.6, 440.170, 483.10, 484.10, and 489.102; Form No.: CMS–R–10 (OMB# 0938–0610); Use: Steps have been taken at both the Federal and State level, to afford greater opportunity for the individual to participate in decisions made concerning the medical treatment to be received by an adult patient in the event that the patient is unable to communicate to others, a preference about medical treatment. The individual may make his preference known through the use of an advance directive, which is a written instruction prepared in advance, such as a living will or durable power of attorney. This information is documented in a prominent part of the individual's medical record. Advance directives as described in the Patient Self-Determination Act (enacted in 1991) have increased the individual's control over decisions concerning medical treatment. The advance directives requirement was enacted because Congress wanted individuals to know that they have a right to make health care decisions and to refuse treatment even when they are unable to communicate.; *Frequency:* On occasion; *Affected Public:* Business or other for-profit; *Number of Respondents:* 33,096; *Total Annual Responses:* 33,096; *Total Annual Hours:* 924,120.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS" Web Site address at *http://www.cms.hhs.gov/regulations/pra/*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office on (410) 786–1326.

Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Reduction Act Reports Clearance Officer designated at the addressbelow:

CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Melissa Musotto, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: March 4, 2005.

John P. Burke, III,

CMS Paperwork Reduction Act Reports Clearance Officer, Office of Strategic Operations and Regulatory Affairs, Regulations Development Group.

[FR Doc. 05–4887 Filed 3–10–05; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with the requirement for the opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer at (301) 443–1129.

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 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.

Proposed Project: Evaluation of Universal Newborn Hearing Screening and Intervention Program—(NEW)

The purpose of the universal newborn hearing screening and intervention evaluation project is to describe the efficacy, or lack thereof, of a national program to assure that all newborn infants are screened for hearing loss before discharge from the newborn nursery, and that those infants who do not pass the initial screening procedures have timely and appropriate follow-up,

defined as audiologic diagnosis by three months of age and enrollment in a program of early intervention before 6 months of age. Program goals of linking every child with a known or suspected hearing loss with a medical home, that is a provider of continuous and comprehensive primary pediatric care, and linkage of families of infants with a hearing loss to a source of family to family support will also be assessed. In addition to a survey tool to be administered in all States, additional data will be collected during site visits to 10–12 selected States. Results of the evaluation will include recommendations to the program office for further assisting the States in fully accomplishing program goals.

Form	Number of respondents	Responses per respondent	Total responses	Minutes per response	Total burden hours
Telephone interviews	57 States and Jurisdictions	1	57	30	28.5
Site Visits	12 States/Jurisdictions	Up to 6	72	60	72.0

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–45, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 day of this notice.

Dated: March 3, 2005.

Tina M. Cheatham,

Director, Division of Policy Review and Coordination.

[FR Doc. 05–4876 Filed 3–10–05; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Clinical Center; 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 NIH Advisory Board for Clinical Research.

The meeting 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: NIH Advisory Board for Clinical Research.

Date: March 28, 2005.

Time: 10 a.m. to 2 p.m.

Agenda: To review proposed 2006 Clinical Center budget.

Place: National Institutes of Health, Building 10, 10 Center Drive, CRC Medical Board, 4–2551, Bethesda, MD 20892.

Contact Person: Maureen E. Gormley, Executive Secretary, Warren Grant Magnuson Clinical Center, National Institutes of Health, Building 10, Room 6–1610, Bethesda, MD 20892. 301/496–2897.

Dated: March 4, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–4867 Filed 3–10–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The 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 Human Genome Research Institute Special Emphasis Panel, Genomic Database.

Date: March 21, 2005.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Ken D. Nakamura, PhD, Scientific Review Administrator, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892. (301) 402–0838.

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. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: March 4, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–4862 Filed 3–10–05; 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 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 Child Health and Human Development Special Emphasis Panel, National Children's Center—Coordinating Center.

Date: April 4, 2005.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Haineed Khan, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892. (301) 435–6902. *khanh@mail.nih.gov.*

(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: March 4, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–4852 Filed 3–10–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of 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 General Medical Sciences Special Emphasis Panel, Review of Anesthesiology Program Project Grant Applications.

Date: April 3–4, 2005.

Time: 8 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Helen R. Sunshine, PhD, Chief, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN12F, Bethesda, MD 20892. 301–594–2881. *sunshinh@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: March 4, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–4853 Filed 3–10–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; 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 of 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 on Aging Special Emphasis Panel, Testosterone Studies.

Date: March 15, 2005.

Time: 10 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Ave., 2C212, Bethesda, MD 20892. (Telephone conference call).

Contact Person: Ramesh Vemuri, PhD, Health Scientist Administrator, Scientific Review Office, National Institute on Aging, National Institutes of Health, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892. 301–402–7700. *rv23r@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 on Aging Special Emphasis Panel, Behavioral Economics.

Date: March 21–22, 2005.

Time: 6 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Alfonsor R. Latoni, PhD, Scientific Review Administrator, Scientific Review Office, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Room 2C212, Bethesda, MD 20892. 301–496–9666. *latonia@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. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: March 4, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–4857 Filed 3–10–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; 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 Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Small Grants in Nutrition.

Date: March 23, 2005.

Time: 4 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892. (Telephone conference call).

Contact Person: Maria E. Davila-Bloom, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 758, 6707 Democracy Boulevard, Bethesda, MD 20892–5452. (301) 594–7637. *davila-bloomm@extra.niddk.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 Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Chronic Renal Insufficiency.

Date: April 5, 2005.

Time: 4 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892. (Telephone conference call).

Contact Person: Michael W. Edwards, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 750, 6707 Democracy Boulevard, Bethesda, MD 20892–5452. (301) 594–8886. *edwardsm@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology

and Hematology Research, National Institutes of Health, HHS)

Dated: March 4, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–4858 Filed 3–10–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases in 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 Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Liver Failure.

Date: March 25, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Barbara A. Woynarowska, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 754, 6707 Democracy Boulevard, Bethesda, MD 20892–5452. 301–402–7172. *woynarowskab@niddk.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. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: March 4, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–4859 Filed 3–10–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of General Medical Sciences Special Emphasis Panel, March 14, 2005, 8 a.m. to March 15, 2005, 5 p.m., Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817 which was published in the **Federal Register** on February 18, 2005, 70 FR 8394.

The meeting dates and times have not changed. However, the panel name has been changed from Small Scale Centers for the Protein Structure Initiative to Specialized Centers for the Protein Structure Initiative. The meeting is closed to the public.

Dated: March 4, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–4860 Filed 3–10–05; 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, Genotypic and Phenotypic Heterogeneity in Dyslexia.

Date: April 1, 2005.

Time: 8 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Norman Chang, PhD, Scientific Review Administrator, Division of Scientific Review, National Institutes of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892. (301) 496–1485. *changn@mail.nih.gov.*

(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: March 4, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–4861 Filed 3–10–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of 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 propoerty 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 General Medical Sciences Special Emphasis Panel, Minority Biomedical Research Support SCORE and RISE.

Date: March 23, 2005.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Helen R. Sunshine, PhD, Chief, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN12F, Bethesda, MD 20892. 301–594–2881. *sunshinh@nigms.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. 93.375, Minority Biomedical

Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: March 4, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–4863 Filed 3–10–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; 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 on Drug Abuse Special Emphasis Panel, Program Project.

Date: March 24, 2005.

Time: 1:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852. (Telephone conference call.)

Contact Person: Mark Swieter, PhD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6101 Executive Boulevard, Suite 220, Bethesda, MD 20892–8401. (301) 435–1389. *ms80x@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. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: March 4, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–4865 Filed 3–10–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; 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 on Drug Abuse Special Emphasis Panel, Statistical Analysis in Support of DPMC's Clinical Trials.

Date: March 15, 2005.

Time: 9 a.m. to 4:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Eric Zatman, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401. (301) 435–1438.

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. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: March 4, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–4866 Filed 3–10–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institute of Health; 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 Advisory Committee on Research on Women's Health.

The meeting 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: Advisory Committee on Research on Women's Health.

Date: April 4, 2005.

Time: 9 a.m. to 5:30 p.m.

Agenda: Provide advice to the Office of Research on Women's Health (ORWH) on appropriate research activities with respect to women's health and related studies to be undertaken by the national research institutes; to provide recommendations regarding ORWH activities; to meet the mandates of the offices, and for discussion of scientific issues.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Contact Person: Joyce Rudick, Director, Programs & Management, Office of Research on Women's Health, Office of the Director, National Institutes of Health, Building 1, Room 201, Bethesda, MD 20892. 301/402–1770.

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://www4.od.nih.gov/orwh/*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from

Disadvantaged Backgrounds, National Institutes of Health, HHS)

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–4864 Filed 3–10–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, March 14, 2005, 10 a.m. to March 14, 2005, 12 p.m., Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD, 20814 which was published in the **Federal Register** on February 22, 2005, 70 FR 8597–8599.

The meeting will be held at the Holiday Inn Select Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814. The meeting date and time remain the same. The meeting is closed to the public.

Dated: March 4, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–4854 Filed 3–10–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, March 16, 2005, 8 a.m. to March 16, 2005, 6 p.m., Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814 which was published in the **Federal Register** on February 24, 2005, 70 FR 9089–9092.

The meetings will be held at the Holiday Inn Select Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814. The meeting date and time remain the same. The meeting is closed to the public.

Dated: March 4, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–4855 Filed 3–10–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Molecular Bacteriology.

Date: March 25, 2005.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Robert Freund, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3200, MSC 7848, Bethesda, MD 20892. 301–435–1050. *freundr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Myeloid Leukemia.

Date: March 28, 2005.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Eva Petrakova, PhD, MPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6158, MSC 7804, Bethesda, MD 20892. 301–435–1716. *petrakoe@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Ear Study Section.

Date: April 4, 2005.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Joseph Kimm, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5178, MSC 7844, Bethesda, MD 20892. (301) 435–1249. *kimmj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Molecular, Cellular, Neuro Tech SBIR.

Date: April 7, 2005.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Jury Washington Hotel, 1500 New Hampshire Avenue, NW., Washington, DC 20038.

Contact Person: Michael A Long, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7850, Bethesda, MD 20892. (301) 435–1265. *langm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflicts: Molecular Basis of Alcohol Effects.

Date: April 7, 2005.

Time: 11:30 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Christine L. Melchior, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892. 301–435–1713. melchioc@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Hematology Bioengineering.

Date: April 8, 2005.

Time: 9 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Delia Tang, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4126, MSC 7802, Bethesda, MD 20892. 301–435–2506. *tangd@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Liver Proteome in Schistosomiasis.

Date: April 8, 2005.

Time: 12 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Joseph D. Mosca, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7808, Bethesda, MD 20892. (301) 435–2344. *moscajos@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Redox Regulation of Endothelial Phenotypes.

Date: April 11, 2005.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Ai-Ping Zou, PhD, MD, Scientific Review Administrator, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7814, Bethesda, MD 20892. 301–435–1777. *zouai@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Bioengineering—Respiratory Diseases.

Date: April 11, 2005.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Everett E. Sinnett, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2178, MSC 7818, Bethesda, MD 20892. 301–435–1016. *sinnett@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cardiovascular Informatics and Computational Research.

Date: April 14, 2005.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Rajiv Kumar, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4122, MSC 7802, Bethesda, MD 20892. 301–435–1212. *kumarra@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Nursing Science Children and Families.

Date: April 15, 2005.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Gertrude K. McFarland, FAAN, RN, DNSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3156, MSC 7770, Bethesda, MD 20892. 301–435–1784. *mcfarlag@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 4, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–4856 Filed 3–10–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, U.S. Department of Homeland Security.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a proposed new information collection. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning FEMA's Web site usability study to identify visitors' information needs, usage patterns, preferences, ease of use, and overall satisfaction.

SUPPLEMENTARY INFORMATION: This proposed information collection is supported by various regulations, legislation and presidential mandates requiring government agencies to build citizen-centered websites, including Section 4 of the President's Management Agenda, the E-Government Act of 2002, and the Recommended Policies and Guidelines for Federal Public Web sites submitted to the Office of Management and Budget (OMB) by the Interagency Committee on Government Information. All of these authorities stipulate that federal agencies develop and administer their electronic capabilities based on customer needs and formulate IT performance criteria consistent with a more responsive and cost-effective government. Furthermore, the E-Government Act further outlines specific mandates for disaster activities, including that: "The Federal Emergency Management Agency, shall initiate pilot projects that further the goal of maximizing the utility of information technology in disaster management." This collection attempts to better understand FEMA's website visitors' information and transactional needs and their overall experience navigating the site. Findings will assist program managers to enhance the website's appearance, content, and ease of use in order to improve its ability to better serve the public.

Collection of Information

Title: FEMA's Website Usability Study.

Type of Information Collection: New Collection.

OMB Number: 1660–NEW16.

Form Numbers: None.

Abstract: The FEMA's Web site Usability Study will collect information on visitors' information and transactional needs, usage patterns and preferences, and overall satisfaction with the navigational experience. Study findings, combined with other website-related internal agency data, will be used to assist managers to redesign the Web site and enhance its utility to the public.

Affected Public: Individuals, Businesses, and Not-for-Profit Organizations.

Estimated Total Annual Burden Hours: 15,360.

ANNUAL BURDEN HOURS

Project/activity (survey, form(s), focus group, etc.)	Number of respondents (A)	Frequency of respones (B)	Burden hours per respondent (C)	Annual responses (A×B)	Total annual burdenhours (A×B×C)
Online Survey	192,000	1	0.08	192,000	15,360
Total	192,000	1	0.08	192,000	15,360

Estimated Cost: $16,742.00 (All Respondents) or $1.09 per respondent.

Comments: Written comments are solicited to (a) Evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden

of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, Chief, Records Management Section, Information Resources Management Branch, Information Technology Services Division, Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security, 500 C Street, SW., Room 316, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Contact Cindy Taylor, Assistant Director of Public Affairs at (202) 646–4600 for additional information. You may contact Ms. Anderson for copies of the proposed collection of information at facsimile number (202) 646–3347 or e-mail address: *FEMA-Information-Collections@dhs.gov.*

Dated: March 3, 2005.

George S. Trotter,

Acting Branch Chief, Information Resources Management Branch, Information Technology Services Division.

[FR Doc. 05–4799 Filed 3–10–05; 8:45 am]

BILLING CODE 9110–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Open Meeting/Conference Call, Board of Visitors for the National Fire Academy

AGENCY: U.S. Fire Administration (USFA), Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 10 (a) (2) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, FEMA announces the following committee meeting:

Name: Board of Visitors (BOV) for the National Fire Academy.

Dates of Meeting: April 5–6, 2005.

Place: Building H, Room 300, National Emergency Training Center, Emmitsburg, Maryland.

Time: April 5, 10 a.m.–5 p.m., and April 6, 8:30 a.m.–4 p.m.

Proposed Agenda: Review National Fire Academy Program Activities.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public in the Emmitsburg commuting area with seating available on a first-come, first-served basis. Members of the general public who plan to participate in the meeting should contact the Office of the Superintendent, National Fire Academy, U.S. Fire Administration, 16825 South Seton Avenue, Emmitsburg, MD 21727, (301) 447–1117, on or before April 1, 2005.

Minutes of the meeting will be prepared and will be available for public viewing in the Office of the U.S. Fire Administrator, U.S. Fire Administration, Federal Emergency Management Agency, Emmitsburg, Maryland 21727. Copies of the minutes will be available upon request within 60 days after the meeting.

Dated: March 3, 2005.

R. David Paulison,

U.S. Fire Administrator.

[FR Doc. 05–4798 Filed 3–10–05; 8:45 am]

BILLING CODE 9110–17–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4980–N–10]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: March 11, 2005.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, Room 7262, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD published a notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: March 4, 2005.

Mark R. Johnston,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 05–4660 Filed 3–10–05; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Intent To Prepare an Environmental Impact Statement/ Environmental Impact Report for the Guidiville Band of Pomo Indians of the Guidiville Rancheria's Proposed Trust Acquisition and Casino/Resort Project, City of Richmond, Contra Costa County, CA

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA) as lead agency for compliance with the National Environmental Policy Act, and the City of Richmond (City), California, as lead agency for compliance with the California Environmental Quality Act, intend to gather information necessary for preparing an Environmental Impact Statement (EIS)/Environmental Impact Report (EIR) for a proposed 415± acre trust acquisition and casino/resort project to be located within the City of Richmond, Contra Costa County, California. The purpose of the proposed action is to restore the Guidiville land base of the Guidiville Band of Pomo Indians of the Guidiville Rancheria (Tribe) and help provide for the economic development of the tribe. The proposed action would additionally serve to meet the City's requirements under the Base Realignment and Closure Act to use a closed Navy fuel depot for economic development purposes. This notice also announces a public scoping meeting to identify potential issues and alternatives for inclusion in the EIS/EIR.

DATES: Written comments on the scope and implementation of this proposal must arrive by April 15, 2005. The public scoping meeting will be held March 31, 2005, from 7 p.m. to 9 p.m., or until the last public comment is received.

ADDRESSES: You may mail or hand carry written comments to Clay Gregory, Regional Director, Pacific Regional Office, Bureau of Indian Affairs, 2800 Cottage Way, Sacramento, California 95825. The public scoping meeting will be held at the Richmond Memorial Auditorium, 403 Civic Center Plaza, Richmond, California.

FOR FURTHER INFORMATION CONTACT: John Rydzik, (916) 978–6042.

SUPPLEMENTARY INFORMATION: The Tribe proposes that 415± acres of land be taken into trust to restore its terminated tribal land base for its people. The 415± acres encompass nine contiguous parcels in the City of Richmond, more commonly known as the former Point Molate Naval Fuel Depot. The project site is located 2 miles northeast of the Richmond-San Rafael Bridge tollbooth, after exiting at Western Avenue off of Highway 580 while heading west.

The Tribe wishes to use the property for multiple tribal purposes, including economic development and the provision of governmental services. The City wishes to use the property for economic development purposes, promoting employment, enhancing City revenues and improving municipal services. More specifically, the Tribe and City contemplate that the site will be used for the development of gaming and related entertainment, retail and lodging facilities, tribal government facilities, police and fire services, public parks, open space, a ferry terminal, public transportation and possible housing. The eventual size and scope of these facilities may be altered based on information obtained through the EIS/EIR process, but the Tribe and City's current proposal is for approximately 150,000 square feet of gaming floor, 300,000 square feet of retail facilities, 25,000 square feet of convention and entertainment facilities, an approximately 400 room hotel and a second phase 700 room hotel, 29 cottages remodeled into hotel suites or offices, a boutique spa/hotel, a fire station, tribal governmental offices, a tribal cultural center, 220+ acres of open space or submerged lands, 40 acres of public parks, a public trail, the ferry terminal and possible limited housing units. The proposed development would also include parking facilities for approximately 3000 vehicles for patrons and employees.

The proposed action encompasses the various federal approvals which would be required to implement the Tribe's efforts to establish a restored tribal land base, including approval of the Tribe's fee-to-trust application, approval of the Tribe's gaming management contract and approval of the Tribe's request for a reservation proclamation pursuant to a court approved stipulation in *Scotts Valley et al* v. *United States* case of September 6, 1991 (NO. C–86–3660–VRW), and implementing the intent and findings of the U.S. Department of Navy EIS/EIR for the base closure of the Point Molate Naval Fuel Depot. The proposed action also includes all the actions and approvals by the City necessary to permit and facilitate the land transfer and development, including approval of a proposed municipal services agreement.

Areas of environmental concern identified so far for analysis in the EIS/EIR include land resources, water resources, coastal zone planning consistency, air quality, living resources, cultural resources, Indian burial remains, socioeconomic conditions, traffic and transportation, land use, public utilities and services, noise, lighting, hazardous materials, environmental justice, soils remediation, visual resources/aesthetics, homeland security issues, Bay Trail construction, historical building restoration, and cumulative impacts. The range of issues and alternatives to be addressed in the EIS/EIR may be expanded based on comments received in response to this notice and at the public scoping meeting.

Public Comment Availability

Comments, including names and addresses of respondents, will be available for public review at the BIA address shown in the **ADDRESSES** section, during business hours 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish us to withhold your name and/or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by the law. We will not, however, consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Authority

This notice is published in accordance with section 1503.1 of the Council of Environmental Quality Regulations (40 CFR Parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4371 *et seq.*), Department of the Interior Manual (516 DM 1–6), and is in the exercise of authority delegated to the Principal Deputy Assistant Secretary—Indian Affairs by 209 DM 8.1.

Dated: February 22, 2005.

Michael D. Olsen,

Acting Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 05–4880 Filed 3–10–05; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Class III gaming compacts taking effect.

SUMMARY: Notice is given that the Tribal-State Compacts between the Kaw Nation, the Kickapoo Tribe, the Peoria Tribe and the State of Oklahoma are considered to have been approved and are in effect.

EFFECTIVE DATE: March 11, 2005.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under Section 11(d)(7)(D) of the Indian Gaming Regulatory Act of 1988 (IGRA), Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior must publish in the **Federal Register** notice of any Tribal-State compact that is approved, or considered to have been approved for the purpose of engaging in Class III gaming activities on Indian lands. The Acting Principal Deputy Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority did not approve or disapprove these compacts before the date that is 45 days after the date these compacts were submitted. Therefore, pursuant to 25 U.S.C. 2710(d)(7)(C), these compacts are considered to have been approved, but only to the extent they are consistent with IGRA. These compacts authorize Indian tribes to engage in certain Class III gaming activities, provides for certain geographical exclusivity, limits the number of gaming machines at existing racetracks, and prohibits non-tribal operation of certain machines and covered games, and take effect on the date their approval is published in the **Federal Register**.

Dated: March 1, 2005.

Michael D. Olsen,

Acting Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 05–4885 Filed 3–10–05; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–060–3809]

Notice of Availability for the Ruby Hill Mine Expansion—East Archimedes Project Draft Supplemental Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

COOPERATING AGENCIES: Nevada Department of Wildlife and Eureka County.

ACTION: Notice of availability.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969 and the Council on Environmental Quality Regulations found at 40 CFR Parts 1500–1508, notice is hereby given of the availability of the Draft Supplemental Environmental Impact Statement (DSEIS) for comment, prepared by the Battle Mountain Field Office of the Bureau of Land Management (BLM). The statement analyzes the environmental effects of the Proposed Action and the No Action Alternatives.

DATES: Written comments must be postmarked or otherwise delivered by 4:30 p.m. (Pacific Time Zone) by no later than 45 days after the date of publication of this Notice in the **Federal Register**. Comments may also be submitted at public meetings to be held in Battle Mountain, NV and Eureka, NV. Dates of the meetings will be published in local newspapers.

ADDRESSES: Written comments should be addressed to the Bureau of Land Management, attn: Caleb Hiner, Battle Mountain Field Office, 50 Bastian Road, Battle Mountain, Nevada 89820. Comments, including names and addresses of respondents, will be available for public review at the address listed below during regular business hours, Monday–Friday, excluding holidays. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. However, we will not consider anonymous comments. Such requests to withhold your name or street address from public review will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives of officials of organizations or businesses, will be available for public inspection in their entirety.

A limited number of copies of the DSEIS may be obtained at the Battle Mountain BLM Field Office.

FOR FURTHER INFORMATION CONTACT: Caleb Hiner, Battle Mountain BLM at (775) 635–4052.

SUPPLEMENTARY INFORMATION: The Proposed Action would develop the East Archimedes deposit which was defined in the original EIS (approved February 3, 1997) as a Reasonably Foreseeable Future Action. The Proposed Action would consist of an extension of the existing pit, expansion of the existing west and east waste rock disposal areas, the expansion of the existing heap leach pad, and construction of dewatering facilities. Under the Proposed Action, an estimated additional 744 acres of disturbance would occur. All disturbances proposed under the expansion falls within the footprint of the project boundary as analyzed in the original EIS.

Gerald M. Smith,

Field Manager.

[FR Doc. 05–4729 Filed 3–10–05; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Quarterly Status Report of Water Service, Repayment, and Other Water-Related Contract Negotiations

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given of contractual actions that have been proposed to the Bureau of Reclamation (Reclamation) and were pending through December 31, 2004, and contract actions that have been completed or discontinued since the last publication of this notice on October 4, 2004. From the date of this publication, future quarterly notices during this calendar year will be limited to new, modified, discontinued, or completed contract actions. This annual notice should be used as a point of reference to identify changes in future notices. This notice is one of a variety of means used to inform the public about proposed contractual actions for capital recovery and management of project resources and facilities consistent with section 9(f) of the Reclamation Project Act of 1939. Additional announcements of individual contract actions may be published in the **Federal Register** and in newspapers of general circulation in the areas determined by Reclamation to be affected by the proposed action.

ADDRESSES: The identity of the approving officer and other information pertaining to a specific contract proposal may be obtained by calling or writing the appropriate regional office at the address and telephone number given for each region in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Sandra L. Simons, Manager, Contract Services Office, Bureau of Reclamation, PO Box 25007, Denver, Colorado 80225–0007; telephone 303–445–2902.

SUPPLEMENTARY INFORMATION: Consistent with section 9(f) of the Reclamation Project Act of 1939 and the rules and regulations published in 52 FR 11954, April 13, 1987 (43 CFR 426.22), Reclamation will publish notice of proposed or amendatory contract actions for any contract for the delivery of project water for authorized uses in newspapers of general circulation in the affected area at least 60 days prior to contract execution. Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. The public participation procedures do not apply to proposed contracts for the sale of surplus or interim irrigation water for a term of 1 year or less. Either of the contracting parties may invite the public to observe contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act. Pursuant to the "Final Revised Public Participation Procedures" for water resource-related contract negotiations, published in 47 FR 7763, February 22, 1982, a tabulation is provided of all proposed contractual actions in each of the five Reclamation regions. When contract negotiations are completed, and prior to execution, each proposed contract form must be approved by the Secretary of the Interior, or pursuant to delegated or redelegated authority, the Commissioner of Reclamation or one of the regional directors. In some instances, congressional review and approval of a report, water rate, or other terms and

conditions of the contract may be involved.

Public participation in and receipt of comments on contract proposals will be facilitated by adherence to the following procedures:

1. Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.

2. Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or project office of Reclamation.

3. Written correspondence regarding proposed contracts may be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act, as amended.

4. Written comments on a proposed contract or contract action must be submitted to the appropriate regional officials at the locations and within the time limits set forth in the advance public notices.

5. All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

6. Copies of specific proposed contracts may be obtained from the appropriate regional director or his designated public contact as they become available for review and comment.

7. In the event modifications are made in the form of a proposed contract, the appropriate regional director shall determine whether republication of the notice and/or extension of the comment period is necessary.

Factors considered in making such a determination shall include, but are not limited to (i) the significance of the modification, and (ii) the degree of public interest which has been expressed over the course of the negotiations. At a minimum, the regional director shall furnish revised contracts to all parties who requested the contract in response to the initial public notice.

Definitions of Abbreviations Used in This Document

BCP Boulder Canyon Project
Reclamation Bureau of Reclamation
CAP Central Arizona Project
CVP Central Valley Project
CRSP Colorado River Storage Project
FR Federal Register
IDD Irrigation and Drainage District
ID Irrigation District
M&I Municipal and Industrial
NMISC New Mexico Interstate Stream Commission
O&M Operation and Maintenance
P–SMBP Pick-Sloan Missouri Basin Program
PPR Present Perfected Right
SOD Safety of Dams
WD Water District

Pacific Northwest Region: Bureau of Reclamation, 1150 North Curtis Road, Suite 100, Boise, Idaho 83706–1234, telephone 208–378–5344.

1. Irrigation, M&I, and Miscellaneous Water Users; Idaho, Oregon, Washington, Montana, and Wyoming: Temporary or interim water service contracts for irrigation, M&I, or miscellaneous use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

2. Rogue River Basin Water Users, Rogue River Basin Project, Oregon: Water service contracts; $8 per acre-foot per annum.

3. Willamette Basin Water Users, Willamette Basin Project, Oregon: Water service contracts; $8 per acre-foot per annum.

4. Pioneer Ditch Company, Boise Project, Idaho; Clark and Edwards Canal and Irrigation Company, Enterprise Canal Company, Ltd., Lenroot Canal Company, Liberty Park Canal Company, Poplar ID, all in the Minidoka Project, Idaho; Juniper Flat District Improvement Company, Wapinitia Project, Oregon: Amendatory repayment and water service contracts; purpose is to conform to the RRA.

5. Palmer Creek Water District Improvement Company, Willamette Basin Project, Oregon: Irrigation water service contract for approximately 13,000 acre-feet.

6. North Unit ID, Deschutes Project, Oregon: Warren Act contract with cost of service charge to allow for use of project facilities to convey nonproject water.

7. Trendwest Resorts, Yakima Project, Washington: Long-term water exchange contract for assignment of Teanaway River and Big Creek water rights to Reclamation for instream flow use in exchange for annual use of up to 3,500 acre-feet of water from Cle Elum Reservoir for a proposed resort development.

8. City of Cle Elum, Yakima Project, Washington: Contract for up to 2,170 acre-feet of water for municipal use.

9. Burley ID, Minidoka Project, Idaho-Wyoming: Supplemental and amendatory contract providing for the transfer of O&M of the headworks of the Main South Side Canal and works incidental thereto.

10. Minidoka ID, Minidoka Project, Idaho-Wyoming: Supplemental and amendatory contract providing for the transfer of O&M of the headworks of the Main North Side Canal and works incidental thereto.

11. Queener Irrigation Improvement District, Willamette Basin Project, Oregon: Renewal of long-term water service contract to provide up to 2,150 acre-feet of stored water from the Willamette Basin Project (a Corps of Engineers' project) for the purpose of irrigation within the district's service area.

12. Vale and Warmsprings IDs, Vale Project, Oregon: Repayment contract for reimbursable cost of SOD modifications to Warm Springs Dam.

13. West Extension ID, Umatilla Project, Oregon: Contract for long-term boundary expansion to include lands outside of federally recognized district boundaries.

14. Greenberry ID, Willamette Basin Project, Oregon: Irrigation water service contract for approximately 7,500 acre-feet of project water.

15. Twenty-three irrigation districts of the Arrowrock Division, Boise Project, Idaho: Repayment agreements with districts with spaceholder contracts for repayment, per legislation, of reimbursable share of costs to rehabilitate Arrowrock Dam Outlet Gates under the O&M program.

16. Eighteen irrigation water user entities, Boise Project, Idaho: Long-term renewal and/or conversion of 19 irrigation water service contracts for supplemental irrigation use of up to 71,018 acre-feet of storage space in Lucky Peak Reservoir, a Corps of Engineers' project on the Boise River, Idaho.

The following action has been completed since the last publication of this notice on October 4, 2004:

1. (16) Westland ID, Umatilla Project, Oregon: Contract for long-term boundary expansion to include lands outside of federally recognized district boundaries. Contract executed on September 14, 2004.

Mid-Pacific Region: Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825–1898, telephone 916–978–5250.

1. Irrigation water districts, individual irrigators, M&I and miscellaneous water users, Mid-Pacific Region projects other than CVP: Temporary (interim) water service contracts for available project water for irrigation, M&I, or fish and wildlife purposes providing up to 10,000 acre-feet of water annually for terms up to 5 years; temporary Warren Act contracts for use of project facilities for terms up to 1 year; temporary

conveyance agreements with the State of California for various purposes; long-term contracts for similar service for up to 1,000 acre-feet annually.

Note: Upon written request, copies of the standard forms of temporary water service contracts for the various types of service are available from the Regional Director at the address shown above.

2. Contractors from the American River Division, Cross Valley Canal, Delta Division, Friant Division, Sacramento River Division, San Felipe Division, Shasta Division, Trinity River Division, and West San Joaquin Division; CVP; California: Renewal of up to 114 long-term water service contracts; water quantities for these contracts total in excess of 3.4M acre-feet. These contract actions will be accomplished through long-term renewal contracts pursuant to Pub. L. 102–575. Prior to completion of negotiation of long-term renewal contracts, existing interim renewal water service contracts may be renewed through successive interim renewal of contracts.

3. Redwood Valley County WD, SRPA, California: Restructuring the repayment schedule pursuant to Pub. L. 100–516.

4. El Dorado County Water Agency, CVP, California: M&I water service contract to supplement existing water supply: 15,000 acre-feet for El Dorado County Water Agency authorized by Pub. L. 101–514.

5. Sutter Extension WD, Delano-Earlimart ID, and the State of California Department of Water Resources; CVP; California: Pursuant to Pub. L. 102–575, cooperative agreements with non-Federal entities for the purpose of providing funding for CVP refuge water wheeling facility improvements to provide water for refuge and private wetlands.

6. CVP Service Area, California: Temporary water purchase agreements for acquisition of 20,000 to 200,000 acre-feet of water for fish and wildlife purposes as authorized by the Central Valley Project Improvement Act for terms of up to 3 years.

7. City of Roseville, CVP, California: Execution of long-term Warren Act contract for conveyance of nonproject water provided from the Placer County Water Agency. This contract will allow CVP facilities to be used to deliver nonproject water to the City of Roseville for use within its service area.

8. Sacramento Municipal Utility District, CVP, California: Amendment of existing water service contract to allow for additional points of diversion and assignment of up to 30,000 acre-feet of project water to the Sacramento County Water Agency. The amended contract will conform to current Reclamation law.

9. El Dorado ID, CVP, California: Execution of long-term Warren Act contracts for conveyance of nonproject water (one contract for ditch rights in the amount of 3,344 acre-feet, and one contract for Project 184 in the amount of 11,000 acre-feet). The contracts will allow CVP facilities to be used to deliver nonproject water to El Dorado ID for use within its service area.

10. Horsefly, Klamath, Langell Valley, and Tulelake IDs; Klamath Project; Oregon: Repayment contracts for SOD work on Clear Lake Dam. These districts will share in repayment of costs, and each district will have a separate contract. Initial contract should be ready by April 2005.

11. Casitas Municipal WD, Ventura Project, California: Repayment contract for SOD work on Casitas Dam.

12. Warren Act Contracts, CVP, California: Execution of long-term Warren Act contracts (up to 25 years) with various entities for conveyance of nonproject water in the Delta-Mendota Canal and the Friant Division facilities.

13. Tuolumne Utilities District (formerly Tuolumne Regional WD), CVP, California: Long-term water service contract for up to 9,000 acre-feet from New Melones Reservoir, and possibly long-term contract for storage of nonproject water in New Melones Reservoir.

14. Banta Carbona ID, CVP, California: Long-term Warren Act contract for conveyance of nonproject water in the Delta-Mendota Canal.

15. Plain View WD, CVP, California: Long-term Warren Act contract for conveyance of nonproject water in the Delta-Mendota Canal.

16. Byron-Bethany ID, CVP, California: Long-term Warren Act contract for conveyance of nonproject water in the Delta-Mendota Canal.

17. Sacramento Area Flood Control Agency, CVP, California: Execution of a long-term operations agreement for flood control operations of Folsom Dam and Reservoir to allow for recovery of costs associated with operating a variable flood control pool of 400,000 to 670,000 acre-feet of water during the flood control season. This agreement is to conform to Federal law.

18. Colusa County WD, CVP, California: Proposed long-term Warren Act contract for conveyance of up to 4,500 acre-feet of ground water through the Tehama-Colusa Canal.

19. Madera-Chowchilla Water and Power Authority, CVP, California: Agreement to transfer the operation, maintenance, and replacement and certain financial and administrative activities related to the Madera Canal and associated works.

20. Carpinteria WD, Cachuma Project, California: Contract to transfer title of distribution system to the district. Title transfer authorized by Pub. L. 108–315, "Carpinteria and Montecito Water Distribution Conveyance Act of 2004."

21. Montecito WD, Cachuma Project, California: Contract to transfer title of distribution system to the district. Title transfer authorized by Pub. L. 108–315, "Carpinteria and Montecito Water Distribution Conveyance Act of 2004."

22. City of Vallejo, Solano Project, California: Execution of long-term Warren Act contract for conveyance of nonproject water. This contract will allow Solano Project facilities to be used to deliver nonproject water to the City of Vallejo for use within its service area.

23. Sacramento Suburban WD, CVP, California: Execution of long-term Warren Act contract for conveyance of nonproject water. This contract will allow CVP facilities to be used to deliver nonproject water to the Sacramento Suburban WD for use within its service area.

24. Truckee Meadows Water Authority, Town of Fernley, State of California, City of Reno, City of Sparks, Washoe County, State of Nevada, Truckee-Carson ID, and any other local interest or Native American Tribal interest, who may have negotiated rights under Pub. L. 101–618; Nevada and California: Contract for the storage of non-Federal water in Truckee River reservoirs as authorized by Pub. L. 101–618 and the Preliminary Settlement Agreement. The contracts shall be consistent with the Truckee River Water Quality Settlement Agreement and the terms and conditions of the proposed Truckee River Operating Agreement.

25. Sacramento River Settlement Contracts, CVP, California: Up to 145 contracts and one contract with Colusa Drain Mutual Water Company will be renewed; water quantities for these contracts total 2.2M acre-feet. These contracts will be renewed for a period of 40 years. The contracts will reflect an agreement to settle the dispute over water rights' claims on the Sacramento River and the Colusa Basin Drain.

26. San Joaquin Valley National Cemetery, U.S. Department of Veteran Affairs; Delta Division, CVP; California: Renewal of the long-term water service contract for up to 850 acre-feet with conveyance through the California State Aqueduct pursuant to the CVP-State Water Project wheeling agreement.

27. A Canal Fish Screens, Klamath Project, Oregon: Negotiation of an O&M

contract for the A Canal Fish Screen with Klamath ID.

28. Ady Canal Headgates, Klamath Project, Oregon: Transfer of operational control to Klamath Drainage District of the headgates located at the railroad. Reclamation does not own the land at the headgates, only operational control pursuant to a railroad agreement.

29. Pajaro Valley Water Management Agency, CVP, California: Proposed assignment of 27,000 acre-feet of Broadview WD's entire CVP supply to Pajaro Valley Water Management Agency for M&I use.

30. Orland Unit Water Users Association, Orland Project, California: Repayment contract for the SOD costs assigned to the irrigation purposes of Stony Gorge Dam.

31. Delta Lands Reclamation District No. 770, CVP, California: Long-term operations contract for conveying nonproject flood flows.

32. Widren WD, CVP, California: Proposed assignment of up to 2,990 acre-feet of Widren WD's CVP water to Westlands WD for irrigation use.

33. Pershing County Water Conservation District, Pershing County, Lander County, and the State of Nevada; Humboldt Project; Nevada: Title transfer to lands and features of Humboldt Project.

34. Plain View WD, CVP, California: Reorganization and proposed full contract assignment of Plain View WD's CVP supply to Byron-Bethany ID.

35. PacifiCorp, Klamath Basin Area Office, Klamath Project, Oregon: Execution of long-term agreement for lease of power privilege and the O&M of Link River Dam. This agreement will provide for operations of Link River Dam, coordinated operations with the non-Federal Keno Dam, and provision of power by PacifiCorp for Klamath Project purposes to ensure project water deliveries to meet Endangered Species Act requirements.

36. Cachuma Operation and Maintenance Board, Cachuma Project, California: Repayment of SOD work on Lauro Dam.

The following action has been completed since the last publication of this notice on October 4, 2004:

1. (37) Centinella WD, CVP, California: Proposed assignment of up to 2,500 acre-feet of Centinella WD's CVP water to Westlands WD for irrigation use. Assignment executed on November 9, 2004.

Lower Colorado Region: Bureau of Reclamation, PO Box 61470 (Nevada Highway and Park Street), Boulder City, Nevada 89006–1470, telephone 702–293–8536.

1. Milton and Jean Phillips, BCP, Arizona: Colorado River water delivery contract for 60 acre-feet of Colorado River water per year as recommended by the Arizona Department of Water Resources.

2. John J. Peach, BCP, Arizona: Colorado River water delivery contract for 456 acre-feet of Colorado River water per year as recommended by the Arizona Department of Water Resources.

3. GOBO Farms, BCP, Arizona: Colorado River water delivery contract for 924 acre-feet of Colorado River water per year as recommended by the Arizona Department of Water Resources.

4. Brooke Water Co., BCP, Arizona: Amend contract for an additional 120 acre-feet per year of Colorado River water for domestic uses, as recommended by the Arizona Department of Water Resources.

5. Miscellaneous PPR No. 11, BCP, Arizona: Assign a portion of the PPR from Holpal to McNulty *et al.*, and assign a portion of the PPR from Holpal to Hoover.

6. Beattie Farms SW, BCP, Arizona: Contract for 1,110 acre-feet per year of fourth priority water for agricultural purposes.

7. Maricopa-Stanfield IDD, CAP, Arizona: Amend distribution system repayment contract No. 4–07–30–W0047 to reschedule repayment pursuant to June 28, 1996 agreement.

8. Indian and non-Indian agricultural and M&I water users, CAP, Arizona: New and amendatory contracts for repayment of Federal expenditures for construction of distribution systems.

9. San Tan ID, CAP, Arizona: Amend distribution system repayment contract No. 6–07–30–W0120 to increase the repayment obligation by approximately $168,000.

10. Central Arizona IDD, CAP, Arizona: Amend distribution system repayment contract No. 4–07–30–W0048 to modify repayment terms pursuant to final order issued by U.S. Bankruptcy Court, District of Arizona.

11. Coachella Valley WD and/or The Metropolitan WD of Southern California, BCP, California: Contract to fund the Department of the Interior's expenses to conserve seepage water from the Coachella Branch of the All-American Canal in accordance with Title II of the San Luis Rey Indian Water Rights Settlement Act, dated November 17, 1988.

12. Salt River Pima-Maricopa Indian Community, CAP, Arizona: O&M contract for its CAP water distribution system.

13. Miscellaneous PPR No. 38, BCP, California: Assign Schroeder's portion of the PPR to Murphy Broadcasting.

14. Berneil Water Co., CAP, Arizona: Partial assignment of 200 acre-feet of water per year to the Cave Creek Water Company.

15. Canyon Forest Village II Corporation, BCP, Arizona: Colorado River water delivery contract for up to 400 acre-feet per year of unused Arizona apportionment or surplus apportionment for domestic use.

16. Gila Project Works, Gila Project, Arizona: Title transfer of facilities and certain lands in the Wellton-Mohawk Division from the United States to the Wellton-Mohawk IDD.

17. Gila River Indian Community, CAP, Arizona: Amend CAP water delivery contract and distribution system repayment and operation, maintenance, and replacement, contract pursuant to the Arizona Water Settlements Act, Pub. L. 108–451, enacted December 10, 2004.

18. North Gila Valley IDD, Yuma ID, and Yuma Mesa IDD; Yuma Mesa Division, Gila Project; Arizona: Administrative action to amend each district's Colorado River water delivery contract to effectuate a change from a "pooled" water entitlement for the Division to a quantified entitlement for each district.

19. Indian and/or non-Indian M&I users, CAP, Arizona: New or amendatory water service contracts or subcontracts in accordance with an anticipated final record of decision for reallocation of CAP water, as discussed in the Secretary of the Interior's notice published on page 41456 of the FR on July 30, 1999.

20. Litchfield Park Service Company, CAP, Arizona: Proposed partial assignments of subcontract for 5,590 acre-feet of CAP M&I water to the Central Arizona Water Conservation District, which is exercising its authority as the Central Arizona Groundwater Replenishment District, and to the cities of Avondale, Carefree, and Goodyear.

21. Shepard Water Company, Inc., BCP, Arizona: Contract for the annual delivery of 50 acre-feet of fourth priority water per year for domestic use.

22. Jessen Family Limited Partnership, BCP, Arizona: Contract for delivery of 1,080 acre-feet of Colorado River water for agricultural purposes.

23. City of Somerton, BCP, Arizona: Contract for the annual delivery of up to 750 acre-feet of Colorado River water per year for domestic use as recommended by the Arizona Department of Water Resources.

24. Various Irrigation Districts, CAP, Arizona: Amend distribution system repayment contracts to provide for partial assumption of debt by the

Central Arizona Water Conservation District and the United States upon enactment of Federal legislation providing for resolution of CAP issues.

25. Mohave County Water Authority, BCP, Arizona: Amendatory Colorado River water delivery contract to include the delivery of 3,500 acre-feet per year of fourth priority water and to delete the delivery of 3,500 acre-feet per year of fifth or sixth priority water.

26. All-American Canal, BCP, California: Agreement among Reclamation, Imperial ID, Metropolitan WD, and Coachella Valley WD for the federally funded construction of a reservoir(s) and associated facilities that will improve the regulation and management of Colorado River water (Federal legislation pending).

27. Tohono O'odham Nation, CAP, Arizona: Amend CAP water delivery contract pursuant to the Arizona Water Settlements Act, Pub. L. 108–451, enacted December 10, 2004.

28. Sunrise Water Company, CAP, Arizona: Proposed assignment of subcontract for 944 acre-feet of CAP M&I water per year to the Central Arizona Water Conservation District, which is exercising its authority as the Central Arizona Groundwater Replenishment District.

29. West End Water Company, CAP, Arizona: Proposed assignment of subcontract for 157 acre-feet of CAP M&I water per year to the Central Arizona Water Conservation District, which is exercising its authority as the Central Arizona Groundwater Replenishment District.

30. New River Utilities Company, CAP, Arizona: Proposed assignment of subcontract for 1,885 acre-feet of CAP M&I water to the Central Arizona Water Conservation District, which is exercising its authority as the Central Arizona Groundwater Replenishment District.

31. Cibola Valley IDD, BCP, Arizona: Contingent upon completion of sale documents, proposed assignment and transfer of a portion of the district's right to divert up to 24,120 acre-feet of Colorado River per year to the Mohave County Water Authority, the Hopi Tribe, and Reclamation.

32. Metropolitan WD and others, BCP, Arizona and California: Contract to provide for the recovery by Metropolitan WD of interstate underground storage credits previously placed in underground storage in Arizona by the Central Arizona Water Conservation District under agreements executed in 1992 and 1994, and to document the Arizona Water Banking Authority's responsibility in agreeing to Arizona's forbearance in the use of Colorado River water to permit the Secretary of the Interior to release that quantity of water for diversion and use by the Metropolitan WD.

33. Wellton-Mohawk IDD, BCP, Arizona: Amend contract No. 1–07–30–W0021 to revise the authority to deliver domestic use water from 5,000 to 10,000 acre-feet per calendar year, which is within the district's current overall Colorado River water entitlement.

34. Fisher's Landing Water and Sewer Works, LLC, BCP Arizona: Contract for 53 acre-feet annually of Colorado River water to be used to account for domestic water use on residential properties located within the Castle Dome area of Martinez Lake.

35. Yuma County Water Users Association, BCP, Arizona: Supplemental contract for the O&M of the Yuma Project, Valley Division.

36. Forbearance agreements, BCP, Arizona and California: Develop and execute short-term agreements to implement a demonstration forbearance program to evaluate the feasibility of acquiring water, through a voluntary land fallowing program, to replace drainage water currently being bypassed to the Cienega de Santa Clara.

37. Miscellaneous PPR No. 43, BCP, California: Contract with the City of Needles, for 1,500 acre-feet diversion and 950 acre-feet consumptive use.

38. Arizona Water Settlements Act, CAP, Arizona: Implementation of the contracting requirements of Title I—Central Arizona Project Settlement, Title II—Gila River Indian Community Water Rights Settlement, Title III—Southern Arizona Water Rights Settlement, and Title IV—San Carlos Apache Tribe Water Rights Settlement.

39. Southern Nevada Water Authority, Colorado River Commission of Nevada, and the Metropolitan WD of Southern California; BCP; California and Nevada: A storage and interstate release agreement establishing a procedure that the Secretary of the Interior will follow to achieve an interstate contractual distribution of Colorado River water.

The following action has been discontinued since the last publication of this notice on October 4, 2004:

1. (33) Central Arizona Water Conservation District and the Arizona Department of Water Resources, CAP, Arizona: Arizona Water Settlement Agreement to address outstanding CAP water allocation issues, subject to completion of final record of decision for reallocation of CAP water as discussed in the Secretary of the Interior's notice published in the FR on July 30, 1999 (64 FR 41456).

The following actions have been completed since the last publication of this notice on October 4, 2004:

1. (11) Imperial ID/Coachella Valley WD and/or The Metropolitan WD of Southern California, BCP, California: Contract to fund the Department of the Interior's expenses to conserve All-American Canal seepage water in accordance with Title II of the San Luis Rey Indian Water Rights Settlement Act, dated November 17, 1988.

2. (14) Arizona State Land Department, BCP, Arizona: Colorado River water delivery contract for 1,534 acre-feet per year for domestic use.

3. (19) ASARCO Inc., CAP, Arizona: Amendment of subcontract to extend the deadline for giving notice of termination on exchange.

4. (48) Mr. and Mrs. West, BCP, California: Assignment of contract No. 6–07–30–W0342 from Mr. and Mrs. West to Ronald E. and Shannon L. Williamson.

Upper Colorado Region: Bureau of Reclamation, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1102, telephone 801–524–3864.

1. Individual irrigators, M&I, and miscellaneous water users; Initial Units, CRSP; Utah, Wyoming, Colorado, and New Mexico: Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 10 years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

(a) Ron Connell, Aspinall Storage Unit, CRSP: Mr. Connell has requested a 40-year water service contract for 6 acre-feet of water out of Blue Mesa Reservoir. Mr. Connell has submitted an augmentation plan to Water District 4, Case No. 04CW168.

(b) Oxbow Mining, LLC, Aspinall Storage Unit, CRSP: Oxbow Mining, LLC has requested 242 acre-feet of M&I water out of the Blue Mesa reservoir, which requires that an augmentation plan be presented to the Division 4 Water Court.

2. Taos Area, San Juan-Chama Project, New Mexico: The United States is reserving 2,990 acre-feet of project water for potential use in an Indian water rights settlement in the Taos, New Mexico area.

3. Various Contactors, San Juan-Chama Project, New Mexico: The United States proposes to lease water from various contractors to stabilize flows in a critical reach of the Rio Grande in order to meet the needs of irrigators and preserve habitat for the silvery minnow.

4. Uncompahgre Valley Water Users Association, Upper Gunnison River

Water Conservancy District, and the Colorado River Water Conservation District; Uncompahgre Project; Colorado: Water management agreement for water stored at Taylor Park Reservoir and the Wayne N. Aspinall Storage Units to improve water management.

5. Southern Ute Indian Tribe, Florida Project, Colorado: Supplement to contract No. 14–06–400–3038, dated May 7, 1963, for an additional 181 acre-feet of project water, plus 563 acre-feet of project water pursuant to the 1986 Colorado Ute Indian Water Rights Final Settlement Agreement.

6. Sanpete County Water Conservancy District, Narrows Project, Utah: Application for a SRPA loan and grant to construct a dam, reservoir, and pipeline to annually supply approximately 5,000 acre-feet of water through a transmountain diversion from upper Gooseberry Creek in the Price River drainage (Colorado River Basin) to the San Pitch—Savor River (Great Basin).

7. Individual Irrigators, Carlsbad Project, New Mexico: The United States proposes to enter into long-term forbearance lease agreements with individuals who have privately held water rights to divert nonproject water either directly from the Pecos River or from shallow/artesian wells in the Pecos River Watershed. This action will result in additional water in the Pecos River to make up for the water depletions caused by changes in operations at Summer Dam which were made to improve conditions for a threatened species, the Pecos bluntnose shiner.

8. La Plata Conservancy District, Animas-La Plata Project, Colorado and New Mexico: Cost sharing/repayment contract for up to 1,560 acre-feet per year of M&I water; contract terms to be consistent with the Colorado Ute Settlement Act Amendments of 2000 (Title III of Pub. L. 106–554).

9. LeChee Chapter of the Navajo Nation, Glen Canyon Unit, CRSP, Arizona: Long-term contract for 950 acre-feet of water for municipal purposes.

10. Pine River ID, Pine River Project, Colorado: Contract to allow the district to convert up to approximately 10,000 acre-feet of project irrigation water to municipal, domestic, and industrial uses.

11. City of Page, Glen Canyon Unit, CRSP, Arizona: Long-term contract for 1,000 acre-feet of water for municipal purposes.

12. El Paso County Water Improvement District No. 1 and Isleta del Sur Pueblo, Rio Grande Project, Texas: Contract to convert up to 1,000 acre-feet of the Pueblo's project irrigation water to use for traditional and religious purposes.

13. Carlsbad ID and the NMISC, Carlsbad Project, New Mexico: Contract to convert irrigation water appurtenant to up to 6,000 acres of land within the project for use by the NMISC for delivery to Texas to meet New Mexico's Pecos River Compact obligation.

14. Animas-La Plata Water Conservancy District, Animas-La Plata Project, Colorado and New Mexico: Contract to transfer the operation, maintenance, and replacement responsibilities of most project facilities to the district, pursuant to Section 6 of the Reclamation Act of June 17, 1902, and other Reclamation laws.

15. Project Operations Committee, Animas-La Plata Project, Colorado and New Mexico: Agreement among the United States, the Southern Ute Indian Tribe, the Ute Mountain Ute Tribe, the Navajo Nation, the San Juan Water Commission, the Animas-La Plata Water Conservancy District, the State of Colorado, and the La Plata Conservancy District of New Mexico to coordinate and oversee the necessary operation, maintenance, and replacement activities of the project works.

16. Southern Ute Indian Tribe, Animas-La Plata Project, Colorado and New Mexico: Water delivery contract for 33,519 acre-feet of M&I water; contract terms to be consistent with the Colorado Ute Settlement Act Amendments of 2000 (Title III of Pub. L. 106–554).

17. Ute Mountain Ute Tribe, Animas-La Plata Project, Colorado and New Mexico: Water delivery contract for 33,519 acre-feet of M&I water; contract terms to be consistent with the Colorado Ute Settlement Act Amendments of 2000 (Title III of Pub. L. 106–554).

18. Navajo Nation, Animas-La Plata Project, Colorado and New Mexico: Water delivery contract for 4,680 acre-feet of M&I water; contract terms to be consistent with the Colorado Ute Settlement Act Amendments of 2000 (Title III of Pub. L. 106–554).

19. Various contractors including the Town of Mancos and the Mancos Rural Water Company, Mancos Project, Colorado: Small or short-term contracts to carry nonproject water through project facilities for municipal purposes under authority of Pub. L. 106–549.

20. State of Colorado, Animas-La Plata Project, Colorado and New Mexico: Cost sharing/repayment contract for up to 10,440 acre-feet per year of M&I water; contract terms to be consistent with the Colorado Ute Settlement Act Amendments of 2000 (Title III of Pub. L. 106–554).

21. Coon Creek Reservoir and Ditch Company, Collbran Project: The Coon Creek Reservoir and Ditch Company and the Collbran Conservancy District have requested a nonproject irrigation carriage contract (40-year) to have 3 cfs, not to exceed 1,000 acre-feet annually, of their direct flow irrigation water rights diverted into and delivered through the existing Southside Canal, a feature of Collbran Project delivery structures.

22. Central Utah Water Conservancy District, Bonneville Unit, Central Utah Project, Utah: Negotiate a repayment contract for 60,000 acre-feet per year of M&I water from the Utah Lake System.

23. Carlsbad ID and the NMISC, Carlsbad Project, New Mexico: Contract for storage and delivery of water produced by the NMISC's River Augmentation Program, among Reclamation, Carlsbad ID, and the NMISC. This will allow for storage of NMISC water in project facilities resulting in additional project water supply.

24. Town of Palisade, Palisade ID, Mesa County ID, Reclamation, and the U.S. Fish and Wildlife Service; CRSP: The Colorado River is critical habitat for four endangered fish species. These agencies are entering into an agreement for each to provide the following: Reclamation shall provide cost-share funding for the recovery monitoring and research, and O&M (October 30, 2000, 114 Stat. 1602, Pub. L. 106–392); the districts are willing to allow the U.S. Fish and Wildlife Service and Reclamation to construct the fish passage; and the Town of Palisade proposes to provide related safety features on or near the fish passage.

25. Public Service Company of New Mexico, Reclamation, and the U.S. Fish and Wildlife Service; San Juan River Basin Recovery Implementation Program: The agreement identifies that Reclamation may provide cost-share funding for the recovery monitoring and research, and O&M (October 30, 2000, 114 Stat. 1602, Pub. L. 106–392) of the constructed fish passage.

26. Reclamation, U.S. Fish and Wildlife Service, and the Colorado River Water Conservation District; Recovery Implementation Program for Endangered Fish Species in the Upper Colorado River Basin: Reclamation will provide cost-share funding for enlargement of Elkhead Reservoir (October 30, 2000, 114 Stat. 1602, Pub. L. 106–392) in a separate grant agreement.

27. The Grand Valley Water Users Association and U.S. Fish and Wildlife Service: Construction and O&M of a fish passage and fish screen facilities at the Grand Valley Diversion Dam and Government Highline Canal facilities to

facilitate recovery of endangered fish species in the Colorado River Basin (October 30, 2000, 114 Stat. 1602, Pub. L. 106–392).

28. Mancos Rural Water Company, Mancos Project, Colorado: Contract to allow the Mancos Rural Water Company to convert an additional 300 acre-feet of project irrigation water to municipal, domestic, and industrial uses.

The following action has been discontinued since the last publication of this notice on October 4, 2004:

1. (1)(g) United Companies, Aspinall Storage Unit, CRSP: United Companies has requested 7 acre-feet of M&I water out of Blue Mesa Reservoir for the Delta No. 1 Gravel Pit.

The following actions have been completed since the last publication of this notice on October 4, 2004:

1. (1)(e) Thomas Chapman, Aspinall Storage Unit, CRSP: Mr. Chapman has requested a 40-year water service contract for 1 acre-foot of water out of Blue Mesa Reservoir to support his pending plan of augmentation, Water Division 4. Contract executed on November 2, 2004.

2. (1)(h) Mountain View Amish-Mennonite Church, Aspinall Storage Unit, CRSP: The Church as requested 1 acre-foot of M&I water out of Blue Mesa Reservoir, Water Division 4, case No. 04CW106. Contract executed on September 29, 2004.

3. (28) U.S. Fish and Wildlife Service, San Juan River Basin Recovery Implementation Program, Aspinall Storage Unit, CRSP: The U.S. Fish and Wildlife Service has requested 14 acre-feet of water out of Blue Mesa Reservoir to be used at the Chipeta Unit ponds at the Hotchkiss National Fish Hatchery. The ponds are to be used to grow out the two San Juan River Basin endangered fish species. Contract executed on September 15, 2004.

Great Plains Region: Bureau of Reclamation, PO Box 36900, Federal Building, 316 North 26th Street, Billings, Montana 59107–6900, telephone 406–247–7752.

1. Individual irrigators, M&I, and miscellaneous water users, Colorado, Kansas, Montana, Nebraska, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming: Temporary (interim) water service contracts for the sale, conveyance, storage, and exchange of surplus project water and nonproject water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for a term of up to 1 year.

2. Green Mountain Reservoir, Colorado-Big Thompson Project, Colorado: Water service contracts for irrigation and M&I; contracts for sale of water from the marketable yield to water users within the Colorado River Basin of western Colorado.

3. Ruedi Reservoir, Fryingpan-Arkansas Project, Colorado: Second round water sales from the regulatory capacity of Ruedi Reservoir. Water service and repayment contracts for up to 17,000 acre-feet annually for M&I use.

4. Garrison Diversion Unit, P–SMBP, North Dakota: Renegotiation of the master repayment contract with Garrison Diversion Conservancy District to conform with the Dakota Water Resources Act of 2000; negotiation of repayment contracts with irrigators and M&I users.

5. City of Rapid City, Rapid Valley Unit, P–SMBP, South Dakota: Contract renewal for storage capacity in Pactola Reservoir. A temporary (1 year not to exceed 10,000 acre-feet) water service contract has been executed with the City of Rapid City, Rapid Valley Unit, for use of water from Pactola Reservoir. A long-term storage contract is being negotiated for water stored in Pactola Reservoir. Legislation is pending for change in the authorized use of Pactola storage.

6. Mid-Dakota Rural Water System, Inc., South Dakota: Pursuant to the Reclamation Projects Authorization and Adjustment Act of 1992, the Secretary of the Interior is authorized to make grants and loans to Mid-Dakota Rural Water System, Inc., a non-profit corporation, for the planning and construction of a rural water supply system.

7. City of Berthoud, Colorado-Big Thompson Project, Colorado: Long-term contract for conveyance of nonproject M&I water through Colorado-Big Thompson Project facilities.

8. City of Cheyenne, Kendrick Project, Wyoming: Negotiate a long-term contract for storage space for replacement water on a daily basis in Seminoe Reservoir. A temporary contract has been issued pending negotiation of the long-term contract.

9. Highland-Hanover ID, Hanover-Bluff Unit, P–SMBP, Wyoming: Negotiate long-term water service contract; includes provisions for repayment of construction costs.

10. Upper Bluff ID, Hanover-Bluff Unit, P–SMBP, Wyoming: Negotiate long-term water service contract; includes provisions for repayment of construction cost.

11. Fort Clark ID, P–SMBP, North Dakota: Negotiation of water service contract to continue delivery of project water to the district.

12. Western Heart River ID, Heart Butte Unit, P–SMBP, North Dakota: Negotiation of water service contract to continue delivery of project water to the district.

13. Sisk Ranch, Inc., Lower Marias Unit, P–SMBP, Montana: Initiating a long-term contract for up to 552 acre-feet of storage water from Tiber Reservoir to irrigate 276 acres. Temporary contracts have been issued to allow continued delivery of water.

14. I.J. Peterson Ranch, Inc., Lower Marias Unit, P–SMBP, Montana: Initiating a long-term contract for up to 478 acre-feet of storage water from Tiber Reservoir to irrigate 239 acres. Temporary contracts have been issued to allow continued delivery of water.

15. Morkrid Enterprises, Inc., Lower Marias Unit, P–SMBP, Montana: Initiating a long-term contract for up to 3,751 acre-feet of storage water from Tiber Reservoir to irrigate 1,875 acres. Temporary contracts have been issued to allow continued delivery of water.

16. Dickinson-Heart River Mutual Aid Corporation, Dickinson Unit, P–SMBP, North Dakota: Negotiate renewal of water service contract for irrigation of lands below Dickinson Dam in western North Dakota.

17. Savage ID, P–SMBP, Montana: The district is currently seeking title transfer. The contract is subject to renewal pending outcome of the title transfer process. A 5-year interim contract has been executed to ensure a continuous water supply.

18. City of Fort Collins, Colorado—Big Thompson Project, Colorado: Long-term contracts for conveyance and storage of nonproject M&I water through Colorado—Big Thompson Project facilities.

19. Standing Rock Sioux Tribe, P–SMBP, North Dakota: Negotiate a long-term water service contract with the Standing Rock Sioux Tribe in North Dakota for irrigation of up to 2,380 acres of land within the reservation.

20. Glendo Unit, P–SMBP, Wyoming: Contract renewal for long-term water service contracts with Burbank Ditch, New Grattan Ditch Company, Torrington ID, Lucerne Canal and Power Company, and Wright and Murphy Ditch Company.

21. Glendo Unit, P–SMBP, Nebraska: Contract renewal for long-term water service contracts with Bridgeport, Enterprise, and Mitchell IDs, and Central Nebraska Public Power and ID.

22. Helena Valley Unit, P–SMBP, Montana: Negotiating with Helena Valley ID for renewal of Part A of the A/B contract which expired December 31, 2004.

23. Crow Creek Unit, P–SMBP, Montana: Negotiating with Toston ID for renewal of Part A of the A/B contract which expired December 31, 2004.

24. Dickinson Parks and Recreation District, Dickinson Unit, P–SMBP,

North Dakota: A temporary contract has been negotiated with the District for minor amounts of water from Dickinson Reservoir. Negotiate a long-term water service contract with the Park Board for minor amounts of water from Dickinson Dam.

25. Clark Canyon Water Supply Company, East Bench Unit, P–SMBP, Montana: Initiating renewal of contract No. 14–06–600–3592 which expires December 31, 2005.

26. East Bench ID, East Bench Unit, P–SMBP, Montana: Initiating renewal of contract No. 14–06–600–3593 which expires December 31, 2005.

27. Tiber Enterprises, Inc., Lower Marias Unit, P–SMBP, Montana: Initiating a long-term contract for up to 1,388 acre-feet of storage water from Tiber Reservoir to irrigate 694 acres. Temporary contracts have been issued to allow continued delivery of water.

28. Helena Valley Unit, P–SMBP, Montana: Initiating negotiations for contract renewal for an annual supply of water for domestic and M&I use to the City of Helena, Montana.

29. Canadian River Municipal Water Authority, Lake Meredith Salinity Control Project, New Mexico and Texas: Negotiation of a contract for the transfer of control (care and O&M) of the project to the Authority in accordance with Pub. L. 102–575, Title VIII, Section 804(c).

30. Fryingpan-Arkansas Project, Colorado: Consideration of excess capacity contracts in the Fryingpan-Arkansas Project.

31. Fryingpan-Arkansas Project, Colorado: Consideration of requests for long-term contracts for the use of excess capacity in the Fryingpan-Arkansas Project from the Southeastern Colorado Water Conservancy District, the City of Aurora, and the Colorado Springs Utilities.

32. Individual irrigators, Heart Butte Unit, P–SMBP, North Dakota: Renew long-term water service contracts for minor amounts of less than 1,000 acre-feet of irrigation water annually from the Heart River below Heart Butte Dam.

33. Municipal Subdistrict of the Northern Colorado Water Conservancy District, Colorado—Big Thompson Project, Colorado: Consideration of a new long-term contract or amendment of contract No. 4–07–70–W0107 with the Municipal Subdistrict and the Northern Colorado Water Conservancy District for the proposed Windy Gap Firming Project.

34. Northern Integrated Supply Project, Colorado-Big Thompson Project, Colorado: Consideration of a new long-term contract with approximately 14 regional water suppliers and the Northern Colorado Water Conservancy District for the Northern Integrated Supply Project.

35. Hill County WD, Milk River Project, Montana: Initiating renewal of municipal water supply contract No. 14–06–600–8954 which expires August 1, 2006. The proposal includes splitting the contract between Hill County WD and North Havre County WD which both receive their full water supply under the current contract.

36. Stutsman County Park Board, Jamestown Unit, P–SMBP, North Dakota: The Board is requesting a contract for minor amounts of water under a long-term contract to serve domestic needs for cabin owners at Jamestown Reservoir, North Dakota.

37. City of Huron, P–SMBP, South Dakota: Renewal of long-term operation, maintenance, and replacement agreement for O&M of the James Diversion Dam, South Dakota, with the City of Huron, South Dakota, or negotiation of water service and O&M with other interested, but as of yet, unidentified entity.

38. Garrison Diversion Unit, P–SMBP, North Dakota: Contracts to provide for project-use pumping power or project use pumping power and supplemental irrigation water with various irrigation districts in North Dakota, covering a combined maximum 28,000 acres within the boundaries and limits set by the Dakota Water Resources Act of 2000.

39. Security Water and Sanitation District, Fryingpan-Arkansas Project, Colorado: Consideration of a request for a long-term contract for the use of excess capacity in the Fryingpan-Arkansas Project.

40. City of Fountain, Colorado; Fryingpan-Arkansas Project; Colorado: Consideration of a request for a long-term contract for the use of excess capacity in the Fryingpan-Arkansas Project.

41. Colorado Springs Utilities, Colorado Springs, Colorado; Colorado-Big Thompson Project; Colorado: Consideration of a request for a long-term agreement for water substitution and power interference in the Colorado-Big Thompson Project.

42. Pueblo West Metropolitan District, Pueblo West, Colorado; Fryingpan-Arkansas Project; Colorado: Consideration of a request for a 5-to 10-year contract for the use of excess capacity in the Fryingpan-Arkansas Project.

43. LeClair ID, Boysen Unit, P–SMBP, Wyoming: Contract renewal of long-term water service contract.

44. Riverton Valley ID, Boysen Unit, P–SMBP, Wyoming: Contract renewal of long-term water service contract.

The following actions have been completed since the last publication of this notice on October 4, 2004:

1. (39) Frenchman Valley ID; Frenchman Unit, Frenchman-Cambridge Division, P–SMBP; Culbertson, Nebraska: The District requested a deferment of its 2004 repayment and reserve fund obligations. A request was prepared to amend contract No. 009E6B0123 to defer payments in accordance with the Act of September 21, 1959. An amendatory contract was executed on September 23, 2004.

2. (40) Bostwick ID in Nebraska; Franklin Superior-Courtland and Courtland Units, Bostwick Division, P–SMBP; Red Cloud, Nebraska: The District requested a deferment of its 2004 repayment and water service obligations. A request was prepared to amend contract No. 009E6B0121 to defer payments in accordance with the Act of September 21, 1959. An amendatory contract was executed on September 23, 2004.

3. (41) Frenchman-Cambridge ID; Meeker-Driftwood, Red Willow, and Cambridge Units; Frenchman-Cambridge Division; P–SMBP; Cambridge, Nebraska: The District requested a deferment of its repayment obligation. A request was prepared to amend contract No. 009D6B0122 to defer payments in accordance with the Act of September 21, 1959. An amendatory contract was executed on September 23, 2004.

4. (43) East Bench ID, East Bench Unit, P–SMBP, Montana: The District requested a deferment of its 2004 distribution works repayment obligation. A request is being prepared to amend contract No. 14–06–600–3593 to defer payments in accordance with the Act of September 21, 1959. An amendatory contract was executed on September 23, 2004.

5. (46) Tom Green County Water Control and Improvement District No. 1, San Angelo Project, Texas: Public Law 108–231 dated May 28, 2004, authorized the Secretary of the Interior to extend the repayment period for the District from 40 to 50 years. A contract amendment was executed on November 1, 2004.

Dated: January 20, 2005.

Roseann Gonzales,

Director, Office of Program and Policy Services.

[FR Doc. 05–4780 Filed 3–10–05; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–532]

In the Matter of Certain Automotive Fuel Caps and Components Thereof; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337 and provisional acceptance of motion for temporary relief.

SUMMARY: Notice is hereby given that a complaint and motion for temporary relief were filed with the U.S. International Trade Commission on January 28, 2005, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Stant Manufacturing, Inc., of Connersville, Indiana. The complaint 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 automotive fuel caps and components thereof by reason of infringement of claims 1, 5, and 6 of U.S. Patent No. 5,449,086, claims 32, 38, 39, and 41 of U.S. Patent No. 5,794,806, claims 1, 2, 10, and 13–15 of U.S. Patent No. 5,480,055, and claims 11–13, 19–22, 24–29, 31, 32, and 34–42 of U.S. Patent No. 4,678,097. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and permanent cease and desist orders.

The motion for temporary relief requests that the Commission issue a temporary limited exclusion order and temporary cease and desist orders prohibiting the importation into and the sale within the United States after importation of certain automotive fuel caps and components thereof that infringe claim 1 of U.S. Patent No. 5,449,086, claims 38 and 39 of U.S. Patent No. 5,794,806, and claims 1 and 2 of U.S. Patent No. 5,480,055 during the course of the Commission's investigation.

ADDRESSES: The complaint and motion for temporary relief, 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 document information system (EDIS) at *http://edis.usitc.gov*.

FOR FURTHER INFORMATION CONTACT: Jay H. Reiziss, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2579.

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). The authority for provisional acceptance of the motion for temporary relief is contained in section 210.58, 19 CFR 210.58.

Scope of Investigation: Having considered the complaint and the motion for temporary relief, the U.S. International Trade Commission, on March 7, 2005, *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 automotive fuel caps or components thereof by reason of infringement of one or more of claims 1, 5, and 6 of U.S. Patent No. 5,449,086, claims 32, 38, 39, and 41 of U.S. Patent No. 5,794,806, claims 1, 2, 10, and 13–15 of U.S. Patent No. 5,480,055, and claims 11–13, 19–22, 24–29, 31, 32, and 34–42 of U.S. Patent No. 4,678,097 and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

(2) Pursuant to section 210.58 of the Commission's Rules of Practice and Procedure, 19 CFR 210.58, the motion for temporary relief under subsection (e) of section 337 of the Tariff Act of 1930, which was filed with the complaint, is provisionally accepted and referred to the presiding administrative law judge for investigation.

(3) 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 complainant is—Stant Manufacturing, Inc., 1620 Columbia Avenue, Connersville, IN 47331.

(b) The respondents are the following companies and individuals alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Gerdes GmbH, Siemensstr. 6, 50170 Kerpen-Sindorf, Germany;
Gerdes GmbH, Olympiastrasse 1, 26419 Schortens, Germany;
Gerdes BVBA, Bakhuisstraat 2, B–3920 Lommel, Belgium;
Theodor Gerdes, c/o Gerdes GmbH, Siemensstr. 6, 50170 Kerpen-Sindorf, Germany;
Ralf Gerdes, c/o Gerdes GmbH, Siemensstr. 6, 50170 Kerpen-Sindorf, Germany;
Monika Gerdes, c/o Gerdes GmbH, Siemensstr. 6, 50170 Kerpen-Sindorf, Germany.

(c) Jay H. Reiziss, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(4) For the investigation so instituted, the Honorable Sidney Harris is designated as the presiding administrative law judge.

Responses to the complaint, the motion for temporary relief, and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 and 210.59 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13 and 210.59. Pursuant to 19 CFR 201.16(d), 210.13(a), and 210.59, such responses will be considered by the Commission if received not later than 10 days after the date of service by the Commission of the complaint, the motion for temporary relief, and the notice of investigation. Extensions of time for submitting the responses to the complaint, motion for temporary relief, and the notice of investigation 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, in the motion for temporary relief, and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint, the motion for temporary relief, and this notice, 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, the motion for temporary relief, 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 cease and desist order or both directed against such respondent.

Issued: March 7, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–4872 Filed 3–10–05; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–05–007]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: March 15, 2005 at 9:30 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: None.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–326 (Second Review)(Frozen Concentrated Orange Juice from Brazil)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before March 28, 2005.)
5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: March 8, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–4985 Filed 3–9–05; 2:45 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed collection: Housing Terms and Conditions (WH–521). A copy of the proposed information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this Notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before May 10, 2005.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418, fax (202) 693–1451, e-mail *bell.hazel@dol.gov*. Please use only one method of transmission for comments (mail, fax, or E-mail).

SUPPLEMENTARY INFORMATION:

I. Background

The Migrant and Seasonal Agricultural Worker Protection Act (MSPA), 29 U.S.C. 1801 *et seq.*, Section 201(c) requires any farm labor contractor, agricultural employer or agricultural association providing housing to any migrant agricultural worker to post in a conspicuous place, or present to the migrant worker, a statement of any housing occupancy terms and conditions. In addition, MSPA Section 201(g) requires a farm labor contractor, agricultural employer or agricultural association providing housing to any migrant agricultural worker to give such information in English, or as necessary and reasonable, in a language common to the worker and that the Department of Labor (DOL) makes forms available to provide such information. The implementing regulations for the MSPA set forth, at 29 CFR 500.75(f) and (g), the housing terms that a farm labor contractor, agricultural employer or agricultural association providing housing to any migrant agricultural worker must post or give in a written statement to the worker. Regulation 29 CFR 500.1(i)(2) provides for Form WH–521 that a farm labor contractor, agricultural employer or agricultural association may use, at its option, to satisfy MSPA requirements. Form WH–521 is an optional form that a farm labor contractor, agricultural employer or agricultural association may post or present to a migrant agricultural worker to list the housing terms and conditions. While use of the Form WH–521 is optional, the MSPA requires disclosure of the information. This information collection is currently approved for use through September 30, 2005.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks the approval of the extension of this information collection to carry out it's statutory responsibility to ensure that farm labor contractor, agricultural employer or agricultural association providing housing to any migrant agricultural worker to post in a conspicuous place, or present to the migrant worker, a statement of any housing occupancy terms and conditions.

Type of Review: Extension.

Agency: Employment Standards Administration.

Titles: Housing Terms and Conditions.

OMB Number: 1215–0146.

Agency Numbers: WH–521.

Affected Public: Farms; Individual or households; Business or other for-profit.

Total Respondents: 1,300.

Total Annual responses: 1,300.

Estimated Total Burden Hours: 650.
Estimated Time Per Response: 30 minutes.
Frequency: On Occasion.
Total Burden Cost (capital/startup): $0.
Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: March 7, 2005.

Bruce Bohanon,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 05–4801 Filed 3–10–05; 8:45 am]
BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from the date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic are indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration be the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of decisions listed to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decision being modified.

Volume I

New York
NY20030018 (Jun. 13, 2003)
NY20030026 (Jun. 13, 2003)

Volume II

Pennsylvania
PA20030001 (Jun. 13, 2003)
PA20030002 (Jun. 13, 2003)
PA20030004 (Jun. 13, 2003)
PA20030005 (Jun. 13, 2003)
PA20030006 (Jun. 13, 2003)
PA20030007 (Jun. 13, 2003)
PA20030008 (Jun. 13, 2003)
PA20030009 (Jun. 13, 2003)
PA20030010 (Jun. 13, 2003)
PA20030012 (Jun. 13, 2003)
PA20030014 (Jun. 13, 2003)
PA20030015 (Jun. 13, 2003)
PA20030018 (Jun. 13, 2003)
PA20030019 (Jun. 13, 2003)
PA20030020 (Jun. 13, 2003)
PA20030021 (Jun. 13, 2003)
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PA20030024 (Jun. 13, 2003)
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PA20030042 (Jun. 13, 2003)
PA20030054 (Jun. 13, 2003)
PA20030059 (Jun. 13, 2003)
PA20030060 (Jun. 13, 2003)
PA20030061 (Jun. 13, 2003)
Virginia
VA20030009 (Jun. 13, 2003)
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West Virginia
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North Carolina
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South Carolina
SC20030036 (Jun. 13, 2003)
Tennesee
TN20030001 (Jun. 13, 2003)
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TN20030016 (Jun. 13, 2003)
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TN20030023 (Jun. 13, 2003)

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IL20030027 (Jun. 13, 2003)
IL20030029 (Jun. 13, 2003)
IL20030031 (Jun. 13, 2003)
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IL20030046 (Jun. 13, 2003)
IL20030050 (Jun. 13, 2003)
IL20030051 (Jun. 13, 2003)
IL20030054 (Jun. 13, 2003)
IL20030057 (Jun. 13, 2003)
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IL20030067 (Jun. 13, 2003)
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IA20030005 (Jun. 13, 2003)
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Missouri
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MO20030002 (Jun. 13, 2003)
MO20030003 (Jun. 13, 2003)
MO20030006 (Jun. 13, 2003)
MO20030007 (Jun. 13, 2003)
MO20030010 (Jun. 13, 2003)
MO20030011 (Jun. 13, 2003)
MO20030015 (Jun. 13, 2003)
MO20030020 (Jun. 13, 2003)
MO20030044 (Jun. 13, 2003)
MO20030050 (Jun. 13, 2003)
MO20030053 (Jun. 13, 2003)
Nebraska
NE20030001 (Jun. 13, 2003)
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None

Volume VII

Arizona
AZ20030001 (Jun. 13, 2003)
AZ20030002 (Jun. 13, 2003)
AZ20030003 (Jun. 13, 2003)
AZ20030016 (Jun. 13, 2003)
AZ20030017 (Jun. 13, 2003)
California
CA20030013 (Jun. 13, 2003)
Hawaii
HI20030001 (Jun. 13, 2003)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *http://www.access.gpo.gov/davisbacon*. They are also available electronically by subscription to the Davis-Bacon Online Service *http://davisbacon.fedworld.gov* of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, This 3rd day of March, 2005.

John Frank,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 05–4478– Filed 3–10–05; 8:45 am]

BILLING CODE 4510–27–M

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 2005–3 CARP]

Notice of Intent to Audit

AGENCY: Copyright Office, Library of Congress.

ACTION: Public notice.

SUMMARY: The Copyright Office of the Library of Congress is announcing receipt of a notice of intent to audit DMX Music, Inc., for its transmissions of sound recordings to business establishments made under an exemption to the digital performance right. This audit intends to review transmissions to business establishments made by DMX Music, Inc., for the years 2002, 2003, and 2004.

FOR FURTHER INFORMATION CONTACT: Tanya M. Sandros, Associate General Counsel, or Abioye E. Oyewole, CARP Specialist, Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024–0977. Telephone: (202) 707–8380. Telefax: (202) 707–3423.

SUPPLEMENTARY INFORMATION: Section 106(6) of the Copyright Act, title 17 of the United States Code, gives the copyright owner of a sound recording the right to perform the sound recording publicly by means of a digital audio transmission, subject to certain limitations. Among these limitations is an exemption from the digital performance right for services making digital transmissions of sound recordings to a business establishment for use in the ordinary course of its business (henceforth, "Business Establishment Services"), provided that two conditions are met: 1) the business recipient does not retransmit the transmissions outside of its premises or the immediate surrounding vicinity and, 2) the transmissions do not exceed the sound recording performance complement. While Business Establishment Services do not pay royalty fees for the right to transmit the sound recording, they do make ephemeral phonorecords under a statutory license, *see* 17 U.S.C. 112(e), to facilitate the transmission of the sound recordings. Use of this license requires the Business Establishment Service to make payments of royalty fees to and file reports of sound recording performances with SoundExchange, a collecting rights entity that was designated by the Librarian of Congress to collect and distribute royalty fee payments made under section 112(e). *See* 69 FR 5693 (February 6, 2004) and 69 FR 11515 (March 11, 2004).

Pursuant to § 262.6 of title 37 of the Code of Federal Regulations, as the Designated Agent, SoundExchange may conduct a single audit of a Licensee, such as DMX Music, Inc., for the purpose of verifying their royalty payments. As a preliminary matter, the Designated Agent is required to submit a notice of its intent to audit a Licensee with the Copyright Office and to serve this notice on the service to be audited. 37 CFR 262.6(c).

On February 16, 2005, SoundExchange filed with the Copyright Office a notice of intent to audit DMX Music, Inc.,[1] for the years 2002, 2003, and 2004. As stated in section 262.6(c), the Copyright Office then is required to publish a notice in

[1] A copy of the Notice of Intent to Audit DMX Music, Inc., will be posted on the Office website at http://www.copyright.gov/carp/dmx_notice262.pdf.

the **Federal Register** within thirty days of receipt of the filing announcing the Designated Agent's intent to conduct an audit.

In accordance with this regulation, the Office is publishing today's notice to fulfill this requirement with respect to SoundExchange's notice of intent to audit.

Dated: March 8, 2005

Tanya M. Sandros,

Associate General Counsel.

[FR Doc. 05–4842 Filed 3–10–05; 8:45 am]

BILLING CODE 1410–33–S

NATIONAL AERONAUTICS AND SPACE ADMINISTRATIQN

[Notice (05–042)]

Aerospace Safety Advisory Panel Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the Aerospace Safety Advisory Panel.

DATES: Thursday, April 7, 2005, 8:30 a.m. to 10:30 a.m. Pacific Time.

ADDRESSES: Jet Propulsion Laboratory, Von Karman Auditorium, 4800 Oak Grove Drive, Pasadena, CA 91109.

FOR FURTHER INFORMATION CONTACT: Mr. Mark D. Erminger, Aerospace Safety Advisory Panel Executive Director, Code Q–1, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–0914.

SUPPLEMENTARY INFORMATION: The Aerospace Safety Advisory Panel will hold its Quarterly Meeting. This discussion is pursuant to carrying out its statutory duties for which the Panel reviews, identifies, evaluates, and advises on those program activities, systems, procedures, and management activities that can contribute to program risk. Priority is given to those programs that involve the safety of human flight. The major subjects covered will be: Jet Propulsion Laboratory Programs and NASA Management. The Aerospace Safety Advisory Panel is composed of nine members and one ex-officio member.

The meeting will be open to the public up to the seating capacity of the room (50).

Seating will be on a first-come basis. Please contact Ms. Susan Burch on (202) 358–0914 at least 24 hours in advance to reserve a seat. Visitors will be requested to sign a visitor's register. Photographs will only be permitted during the first 10 minutes of the meeting. During the first 30 minutes of the meeting, members of the public may make a 5-minute verbal presentation to the Panel on the subject of safety in NASA. To do so, please contact Ms. Susan Burch on (202) 358–0914 at least 24 hours in advance. Any member of the public is permitted to file a written statement with the Panel at the time of the meeting. Verbal presentations and written comments should be limited to the subject of safety in NASA.

Michael F. O'Brien,

Assistant Administrator for External Relations, National Aeronautics and Space Administration.

[FR Doc. 05–4769 Filed 3–10–05; 8:45 am]

BILLING CODE 7510–13–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* Design Information Questionnaire–IAEA–N–71 and associated Forms N–72, N–73, N–74, N–75, N–91, N–92, N–93, N–94.

2. *Current OMB approval number:* 3150–0056.

3. *How often the collection is required:* Approximately 1 time annually.

4. *Who is required or asked to report:* Licensees of facilities on the U.S. eligible list who have been notified in writing by the Commission to submit the form.

5. *The number of annual respondents:* 1.

6. *The number of hours needed annually to complete the requirement or request:* 360 reporting hours (360 hours per response).

7. *Abstract:* Licensees of facilities that appear on the U.S. eligible list, pursuant to the US/IAEA Safeguards Agreement, and who have been notified in writing by the Commission, are required to complete and submit a Design Information Questionnaire, IAEA Form N–71 (and the appropriate associated IAEA Form) or Form N–91, to provide information concerning their installation for use of the International Atomic Energy Agency.

Submit, by May 10, 2005, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room located at One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD. OMB clearance requests are available at the NRC worldwide Web site (*http://www.nrc.gov/public-involve/doc-comment/omb/index.html*). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–5 F53, Washington, DC 20555–0001, by telephone at (301) 415–7233, or by Internet electronic mail at *INFOCOLLECTS@NRC.GOV*.

Dated in Rockville, Maryland, this 3rd day of March, 2005.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 05–4793 Filed 3–10–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–1007 and EA–05–045]

In the Matter of BNFL Fuel Solutions Corporation and All Other Persons Who Obtain Safeguards Information Described Herein

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of Order imposing requirements for the protection of certain safeguards information.

FOR FURTHER INFORMATION CONTACT: Cynthia Barr, Project Manager, Licensing and Inspection Directorate, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Rockville, MD 20852. Telephone: (301) 415–4015; fax number: (301) 415–8555; e-mail *CSB2@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I

In accordance with the Atomic Energy Act of 1954 and 10 CFR Part 72, BNFL Fuel Solutions Corporation, (BNFL) holds Certificate of Compliance No. 1007 for the Model No. Ventilated Storage Cask (VSC–24). In a phone call on January 31, 2005, BNFL agreed to meet with the U.S. Nuclear Regulatory Commission (NRC) staff with Safeguards Information security measures in place. The purpose of the meeting(s) is to discuss the NRC's engineering evaluations performed to evaluate the safety and security of an array of VSC–24 storage casks. The meeting(s) will be closed to the public.

Following the September 11, 2001, simultaneous terrorist events at the World Trade Center (WTC) in New York City and at the Pentagon in Virginia, the U.S. Government issued a nationwide alert for the potential of additional terrorist acts within the United States. The NRC initiated a comprehensive review of all NRC-licensed activities to evaluate those activities against threats. As part of that review, U.S. Nuclear Regulatory Commission initiated an engineering study to assess the consequences of a terrorist event, similar in magnitude to the WTC and Pentagon, on spent nuclear fuel transportation packages and storage casks. The NRC staff intends to discuss specific information on the engineering evaluations performed for the VSC–24 storage casks with BNFL. However, the Commission has determined that the material to be discussed at the meeting(s) is Safeguards Information, will not be released to the public, and must be protected from unauthorized disclosure. Therefore, the Commission is imposing the requirements, as set forth in 10 CFR 73.21, so that BNFL can receive this information for review and comment at the closed meeting. This Order also imposes requirements for the protection of Safeguards Information in the hands of any person [1], whether or not a Licensee of the Commission, who produces, receives, or acquires Safeguards Information.

II

The Commission has broad statutory authority to protect and prohibit the unauthorized disclosure of Safeguards Information. Section 147 of the Atomic Energy Act of 1954, as amended, grants the Commission explicit authority to "issue such orders, as necessary to prohibit the unauthorized disclosure of safeguards information * * *". This authority extends to information concerning special nuclear material, source material, and byproduct material, as well as production and utilization facilities. Licensees and all persons who produce, receive, or acquire Safeguards Information must ensure proper handling and protection of Safeguards Information to avoid unauthorized disclosure in accordance with the specific requirements for the protection of Safeguards Information as contained in 10 CFR 73.21. The Commission hereby provides notice that it intends to treat all violations of the requirements contained in 10 CFR 73.21, applicable to the handling and unauthorized disclosure of Safeguards Information, as serious breaches of adequate protection of the public health and safety and the common defense and security of the United States. Access to Safeguards Information is limited to those persons who have established the need-to-know the information, and are considered to be trustworthy and reliable. A need-to-know means a determination by a person having responsibility for protecting Safeguards Information that a proposed recipient's access to Safeguards Information is necessary in the performance of official, contractual, or duties of employment. Licensees and all other persons who obtain Safeguards Information must ensure that they develop, maintain and implement strict policies and procedures for the proper handling of Safeguards Information to prevent unauthorized disclosure, in accordance with the requirements in 10 CFR 73.21. BNFL must ensure that all contractors whose employees may have access to Safeguards Information either adhere to the licensee's policies and procedures on Safeguards Information or develop, maintain and implement their own acceptable policies and procedures. BNFL remains responsible for the conduct of their contractors. The policies and procedures necessary to ensure compliance with applicable requirements contained in 10 CFR 73.21 must address, at a minimum, the following: The general performance requirement that each person who produces, receives, or acquires Safeguards Information shall ensure that Safeguards Information is protected against unauthorized disclosure; protection of Safeguards Information at fixed sites, in use and in storage, and while in transit; correspondence containing Safeguards Information; access to Safeguards Information; preparation, marking, reproduction and destruction of documents; external transmission of documents; use of automatic data processing systems; and removal of the Safeguards Information category.

In order to provide assurance that BNFL is implementing prudent measures to achieve a consistent level of protection, to prohibit the unauthorized disclosure of Safeguards Information, BNFL shall implement the requirements identified in 10 CFR 73.21. The Commission recognizes that BNFL may have already initiated many of the measures set forth in 10 CFR 73.21 to this Order for handling of Safeguards Information in conjunction with a previous NRC Order. In addition, pursuant to 10 CFR 2.202, I find that in light of the common defense and security matters identified above, which warrant the issuance of this Order, the public health, safety and interest require that this Order be effective immediately.

III

Accordingly, pursuant to Sections 53, 57, 62, 63, 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, and 10 CFR Part 72, *it is hereby ordered*, effective immediately, that BNFL and all other persons who produce, receive, or acquire the safeguards information described above, and any related safeguards information, shall comply with the requirements of 10 CFR 73.21.

The Director, Office of Nuclear Materials Safety and Safeguards, may in writing, relax or rescind any of the above conditions upon demonstration by the licensee.

IV

In accordance with 10 CFR 2.202, BNFL must, and any other person adversely affected by this Order may,

[1] Person means (1) any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, government agency other than the Commission or the Department, except that the Department shall be considered a person with respect to those facilities of the Department specified in section 202 of the Energy Reorganization Act of 1974 (88 Stat. 1244), any State or any political subdivision of, or any political entity within a State, any foreign government or nation or any political subdivision of any such government or nation, or other entity; and (2) any legal successor, representative, agent, or agency of the foregoing.

submit an answer to this Order, and may request a hearing on this Order, within twenty (20) days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to request a hearing must be made in writing to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, and to BNFL if the hearing request is by a person other than BNFL. Because of possible disruptions in delivery of mail to United States Government offices, it is requested that requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov* and also to the Office of the General Counsel either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. If a person other than BNFL requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by BNFL or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), BNFL may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error. In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final twenty (20) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires if a hearing request has not been received. *A request for hearing shall not stay the immediate effectiveness of this Order.*

Dated this 3rd day of March 2005.

For the Nuclear Regulatory Commission.

Margaret V. Federline,

Deputy Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 05–4796 Filed 3–10–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 71–9010 and 71–9270; EA–05–045]

In the Matter of NAC International, Inc., and All Other Persons Who Obtain Safeguards Information Described Herein

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of Order imposing requirements for the protection of certain safeguards information.

FOR FURTHER INFORMATION CONTACT: Cynthia Barr, Project Manager, Licensing and Inspection Directorate, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Rockville, MD 20852. Telephone: (301) 415–4015; fax number: (301) 415–8555; e-mail *CSB2@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I

In accordance with the Atomic Energy Act of 1954 and 10 CFR Part 71, NAC International, Inc., (NAC) holds Certificate of Compliance Nos. 9010 for the Model No. NLI 1/2 and 9270 for the Model No. NAC–UMS transportation packages. In a phone call on January 27, 2005, NAC agreed to meet with the U.S. Nuclear Regulatory Commission (NRC) staff with Safeguards Information security measures in place. The purpose of the meeting(s) is to discuss the NRC's engineering evaluations performed to evaluate the safety and security of a single NLI 1/2 and an array of NAC–UMS transportation packages. The meeting(s) will be closed to the public.

Following the September 11, 2001, simultaneous terrorist events at the World Trade Center (WTC) in New York City and at the Pentagon in Virginia, the U.S. Government issued a nationwide alert for the potential of additional terrorist acts within the United States. The NRC initiated a comprehensive review of all NRC-licensed activities to evaluate those activities against threats. As part of that review, U.S. Nuclear Regulatory Commission initiated an engineering study to assess the consequences of a terrorist event, similar in magnitude to the WTC and Pentagon, on spent nuclear fuel transportation packages. The NRC staff intends to discuss specific information on the engineering evaluations performed for the NLI 1/2 and NAC–UMS transportation packages with NAC. However, the Commission has determined that the material to be discussed at the meeting(s) is Safeguards Information, will not be released to the public, and must be protected from unauthorized disclosure. Therefore, the Commission is imposing the requirements, as set forth in 10 CFR 73.21, so that NAC can receive this information for review and comment at the closed meeting. This Order also imposes requirements for the protection of Safeguards Information in the hands of any person,[1] whether or not a Licensee of the Commission, who produces, receives, or acquires Safeguards Information.

II

The Commission has broad statutory authority to protect and prohibit the unauthorized disclosure of Safeguards Information. Section 147 of the Atomic Energy Act of 1954, as amended, grants the Commission explicit authority to "issue such orders, as necessary to prohibit the unauthorized disclosure of safeguards information * * *". This authority extends to information concerning special nuclear material, source material, and byproduct material, as well as production and utilization facilities. Licensees and all persons who produce, receive, or acquire Safeguards Information must ensure proper handling and protection of Safeguards Information to avoid unauthorized disclosure in accordance with the specific requirements for the protection of Safeguards Information as contained in 10 CFR 73.21. The Commission hereby provides notice that it intends to

[1] Person means (1) any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, government agency other than the Commission or the Department, except that the Department shall be considered a person with respect to those facilities of the Department specified in section 202 of the Energy Reorganization Act of 1974 (88 Stat. 1244), any State or any political subdivision of, or any political entity within a State, any foreign government or nation or any political subdivision of any such government or nation, or other entity; and (2) any legal successor, representative, agent, or agency of the foregoing.

treat all violations of the requirements contained in 10 CFR 73.21, applicable to the handling and unauthorized disclosure of Safeguards Information, as serious breaches of adequate protection of the public health and safety and the common defense and security of the United States. Access to Safeguards Information is limited to those persons who have established the need-to-know the information, and are considered to be trustworthy and reliable. A need-to-know means a determination by a person having responsibility for protecting Safeguards Information that a proposed recipient's access to Safeguards Information is necessary in the performance of official, contractual, or duties of employment. Licensees and all other persons who obtain Safeguards Information must ensure that they develop, maintain and implement strict policies and procedures for the proper handling of Safeguards Information to prevent unauthorized disclosure, in accordance with the requirements in 10 CFR 73.21. NAC must ensure that all contractors whose employees may have access to Safeguards Information either adhere to the licensee's policies and procedures on Safeguards Information or develop, maintain and implement their own acceptable policies and procedures. NAC remains responsible for the conduct of their contractors. The policies and procedures necessary to ensure compliance with applicable requirements contained in 10 CFR 73.21 must address, at a minimum, the following: the general performance requirement that each person who produces, receives, or acquires Safeguards Information shall ensure that Safeguards Information is protected against unauthorized disclosure; protection of Safeguards Information at fixed sites, in use and in storage, and while in transit; correspondence containing Safeguards Information; access to Safeguards Information; preparation, marking, reproduction and destruction of documents; external transmission of documents; use of automatic data processing systems; and removal of the Safeguards Information category.

In order to provide assurance that NAC is implementing prudent measures to achieve a consistent level of protection, to prohibit the unauthorized disclosure of Safeguards Information, NAC shall implement the requirements identified in 10 CFR 73.21. The Commission recognizes that NAC may have already initiated many of the measures set forth in 10 CFR 73.21 to this Order for handling of Safeguards Information in conjunction with a previous NRC Order. In addition, pursuant to 10 CFR 2.202, I find that in light of the common defense and security matters identified above, which warrant the issuance of this Order, the public health, safety and interest require that this Order be effective immediately.

III

Accordingly, pursuant to Sections 53, 57, 62, 63, 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, and 10 CFR Part 71, *it is hereby ordered,* effective immediately, that NAC international, Inc., and all other persons who produce, receive, or acquire the safeguards information described above, and any related safeguards information, shall comply with the requirements of 10 CFR 73.21.

The Director, Office of Nuclear Materials Safety and Safeguards, may in writing, relax or rescind any of the above conditions upon demonstration by the licensee.

IV

In accordance with 10 CFR 2.202, NAC must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within twenty (20) days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to request a hearing must be made in writing to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, and to NAC if the hearing request is by a person other than NAC. Because of possible disruptions in delivery of mail to United States Government offices, it is requested that requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov* and also to the Office of the General Counsel either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. If a person other than NAC requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by NAC or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), NAC may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error. In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final twenty (20) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires if a hearing request has not been received. *A request for hearing shall not stay the immediate effectiveness of this Order.*

Dated this 3rd day of March, 2005.

For the Nuclear Regulatory Commission.

Margaret V. Federline,

Deputy Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 05–4795 Filed 3–10–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–1004 and 72–1027; EA–05–045]

In the Matter of Transnuclear, Inc., and All Other Persons Who Obtain Safeguards Information Described Herein

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of order imposing requirements for the protection of certain safeguards information.

FOR FURTHER INFORMATION CONTACT: Cynthia Barr, Project Manager, Licensing and Inspection Directorate, Spent Fuel Project Office, Office of

Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Rockville, MD 20852. Telephone: (301) 415–4015; fax number: (301) 415–8555; e-mail *CSB2@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I

In accordance with the Atomic Energy Act of 1954 and 10 CFR part 72, Transnuclear, Inc., (Transnuclear) holds Certificate of Compliance No. 1004 for the Model No. NUHOMS®–32PT storage cask and Certificate of Compliance No. 1027 for the Model No. TN–68 storage cask. In a phone call on January 27, 2005, Transnuclear agreed to meet with the U.S. Nuclear Regulatory Commission (NRC) staff with Safeguards Information security measures in place. The purpose of the meeting(s) is to discuss the NRC's engineering evaluations performed to evaluate the safety and security of an array of NUHOMS®–32PT and an array of TN–68 storage casks. The meeting(s) will be closed to the public.

Following the September 11, 2001, simultaneous terrorist events at the World Trade Center (WTC) in New York City and at the Pentagon in Virginia, the U.S. Government issued a nationwide alert for the potential of additional terrorist acts within the United States. The NRC initiated a comprehensive review of all NRC-licensed activities to evaluate those activities against threats. As part of that review, U.S. Nuclear Regulatory Commission initiated an engineering study to assess the consequences of a terrorist event, similar in magnitude to the WTC and Pentagon, on spent nuclear fuel transportation packages and storage casks. The NRC staff intends to discuss specific information on the engineering evaluations performed for the NUHOMS®–32PT and the TN–68 storage casks with Transnuclear. However, the Commission has determined that the material to be discussed at the meeting(s) is Safeguards Information, will not be released to the public, and must be protected from unauthorized disclosure. Therefore, the Commission is imposing the requirements, as set forth in 10 CFR 73.21, so that Transnuclear can receive this information for review and comment at the closed meeting. This Order also imposes requirements for the protection of Safeguards Information in the hands of any person,[1] whether or not a Licensee of the Commission, who produces, receives, or acquires Safeguards Information.

II

The Commission has broad statutory authority to protect and prohibit the unauthorized disclosure of Safeguards Information. Section 147 of the Atomic Energy Act of 1954, as amended, grants the Commission explicit authority to "issue such orders, as necessary to prohibit the unauthorized disclosure of safeguards information * * *". This authority extends to information concerning special nuclear material, source material, and byproduct material, as well as production and utilization facilities. Licensees and all persons who produce, receive, or acquire Safeguards Information must ensure proper handling and protection of Safeguards Information to avoid unauthorized disclosure in accordance with the specific requirements for the protection of Safeguards Information as contained in 10 CFR 73.21. The Commission hereby provides notice that it intends to treat all violations of the requirements contained in 10 CFR 73.21, applicable to the handling and unauthorized disclosure of Safeguards Information, as serious breaches of adequate protection of the public health and safety and the common defense and security of the United States. Access to Safeguards Information is limited to those persons who have established the need-to-know the information, and are considered to be trustworthy and reliable. A need-to-know means a determination by a person having responsibility for protecting Safeguards Information that a proposed recipient's access to Safeguards Information is necessary in the performance of official, contractual, or duties of employment. Licensees and all other persons who obtain Safeguards Information must ensure that they develop, maintain and implement strict policies and procedures for the proper handling of Safeguards Information to prevent unauthorized disclosure, in accordance with the requirements in 10 CFR 73.21. Transnuclear must ensure that all contractors whose employees may have access to Safeguards Information either adhere to the licensee's policies and procedures on Safeguards Information or develop, maintain and implement their own acceptable policies and procedures. Transnuclear remains responsible for the conduct of their contractors. The policies and procedures necessary to ensure compliance with applicable requirements contained in 10 CFR 73.21 must address, at a minimum, the following: The general performance requirement that each person who produces, receives, or acquires Safeguards Information shall ensure that Safeguards Information is protected against unauthorized disclosure; protection of Safeguards Information at fixed sites, in use and in storage, and while in transit; correspondence containing Safeguards Information; access to Safeguards Information; preparation, marking, reproduction and destruction of documents; external transmission of documents; use of automatic data processing systems; and removal of the Safeguards Information category.

In order to provide assurance that Transnuclear is implementing prudent measures to achieve a consistent level of protection, to prohibit the unauthorized disclosure of Safeguards Information, Transnuclear shall implement the requirements identified in 10 CFR 73.21. The Commission recognizes that Transnuclear may have already initiated many of the measures set forth in 10 CFR 73.21 to this Order for handling of Safeguards Information in conjunction with a previous NRC Order. In addition, pursuant to 10 CFR 2.202, I find that in light of the common defense and security matters identified above, which warrant the issuance of this Order, the public health, safety and interest require that this Order be effective immediately.

III

Accordingly, pursuant to Sections 53, 57, 62, 63, 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, and 10 CFR part 72, *it is hereby ordered,* effective immediately, that Transnuclear, Inc., and all other persons who produce, receive, or acquire the safeguards information described above, and any related safeguards information, shall comply with the requirements of 10 CFR 73.21.

The Director, Office of Nuclear Materials Safety and Safeguards, may in writing, relax or rescind any of the above conditions upon demonstration by the licensee.

IV

In accordance with 10 CFR 2.202, Transnuclear must, and any other person adversely affected by this Order

[1] Person means (1) any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, government agency other than the Commission or the Department, except that the Department shall be considered a person with respect to those facilities of the Department specified in section 202 of the Energy Reorganization Act of 1974 (88 Stat. 1244), any State or any political subdivision of, or any political entity within a State, any foreign government or nation or any political subdivision of any such government or nation, or other entity; and (2) any legal successor, representative, agent, or agency of the foregoing.

may, submit an answer to this Order, and may request a hearing on this Order, within twenty (20) days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to request a hearing must be made in writing to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, and to Transnuclear if the hearing request is by a person other than Transnuclear. Because of possible disruptions in delivery of mail to United States Government offices, it is requested that requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov* and also to the Office of the General Counsel either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. If a person other than Transnuclear requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Transnuclear or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Transnuclear may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error. In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final twenty (20) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires if a hearing request has not been received. A request for hearing shall not stay the immediate effectiveness of this Order.

Dated this 3rd day of March, 2005.

For the Nuclear Regulatory Commission.

Margaret V. Federline,

Deputy Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 05–4794 Filed 3–10–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Office of Nuclear Material Safety and Safeguards: Status of Decommissioning Program—2004 Annual Report; Notice of Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

FOR FURTHER INFORMATION CONTACT: John T. Buckley, Mail Stop: T–7E18, Decommissioning Directorate, Division of Waste Management and Environmental Protection, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone: (301) 415–6607, and Internet: *jtb@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Summary

The Nuclear Regulatory Commission's (NRC's) Office of Nuclear Material Safety and Safeguards (NMSS) is announcing the availability of NUREG–1814, "Status of Decommissioning Program—2004 Annual Report." This NUREG provides a comprehensive overview of the NRC's decommissioning program. Its purpose is to provide a stand-alone reference document which describes the decommissioning process and summarizes the current status of all decommissioning activities including the decommissioning of complex decommissioning sites, commercial reactors, research and test reactors, uranium mill tailings facilities; and fuel cycle facilities. In addition, this report discusses accomplishments in the decommissioning program since publication of the 2003 annual report (SECY–03–0161); and it identifies the key decommissioning program issues which the staff will address in fiscal year (FY) 2005.

II. Further Information

NUREG–1814 is available for inspection and copying for a fee at the Commission's Public Document Room, U.S. NRC's Headquarters Building, 11555 Rockville Pike (First Floor), Rockville, Maryland. The Public Document Room is open from 7:45 a.m. to 4:15 p.m., Monday through Friday, except on Federal holidays.

NUREG–1814 is also available for inspection at NRC's Public Electronic Reading Room at: *http://www.nrc.gov/NRC/ADAMS/index.html*. The ADAMS Accession No. for the NUREG is ML050480398. Copies of NUREG–1814 may be purchased from one of these two sources: (1) The Superintendent of Documents, U.S. Government Printing Office, Mail Stop: SSOP, Washington, DC 20402–0001; Internet: *http://bookstore.gpo.gov;* telephone: 202–512–1800; fax: 202–512–2250; or (2) The National Technical Information Service, Springfield, VA 22161–0002, Internet: *http://www.ntis.gov;* telephone 1–800–553–6847 or, locally, 703–605–6000.

Dated in Rockville, Maryland, this 4th day of March, 2005.

For the Nuclear Regulatory Commission.

Daniel M. Gillen,

Deputy Director, Decommissioning Directorate, Division of Waste Management and Environmental Protection; Office of Nuclear Material Safety and Safeguards.

[FR Doc. 05–4791 Filed 3–10–05; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Proposed Data Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board will publish periodic summaries of proposed data collections.

Comments Are Invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and Purpose of Information Collection: Statement Regarding Contributions and Support: OMB 3220–0099.

Under Section 2 of the Railroad Retirement Act, dependency on an employee for one-half support at the time of an employee's death can be a condition affecting entitlement to a survivor annuity and can affect the amount of both spouse and survivor annuities. One-half support is also a condition which may negate the public service pension offset in Tier I for a spouse or widow(er). The Railroad Retirement Board (RRB) utilizes Form G–134, Statement Regarding Contributions and Support, to secure information needed to adequately determine if the applicant meets the one-half support requirement. One form is completed by each respondent.

Non-burden impacting editorial and formatting changes are being proposed to Form G–134 for clarification purposes.

Estimate of Annual Respondent Burden

The estimated annual respondent burden is as follows:

Form No.	Annual responses	Estimated completion time (min)	Burden (hrs)
G–134:			
With assistance	75	147	184
Without assistance	25	180	75
Total	100		259

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363 or send an e-mail request to *Charles.Mierzwa@RRB.GOV*. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or send an e-mail to *Ronald.Hodapp@RRB.GOV*. Written comments should be received within 60 days of this notice.

Charles Mierzwa,

Clearance Officer.

[FR Doc. 05–4777 Filed 3–10–05; 8:45 am]

BILLING CODE 7905–01–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363 or send an e-mail request to *Charles.Mierzwa@RRB.GOV*. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or send an e-mail to *Ronald.Hodapp@RRB.GOV*.

The following information collection is pending at the RRB and will be submitted to OMB 60 days from the date of this notice. Therefore, your comments should be received within 60 days of this notice.

Title and purpose of information collection: Student Beneficiary Monitoring; OMB 3220–0123—20CFR 219.54 and 219.55. Under provisions of the Railroad Retirement Act (RRA), there are two types of benefits whose payment is based upon the status of a child being in full-time elementary or secondary school attendance at age 18–19; a survivor child's annuity benefit under Section 2(d)(2)(iii) and an increase in the employee retirement annuity under the Special Guaranty computation as prescribed in section 3(f)(3).

The survivor student annuity is usually paid by direct deposit at a financial institution to the student's checking or savings account or a joint bank account with the parent. The requirements for eligibility as a student are prescribed in 20 CFR 216.74, and include students in independent study or home schooling.

The RRB requires evidence of full-time school attendance in order to determine that a child is entitled to student benefits. The RRB utilizes the following forms to conduct its student monitoring program. Form G–315, Student Questionnaire, obtains certification of a student's full-time school attendance. It also obtains information on a student's marital status, Social Security benefits, and employment which are needed to determine entitlement or continued entitlement to benefits under the RRA. Form G–315a, Statement of School Official, is used to obtain verification from a school that a student attends school full-time and provides their expected graduation date. Form G–315a.1, School Officials Notice of Cessation of Full-Time Attendance, is used by a school to notify the RRB that a student has ceased full-time school attendance.

Type of Request: Revision of an OMB approved information collection. Completion is required to obtain or retain a benefit.

Number of Respondents: 900—The RRB estimates that approximately 860 Form G–315's, 20 Form G–315a's and 20 Form G–315a.1's are received annually.

Frequency of Response: Once.

Average Burden Per Response: The completion time for the G–315 is estimated at 15 minutes per response. The completion time for the G–315a is estimated at 3 minutes per response and the G–315a.1 estimated completion time is 2 minutes.

Estimated Annual Burden: 217 hours.

Charles Mierzwa,

Clearance Officer.

[FR Doc. 05–4779 Filed 3–10–05; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51306; File No. SR–Amex–2005–013]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendments No. 1 and 2 thereto by the American Stock Exchange LLC Relating to Revisions to the ANTE Roll-Out Schedule

March 3, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 28, 2005, the American Stock Exchange LLC ("Amex" 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 February 11, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.[3] On February 24, 2005, the Exchange filed Amendment No. 2 to the proposed rule change.[4] 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 Amex proposes to amend Rule 900—ANTE to provide a revised date for the implementation of the Amex New Trading Environment ("ANTE") System for the three hundred most actively traded option classes. The text of the proposed rule change is set forth below. Proposed new language is in *italics*. Deleted language is in [brackets].

* * * * *

Rule 900—ANTE Applicability, Definitions and References

(a) Applicability—The Exchange's new trading system (known as the ANTE System or ANTE) will be rolled-out over a period of time (approximately eighteen months) on a specialist post-by-specialist post basis. [It is anticipated that t] *T*he roll-out [will begin] *began* on [or about March 1] *May 25, 2004* and will continue until the end of the [third] *second* quarter of 2005 at which time all equity and index option classes traded by the Exchange will be on the ANTE System. It is anticipated that by [August 31, 2004] *March 31, 2005*, the three hundred most actively traded option classes will be traded on the ANTE System. Therefore, during the roll-out period, while the Exchange has option classes trading on both systems, current rules (as they are amended from time to time) will apply to those option classes continuing to trade on its current system while the following ANTE rules will apply to those option classes trading on the new trading system. Once the roll-out of ANTE is complete. the amendments to the Exchange's options rules reflecting the implementation of ANTE set forth below will replace, where applicable, the corresponding provisions in Rules 900 through 958A. The following Trading of Option Contracts Rules shall apply to the trading of option contracts on the ANTE System: 901, 902, 903, 904, 905, 906, 907, 908, 909, 915, 916, 917, 920, 921, 922, 923, 924, 925, 926, 927, 928, 930, 932, 940, 942, 943, 944, 952, 953, 954, 956, 957, 959, 960, 961, 962, 963, 964, 965, 966, 967, 970, 971, 972, 980, 981, 982, 990, 991, and 992. In addition, the following Trading of Option Contract Rules, which have been amended to reflect usage in the ANTE System, shall apply to the trading of options contracts on the ANTE System.

Moreover, the Rules in this Chapter (Trading of Options Contracts) shall be applicable to (i) the trading on and through the facilities of the Exchange of option contracts issued by the Options Clearing Corporation and the terms and conditions thereof; and (ii) the exercise and settlement, the handling of orders, and the conduct of accounts and other matters, relating to option contracts dealt in by any member or member organization. Except to the extent that specific Rules in this Chapter govern, or unless the context otherwise requires, the provisions of the Constitution and of all other Rules and policies of the Board of Governors shall be applicable to the trading on the Exchange of option contracts. Pursuant to the provisions of Article I, Section 3(i) of the Constitution, option contracts (as defined below) are included within the definition of "security" or "securities" as such terms are used in the Constitution and the Rules of the Exchange.

(b) through (d)—No changes.

* * * * *

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

On May 20, 2004, the Commission approved the Amex's proposal to implement a new options trading platform known as the ANTE. On May 25, 2004, the Amex began rolling out the ANTE System on its trading floor on a specialist's post-by-specialist's post basis. At that time, the Exchange anticipated the three hundred most actively traded option classes would be trading on the ANTE System by January 31, 2005. However, as of January 31, 2005, 260 of the 300 most active options classes, and 1,627 out of 1,920 total option classes are trading on the ANTE System.

The Exchange now anticipates that all of the three hundred most active option classes (that is, the remaining 40 classes) will be on the ANTE System by March 31, 2005. The Amex plans to put a systems enhancement in place in February 2005, which will alleviate the capacity issues that can occur when the most active classes begin trading on ANTE. Once the enhancement is in place, the most active classes will begin to be traded on ANTE. The Exchange believes that maintaining two systems for the trading of options—the legacy system (XTOPS, AODB and Auto-Ex) and ANTE—is costly. As a result, the Exchange is working diligently to have all option classes on the ANTE System by March 31, 2005 in order to retire its legacy systems before its original estimated date of completion, which was the end of the second quarter.

Furthermore, the Exchange notes that the roll-out schedule presently contained in Rule 900 (a)—ANTE does not reflect the roll-out schedule approved by the Commission on May

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 made technical corrections to the rule text and discussion section, which are incorporated herein.

[4] Partial Amendment No. 2 made technical corrections to underline the word "began" and insert a comma in the proposed rule text.

20, 2004.[5] The roll-out schedule currently set forth in Rule 900(a)—ANTE was part of an amendment to the original proposal seeking to implement the ANTE system.[6] Filed on February 9, 2004, Amendment No. 3 to the proposal anticipated for Commission approval of the ANTE implementation date by March 1, 2004 and accordingly provided a roll-out schedule based on that date. However, the Order describes the actual roll-out schedule based upon the Commission's approval date of May 20, 2004.[7] Accordingly, the Exchange seeks to amend Rule 900(a)—ANTE to correct where appropriate the roll-out schedule and to set forth adjustments to the schedule proposed by the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act[8] in general, and furthers the objectives of Section 6(b)(5) of the Act[9] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities, 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, and is designed to prohibit unfair discrimination between customers, issuers, brokers and dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change, as amended.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change, as amended, has become effective pursuant to Section 19(b)(3)(A)(i) of the Act[10] and Rule 19b–4(f)(1) thereunder[11] because it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Exchange. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[12]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Amex–2005–013 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–Amex–2005–013. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2005–013 and should be submitted on or before April 1, 2005.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–1021 Filed 3–10–05; 8:45 am]

BILLING CODE 8010–01–P

[5] *See* Securities Exchange Act Release No. 49747 (May 20, 2004), 69 FR 30344 (May 27, 2004) (SR–Amex–2003–89) ("Order").

[6] *See* Amendment No. 3 to SR–Amex–2003–89, *supra* note 5.

[7] *See* Order, *supra* note 5, at 30345–30346.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A)(i).

[11] 17 CFR 240.19b–4(f)(1).

[12] For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, as amended, under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on February 24, 2005, the date on which the Amex filed Partial Amendment No. 2. *See* 15 U.S.C. 78s(b)(3)(C).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51316; File No. SR–Amex–2005–029]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Position Limits and Exercise Limits

March 3, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 2, 2005, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Amex. The Exchange has filed the proposal as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex is proposing to amend Exchange Rule 904 to increase the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

standard position and exercise limits for equity options contracts and options on the Nasdaq-100 Index Tracking Stock ("QQQQ") for pilot program of six months. The text of the proposed rule change is available on the Amex's Web site (*http://www.amex.com*), at the Amex's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex 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

The Amex is proposing several changes to Exchange Rule 904 to increase position and exercise limits. Exchange Rule 904 subjects equity options to one of five different position limits depending on the trading volume and outstanding shares of the underlying security. Rule 905 establishes exercise limits for the corresponding options at the same levels.[5] On February 23, 2005, the Commission granted accelerated approval of a rule change proposed by the Chicago Board Options Exchange, Inc. ("CBOE") relating to position and exercise limits.[6]

Standard Position and Exercise Limits. The Exchange is proposing to adopt a pilot program for a period of six months during which the standard position and exercise limits for options on the QQQQ and for equity option classes traded on the Exchange would be increased to the following levels:

Current Equity Option Contract Limit	Proposed Equity Option Contract Limit
13,500	25,000
22,500	50,000
31,500	75,000
60,000	200,000
75,000	250,000
Current QQQQ Option Contract Limit	**Proposed QQQQ Option Contract Limit**
300,000	900,000

The standard position limits were last increased on December 31, 1998.[7] Since that time, there has been a steady increase in the number of accounts that, (a) approach the position limit; (b) exceed the position limit; and (c) are granted an exemption to the standard limit. Several member firms have petitioned the options exchanges to either eliminate position limits, or in lieu of total elimination, increase the current levels and expand the available hedge exemptions. A review of available data indicates that the majority of accounts that maintain sizable positions are in those option classes subject to the 60,000 and 75,000 tier limits. There also has been an increase in the number of accounts that maintain sizeable positions in the lower three tiers. In addition, overall volume in the options market has continually increased over the past five years. The Exchange believes that the increase in options volume and lack of evidence of market manipulation occurrences over the past twenty years justifies the proposed increases in the position and exercise limits.

The Exchange also proposes the adoption of a new equity hedge exemption to the existing exemptions currently provided under Commentary .09 to Exchange Rule 904. Specifically, new Commentary .09(5) to Exchange Rule 904 would allow for a "reverse collar" hedge exemption where a long call position is accompanied by a short put position, where the long call expires with the short put and the strike price of the long call equals or exceeds the short put and where each long call and short put position is hedged with 100 shares of the underlying security (or other adjusted number of shares). Neither side of the long call short put can be in-the-money at the time the position is established. The Exchange believes this is consistent with the existing Commentary .09(4) to Exchange Rule 904, which provides for an exemption for a "collar," and Commentary .09(2) and (3) to Exchange Rule 904, which provide for a hedge exemption for reverse conversions and conversions, respectively.

Manipulation. The Amex believes that position and exercise limits, at their current levels, no longer serve their stated purpose. The Commission has previously stated that:

> Since the inception of standardized options trading, the options exchanges have had rules imposing limits on the aggregate number of options contracts that a member or customer could hold or exercise. These rules are intended to prevent the establishment of options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the options position. In particular, position and exercise limits are designed to minimize the potential for mini-manipulations and for corners or squeezes of the underlying market. In addition such limits serve to reduce the possibility for disruption of the options market itself, especially in illiquid options classes.[8]

The Exchange believes that the existing surveillance procedures and reporting requirements at the Amex, other options exchanges, and at the several clearing firms are capable of

[5] Amex Rule 905 states "no member or member organization shall exercise, for any account in which such member or member organization has an interest or for the account of any partner, officer, director or employee thereof or for the account of any customer, a long position in any option contract of a class of options dealt in on the Exchange if as a result thereof such member or member organization, or partner, officer, director, employee thereof or customer acting alone or in concert with others, directly or indirectly has or will have exercised within any five (5) business days aggregate long positions in excess of: (i) the number of option contracts set forth as the position limit in [Amex] Rule 904 in a class of options for which the underlying security is a stock * * *."

[6] *See* Securities Exchange Act Release No. 51244 (February 23, 2005); 70 FR 10010 (March 1, 2005) (SR–CBOE–2003–30) (notice of filing and order granting accelerated approval).

[7] *See* Securities Exchange Act Release No. 40875 (December 31, 1998), 64 FR 1842 (January 12, 1999) (SR–Amex–98–22) (approval of increase in position limits and exercise limits).

[8] *See* Securities Exchange Act Release No. 39489 (December 24, 1997), 63 FR 276 (January 5, 1998) (SR–CBOE–97–11).

properly identifying unusual and/or illegal trading activity. In addition, routine oversight inspections of Amex's regulatory programs by the Commission have not uncovered any material inconsistencies or shortcomings in the manner in which the Exchange's market surveillance is conducted with respect to monitoring position limits. These procedures utilize daily monitoring of market movements via automated surveillance techniques to identify unusual activity in both options and in underlying stocks.

Furthermore, large stock holdings must be disclosed to the Commission by way of Schedules 13D or 13G.[9] Options positions are part of any reportable positions and, thus, cannot be legally hidden. In addition, Exchange Rule 906, which requires members to file reports with the Exchange for any customer or member who held aggregate long or short positions of 200 or more option contracts of any single class for the previous day, will remain unchanged and will continue to serve as an important part of the Exchange's surveillance efforts.

The Exchange believes that restrictive equity position limits prevent large customers, such as mutual funds and pension funds, from using options to gain meaningful exposure to individual stocks. This can result in lost liquidity in both the options market and the stock market. In addition, the Exchange has found that restrictive limits and narrow hedge exemption relief restrict member firms from adequately facilitating customer order flow and offsetting the risks of such facilitations in the listed options market. The fact that position limits are calculated on a gross rather than a delta basis also is an impediment.

Financial Requirements. The Exchange believes that the current financial requirements imposed by the Exchange and by the Commission adequately address concerns that a member or its customer may try to maintain an inordinately large unhedged position in an equity option. Current margin and risk-based haircut methodologies serve to limit the size of positions maintained by any one account by increasing the margin and/or capital that a member must maintain for a large position held by itself or by its customer. It also should be noted that the Exchange has the authority under Exchange Rule 462(F) to impose higher margin requirements upon a member or member organization when the Exchange determines that higher requirements are warranted. Also, the Commission's net capital rule, Rule 15c3–1 under the Act,[10] imposes a capital charge on members to the extent of any margin deficiency resulting from the higher margin requirement.

Finally, equity position limits have been gradually expanded from 1,000 contracts in 1973 to the current level of 75,000 contracts for options on the largest and most active underlying securities. To date, the Exchange believes that there have been no adverse affects on the market as a result of these past increases in the limits for equity option contracts.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act[11] in general and furthers the objectives of Section 6(b)(5) of the Act[12] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received by the Exchange on this proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has been designated by the Amex as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act[13] and subparagraph (f)(6) of Rule 19b–4 thereunder.[14]

The foregoing rule change: (1) Does not significantly affect the protection of investors or the public interest, (2) does not impose any significant burden on competition, and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest. Consequently, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[15] and Rule 19b–4(f)(6) thereunder.[16]

Pursuant to Rule 19b–4(f)(6)(iii), a proposed "non-controversial" rule change does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, and the Amex gave the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.[17] The Amex has requested that the Commission waive the five-day pre-filing notice requirement and the 30-day operative delay. The Commission has determined that it is consistent with the protection of investors and the public interest to waive the five-day pre-filing notice requirement and the 30-day operative delay.[18] Waiving the pre-filing requirement and accelerating the operative date will allow the Amex to immediately conform its position and exercise limits and equity hedge exemption strategies to those of the CBOE, which were recently approved by the Commission.[19]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[9] 17 CFR 240.13d–1.

[10] 17 CFR 240.15c3–1.

[11] 15 U.S.C. 78f.

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6).

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6)(iii).

[18] For the purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[19] *See* Securities Exchange Act Release No. 51244 (February 23, 2005), 70 FR 10010 (March 1, 2005) (SR–CBOE–2003–30).

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–Amex–2005–029 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File No. SR–Amex–2005–029. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–Amex–2005–029 and should be submitted on or before April 1, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Margaret H. McFarland,

Deputy Secretary.

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SECURTITES AND EXCHANGE COMMISSION

[Release No. 34–51317; File No. SR–BSE–2005–10]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to Position Limits and Exercise Limits on the Boston Options Exchange Facility

March 3, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 1, 2005, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the BSE. On March 2, 2005 the BSE filed Amendment No. 1 to the proposed rule change.[3] On March 3, 2005 the BSE filed Amendment No. 2 to the proposed rule change.[4] The Exchange has filed the proposal as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act[5] and Rule 19b–4(f)(6) thereunder,[6] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The BSE proposes to amend Section 7 (Position Limits), Section 8 (Exemptions from Position Limits), and Section 9 (Exercise Limits) of Chapter III of the Rules of the Boston Options Exchange ("BOX") to increase the standard position and exercise limits for equity options contracts and options on the Nasdaq-100 Index Tracking Stock ("QQQQ") for a pilot program of six months. The text of the proposed rule change is available on the BSE's Web site (*http://www.bostonstock.com*), at the BSE's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the BSE 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

The Exchange is proposing several changes to Section 7 (Position Limits), Section 8 (Exemptions from Position Limits), and Section 9 (Exercise Limits) of Chapter III of the BOX Rules. Section 7 of Chapter III of the BOX Rules subjects equity options to one of five different position limits depending on the trading volume and outstanding shares of the underlying security. Section 8 of Chapter III of the BOX Rules establishes certain qualified hedging transactions and positions that are exempt from established options position limits as prescribed under Section 7 of Chapter III of the BOX Rules. Section 9 of Chapter III of the BOX Rules establishes exercise limits for the corresponding options at the same levels as the corresponding security's position limits. On February 23, 2005, the Commission granted accelerated approval of a rule change proposed by the Chicago Board Options Exchange, Inc. ("CBOE") relating to position and exercise limits.[7]

Standard Position and Exercise Limits. The Exchange is proposing to adopt for BOX a pilot program for a period of six months during which the standard position and exercise limits for options on the QQQQ and for equity option classes traded on BOX would be increased to the following levels:

Current Equity Option Contract Limit	Proposed Equity Option Contract Limit
13,500	25,000

[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 corrected an error in Exhibit 5 to the filing.

[4] Amendment No. 2 corrected an error in Exhibit 5 to the filing.

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(6).

[7] *See* Securities Exchange Act Release No. 51244 (February 23, 2005), 70 FR 10010 (March 1, 2005) (SR–CBOE–2003–30).

Current Equity Option Contract Limit	Proposed Equity Option Contract Limit
22,500	50,000
31,500	75,000
60,000	200,000
75,000	250,000
Current QQQQ Option Contract Limit	**Proposed QQQQ Option Contract Limit**
300,000	900,000

The BOX's standard position limits have been in effect since the BOX commenced trading in February 2004. These standard position limits are the same as the standard position limits at the other options exchanges at that time, which were last increased on December 31, 1998.[8] Since that time, there has been a steady increase in the number of accounts on the options exchanges that, (a) approach the position limit; (b) exceed the position limit; and (c) are granted an exemption to the standard limit. Several member firms have petitioned the options exchanges to either eliminate position limits, or in lieu of total elimination, increase the current levels and expand the available hedge exemptions. A review of available data indicates that the majority of accounts that maintain sizable positions are in those option classes subject to the 60,000 and 75,000 tier limits. There also has been an increase in the number of accounts that maintain sizeable positions in the lower three tiers. In addition, overall volume in the options market has consistently increased over the past five years. The Exchange believes that the increase in options volume and lack of evidence of market manipulation occurrences during that same period justifies the proposed increases in the position and exercise limits.

The Exchange also proposes the adoption of a new equity hedge exemption to the existing exemptions currently provided under Section 8 of Chapter III of the BOX Rules. Specifically, new subparagraph (a)(v) of Section 8 of Chapter III of the BOX Rules would allow for a "reverse collar" hedge exemption to apply when a long call position is accompanied by a short put position, and the long call expires with the short put. In addition, the strike price of the long call must equal or exceed the short put, and each long call and short put position must be hedged with 100 shares of the underlying security (or other adjusted number of shares). Neither side of the long call short put can be in-the-money at the time the position is established. The Exchange believes this is consistent with existing subparagraph (a)(iv) of Section 8 of Chapter III of the BOX Rules, which provides for an exemption for a "collar," and subparagraphs (a)(ii) and (a)(iii) of Section 8 of Chapter III of the BOX Rules, which provide for a hedge exemption for reverse conversions and conversions, respectively.

Manipulation. The Exchange believes that position and exercise limits, at their current levels, no longer serve their stated purpose. The Commission has previously stated that:

> Since the inception of standardized options trading, the options exchanges have had rules imposing limits on the aggregate number of options contracts that a member or customer could hold or exercise. These rules are intended to prevent the establishment of options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the options position. In particular, position and exercise limits are designed to minimize the potential for mini-manipulations and for corners or squeezes of the underlying market. In addition such limits serve to reduce the possibility for disruption of the options market itself, especially in illiquid options classes.[9]

The Exchange believes that the existing surveillance procedures and reporting requirements at the BOX, other options exchanges, and at the several clearing firms are capable of properly identifying unusual and/or illegal trading activity. In addition, when the Commission reviewed BOX's regulatory program before allowing BOX to begin trading, the Commission did not uncover any material inconsistencies or shortcomings in the manner in which BOXR's market surveillance of BOX would be conducted. These procedures utilize daily monitoring of market movements via automated surveillance techniques to identify unusual activity in both options and in underlying stocks.

Furthermore, large stock holdings must be disclosed to the Commission by way of Schedules 13D or 13G.[10] Options positions are part of any reportable positions and, thus, cannot be legally hidden. In addition, Section 10 of Chapter III of the BOX Rules, which requires members to file reports with the Exchange for any customer or member who held aggregate long or short positions of 200 or more option contracts of any single class for the previous day, will remain unchanged and will continue to serve as an important part of the Exchange's surveillance efforts.

The Exchange believes that restrictive equity position limits prevent large customers, such as mutual funds and pension funds, from using options to gain meaningful exposure to individual stocks. This can result in lost liquidity in both the options market and the stock market. In addition, the Exchange has found that restrictive limits and narrow hedge exemption relief restrict member firms from adequately facilitating customer order flow and offsetting the risks of such facilitations in the listed options market. The fact that position limits are calculated on a gross rather than a delta basis also is an impediment.

Financial Requirements. The Exchange believes that the current financial requirements imposed by the Exchange and by the Commission adequately address concerns that a member or its customer may try to maintain an inordinately large unhedged position in an equity option. Current margin and risk-based haircut methodologies serve to limit the size of positions maintained by any one account by increasing the margin and/or capital that a member must maintain for a large position held by itself or by its customer. Also, the Commission's net capital rule, Rule 15c3–1 under the Act,[11] imposes a capital charge on members to the extent of any margin deficiency resulting from the higher margin requirement.

Finally, equity position limits have been gradually expanded from 1,000

[8] *See* Securities Exchange Act Release No. 40875 (December 31, 1998), 64 FR 1842 (January 12, 1999) (SR–CBOE–98–25) (approval of increase in position limits and exercise limits).

[9] *See* Securities Exchange Act Release No. 39489 (December 24, 1997), 63 FR 276 (January 5, 1998) (SR–CBOE–97–11) (approval of increase in position limits and exercise limits for OEX index options).

[10] 17 CFR 240.13d–1.

[11] 17 CFR 240.15c3–1.

contracts in 1973 to the current level of 75,000 contracts for options on the largest and most active underlying securities. To date, the Exchange believes that there have been no adverse affects on the market as a result of these past increases in the limits for equity option contracts.

QQQQ. The Exchange also proposes to change the references to the Nasdaq-100 Index Tracking Stock that are currently in Sections 7 and 9 of Chapter III of the BOX Rules from "QQQ" to "QQQQ" to correspond to the symbol change that occurred when the listing moved from the American Stock Exchange to the Nasdaq Stock Market.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[12] in general, and of Section 6(b)(5) of the Act,[13] in particular, in that it is designed to promote just and equitable principles of trade, and 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 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 comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has been designated by the BSE as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act[14] and subparagraph (f)(6) of Rule 19b–4 thereunder.[15]

The foregoing rule change: (1) Does not significantly affect the protection of investors or the public interest, (2) does not impose any significant burden on competition, and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest. Consequently, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[16] and Rule 19b–4(f)(6) thereunder.[17]

Pursuant to Rule 19b–4(f)(6)(iii), a proposed "non-controversial" rule change does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, and the BSE gave the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.[18] The BSE has requested that the Commission waive the five-day pre-filing notice requirement and the 30-day operative delay. The Commission has determined that it is consistent with the protection of investors and the public interest to waive the five-day pre-filing notice requirement and the 30-day operative delay.[19] Waiving the pre-filing requirement and accelerating the operative date will allow the BSE to immediately conform the BOX's position and exercise limits and the BOX's equity hedge exemption strategies to those of the CBOE, which were recently approved by the Commission.[20]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the Act.[21]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–BSE–2005–10 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File No. SR–BSE–2005–10. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–BSE–2005–10 and should be submitted on or before April 1, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Margaret H. McFarland,

Deputy Secretary.

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[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6).

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6).

[18] 17 CFR 240.19b–4(f)(6)(iii).

[19] For the purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[20] *See* Securities Exchange Act Release No. 51244 (February 23, 2005), 70 FR 10010 (March 1, 2005) (SR–CBOE–2003–30).

[21] For purpose of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers that period to commence on March 3, 2005, the date that the BSE filed Amendment No. 2.

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51324; File No. SR–NASD–2004–042]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Foreign Hearing Locations

March 7, 2005.

I. Introduction

On March 9, 2004, National Association of Securities Dealers, Inc. ("NASD"), through its wholly owned subsidiary, NASD Dispute Resolution, Inc. ("Dispute Resolution"), filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change (1) to amend NASD Rule 10315 to permit arbitrations to occur in a foreign hearing location, and (2) to amend IM–10104 to allow the Director of Arbitration to authorize a higher or additional honorarium for the use of a foreign hearing location. NASD amended the proposal on September 29, 2004,[3] and November 23, 2004.[4] Notice of the proposed rule change was published for comment in the **Federal Register** on February 3, 2005.[5] The Commission did not receive any comment letters on the proposal. This order approves the proposed rule change.

II. Description of Proposed Rule Change

The proposed rule change amends NASD Rule 10315 to permit arbitrations to occur in a foreign hearing location in order to accommodate parties who desire to conduct their arbitrations abroad. Under the proposal, the foreign hearing location process will be strictly voluntary. According to NASD, once Dispute Resolution has determined that an arbitration can be handled using a foreign hearing location, Dispute Resolution will inform claimants about the availability and the additional costs of the appropriate foreign hearing location, as well as seek the agreement of the respondents if a claimant wishes to use a foreign hearing location. Under the proposal, parties will pay an additional surcharge for use of the foreign hearing location. Also, under the proposal, all foreign arbitrators selected by NASD to conduct arbitrations in foreign hearing locations must: (1) Meet NASD background qualifications for arbitrators; (2) receive training on NASD arbitration rules and procedures; and (3) satisfy at least the same training and testing requirements as those arbitrators who serve in U.S. locations of NASD. In addition, the proposed rule change amends IM–10104 to allow the Director to authorize a higher or additional honorarium for the use of a foreign hearing location to cover the additional daily cost for the foreign arbitrators' service in that location. Under the proposal, this surcharge will initially be apportioned equally among the parties, unless they agree otherwise, but the foreign arbitrators will retain the authority to apportion the surcharge as provided for in NASD Rules 10205 and 10332.

According to NASD, the NASD Dispute Resolution Business Development staff, with the cooperation of the administrative staff of the groups providing the foreign arbitrators, will administer all cases designated for hearing in a foreign location. Also, according to NASD, the first foreign hearing location for NASD arbitrations will be in London. NASD represented that Dispute Resolution has formed a relationship with the Chartered Institute of Arbitrators ("CIArb"), which is based in London and maintains a worldwide roster of neutrals. NASD believes that a partnership between CIArb and NASD will provide its international constituents with access to a local roster of experienced neutrals, as well as the convenience and cost efficiency of conducting hearing sessions within a reasonable distance from their place of business or residence.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[6] Specifically, the Commission finds that the proposal is consistent with Section 15A(b)(6) of the Act,[7] which requires, among other things, that NASD's rules 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. The Commission believes that the proposed rule change should improve NASD's ability to conduct arbitrations because it will provide those parties residing in foreign locations with the option of holding their arbitration hearings closer to home, using local arbitrators, and saving the expense of traveling to the United States to resolve their disputes. At the same time, the Commission notes that the voluntary aspect of the proposed rule change will allow these parties to decide in each matter whether a foreign hearing location or U.S. hearing location is preferable for them.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (File No. SR–NASD–2004–042) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Letter from Mignon McLemore, Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated September 29, 2004.

[4] Form 19b–4 dated November 23, 2004.

[5] Securities Exchange Act Release No. 51082 (February 3, 2005), 70 FR 5713 ("Notice").

[6] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78*o*–3(b)(6).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51318; File No. SR–PCX–2005–25]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Split Price Priority

March 4, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 1, 2005, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by PCX. The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

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

PCX proposes to amend PCX Rule 6.75 relating to split price transactions. The text of the proposed rule change is set forth below.[5] Proposed new language is in *italics*; proposed deletions are in [brackets].

* * * * *

Rule 6.75(h) Priority on Split Price Transaction*s Occurring in Open Outcry*.

(1) Purchase *or sale* priority. If an OTP Holder or OTP Firm purchases *(sells)* one or more option contracts of a particular series at a particular price or prices, the OTP Holder or OTP Firm must, at the next lower *(higher)* price at which another OTP Holder or OTP Firm bids *(offers)*, have priority in purchasing *(selling)* up to the equivalent number of option contracts of the same series that the OTP Holder or OTP Firm purchased *(sold)* at the higher (lower) price or prices, provided that the OTP Holder or OTP Firm's bid *(offer)* is made promptly and continuously and that the purchase *(sale)* so effected represents the opposite side of a transaction with the same order or offer *(bid)* as the earlier purchase or purchases *(sale or sales). This paragraph only applies to transactions effected in open outcry.*

(2) [Sale priority. If an OTP Holder or OTP Firm sells one or more option contracts of a particular series at a particular price or prices, he shall, at the next higher price at which another OTP Holder or OTP Firm offers, have priority in selling up to the equivalent number of option contracts of the same series that he sold at the lower price or prices, provided that his offer is made promptly and that the sale so effected represents the opposite side of a transaction with the same order or bid as the earlier sale or sales.] *If an OTP Holder or OTP Firm purchases (sells) fifty or more option contracts of a particular series at a particular price or prices, he/she shall, at the next lower (higher) price have priority in purchasing (selling) up to the equivalent number of option contracts of the same series that he/she purchased (sold) at the higher (lower) price or prices, but only if his/her bid (offer) is made promptly and the purchase (sale) so effected represents the opposite side of the transaction with the same order or offer (bid) as the earlier purchase or purchases (sale or sales). The Exchange may increase the "minimum qualifying order size" above 100 contracts for all products. Announcements regarding changes to the minimum qualifying order size shall be made via an Exchange Bulletin. This paragraph only applies to transactions effected in open outcry.*

(3) No Change.

(4) *Except for the provisions set forth in Rule 6.75(h)(2),* [T]the priority afforded by this rule is effective only insofar as it does not conflict with orders on the book of the Order Book Official as provided in Rule 6.75. Such orders on the book of the Order Book Official have precedence over OTP Holders and OTP Firms' orders at a particular price; orders on the book also have precedence over OTP Holder or OTP Firms' orders that are not superior in price by at least the MPV.

(5) Floor Brokers are able to achieve split price priority in accordance with paragraphs (1) and (2) above. Provided however, that a floor broker who bids (offers) on behalf of a non-market-maker PCX broker-dealer ("PCX BD") must ensure that the PCX BD qualifies for an exemption from Section 11(a)(1) of the Exchange Act or that the transaction satisfies the requirements of Exchange Act Rule 11a2–2(T), otherwise the floor broker must yield priority to orders for the accounts of non-OTP Holders or non-OTP Firms.

* * * * *

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

PCX Rule 6.75(h) establishes priority for split-price transactions. Generally, an OTP Holder or OTP Firm buying (selling) at a particular price shall have priority over other OTP Holders or OTP Firms purchasing (selling) up to an equivalent number of contracts of the same order at the next lower (higher) price. Awarding split price priority serves as an inducement to OTP Holders and OTP Firms to bid (offer) more aggressively for an order that may require a split-price execution by giving them priority at the next lower (higher) price point. For example, assume the market is $1.00–$1.20, 300 up when a floor broker ("FB") receives instructions from a customer that it would like to buy 500 options at a price or prices no higher than $1.20. The FB could attempt to execute the order in open outcry at a price better than the displayed market of $1.20. Assume a market maker ("MM") in the crowd is willing to sell 250 contracts at $1.15 provided he can also sell the remaining 250 contracts at $1.20. Under current PCX rules, that MM could offer $1.15 for 250 contracts and then, by virtue of the split price priority rule, he/she would have priority for the balance of the order (up to 250 contracts) over other crowd members. If executed, the resulting net price of $1.175 is better than the current displayed market of $1.20, which results in a better fill for the customer.[6]

One limitation on the ability of crowd participants to use the split price priority rule is the rule's requirement that orders in the limit order book ("Book") have priority over the OTP Holder or OTP Firm attempting to fill the balance of the order at the split price. Using the example above, if the $1.20 price represented orders in the Book, those orders would have priority over the MM at $1.20. This means that a MM who is willing to trade at $1.15 and $1.20 may be completely unwilling to trade at the better price of $1.15 if he/she cannot trade the balance of the order at $1.20 because of the requirement to yield to existing customer interest in the Book. This jeopardizes the FB's ability to execute the first part of the order at a price of $1.15, thereby potentially making it difficult to achieve price improvement for the customer at the PCX. Instead, the order may trade at another exchange that has no impediments, *i.e.*, no customer interest at those price levels. Accordingly, the purpose of this proposal is to adopt a limited exception to the existing priority requirement.

Under newly proposed paragraph (2) of Rule 6.75, an OTP Holder or OTP Firm with an order for at least 100 contracts who buys (sells) at least 50 contracts at a particular price would have price priority over all others in

[5] Based on a conversation with PCX, the Commission staff made two grammatical corrections to the proposed rule text. Telephone conference on March 3, 2005 between Steven Matlin, Senior Counsel, PCX and Ann Leddy, Special Counsel, Division of Market Regulation, Commission.

[6] If successful, two trades will be reported at $1.15 and $1.20 and the net price result to the customer will be $1.175.

purchasing (selling) up to an equivalent number of contracts of the same order at the next lower (higher) price.[7] Using the above example, the MM trading at $1.15 would have priority over OTP Holders and OTP Firms and orders in the Book at $1.20 to trade at $1.20 with the balance of the order in the trading crowd. The Exchange believes the proposal will lead to more aggressive quoting by MMs, which in turn could lead to better executions. As indicated above, a MM may be willing to trade at a better price for a portion of an order if he/she is assured of trading with the balance of the order at the next pricing increment. As a result, FBs representing orders in the trading crowd may receive better-priced executions. As proposed, the Exchange will have the ability to increase the minimum qualifying order size to a number larger than 100 contracts. Any changes, which would have to apply to all products, would be announced to the OTP Holders and OTP Firms via an Exchange Bulletin.

The Exchange believes that it is reasonable to make a limited exception to the customer priority rule to allow split price trading. In this regard, the proposed exception would be similar in operation to the limited priority exception that exists for Combination, Spread, Ratio and Straddle orders (contained in Rule 6.75, Commentary .04). This priority exception generally provides that a crowd member affecting a qualifying order may trade ahead of the Book on one side of the order provided the other side of the order betters the Book. This exception was intended to facilitate the trading of Combination, Spread, Ratio and Straddle orders, which by virtue of their multi-legged composition could be more difficult to trade without a limited exception to the priority rule for one of the legs. The purpose behind the proposed split-price priority exception is the same—to facilitate the execution of large orders, which by virtue of their size and the need to execute them at multiple prices may be difficult to execute without a limited exception to the priority rules. The proposed exception would operate in the same manner as the Combination, Spread, Ratio and Straddle order exception by allowing an OTP Holder or OTP Firm affecting a trade that betters the market to have priority on the balance of that trade at the next pricing increment even if there are orders in the Book at the same price.

To address potential concerns regarding Section 11(a) of the Act,[8] the Exchange proposes to adopt Rule 6.75(h)(5). Section 11(a) generally prohibits members of national securities exchanges from effecting transactions for the member's own account, absent an exemption. With respect to the proposal, there could be situations where because of the limited exception to customer priority, orders on behalf of members could trade ahead of orders of nonmembers in violation of Section 11(a).[9] The proposed Commentary makes clear that FBs may avail themselves of the split-price priority rule but that they will be obligated to ensure compliance with Section 11(a). In this regard, a FB that bids (offers) on behalf of a non-market maker PCX OTP Holder or OTP Firm ("PCX BD") must ensure that the PCX BD qualifies for an exemption from Section 11(a)(1) of the Act or that the transaction satisfies the requirements of Rule 11a2–2(T). Otherwise, the FB would be required to yield priority to orders for the accounts of non-OTP Holders or non-OTP Firms.

2. Statutory Basis

For the above reasons, the Exchange believes that the proposed rule change would enhance competition. The Exchange believes that the proposed rule change is consistent with Section 6(b)[10] of the Act, in general, and furthers the objectives of Section 6(b)(5),[11] in particular, in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, to foster competition and 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

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act,[12] and Rule 19b–4(f)(6) thereunder.[13] At any time within 60 days of the filing of the proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

A proposed rule change filed under Rule 19b-4(f)(6)[14] normally does not become operative prior to 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii), the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. PCX has requested that the Commission waive the thirty-day operative date specified in Rule 19b–4(f)(6)(iii)[15] in order to conform its rules pertaining to split price priority with those of other options exchanges.

The Commission believes that waiving the thirty-day operative delay is consistent with the protection of investors and the public interest[16] because it will allow PCX to implement immediately rules similar to ones already in place at another options exchange and should encourage more

[7] Orders for less than 100 contracts would be unaffected by this proposal. The Exchange also takes the opportunity to consolidate current paragraphs (1) and (2) of Rule 6.75(h) into one paragraph (paragraph (1)). This consolidation would not effect the operation of the rule in any way; it simply would make the rule shorter.

[8] 15 U.S.C. 78k(a).

[9] For example, assume FB A walks into the trading crowd attempting to find a crowd member willing to effect a split-price transaction. FB B, who is representing either a proprietary or member BD order, expresses interest. In this instance, Section 11(a) could be implicated, absent an exemption.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). The Commission notes that the Exchange provided written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change.

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

aggressive quoting by market makers in competition for large-sized orders, and, in turn, better-priced executions. For these reasons, the Commission waives the 30-day pre-operative period.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–PCX–2005–25 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. All submissions should refer to File Number SR–PCX–2005–25. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PCX–2005–25 and should be submitted on or before April 1, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–1020 Filed 3–10–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51322; File No. SR–Phlx–2005–17]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to Position Limits and Exercise Limits

March 4, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 3, 2005, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Phlx. On March 3, 2005 the Phlx filed Amendment No. 1 to the proposed rule change.[3] The Exchange has filed the proposal as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act[4] and Rule 19b–4(f)(6) thereunder,[5] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend Exchange Rule 1001 to increase the standard position and exercise limits for equity options contracts and options on the Nasdaq-100 Index Tracking Stock ("QQQQ") on a six month pilot basis beginning on the effective date of the proposed rule change. The text of the proposed rule change is available on the Phlx's Web site (*http://www.phlx.com*), at the Phlx's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Exchange Rule 1001, Position Limits, to establish increased position and exercise limits for equity options and options overlying QQQQ, on a six-month pilot basis. Position limits impose a ceiling on the number of option contracts in each class on the same side of the market relating to the same underlying security that can be held or written by an investor or group of investors acting in concert. Exchange Rule 1002 (not proposed to be amended herein) establishes corresponding exercise limits.[6] Exercise limits prohibit an investor or group of investors acting in concert from exercising more than a specified number of puts or calls in a particular class within five consecutive business days.

Exchange Rule 1001 subjects equity options to one of five different position limits depending on the trading volume and outstanding shares of the underlying security. Exchange Rule 1002 establishes exercise limits for the corresponding options at the same levels as the corresponding security's position limits.[7]

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[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 made certain technical changes to Exhibit 5 to the filing.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

[6] As clarified by the Phlx, although the proposed rule change would not amend the text of Exchange Rule 1002 itself, the proposed amendment to Exchange Rule 1001 would have the effect of increasing the exercise limits established in Exchange Rule 1002 for the same six-month pilot period. Telephone conversation between Richard S. Rudolph, Vice President and Counsel, Phlx, and Ira L. Brandriss, Assistant Director, Division of Market Regulation, Commission, on March 4, 2005. *See also infra*, note 7 and accompanying text.

[7] Exchange Rule 1002 states, in relevant part, "* * * no member of member organization shall exercise, for any account in which such member or member organization has an interest of for the account of any partner, officer, director or employee thereof or for the account of any customer, a long position in any option contract of a class of options dealt in on the Exchange (or, respecting an option not dealt in on the Exchange, another exchange if the member or member organization is not a

Standard Position and Exercise Limits. The Exchange proposes to adopt a pilot program for a period of six months during which the standard position and exercise limits for equity options traded on the Exchange and for options overlying QQQQ would be increased to the following levels:

Current Equity Option Contract Limit	Proposed Equity Option Contract Limit
13,500	25,000
22,500	50,000
31,500	75,000
60,000	200,000
75,000	250,000
Current QQQQ Option Contract Limit	**Proposed QQQQ Option Contract Limit**
300,000	900,000

In 1998, the Commission approved an Exchange proposal (and similar proposals of other options exchanges) to increase standard option position and exercise limits to their current levels.[8] Since that time, there has been a steady increase in the number of accounts that, (a) approach the position limit; (b) exceed the position limit; and (c) are granted an exemption to the standard limit. Several member organizations have petitioned the Exchange to either eliminate position limits, or in lieu of total elimination, increase the current levels and expand the available hedge exemptions. A review of available data indicates that the majority of accounts that maintain sizable positions are in those options subject to the 60,000 and 75,000 tier limits. There also has been an increase in the number of accounts that maintain sizable positions in the lower three tiers. In addition, overall volume in the options market has continually increased over the past five years. The Exchange believes that the increase in options volume and lack of evidence of market manipulation occurrences over the past twenty years justifies the proposed increases in the position and exercise limits.

The proposal would also adopt a new equity hedge exemption to the existing exemptions currently provided under Commentary .07 to Exchange Rule 1001. Specifically, new Commentary .07(5) to Rule 1001 would allow for a "reverse collar" hedge exemption, where a long call position is accompanied by a short put position where the long call expires with the short put and the strike price of the long call equals or exceeds the short put, and where each long call and short put position is hedged with 100 shares of the underlying security (or other adjusted number of shares). Neither side of the long call/short put can be in-the-money at the time the position is established. The Exchange believes this is consistent with existing Commentary .07(4) to Exchange Rule 1001, which provides for an exemption for a "collar," and Commentary .07(2) and (3), which allow for a hedge exemption for "reverse conversions" and "conversions," respectively.

Manipulation. The Exchange believes that position and exercise limits, at their current levels, no longer serve their stated purpose. The Commission has previously stated that:

> Since the inception of standardized options trading, the options exchanges have had rules imposing limits on the aggregate number of options contracts that a member or customer could hold or exercise. These rules are intended to prevent the establishment of options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the options position. In particular, position and exercise limits are designed to minimize the potential for mini-manipulations and for corners or squeezes of the underlying market. In addition such limits serve to reduce the possibility for disruption of the options market itself, especially in illiquid options classes.[9]

As the anniversary of listed options trading approaches its thirty-fifth year, the Exchange believes that the existing surveillance procedures and reporting requirements at the Phlx, other options exchanges, and at the several clearing firms are capable of properly identifying unusual and/or illegal trading activity. In addition, routine oversight inspections of the Exchange's regulatory programs by the Commission have not uncovered any material inconsistencies or shortcomings in the manner in which the Exchange's market surveillance is conducted. These procedures utilize daily monitoring of market movements via automated surveillance techniques to identify unusual activity in both options and in underlying stocks. Furthermore, the significant increases in unhedged options capital charges resulting from the September 1997 adoption of risk-based haircuts in combination with the Exchange margin requirements applicable to these products under Exchange rules, serve as a more effective protection than do position limits.[10]

Furthermore, large stock holdings must be disclosed to the Commission by way of Schedules 13D or 13G.[11] Options positions are part of any reportable positions and, thus, cannot be legally hidden. In addition, Exchange Rule 1003, which requires members to file reports with the Exchange for any customer who held aggregate long or short positions of 200 or more option contracts of any single class for the previous day, will remain unchanged and will continue to serve as an important part of the Exchange's surveillance efforts.

The Exchange believes that restrictive equity position limits prevent large customers, such as mutual funds and pension funds, from using options to gain meaningful exposure to individual stocks. This can result in lost liquidity in both the options market and the equity market. In addition, the Exchange has found that restrictive limits and narrow hedge exemption relief restrict member firms from adequately facilitating customer order flow and offsetting the risks of such facilitations in the listed options market. The fact that position limits are calculated on a

member of that exchange) if as a result thereof such member or member organization, or partner, officer, director or employee thereof or customer, acting alone or in concert with others, directly or indirectly, has or will have exercised within any five (5) consecutive business days aggregate long positions in that class (put or call) as set forth as the position limit in Exchange Rule 1001, in the case of options on a stock or an Exchange-Traded Fund Share. * * *"

[8] *See* Securities Exchange Act Release No. 40875 (December 31, 1998), 64 FR 1842 (January 12, 1999) (Order approving SR–Phlx–98–36; SR–Amex–98–22; SR–CBOE–98–25; and SR–PCX–98–33).

[9] *See* Securities Exchange Act Release No. 39489 (December 24, 1997), 63 FR 276 (January 5, 1998) (SR–CBOE–97–11).

[10] *See* Securities Exchange Act Release No. 38248 (February 6, 1997), 62 FR 6474 (February 12, 1997) (File No. S7–7–94) (adopting Risk-Based Haircuts).

[11] 17 CFR 240.13d–1.

gross rather than a delta basis also is an impediment.

Financial Requirements. The Exchange believes that the current financial requirements imposed by the Exchange and by the Commission adequately address concerns that a member or its customer may try to maintain an inordinately large unhedged position in an equity option. Current margin and risk-based haircut methodologies serve to limit the size of positions maintained by any one account by increasing the margin and/or capital that a member must maintain for a large position held by itself or by its customer. It should also be noted that the Exchange has the authority under Exchange Rule 722(d)(1), (d)(4) and (i)(8) to impose a higher margin requirement upon a member or member organization when the Exchange determines a higher requirement is warranted. In addition, the Commission's net capital rule, Rule 15c3–1 under the Act,[12] imposes a capital charge on members to the extent of any margin deficiency resulting from the higher margin requirement.

Finally, equity position limits have been gradually expanded from 1,000 contracts in 1973 to the current level of 75,000 contracts for the largest and most active stocks. To date, the Exchange believes that there have been no adverse affects on the market as a result of these past increases in the limits for equity option contracts.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[13] in general, and furthers the objectives of Section 6(b)(5) of the Act,[14] in particular, in that it is designed to perfect the mechanisms of a free and open market and the national market system, protect investors and the public interest and promote just and equitable principles of trade, by establishing higher equity option position limits on a six-month pilot basis.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

[12] 17 CFR 240.15c3–1.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has been designated by the Phlx as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act [15] and subparagraph (f)(6) of Rule 19b–4 thereunder.[16]

The foregoing rule change: (1) Does not significantly affect the protection of investors or the public interest, (2) does not impose any significant burden on competition, and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest. Consequently, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [17] and Rule 19b–4(f)(6) thereunder.[18]

Pursuant to Rule 19b–4(f)(6)(iii), a proposed "non-controversial" rule change does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, and the Exchange gave the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.[19] The Phlx has requested that the Commission waive the five-day pre-filing notice requirement and the 30-day operative delay. The Commission has determined that it is consistent with the protection of investors and the public interest to waive the five-day pre-filing notice requirement and the 30-day operative delay.[20] Waiving the pre-filing requirement and accelerating the operative date will allow the Phlx to immediately conform its position and exercise limits and its equity hedge exemption strategies to those of another exchange, which were recently approved by the Commission.[21]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the Act.

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6).

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(6).

[19] 17 CFR 240.19b–4(f)(6)(iii).

[20] For the purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml)*; or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–Phlx–2005–17 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File No. SR–Phlx–2005–17. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All comments received will be posted without change;

[21] *See* Securities Exchange Act Release No. 51244 (February 23, 2005), 70 FR 10010 (March 1, 2005) (SR–CBOE–2003–30).

the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–Phlx–2005–17 and should be submitted on or before April 1, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–1018 Filed 3–10–05; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 10007 and # 10008]

Indiana Disaster Number IN–00001

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Indiana (FEMA–1573–DR), dated January 21, 2005.

Incident: Severe Winter Storms and Flooding.

Incident Period: January 1, 2005, through February 11, 2005.

DATES: *Effective Date:* February 11, 2005.

Physical Loan Application Deadline Date: March 22, 2005.

EIDL Loan Application Deadline Date: October 21, 2005.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Disaster Area Office 1, 360 Rainbow Blvd. South 3rd Floor, Niagara Falls, NY 14303.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Indiana, dated January 21, 2005, is hereby amended to establish the incident period for this disaster as beginning January 1, 2005, and continuing through February 11, 2005.

All other information in the original declaration remains unchanged.

[22] 17 CFR 200.30–3(a)(12).

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 05–4782 Filed 3–10–05; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10066 and #10067]

Louisiana Disaster #LA–00001

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Louisiana, dated 03/03/2005.

Incident: Severe Storms and Tornadoes.

Incident Period: 11/23/2004.

Effective Date: 03/03/2005.

Physical Loan Application Deadline Date: 05/02/2005.

EIDL Loan Application Deadline Date: 12/05/2005.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Disaster Area Office 1, 360 Rainbow Blvd. South 3rd Floor, Niagara Falls, NY 14303.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration on 03/03/2005, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Parish: La Salle.

Contiguous Parishes: Louisiana, Avoyelles, Caldwell, Catahoula, Grant, Rapides, Winn.

	Percent
The Interest Rates are:	
Homeowners with credit available elsewhere	5.875
Homeowners without credit available elsewhere	2.937
Businesses with credit available elsewhere	5.800
Businesses & small agricultural cooperatives without credit available elsewhere	4.000
Other (including non-profit organizations) with credit available elsewhere	4.750
Businesses and non-profit organizations without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 10066 C and for economic injury is 10067 0.

The State which received an EIDL Declaration # is Louisiana.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: March 3, 2005.

Hector V. Barreto,

Administrator.

[FR Doc. 05–4784 Filed 3–10–05; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 10022]

West Virginia Disaster Number WV–00002

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of West Virginia (FEMA–1574–DR), dated February 1, 2005.

Incident: Severe storms, flooding, and landslides.

Incident Period: January 4, 2005, through January 25, 2005.

DATES: *Effective Date:* January 25, 2005.

Physical Loan Application Deadline Date: April 4, 2005.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Disaster Area Office 1, 360 Rainbow Blvd. South 3rd Floor, Niagara Falls, NY 14303.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of West Virginia, dated February 1, 2005, is hereby amended to establish the incident period for this disaster as beginning January 4, 2005, and continuing through January 25, 2005.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 05–4783 Filed 3–10–05; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 5014]

Notice of Meeting of the Cultural Property Advisory Committee

In accordance with the provisions of the Convention on Cultural Property Implementation Act (19 U.S.C. 2601 *et seq.*) there will be a meeting of the Cultural Property Advisory Committee on Thursday, March 31, 2005, from approximately 8:30 a.m. to 5:30 p.m., and on Friday, April 1, 2005, from approximately 8:30 a.m. to 3 p.m., at the Department of State, Annex 44, Room 840, 301 4th St., SW., Washington, DC. During its meeting the Committee will continue its review of a request from the Government of the People's Republic of China to the Government of the United States of America. Concerned that its cultural heritage is in jeopardy from pillage, the Government of the People's Republic of China made this request under Article 9 of the 1970 UNESCO Convention. The request seeks U.S. import restrictions on Chinese archaeological material from the Paleolithic to the Qing Dynasty.

The Committee's responsibilities are carried out in accordance with provisions of the Convention on Cultural Property Implementation Act (19 U.S.C. 2601 *et seq.*). The text of the Act, a public summary of this request, and related information may be found at *http://exchanges.state.gov/culprop*. The meeting on March 31 and April 1 will be closed pursuant to 5 U.S.C. 552b(c)(9)(B) and 19 U.S.C. 2605(h).

The Committee also invites written comments that specifically address the determinations under Section 303(a)(1) of the Convention on Cultural Property Implementation Act, 19 U.S.C. 2602, pursuant to which the Committee must make findings. This citation for the determinations can be found at the Web site noted above. Written comments must be received no later than March 17, 2005, and may be faxed to (202) 260–4893, if 5 pages or less. Written comments greater than five pages must be sent in multiple copies (20 copies) via express mail to: Cultural Heritage Center, Department of State Annex 44, 301 4th St., SW., Rm. 334, Washington, DC 20547. Express mail is recommended for timely delivery.

Dated: March 4, 2005.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 05–4830 Filed 3–10–05; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 5015]

Notice Convening an Accountability Review Board for the December 6, 2004, Attack on the U.S. Consulate in Jeddah, Saudi Arabia

Pursuant to section 301 of the Omnibus Diplomatic Security and Antiterrorism Act of 1986, as amended (22 U.S.C. 4831 *et seq.*), I have determined that the December 6, 2004, attack on the U.S. Consulate in Jeddah, Saudi Arabia involved loss of life and serious injury at or related to a U.S. mission abroad. Therefore, I am convening an Accountability Review Board, as required by that statute, to examine the facts and the circumstances of the attack and to report to me such findings and recommendations as it deems appropriate, in keeping with their mandate.

I have appointed David C. Fields, a retired U.S. ambassador, as Chair of the Board. He will be assisted by Melvin Harrison, John Geoff O'Connell, Carolee Heileman, Robert Benedetti and by the Executive Secretary to the Board, Mark Jackson. They bring to their deliberations distinguished backgrounds in government service and in the private sector.

The Board will submit its conclusions and recommendations to me within 60 days of its first meeting, unless the Chair determines a need for additional time. Appropriate action will be taken and reports submitted to Congress on any recommendations made by the Board.

Anyone with information relevant to the Board's examination of this incident should contact the Board promptly at (202) 647–5204 or send a fax to the Board at (202) 647–3282.

This notice shall be published in the **Federal Register**.

Dated: March 4, 2005.

Condoleezza Rice,

Secretary of State, Department of State.

[FR Doc. 05–4831 Filed 3–10–05; 8:45 am]

BILLING CODE 4710–35–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending February 25, 2005

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2005–20456.

Date Filed: February 22, 2005.

Parties: Members of the International Air Transport Association.

Subject:

Memorandum PTC3 0827 dated 21 February 2005, Mail Vote 437—Resolution 010L—TC3 South Asian Subcontinent-South East Asia, South West Pacific, Japan/Korea—Special Passenger Amending Resolution from India to South East Asia, South West Pacific, Japan/Korea, r1–r21.

Intended effective date: 1 March 2005.

Docket Number: OST–2005–20464.

Date Filed: February 23, 2005.

Parties: Members of the International Air Transport Association.

Subject:

PTC23 EUR–J/K 0121, PTC23 ME–TC3 0228, PTC23 AFR–TC3 0262, PTC31 N&C/CIRC 0305 dated 25 February 2005.

Mail Vote 440—Resolution 010m—TC23/TC31 Special Passenger Amending Resolution from Japan to TC1, TC2, r1–r6.

Intended effective date: 1 April 2005.

Docket Number: OST–2005–20465.

Date Filed: February 23, 2005.

Parties: Members of the International Air Transport Association.

Subject:

PTC COMP 1217 dated 22 February 2005, Mail Vote 441—Resolution 010n—Special Amending Resolution—Turkey, r1–r3.

Intended effective date: 1 April 2005.

Renee V. Wright,

Acting Program Manager, Docket Operations, Alternate Federal Register Liaison.

[FR Doc. 05–4845 Filed 3–10–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending February 25, 2005

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2000–6836.
Date Filed: February 22, 2005.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 15, 2005.
Description: Application of Northwest Airlines, Inc., requesting renewal of its route 668 Experimental Certificate of Public Convenience and Necessity to engage in scheduled foreign air transportation of persons, property, and mail between the United States and Kiev, Ukraine.

Docket Number: OST–1995–958.
Date Filed: February 25, 2005.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 18, 2005.
Description: Application of Continental Airlines, Inc., requesting renewal its Route 29 F Segment 14 authority and to amend Continental's current Route 29 F Segment 14 authority to award Continental authority to provide scheduled foreign air transportation of persons, property, and mail between a point or points in the United States via intermediate points and the coterminal points Quito and Guayaquil, Ecuador, and beyond to the extent consistent with applicable air transport agreements. Continental also asks for renewed authority to integrate its amended Route 29 F Segment 14 certificate authority with its existing certificate and exemption authority.

Renee V. Wright,
Acting Program Manager, Alternate Federal Register Liaison.
[FR Doc. 05–4846 Filed 3–10–05; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Extension of the Public Comment Period for the O'Hare Modernization Draft Environmental Impact Statement, Chicago O'Hare International Airport, Chicago, IL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Extension of public comment period.

SUMMARY: This notice advises the public that the comment period for the O'Hare Modernization Draft Environmental Impact Statement (DEIS) Chicago O'Hare International Airport, Chicago, Illinois, is extended.

DATES: The comment period of the DEIS, ending on March 23, 2005, is extended to April 6, 2005.

SUPPLEMENTARY INFORMATION: By notice dated January 21, 2005, the Federal Aviation Administration (FAA) announced the availability of the DEIS for the Chicago O'Hare International Airport. In that notice, the FAA described the schedule for public hearings regarding the DEIS and advised that the public comment period would close Wednesday, March 23, 2005. The public hearings were held as scheduled on February 22, 23, and 24, 2005.

As set forth in the January 21, 2005, notice, all comments are to be submitted to Michael W. MacMullen of the FAA, at the address shown below.

FOR FURTHER INFORMATION CONTACT: Michael W. MacMullen, Airports Environmental Program Manager, Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, Des Plaines, IL 60018. Telephone: 847–294–8339, Fax: 847–7046; e-mail address: *ompeis@faa.gov.*

Issued in Washington, DC, on March 7, 2005.

Rebecca B. MacPherson,
Assistant Chief Counsel for Regulations.
[FR Doc. 05–4800 Filed 3–8–05; 11:04 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket Nos. FMCSA–99–6156, FMCSA–2000–7165, FMCSA–2000–7363, FMCSA–2000–7918, FMCSA–2000–8398]

Qualification of Drivers; Exemption Applications; Vision

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

ACTION: Notice of renewal of exemption; request for comments.

SUMMARY: This notice publishes the FMCSA decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 30 individuals. The FMCSA has statutory authority to exempt individuals from vision standards if the exemptions granted will not compromise safety. The agency has concluded that granting these exemptions will provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective March 23, 2005. Comments from interested persons should be submitted by April 11, 2005.

ADDRESSES: You may submit comments identified by DOT DMS Docket Numbers FMCSA–99–6156, FMCSA–2000–7165, FMCSA–2000–7363, FMCSA–2000–7918, and FMCSA–2000–8398 by any of the following methods:

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

Instructions: All submissions must include the agency name and docket numbers for this notice. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public

Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to *http://dms.dot.gov*, including any personal information provided. Please see the Privacy Act heading under Regulatory Notices.

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

FOR FURTHER INFORMATION CONTACT: Maggi Gunnels, Office of Bus and Truck Standards and Operations, (202) 366–4001, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 8 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Public Participation: The DMS is available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help guidelines under the "help" section of the DMS Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

Exemption Decision

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may renew an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381. This notice addresses 30 individuals who have requested renewal of their exemptions in a timely manner. The FMCSA has evaluated these 30 applications for renewal on their merits and decided to extend each exemption for a renewable two year period. They are:

Carl W. Adams
Glenn A. Babcock, Jr.
David W. Ball
David F. Bardsley, Sr.
Joseph M. Blankenship
Willie Burnett, Jr.
Charles C. Chapman
Dennis J. Christensen
Robert P. Conrad, Sr.
Jerald O. Edwards
Elias Gomez, Jr.
William G. Holland
Thomas E. Howard
John N. Lanning
Thomas F. Marczewski
Roy E. Mathews
Velmer L. McClelland
Duane A. McCord
James T. McGraw, Jr.
Robert A. Moss
Henry C. Patton
Bobby G. Pool, Sr.
Richard Rankin
Billy G. Saunders
George D. Schell
Scottie Stewart
Clarence L. Swann, Jr.
Thaddeus E. Temoney
Harry C. Weber
Yu Weng

These exemptions are extended subject to the following conditions: (1) That each individual have a physical exam every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by the FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31315 and 31136(e).

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31315 and 31136(e), each of the 30 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (64 FR 54948; 65 FR 159; 67 FR 57266; 65 FR 33406; 65 FR 57234; 68 FR 13360; 65 FR 45817; 65 FR 77066; 65 FR 66286; 66 FR 13825; 68 FR 10300; 65 FR 78256; 66 FR 16311). Each of these 30 applicants has requested timely renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, the FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Comments

The FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31315 and 31136(e). However, the FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by April 11, 2005.

In the past the FMCSA has received comments from Advocates for Highway and Auto Safety (Advocates) expressing continued opposition to the FMCSA's procedures for renewing exemptions from the vision requirement in 49 CFR 391.41(b)(10). Specifically, Advocates objects to the agency's extension of the exemptions without any opportunity for public comment prior to the decision to renew, and reliance on a summary statement of evidence to make its decision to extend the exemption of each driver.

The issues raised by Advocates were addressed at length in 69 FR 51346 (August 18, 2004). The FMCSA

continues to find its exemption process appropriate to the statutory and regulatory requirements.

Issued on: March 4, 2005.

Rose A. McMurray,

Associate Administrator, Policy and Program Development.

[FR Doc. 05–4844 Filed 3–10–05; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34654]

Watco Companies, Inc.—Continuance in Control Exemption—Appalachian & Ohio Railroad, Inc.

Watco Companies, Inc. (Watco), has filed a verified notice of exemption to continue in control of Appalachian & Ohio Railroad, Inc. (AO), upon AO's becoming a Class III rail carrier.

The transaction is scheduled to be consummated on or shortly after March 25, 2005.

This transaction is related to a concurrently filed verified notice of exemption in STB Finance Docket No. 34653, *Appalachian & Ohio Railroad, Inc.—Lease and Operation Exemption—CSX Transportation, Inc.*, wherein AO seeks to acquire by lease from CSX Transportation, Inc. (CSXT) and operate approximately 158.22 miles of rail lines in the State of West Virginia.[1]

Watco, a Kansas corporation, is a noncarrier that currently controls 10 Class III rail carriers: South Kansas and Oklahoma Railroad Company (SKO), Palouse River & Coulee City Railroad, Inc. (PRCC), Timber Rock Railroad, Inc. (TIBR), Stillwater Central Railroad (SLWC), Eastern Idaho Railroad, Inc. (EIRR), Kansas & Oklahoma Railroad, Inc. (K&O), Pennsylvania Southwestern Railroad, Inc. (PSWR), Great Northwest Railroad, Inc. (GNR), Kaw River Railroad, Inc. (KRR), and Mission Mountain Railroad, Inc. (MMT).

Applicant states that: (1) The rail lines operated by SKO, PRCC, TIBR, SLWC, EIRR, K&O, PSWR, GNR, KRR, and MMT do not connect with the rail lines being leased by AO; (2) the continuance in control is not part of a series of anticipated transactions that would connect the rail lines being acquired by AO with any railroad in the Watco corporate family; and (3) neither AO nor any of the carriers controlled by Watco are Class I rail carriers. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2). The purpose of the transaction is to reduce overhead expenses, coordinate billing, maintenance, mechanical and personnel policies and practices of applicant's rail carrier subsidiaries, thereby improving the overall efficiency of rail service provided by the 11 railroads.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34654, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Karl Morell, Of Counsel, Ball Janik LLP, 1455 F Street, NW., Suite 225, Washington, DC 20005.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: March 7, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–4834 Filed 3–10–05; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34653]

Appalachian & Ohio Railroad, Inc.—Lease and Operation Exemption—CSX Transportation, Inc.

Appalachian & Ohio Railroad, Inc. (AO), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to lease, from CSX Transportation, Inc. (CSXT), and operate approximately 158.22 miles of rail line extending between: (1) milepost BUC 0.0, at Berkeley Run Jct., WV, and milepost BUC 119.0, at Cowen, WV; (2) milepost BUN 0.0, at Berryburg Jct., WV, and milepost BUN 4.0, at the Sentinel Mine near Berryburg Jct.; (3) milepost BUO 0.0, at Century Jct., WV, and milepost BUO 5.05, at the Century Mine, near Century Jct.; (4) milepost BUJ 0.0, at Buckhannon, WV, and milepost BUJ 1.65, near Buckhannon; (5) milepost BUF 0.0, at Burnsville, WV, and milepost BUF 6.2, at Gilmer, WV; (6) milepost BUR 0.0, at Cowen, and milepost BUR 1.0, near Cowen; (7) milepost BUH 0.0, at Hampton Jct., WV, and milepost BUH 17.0, at Alexander, WV; and (8) milepost BTF 0.0, at Island Creek Jct., WV, and milepost BTF 4.32, near Island Creek Jct.

AO certifies that its projected revenues as a result of this transaction will not exceed those that would qualify it as a Class III rail carrier. However, because its projected annual revenues will exceed $5 million, AO also certifies that it has complied with the posting and service requirements of 49 CFR 1150.32(e). In accordance with that section, the transaction cannot be consummated before March 22, 2005, the effective date of the exemption. The transaction is scheduled to be consummated on or shortly after March 25, 2005.

This transaction is related to STB Finance Docket No. 34654, *Watco Companies, Inc.—Continuance in Control Exemption—Appalachian & Ohio Railroad, Inc.*, wherein Watco Companies, Inc., has concurrently filed a verified notice of exemption to continue in control of AO upon its becoming a carrier.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34653, must be filed with

[1] The rail lines being leased are between: (1) Milepost BUC 0.0, at Berkeley Run Jct., WV, and milepost BUC 119.0, at Cowen, WV; (2) milepost BUN 0.0, at Berryburg Jct., WV, and milepost BUN 4.0, at the Sentinel Mine near Berryburg Jct.; (3) milepost BUO 0.0, at Century Jct., WV, and milepost BUO 5.05, at the Century Mine, near Century Jct.; (4) milepost BUJ 0.0, at Buckhannon, WV, and milepost BUJ 1.65, near Buckhannon; (5) milepost BUF 0.0, at Burnsville, WV, and milepost BUF 6.2, at Gilmer, WV; (6) milepost BUR 0.0, at Cowen, and milepost BUR 1.0, near Cowen; (7) milepost BUH 0.0, at Hampton Jct., WV, and milepost BUH 17.0, at Alexander, WV; and (8) milepost BTF 0.0, at Island Creek Jct., WV, and milepost BTF 4.32, near Island Creek Jct.

the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Karl Morell, Of Counsel, Ball Janik LLP, 1455 F Street, NW., Suite 225, Washington, DC 20005.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: March 7, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–4833 Filed 3–10–05; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 7, 2005.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before April 11, 2005 to be assured of consideration.

Departmental Offices/Office of the Undersecretary for Domestic Finance; Proposed Collection; Comment Request

OMB Number: 1505–0174.

CFR Cite: 12 CFR 1501.2.

Type of Review: Extension.

Title: Financial Subsidiaries (Interim Final Rule).

Description: The regulation explains how a party may request that the Secretary of the Treasury determine that an activity is financial in nature and therefore one in which a financial subsidiary of a national bank may engage pursuant to 12 U.S.C. 24a.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 2.

Estimated Burden Hours Per Respondent: 20 Hours.

Frequency of Response: On Occasion.

Estimated Total Reporting Burden: 40 hours.

OMB Number: 1505–0179.

CFR Cite: 12 CFR 1501.2.

Type of Review: Extension.

Title: Financial Subsidiaries (Interim Final Rule).

Description: The rule finds three types of activities to be financial in nature pursuant to 12 U.S.C. 24a(b)(3) and creates a means by which national banks may request that the Secretary define particular activities within one of the three categories.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 1.

Estimated Burden Hours Per Respondent: 20 hours.

Frequency of Response: On Occasion.

Estimated Total Reporting Burden: 20 hours.

OMB Number: 1505–0182.

CFR Cite: 12 CFR Part 1500.

Type of Review: Extension.

Title: Merchant Banking Investments.

Description: The rule requires financial holding companies engaged in merchant banking activities to maintain certain policies, procedures, records and systems to manage and monitor such activities in a safe and sound manner.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 450.

Estimated Burden Hours Per Respondent: 50 hours.

Estimated Total Reporting Burden: 22,500 hours.

Clearance Officer: Lois K. Holland, Departmental Offices, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220, (202) 622–1563.

OMB Reviewer: Joseph F. Lackey, Jr., Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

Christopher L. Davis,

Treasury PRA Assistant.

[FR Doc. 05–4821 Filed 3–10–05; 8:45 am]

BILLING CODE 4811–16–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 4, 2005.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before April 11, 2005 to be assured of consideration.

Departmental Offices/International Affairs

OMB Number: 1505–0123.

Form Numbers: SHL—Schedule 1, SHL–Schedule 2; and other years SHLA—Schedule 1, SHLA—Schedule 2.

Type of Review: Revision.

Title: Survey of Foreign-Residents' Holdings of U.S. Securities.

Description: The survey collects information on foreign residents' holdings of U.S. securities, including selected money market instruments. The data is used in the computation of the U.S. balance of payments accounts and U.S. international investment position, in the formulation of U.S. financial and monetary policies, to satisfy 22 U.S.C. 3101, and for information on foreign portfolio investment patterns. Respondents are primarily the largest banks, securities dealers, and issuers of U.S. securities.

Respondents: Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents/Recordkeepers: 360.

Estimated Burden Hours Per Respondent/Recordkeeper: 110 hours.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 39,600 hours.

Clearance Officer: Lois K. Holland, Departmental Offices, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220, (202) 622–1563.

OMB Reviewer: Joseph F. Lackey, Jr., Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 05–4822 Filed 3–10–05; 8:45 am]

BILLING CODE 4811–16–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 7, 2005.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s)

may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before April 11, 2005 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1626.

Form Number: IRS Form 1065–b AND Schedule K–1.

Type of Review: Extension.

Title: Form 1065: U. S. Return of Income for Electing Large Partnerships; and *Schedule K–1:* Partner's Share of Income (Loss) From an Electing Large Partnership.

Description: Code sections 771–777 allow large partnerships to elect to file a simplified return which requires fewer items to be reported to partners.

Respondents: Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 100.

Estimated Burden Hours Per Respondent/Recordkeeper:

Form	Recordkeeping	Learning about the law or the form	Preparing the form	Copying, assembling, and sending the form to the IRS
Form 1065–B	52 hr., 24 min	23 hr., 51 min	35 hr., 2 min	2 hr., 40 min.
Schedule D (Form 1065–B)	14 hr., 6 min	2 hr., 40 min	3 hr., 1 min	
Schedule K–1 (Form 1065)	9 hr., 34 min	7 hr., 43 min	11 hr., 57 min	1 hr., 4 min.
Schedule L (Form 1065)	15 hr., 46 min	12 min	27 min.	
Schedule M–1 (Form 1065)	3 hr., 21 min	12 min	15 min.	
Schedule M–2 (Form 1065–B)	3 hr., 6 min	6 min	9 min.	

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 487,225 hours.

OMB Number: 1545–1915.

Notice Number: Notice 2005–04.

Type of Review: Extension.

Title: Fuel Tax Guidance.

Description: This notice provides guidance on certain excise tax Code provisions that were added or effected by the American Jobs Creation Act of 2004, Pub. L. 108–357. The information will be used by the IRS to verify that the proper amount of tax is reported, excluded, refunded, or credited.

Respondents: Business or other for-profit, Not-for-profit institutions, Farms, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents/ Recordkeepers: 20,263.

Estimated Burden Hours Respondent/ Recordkeeper: 1 hour, 41 minutes.

Estimated Total Reporting/ Recordkeeping Burden: 34,390 hours.

Clearance Officer: Glenn P. Kirkland, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, (202) 622–3428.

OMB Reviewer: Joseph F. Lackey, Jr., Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 05–4823 Filed 3–10–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

Proposed Agency Information Collection Activities; Comment Request

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Joint notice and request for comment.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the OCC, the Board, and the FDIC (the "agencies") may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Federal Financial Institutions Examination Council (FFIEC), of which the agencies are members, has approved the agencies' publication for public comment of proposed revisions to the Consolidated Reports of Condition and Income (Call Report), which are currently approved collections of information. At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the FFIEC and the agencies should modify the proposed revisions prior to giving final approval. The agencies will then submit the revisions to OMB for review and approval.

DATES: Comments must be submitted on or before May 10, 2005.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments, which should refer to the OMB control number(s), will be shared among the agencies.

OCC: You may submit comments, identified by [Attention: 1557–0081], by any of the following methods:

- *E-mail: regs.comments@occ.treas.gov.* Include [Attention: 1557–0081] in the subject line of the message.
- *Fax:* (202) 874–4448.
- *Mail:* Public Information Room, Office of the Comptroller of the Currency, 250 E Street, SW., Mailstop 1–5, Washington, DC 20219; Attention: 1557–0081.

Public Inspection: You may inspect and photocopy comments at the Public Information Room. You can make an appointment to inspect the comments by calling (202) 874–5043.

Board: You may submit comments, which should refer to "Consolidated Reports of Condition and Income, 7100–0036," by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov.* Follow the instructions for submitting comments on the *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov.*

Include docket number in the subject line of the message.

- *FAX:* 202–452–3819 or 202–452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, except as necessary for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FDIC: You may submit comments, which should refer to "Consolidated Reports of Condition and Income, 3064–0052," by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/propose.html.*
- *E-mail: comments@FDIC.gov.* Include "Consolidated Reports of Condition and Income, 3064–0052" in the subject line of the message.
- *Mail:* Steven F. Hanft (202–898–3907), Paperwork Clearance Officer, Room MB–3064, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Public Inspection: You may inspect comments at the FDIC Public Information Center, Room 100, 801 17th Street, NW., between 9 a.m. and 4:30 p.m. on business days.

A copy of the comments may also be submitted to the OMB desk officer for the agencies: Mark Menchik, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503, or electronic mail to *mmenchik@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: For further information about the revisions discussed in this notice, please contact any of the agency clearance officers whose names appear below. In addition, copies of Call Report forms can be obtained at the FFIEC's Web site (*http://www.ffiec.gov/ffiec_report_forms.htm*).

OCC: Mary Gottlieb, OCC Clearance Officer, or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Michelle E. Long, Clearance Officer, (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call (202) 263–4869.

FDIC: Steven F. Hanft, Paperwork Clearance Officer, (202) 898–3907, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: The agencies are proposing to revise the Call Report, which is currently an approved collection of information for each of the agencies.

The effect of the proposed revisions to the reporting requirements will vary from institution to institution depending on the extent to which an institution acquires loans with evidence of deterioration of credit quality since origination, including acquisitions of such loans in business combinations accounted for using the purchase method. The agencies expect that the proposed revisions will generally apply only to the limited number of institutions that are involved in purchase business combinations or that engage in purchases of loans with credit quality problems as a business activity. Furthermore, the proposed revisions entail the reporting of information included in disclosures required under applicable generally accepted accounting principles. Therefore, the agencies estimate that the implementation of these reporting revisions will result in a nominal increase in the current reporting burden imposed on all banks by the Call Report. The following burden estimates include the proposed revisions.

Report Title: Consolidated Reports of Condition and Income (Call Report).

Form Number: FFIEC 031 (for banks with domestic and foreign offices) and FFIEC 041 (for banks with domestic offices only).

Frequency of Response: Quarterly.

Affected Public: Business or other for-profit.

OCC:

OMB Number: 1557–0081.

Estimated Number of Respondents: 2,000 national banks.

Estimated Time per Response: 46.43 burden hours.

Estimated Total Annual Burden: 371,403 burden hours.

Board:

OMB Number: 7100–0036.

Estimated Number of Respondents: 922 state member banks.

Estimated Time per Response: 52.38 burden hours.

Estimated Total Annual Burden: 193,177 burden hours.

FDIC:

OMB Number: 3064–0052.

Estimated Number of Respondents: 5,332 insured state nonmember banks.

Estimated Time per Response: 37.08 burden hours.

Estimated Total Annual Burden: 790,796 burden hours.

The estimated time per response for the Call Report is an average, which varies by agency because of differences in the composition of the institutions under each agency's supervision (*e.g.*, size distribution of institutions, types of activities in which they are engaged, and existence of foreign offices). For the Call Report, the average reporting burden includes the effect on burden of the new Central Data Repository (CDR) system for processing Call Reports. The time per response for the Call Report is estimated to range from 15 to 600 hours, depending on an individual institution's circumstances, before considering the effect of voluntary testing and global enrollment activities related to the CDR. The reporting burden for testing and enrollment activities for an individual institution is estimated to range from 16 to 69 hours, depending on the institution's level of participation.

General Description of Reports

These information collections are mandatory: 12 U.S.C. 161 (for national banks), 12 U.S.C. 324 (for state member banks), and 12 U.S.C. 1817 (for insured state nonmember commercial and savings banks). Except for selected items, these information collections are not given confidential treatment.

Abstract

Institutions file Call Reports with the agencies each quarter for the agencies' use in monitoring the condition, performance, and risk profile of individual institutions and the industry as a whole. In addition, Call Reports provide the most current statistical data available for evaluating institutions' corporate applications such as mergers, for identifying areas of focus for both on-site and off-site examinations, and for monetary and other public policy purposes. Call Reports are also used to calculate all institutions' deposit insurance and Financing Corporation assessments and national banks' semiannual assessment fees.

Current Action

I. Overview

This joint notice and request for comment addresses proposed revisions

to the Call Report in response to Statement of Position 03–3, Accounting for Certain Loans or Debt Securities Acquired in a Transfer (SOP 03–3), which was issued by the American Institute of Certified Public Accountants (AICPA) and is effective for loans acquired in fiscal years beginning after December 15, 2004. The agencies are proposing to add three items to the Call Report relating to loans within the scope of SOP 03–3. In addition, the agencies are revising the Call Report instructions to explain how the delinquency status of loans within the scope of SOP 03–3 should be determined for purposes of disclosing past due loans in the Call Report.

The proposed revisions to the Call Report have been approved for publication by the FFIEC. The agencies intend to implement the proposed Call Report changes as of the June 30, 2005, report date. Nonetheless, as is customary for Call Report changes, if the information required to be reported in accordance with the proposed reporting revisions is not readily available, institutions are advised that they may report reasonable estimates of this information for the report date as of which the proposed changes first take effect.

Type of Review: Revision of currently approved collections.

II. Discussion of Proposed Revisions

In December 2003, the AICPA issued SOP 03–3. In general, this Statement of Position applies to "purchased impaired loans," *i.e.*, loans that a bank has purchased, including those acquired in a purchase business combination, when there is evidence of deterioration of credit quality since the origination of the loan and it is probable, at the purchase date, that the bank will be unable to collect all contractually required payments receivable. The Statement of Position applies to loans acquired in fiscal years beginning after December 15, 2004, with early adoption permitted. Banks must follow SOP 03–3 for Call Report purposes in accordance with its effective date based on their fiscal years. The Statement of Position does not apply to the loans that a bank has originated. SOP 03–3 also excludes certain acquired loans from its scope.

Under SOP 03–3, a purchased impaired loan is initially recorded at its purchase price (in a purchase business combination, the present value of amounts to be received). The Statement of Position limits the yield that may be accreted on the loan (the accretable yield) to the excess of the bank's estimate of the undiscounted principal, interest, and other cash flows expected at acquisition to be collected on the loan over the bank's initial investment in the loan. The excess of contractually required cash flows over the cash flows expected to be collected on the loan, which is referred to as the nonaccretable difference, must not be recognized as an adjustment of yield, loss accrual, or valuation allowance. Neither the accretable yield nor the nonaccretable difference may be shown on the balance sheet. After acquisition, increases in the cash flows expected to be collected generally should be recognized prospectively as an adjustment of the loan's yield over its remaining life. Decreases in cash flows expected to be collected should be recognized as an impairment through an addition to the loan loss allowance.

The Statement of Position prohibits a bank from "carrying over" or creating valuation allowances (loan loss allowances) in the initial accounting for purchased impaired loans. This prohibition applies to the purchase of an individual impaired loan, a pool or group of impaired loans, and impaired loans acquired in a purchase business combination. As a consequence, SOP 03–3 provides that valuation allowances should reflect only those losses incurred after acquisition, that is, the present value of all cash flows expected at acquisition that ultimately are not to be received. Thus, because of the accounting model set forth in SOP 03–3, banks will need to segregate their purchased impaired loans, if any, from the remainder of their loan portfolio for purposes of determining their overall allowance for loan and lease losses.

According to the Basis for Conclusions of SOP 03–3, the AICPA's Accounting Standards Executive Committee "believes that the accounting for acquired loans within the scope of this SOP is sufficiently different from the accounting for originated loans, particularly with respect to provisions for impairment, such that the amount of loans accounted for in accordance with this SOP should be disclosed separately in the notes to financial statements." The agencies agree with this assessment and have considered the disclosures required by SOP 03–3. Therefore, to assist the agencies in understanding the relationship between the allowance for loan and lease losses and the carrying amount of the loan portfolios of those banks whose portfolios include purchased impaired loans, the agencies are proposing to add three items to the Call Report. All three of these items represent information included in the disclosures required by SOP 03–3. The agencies would add two Memorandum items to Schedule RC–C, part I, Loans and Leases: (1) The outstanding balance [1] and (2) the carrying amount (before any loan loss allowances) as of the report date of the purchased impaired loans held for investment [2] that are included in Schedule RC–C. In addition, the agencies would add a Memorandum item to Schedule RI–B, part II, Changes in Allowance for Loan and Lease Losses, in which banks would report the amount of loan loss allowances for purchased impaired loans held for investment that is included in the total amount of the allowance for loan and lease losses as of the report date.

The agencies also plan to revise the instructions to Schedule RC–N, Past Due and Nonaccrual Loans, Leases, and Other Assets, to explain how purchased impaired loans should be reported in this schedule. SOP 03–3 does not prohibit placing loans on nonaccrual status and any nonaccrual purchased impaired loans should be reported accordingly in Schedule RC–N. For those purchased impaired loans that are not on nonaccrual status, banks should determine their delinquency status in accordance with the contractual repayment terms of the loans without regard to the purchase price of (initial investment in) these loans or the amount and timing of the cash flows expected at acquisition.

III. Request for Comment

Public comment is requested on all aspects of this joint notice. In addition, comments are invited on:

(a) Whether the proposed revisions to the Call Report collections of information are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

(b) The accuracy of the agencies' estimates of the burden of the information collections as they are proposed to be revised, including the validity of the methodology and assumptions used;

[1] The outstanding balance is the undiscounted sum of all amounts, including amounts deemed principal, interest, fees, penalties, and other under the loan, owed to the bank at the report date, whether or not currently due and whether or not any such amounts have been charged off by the bank. The outstanding balance does not include amounts that would be accrued under the contract as interest, fees, penalties, and other after the report date.

[2] Loans held for investment are those loans that the bank has the intent and ability to hold for the foreseeable future or until maturity or payoff. Thus, the outstanding balance and carrying amount of any purchased impaired loans that are held for sale would not be reported in these proposed Memorandum items.

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of information collections 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.

Comments submitted in response to this joint notice will be shared among the agencies and will be summarized or included in the agencies' requests for OMB approval. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden as well as other relevant aspects of the information collection request.

Stuart E. Feldstein,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

Board of Governors of the Federal Reserve System, February 28, 2005.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, DC, this 3rd day of March, 2005.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 05–4664 Filed 3–10–05; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1028

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1028, Application for Recognition of Exemption Under Section 521 of the Internal Revenue Code.

DATES: Written comments should be received on or before May 10, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala at the Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3634, or through the Internet at *RJoseph.Durbala@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Application for Recognition of Exemption Under Section 521 of the Internal Revenue Code.

OMB Number: 1545–0058.

Form Number: 1028.

Abstract: Farmers' cooperatives must file Form 1028 to apply for exemption from Federal income tax as being organizations described in Internal Revenue Code section 521. The information on Form 1028 provides the basis for determining whether the applicants are exempt.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 50.

Estimated Time Per Respondent: 50 hours, 54 minutes.

Estimated Total Annual Burden Hours: 2,545.

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: March 7, 2005.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 05–4884 Filed 3–10–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 1 Taxpayer Advocacy Panel (Including the States of New York, Connecticut, Massachusetts, Rhode Island, New Hampshire, Vermont and Maine)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 1 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, April 6, 2005.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227 (toll-free), or 718–488–3557 (non toll-free).

SUPPLEMENTARY INFORMATION: An open meeting of the Area 1 Taxpayer Advocacy Panel will be held Wednesday, April 6, 2005 from 3 p.m. ET to 4 p.m. ET via a telephone conference call. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 718–488–3557, or write Marisa Knispel, TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Marisa Knispel. Ms. Knispel can be reached at 1–888–912–1227 or 718–488–3557, or post comments to the Web site: *http://www.improveirs.org*.

The agenda will include various IRS issues.

Dated: March 8, 2005.

Martha Curry,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 05–4882 Filed 3–10–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Small Business/Self Employed—Taxpayer Burden Reduction Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Small Business/Self Employed—Taxpayer Burden Reduction Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The TAP will be discussing issues pertaining to increasing compliance and lessening the burden for Small Business/Self Employed individuals.

DATES: The meeting will be held Thursday, April 7, 2005.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227 or 718–488–3557.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Small Business/Self Employed—Taxpayer Burden Reduction Committee of the Taxpayer Advocacy Panel will be held Thursday, April 7, 2005 from 3 p.m. ET to 4:30 p.m. ET via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 718–488–3557, or write to Marisa Knispel, TAP Office, 10 Metro Tech Center, 625 Fulton Street, Brooklyn, NY 11201. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Marisa Knispel. Ms. Knispel can be reached at 1–888–912–1227 or 718–488–3557, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include the following: Various IRS issues.

Dated: March 8, 2005.

Martha Curry,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 05–4883 Filed 3–10–05; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Friday,
March 11, 2005

Part II

Environmental Protection Agency

40 CFR Parts 152 and 158
Pesticides; Data Requirement for Conventional Chemicals; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 152 and 158

[OPP–2004–0387; FRL–6811–2]

RIN 2070–AC12

Pesticides; Data Requirement for Conventional Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to update and revise its data requirements for the registration of conventional pesticide products. These data requirements and those already codified in part 158 of title 40 of the Code of Federal Regulations (CFR), are intended to provide EPA with data and other information necessary for the registration of a conventional pesticide chemical. Since the data requirements in part 158 were first codified in 1984, information needed to support the registration of a pesticide chemical has evolved as the general scientific understanding of the potential hazards posed by pesticides has grown. Over the years, updated data requirements were developed by EPA using a process that involved public participation and extensive involvement by the scientific community, including peer review by the FIFRA Scientific Advisory Panel (SAP). Most of the data requirements contained in this proposal have been applied on a case-by-case basis to support individual applications, or imposed via Data Call-In (DCI) on all registrants of similar products. Although the data requirements imposed have progressed as scientific understanding and concerns have evolved, the codified data requirements have not been updated to keep pace. This proposal involves changes to the codified data requirements that pertain to product chemistry, toxicology, residue chemistry, applicator exposure, post-application exposure, nontarget terrestrial and aquatic organisms, nontarget plant protection, and environmental fate. Coupled with updating data requirements, EPA proposes to add a few new studies, reformat the requirements, and revise its general procedures and policies associated with data submission. By codifying existing data requirements which are currently applied on a case-by-case basis, the pesticide industry, along with other partners in the regulated community, attain a better understanding and are better prepared for the pesticide registration process. This proposed rule does not apply to the data requirements for the registration of antimicrobial pesticide products; inert ingredients for pesticide products; spray drift, product performance (efficacy); or biochemical, and microbial pesticides.

DATES: Comments must be received on or before June 9, 2005.

ADDRESSES: Submit your comments, identified by Docket ID No. OPP–2004–0387, by one of the following methods:

- *Federal eRulemaking Portal. http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Agency Web Site. http://www.epa.gov/edocket.* EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- *E-mail. opp-docket@epa.gov.*
- *Mail.* Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Hand Delivery.* Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions. Direct your comments to Docket ID No. OPP–2004–0387. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the federal regulations.gov websites are "anonymous access " systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102). For additional instructions on submitting comments, go to Unit I.B. of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Vera Au, Field and External Affairs Division (FEAD), Office of Pesticide Programs, Mailcode: 7506C, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (703) 308–9069: fax number: 703–305–5884; e-mail address: *au.vera@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are a producer or registrant of a pesticide product, including agricultural, residential, and industrial pesticides, but not including antimicrobial, biochemical or microbial pesticides, or inert ingredients in pesticide products. This proposal also may affect any person or company who might petition the Agency for new tolerances, hold a pesticide registration with existing tolerances, or any person or company who is interested in obtaining or retaining a tolerance in the absence of a registration, that is, an import tolerance. This latter group may

include pesticide manufacturers or formulators, importers of food, grower groups, or any person or company who seeks a tolerance. Potentially affected entities may include, but are not limited to:

Chemical Producers (NAICS 32532), *e.g.*, pesticide manufacturers or formulators of pesticide products, importers or any person or company who seeks to register a pesticide or to obtain a tolerance for a pesticide.

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 above 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, please consult the appropriate Branch Chief in the Registration Division of the Office of Pesticide Programs at 703–305–5447.

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

1. *Submitting CBI.* Do not submit this information to EPA through EDOCKET, regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

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

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

II. Organization of Preamble

This preamble is organized according to the outline in this unit.

III. Statutory Authorities and Regulatory Framework

EPA is authorized to regulate pesticides under two federal statutes. The Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) regulates the sale, distribution, and use of pesticide products through a licensing (registration) scheme. The Federal Food, Drug and Cosmetic Act (FFDCA), among other things, regulates the safety of pesticide residues in food and feed. Both FIFRA and FFDCA were amended in 1996 by the Food Quality Protection Act (FQPA) to strengthen the protections offered, with particular emphasis on protection of children.

This action is issued under the authority of secs. 3, 4, 5, 10, 12, and 25 of FIFRA (7 U.S.C. 136–136y) and sec. 408 of FFDCA (21 U.S.C. 346a). The data required for a registration, reregistration, experimental use permit, or tolerance are listed in 40 CFR part 158.

A. FIFRA

Under FIFRA, every pesticide product must be registered (or specifically exempted from registration under FIFRA sec. 25(b)) with EPA before it may be sold or distributed in the United States. To obtain a registration, an applicant or registrant must demonstrate to the Agency's satisfaction that, among other things, the pesticide product, when used in accordance with widespread and commonly recognized practice, will not cause "unreasonable adverse effects" to humans or the environment. This safety determination, as defined in the statute, requires the Agency to consider the risk of the use of the pesticide and weigh this against its benefit. EPA must determine that the safety standard contained in FIFRA is met before granting a federal pesticide registration.

1. *Registration.* Section 3 of FIFRA contains the requirements for registration. Specifically, FIFRA sec. 3(c)(2) provides EPA broad authority, before and after registration, to require scientific testing and submission of the resulting data to the Agency by registrants and applicants of pesticide products. An applicant for registration must furnish EPA with substantial amounts of data on the pesticide, its composition, toxicity, potential human exposure, environmental properties and ecological effects, as well as information on its efficacy in certain cases. Although the data requirements are imposed primarily as a part of initial registration, EPA is authorized under FIFRA sec. 3(c)(2)(B) to require a registrant to develop and submit additional data to maintain a registration. This post registration data call-in authority recognizes that the scientific underpinnings of risk assessment change, and is another means by which EPA may keep data for use in risk assessment current with evolving science.

2. *Reregistration.* FIFRA sec. 4 requires that EPA reregister each pesticide product first registered before November 1984. This date was chosen based upon the fact that pesticides registered since 1984 were subject to the part 158 requirements of the 1984 regulation. Additional data for older

pesticides were called in where gaps in the scientific data base occurred. The Agency has largely used its data call-in authority to require on a case-by-case basis the submission of most of the data requirements contained in this proposal.

3. *Experimental use permits.* Subject to some exceptions, FIFRA sec. 5 requires persons seeking experimental use of pesticides under field conditions to obtain an experimental use permit (EUP). An EUP allows limited use of a pesticide for specified experimental and data collection purposes intended to support future registration of the pesticide. Because an EUP is for limited use under controlled conditions, the data needed to support issuance of the permit are correspondingly less than those required for full registration. For example, when performing crop field trials, a registrant may opt to destroy the treated crop rather than generate the needed residue chemistry data to establish a temporary tolerance. The regulations governing the issuance of EUPs are found in 40 CFR part 172.

B. FFDCA

FFDCA mandates EPA to determine that the level of pesticide chemical residues in food and feed will be safe for human consumption. An applicant must petition the Agency for a tolerance (maximum residue level) for a pesticide that is to be used in or around food or feed commodities, or could otherwise come in contact with food or feed. The safety standard set under FFDCA sec. 408(b) and (c) defines safe as "a reasonable certainty that no harm " will result from exposures to pesticide chemical residues. In making this determination, EPA is directed to consider aggregate risks from multiple sources of pesticide exposure, including anticipated food, drinking water, and other non-occupational exposures for which there is reliable information. Under FFDCA sec. 408(b)(2)(C), EPA must make a separate finding of safety for infants and children. In addition, EPA must take into account a variety of other factors, enumerated in sec. 408(b)(2)(D), including the cumulative risks associated with pesticides having a common mechanism of toxicity. The combination of aggregate and cumulative exposure increases the nature and scope of EPA's risk assessment, and potentially the types and amounts of data needed to determine that the FFDCA safety standard is met.

1. *Establishing tolerances.* Under FFDCA sec. 408, EPA is authorized to establish tolerances for pesticide residues in food and feed, or to exempt a pesticide from the requirement of a tolerance, if warranted. In this preamble, references to tolerances include exemptions from tolerance since the standards and procedures for both are the same. As previously mentioned, in 1996, FQPA modified FFDCA to establish a single health-based standard for tolerance-setting and enhanced the risk assessment process to more clearly focus on pesticide risks to children. The new safety standard applies to tolerances in a number of regulatory situations, including:

- Permanent tolerances that support registration under FIFRA;
- Tolerances for imported products which are established to allow importation of pesticide-treated commodities, but for which no U.S. registration is sought;
- Time-limited tolerances which are established for FIFRA sec. 18 emergency exemptions; and
- Temporary tolerances established for experimental use permits under FIFRA sec. 5.

2. *Reassessing tolerances.* Under FFDCA sec. 408(q), EPA must reassess each tolerance established before August 3, 1996, on a prescribed 10–year schedule. The Agency has reassessed many tolerances under its reregistration program. Numerous regulatory decisions have been made based upon available data and information required by the existing data requirements, and supplemented by additional data provided by registrants through data call-ins or voluntary submissions.

C. Linking FIFRA and FFDCA Safety Standards

Unless EPA is able to establish or maintain a needed tolerance or exemption under FFDCA, a pesticide cannot be registered under FIFRA for a food/feed use. FQPA created a specific linkage (FIFRA sec. 2(bb)) between the "unreasonable adverse effects" finding under FIFRA and the determination of pesticide residue safety of "reasonable certainty of no harm" under FFDCA. In essence, a pesticide that is inconsistent with, or does not meet, the FFDCA sec. 408 safety standard poses an unreasonable adverse effect that precludes new or continued registration. Thus, both FIFRA and FFDCA standards must be met for pesticides intended to be registered in the United States for food or feed uses.

Given this linkage between registration and tolerances, it makes sense for EPA to define data requirements for both purposes: the data required to support a determination of "reasonable certainty of no harm" under FFDCA are an integral part of the data needed for an "unreasonable adverse effects" determination under FIFRA. Consequently, when promulgated, these proposed data requirements would encompass the basic data requirements for both registration and tolerance-setting determinations. EPA will retain its authority to require additional data on a case-by-case basis.

IV. Background

A. Why does EPA Require Data for Pesticide Registrations?

Under the FFDCA and the FIFRA, anyone seeking to register a pesticide product is required to provide information to EPA that demonstrates their products can be used without posing unreasonable risk to human health and the environment, and for food uses, that there is a reasonable certainty that no harm will result from exposures to the residues of their pesticide product. As appropriate for the particular pesticide product, EPA uses the information provided to evaluate the pesticide for a wide range of adverse human health effects, from eye and skin irritation to cancer and birth defects, and to assess how the pesticide affects animal and plant species, non-target insect species, and what happens to the pesticide in soil, water, and air.

B. What are the Data Requirements?

First promulgated in 1984; the data requirements in 40 CFR part 158 outline the kinds of data and related information typically needed to register a pesticide. The data requirements are organized by major pesticide type (*e.g.*, conventional, antimicrobial, biochemical/microbial, etc.), scientific discipline (*e.g.*, toxicology, etc.), and major use site (*e.g.*, outdoor vs. indoor). Part 158 also outlines the associated procedures for submitting the data, requesting a waiver from a requirements, and other associated procedures. Since there is much variety in pesticide chemistry, exposure, and hazard, part 158 is designed to be flexible. Table notes to each data requirement explain under what conditions data are typically needed. The Agency also recognizes, however, that due to the particular nature and risk of some pesticides, registrants may seek to obtain data waivers or may suggest alternative approaches to satisfying requirements. Over the years since 1984, other data requirements have been implemented on a case-by-case basis. The determination of what data or information is needed is based on a scientifically rigorous process that includes peer review by the FIFRA Scientific Advisory Panel (SAP), as well

as a public review and comment process.

In essence, the data requirements identify the questions that the registrant will need to answer regarding the safety of a pesticide product before the Agency can register it. The data requirements address both components of a risk assessment, *i.e.*, what hazards does the pesticide present, and what level of exposure. The answer to one question may inform the kind of information needed in others. For example, a pesticide that is persistent and toxicologically potent may require more extensive exposure data to help establish a safe level of exposure. If there is negligible exposure then there may be generally less need for extensive hazard data since any conceivable risk would be low.

1. *The establishment of standardized data requirements.* Until 1984, data requirements were based on longstanding requirements initially put in place when pesticides were regulated by the U.S. Department of Agriculture (USDA) and the Food and Drug Administration (FDA). However, because virtually all of EPA's decisions relating to the registration of pesticides or the establishment of tolerances depend on Agency evaluation of scientific studies, EPA has throughout the years developed standardized data requirements and test guidelines, and established evaluation procedures and peer review processes to ensure the quality and consistency of scientific studies.

The current provisions in part 158 were originally promulgated in October, 1984. Prior to this, data requirements for the registration of pesticides were contained in a variety of guidance documents, not in regulatory form. Part 158 was intended to be a concise presentation of what data were required and under what circumstances. Once codified, part 158 specified standard hazard and exposure studies required for registration and tolerance setting and also identified conditions under which more specialized studies might be required. Guidelines, *i.e.*, instructions and test methods on how to perform a study, had meanwhile been issued as a series of Pesticide Assessment Guidelines. These documents, updated in 1996, describe acceptable protocols, test conditions, and data reporting guidelines to ensure that EPA's regulatory decisions are based on sound scientific data.

2. *Relationship between the harmonized test guidelines and part 158 requirements.* EPA has established a unified library for test guidelines issued by the Office of Prevention, Pesticides and Toxic Substances (OPPTS) for use in testing chemical substances to develop data for submission to EPA under the Toxic Substances Control Act (TSCA), FFDCA or FIFRA. This unified library of test guidelines represents an Agency effort that began in 1991 to harmonize the test guidelines within OPPTS, as well as to harmonize the OPPTS test guidelines with those of the Organization for Economic Cooperation and Development (OECD) of the European Community. The process for developing and amending these test guidelines includes several opportunities for public participation and the extensive involvement of the scientific community, including peer review by the FIFRA SAP and the Science Advisory Board (SAB) and other expert scientific organizations.

The purpose for harmonizing these guidelines into a single set of OPPTS guidelines is to minimize variations among the testing procedures that must be performed to meet the Agency's data requirements under FIFRA and TSCA. The guidelines themselves do not impose mandatory requirements. Instead, they present recognized standards for conducting acceptable tests, guidance on evaluating and reporting data, definition of terms, and suggested study protocols. As such, pesticide registrants may use a non-guideline protocol to generate the data required by part 158. Typically the registrant will use the available guideline, in which case the study protocol would simply cite the relevant guideline. If the registrant deviates from these guidelines, or is asked to provide data where there isn't yet a final guideline available, the registrant will discuss the variation with EPA and will explain and justify the methods chosen in the study protocol. Non-guideline protocols are accepted, provided that the study protocol meets the purpose of the test standards specified in the guidelines, and provides data of suitable quality and completeness as typified by the protocols cited in the guidelines. More information about the unified library and these guidelines is available at *http://www.epa.gov/opptsfrs/home/guidelin.htm.*

C. Why Have the Data Needs Changed Since 1984?

1. *1988 FIFRA amendments.* In 1988, FIFRA was amended to ensure that older pesticides met the scientific standards of the day. Among other things, the amendments provided for the acceleration of the reregistration program by establishing statutory deadlines and new procedures. The 1988 changes to FIFRA are important because it was during this effort that EPA recognized that some of the 1984 data requirements were becoming out of date. The Agency then used the reregistration process to focus on needed changes.

2. *The National Academy of Sciences 1993 Report.* With increasing emphasis on protecting children's health, EPA began to examine its data requirements relative to evaluating the potential risks from pesticides to sensitive subpopulations. The Agency sought the advice of the National Academy of Sciences' National Research Council (NRC) to assess its risk assessment methodologies and to provide additional information on the extent to which children may be at risk given emerging scientific information and technologies. In their 1993 report entitled, "Pesticides in the Diets of Infants and Children," (Ref. 1) NRC offered recommendations for further protecting infants and children from pesticides in their diet. The NRC called for the Agency to require more data and adopt better risk assessment methodologies. For example, the Council called for increased testing in the area of immune function, neurodevelopmental and reproductive testing, and neurotoxicity testing. NRC also suggested adding a thyroid screen to existing subchronic and chronic toxicity tests and additional tests on age-related physiological changes and pharmacokinetics in immature animals.

At the time the 1993 report was released, EPA had already begun work on many of the recommendations to improve the quality of its risk assessments. New testing guidelines and protocols were developed. Since then, many of the testing requirements recommended by the NRC have been incorporated into the Agency's standard evaluation requirements and practices. In addition, in line with the Council's recommendations and the FIFRA Scientific Advisory Panel's (SAP) advice, EPA recently expanded its neurotoxicity and developmental neurotoxicity study requirements. These updated requirements are contained in this proposal.

3. *The Food Quality Protection Act of 1996 (FQPA).* Passage of FQPA in 1996 reformed our nation's pesticide and food safety laws, resulting in changes in EPA's approach to protecting human health from risks associated with pesticide use. As mentioned, FQPA modified both FIFRA and FFDCA and established a single health-based standard for food-use pesticides and added protections for infants and children.

Throughout the 1990s, EPA has been continually working on improving data requirements. Under FFDCA, as amended by FQPA, EPA must reassess all existing pesticide tolerances and exemptions against the expanded and more rigorous safety standard. Beginning in 1994, and increasingly since the enactment of FQPA, EPA has changed aspects of its data requirements and risk assessment process to improve its ability to assess exposure more accurately and to strengthen its understanding of the potential pesticide risk to children. As mentioned, risk assessments must now consider data relating to aggregate exposure (exposure to pesticides from food, drinking water, and non-occupational routes such as home and garden uses) and cumulative risk (effects from exposures to multiple pesticides that share a common mechanism of toxicity). These measures necessitate collection of additional data on drinking water and non-occupational and residential exposure.

V. Purpose and Scope of this Proposal

A. What is the Scope of this Proposal?

This proposal applies only to conventional pesticides. In general, a conventional pesticide is considered as a synthetic chemical or a natural substance with a toxic mode of action. It is applicable to both manufacturing-use and end-use products. It does not include data requirements for antimicrobial, biochemical or microbial pesticides; inert ingredients; or changes to existing spray drift or product performance (efficacy) data requirements for conventional chemicals.

B. Why is EPA Proposing these Revisions?

EPA has a number of objectives in proposing this regulation to update and revise the data requirements in 40 CFR part 158. First, this proposal will update the requirements in part 158 to reflect changes that have occurred over time and which are generally applied already.

Second, this proposal will provide clarity on the data requirements themselves, with data requirements reformatted to promote efficiency in registration decision processes. Third, information developed in fulfilling these data requirements will improve the scientific basis supporting increasingly complex risk management decisions.

1. *Updating the 1984 requirements.* Although most of the specific requirements in part 158 have not changed since the data requirements were first published in 1984, there is information that is out-of date or may be unclear. The underlying science has advanced (*e.g.*, NAS in 1993 suggested changes to better protect children). The Agency's legislative mandate has been broadened to address new concerns. For example, given the stricter mandates imposed by the 1988 FIFRA amendments (emphasis on exposure to population subgroups) and the 1996 FQPA amendments to FIFRA and FFDCA, EPA finds that it is more frequently requesting certain data, and the Agency believes it should detail more specifically the conditions under which these tests will be required. Thus the proposed change entails both new tests and broadened requirements for some current tests.

This regulation will reflect the changes in data requirement practices that have evolved through practice since the 1984 data requirement rule was promulgated and address data needed to meet requirements created by statutory amendments to FIFRA and FFDCA. In addition, the rule will eliminate redundant data submission requirements.

EPA's underlying principle in development of this regulation is to strike an appropriate balance between the need for adequate data to make informed risk management decisions while minimizing the data collection burden.

Until this proposal is promulgated, the Agency will continue to use existing authority in 40 CFR part 158, to obtain these data on a case-by-case basis should they be necessary to support a registration.

2. *Reorganizing part 158 to improve usability.* EPA proposes to reorganize and reformat part 158 subpart A (General Provisions), and subpart B (How to Use Data Tables), and reorganize and renumber subpart D (Data Requirement Tables) into several individual subparts (see Table 1 in Unit VI). Each subpart would contain the data requirement tables for an individual scientific discipline and references to correlate with the Pesticide Assessment Guidelines. The Agency also proposes to remove from the regulations the current Appendix A, (a compendium of pesticide use sites and use categories), and create a separate Pesticide Use Index Guidance Document. Since the information contained in Appendix A only serves as reference material and is not being stated as a requirement, EPA believes that a guidance document format is easier to keep current and therefore better serves the regulated community. The information will be placed on EPA's website and made available to the public.

3. *Improving the scientific basis for pesticide registration decisions.* In general, the information developed as a result of the revisions, if finalized as proposed today, is expected to increase scientific understanding of the health and environmental effects of pesticides to which individuals and the environment may be exposed. The revised requirements are expected to improve the scientific basis for the Agency's regulatory decisions about the human health and environmental risks of pesticide products. The improved scientific basis is also expected to benefit a wide range of parties, including consumers and the general public, workers, scientists, industry, governments, public health officials, and the medical community, as well as foreign parties. Discussed in more detail in the document entitled "Economic Analysis of the Proposed Change in Data Requirements Rule for Conventional Pesticides," which is available in the public docket for this rulemaking, the following briefly highlights the various ways the improved data is expected to be used:

i. *Better informed regulatory decisions allow preservation of important pesticide uses.* The proposed revisions enable the Agency to make better informed regulatory decisions based on more complete data about the potential risks of pesticides. For example, the proposed changes better target needed data that take into account human and wildlife toxicological end points or routes of exposure not now adequately covered. The proposed rule would also require better information about the potential for pesticides to cause immunotoxic or developmental neurotoxic effects. This information is expected to be valuable in assuring that pesticide residues in food or from other sources are safe for children as well as other consumers. These studies would allow the Agency to assess aggregated and cumulative risks to consumers, with special emphasis on children. The proposal also includes exposure data tailored specifically to address pesticide handlers is crucial in assessing their risk and thus adequately protecting their health.

ii. *More refined exposure assessments mean clearing understanding of real risks.* EPA's current application and post-application exposure data base is not comprehensive, especially regarding exposures to pesticides in some agricultural or nonagricultural settings. The new data that would be collected under this proposal would allow the Agency to conduct improved exposure

assessments for residential sites and for bystanders in other settings. This will benefit farmers and other workers by allowing EPA to make better informed regulatory decisions that are neither too stringent nor too lenient.

iii. *Clarity and transparency to regulated community means savings.* The enhanced clarity and transparency of the information presented in part 158 should enhance the ability of industry to avoid wasted time and effort. Registrants may save time and money by understanding when studies are needed. This should allow products to enter the market earlier, thus increasing profits. The addition of some data requirements is likely to further communicate to domestic and world-wide marketplaces that pesticide products and items treated with them are safer, thus enhancing the reputation of American agricultural products and registered pesticides as tools for public health, etc.

iv. *Enhanced international harmonization means less duplication.* Data generated as a result of the revised requirements in part 158 would generally be sufficient for the needs of the OECD countries because EPA has harmonized the FIFRA test guidelines with those OECD. As a result, assessments of pesticides that are developed using data under the revised part 158 can be shared worldwide, allowing companies to avoid duplicative efforts to meet the requirements of other countries where the company may also manufacture and sell certain pesticides. This should lead to cost savings for companies that operate in the international market.

However, since EPA continues to allow applicants to submit and use their own study protocols to generate data that they subsequently submit to EPA, and there are differences in the mandate and authorities between EPA and OECD countries, the data submitted to EPA under part 158 would be expected to satisfy OECD standards under most circumstances, but perhaps not in all cases.

v. *Better informed users means informed risk-reduction choices.* Better regulatory decisions resulting from the proposed changes should also mean that the label will provide better information on the use of the pesticide. A pesticide label is the user's direction for using pesticides safely and effectively. It contains important information about where to use, or not use, the product, health and safety information that should be read and understood before using a pesticide product, and how to dispose of that product. This benefits users by enhancing their ability to obtain pesticide products appropriate to their needs, and to use and dispose of products in a manner that is safe and environmentally sound. Farmers (as well as other applicators) may benefit from label information based on the data submitted to the extent it helps inform their decisions about whether or how to use particular pesticides to avoid potential exposure to people or the environment from residues on treated crops or through off-site movement.

vi. *EPA information assists other communities in assessing pesticide risks.* Scientific, environmental, and health communities find pesticide toxicity information useful to respond to a variety of needs. For example, medical professionals are concerned about the health of patients exposed to pesticides; poison control centers make use of and distribute information on toxicity and treatment associated with poisoning; and scientists use toxicity information to characterize the effects of pesticides and to assess risks of pesticide exposure. Similarly those responsible for protection of non-target wildlife need reliable information about pesticides and assurance that pesticides do not pose an unreasonable threat. The proposed changes will help the scientific, environmental, and health communities by increasing the breadth, quality, and reliability of Agency regulatory decisions by improving their scientific underpinnings. In turn, the companies will be able to improve their ability to make appropriate decisions and take useful actions.

C. How Will this Proposal Affect Existing Registrations?

This proposal concerns prospective data requirements for future registrations of pesticides. That is, these proposed data requirements would apply to all new registrations of pesticides after the rule is finalized. The Agency does not intend to apply these requirements retrospectively to all existing pesticide registrations. While the intended future applicability of this proposed rule is to new applications, the Agency may find it necessary to call-in some data on certain existing registrations, as warranted by emerging risks of concern on particular pesticides or as a result of possible future programmatic changes and priorities on existing pesticides.

VI. Overview of Proposed Changes

A. Phased approach

This proposal is the first in a series of revisions aimed at comprehensively updating EPA's pesticide data requirements. The data requirements discussed in this proposal pertain to conventional pesticides. Future proposals will address data requirements for antimicrobial pesticides, biochemical and microbial pesticides, inert ingredients in pesticide products, and product performance data requirements.

B. Organizational changes

Part 158 is currently divided into four subparts:

- Subpart A, General Provisions
- Subpart B, How to Use Data Tables
- Subpart C, Product Chemistry Data Requirements
- Subpart D, Data Requirements Tables

EPA proposes to reorganize part 158 to more closely correspond with the Office of Prevention, Pesticides, and Toxic Substances (OPPTS) Harmonized Guidelines, primarily by creating a series of new subparts to replace subpart D. Each subpart will address an individual scientific discipline or data type. In this preamble, EPA will refer to the proposed new subpart and section designations when discussing the data requirements. Table 1 below provides a cross-reference between the current and proposed new subparts. Future new subparts are included for information.

TABLE 1.—PART 158: PROPOSED CHANGE TO SUBPART DESIGNATIONS

Current Regulation and Title	Proposed Regulation and Title
Subpart A: 158.20 General Provisions	Subpart A: 158.1 General Provisions
Subpart B: 158.100 How to Use Data Tables	Subpart B: 158.100 How to Use Data Tables
Subpart C: 158.150 Product Chemistry	Subpart D: 158.300 Product Chemistry
Subpart D: 158.240 Residue Chemistry	Subpart O: 158.1200 Residue Chemistry
Subpart D: 158.290 Environmental Fate	Subpart N: 158.1100 Environmental Fate
Subpart D: 158.340 Toxicology	Subpart F: 158.500 Toxicology
Subpart D: 158.390 Reentry Protection	Subpart K: 158.800 Post-application Exposure
Subpart D: 158.440 Spray Drift	Subpart R: 158.1400 Spray Drift

TABLE 1.—PART 158: PROPOSED CHANGE TO SUBPART DESIGNATIONS—Continued

Current Regulation and Title	Proposed Regulation and Title
Subpart D: 158.490 Wildlife and Aquatic Organisms Subpart D: 158.590 Nontarget Insects	Subpart E: 158.400 Terrestrial and Aquatic Nontarget Organisms
Subpart D: 158.540 Plant Protection	Subpart J: 158.700 Plant Protection
Subpart D: 158.640 Product Performance	Subpart G: 158.600 Product Performance
Subpart D: 158.690 Biochemical Pesticides	Subpart L: 158.900 Biochemical Pesticides
Subpart D: 158.740 Microbial Pesticides	Subpart M: 158.1000 Microbial Pesticides
	Subpart P: 158.1300 Pesticide Management and Disposal (Reserved) Subpart U: 158.1500 Applicator Exposure Subpart V: 158.1600 Inert Ingredients (Reserved) Subpart W: 158.1700 Antimicrobials

Further, EPA proposes to remove the current Appendix A, which contains a compendium of pesticide use sites and use categories to help determine data requirements. This will be separately issued and maintained as a guidance document.

C. "New Requirement" Vs."Newly Codified Requirement."

FIFRA is a licensing statute, under which regulatory decisions on the registrability of an individual product is based upon data specific to the product and its uses. EPA is authorized to require the submission of data that it needs to make the registration decision in the context of any individual application for registration, amended registration or reregistration. EPA may also impose a data requirement after registration in order to maintain the registration, using specific Data Call-In (DCI) authority of FIFRA sec. 3(c)(2)(B).

Since 1984, when part 158 was first promulgated, EPA's data requirements have evolved as the general scientific understanding of the potential hazards posed by pesticides has grown. Most of the data requirements contained in this new proposal have been applied on a case-by-case basis to support individual applications, or imposed via a DCI on all registrants of similar products. Thus EPA's actual data requirements have progressed as scientific understanding and concerns have evolved, but part 158 data requirements have not been updated to keep pace.

The result of this regulatory lag is that EPA regards many data requirements in today's proposal to be "newly codified requirements," routinely applied in practice on a case-by-case basis but simply not codified in the CFR. However, because they have not been codified, they are considered to be "new requirements" never before imposed on the regulated industry. For the purposes of this proposal, EPA has evaluated the costs and burdens of all proposed requirements, whether "new" or "newly codified " against the data requirements as originally promulgated in 1984, termed "existing requirements." Many of these studies can be categorized as rarely to infrequently required.

In this preamble, EPA is proposing new and revised data requirements that encompass all three categories of requirements:

1. EPA is proposing "new requirements," never before imposed on any registrant.

2. EPA is proposing "newly codified requirements," which have been applied on a case-by-case basis, but are not in the CFR.

3. EPA is proposing revisions to "existing requirements."

D. Types of Revisions Being Proposed

Part 158 is a massive and complex set of tables that describe pesticide data requirements. Each data requirement is currently established and its scope and applicability defined according to a number of parameters. Having comprehensively evaluated its data requirement parameters, EPA is proposing changes in all areas of data requirements. Some of these changes are clarifications or housekeeping changes without cost or burden, others have the effect of increasing or decreasing the burden of the data requirement. The types of changes may be broadly categorized as follows:

1. *Substantive changes*—i. *Addition of a requirement.* This encompasses both "new requirements" and "newly codified requirements." For example, EPA is proposing a "new requirement" for immunotoxicity testing. On the other hand, data requirements for applicator exposure (subpart U) are entirely "newly codified."

ii. *Elimination of a requirement, sometimes with substitution of a new requirement.* For example, EPA is wholly eliminating the requirement for seed germination testing. By contrast, the existing requirement for a battery of mutagenicity studies is being eliminated in favor of a specific set of mutagenicity studies.

iii. *A change to the number or type of species that must be tested.* For example, EPA proposes to require acute avian toxicity testing on an additional passerine species in some instances. EPA also proposes to require that certain toxicity studies be conducted routinely with two species instead of one.

iv. *A change in the conditionality of the test requirement.* For example, EPA is proposing to change a number of requirements from conditionally required to fully required, or vice versa. In some cases, this change is a minor change in the actual frequency (and burden) of the requirement. In other cases, the change may represent a substantive increase in frequency of requirement.

v. *A change to the use patterns to which a data requirement applies.* As described elsewhere, EPA proposed to increase the number of use pattern descriptors from 9 to 15. In some cases, EPA proposes to extend requirements currently limited to food uses to nonfood uses, *e.g.*, prenatal developmental toxicity studies. A second example would be a proposed expansion of certain studies into greenhouse and indoor use patterns, for example, avian oral toxicity requirements.

vi. *A change to the test substance to be used.* Typical test substances include the technical grade of active ingredient (TGAI), the manufacturing-use product, the end-use product, and a "typical product." For example, EPA proposes to require primary eye and primary dermal irritation, and dermal sensitization testing using the TGAI in addition to the end-use product.

vii. *A clarification in the notes describing the test.* For example, EPA is proposing in a test note that analytical methods for residue chemistry and environmental fate be validated by an independent laboratory.

2. *Technical changes having no substantive effect*—i. *Relocation of a requirement.* For example, EPA proposes to move the magnitude of residues in rotational crops data requirement from environmental fate requirements to residue chemistry requirements.

ii. *A change to the title of a data requirement.* For example, EPA proposes to rename the "teratogenicity" data requirement to "prenatal developmental toxicity" to more accurately reflect the nature of the study.

iii. *Subdividing an existing requirement to create two separate entries.* For example, EPA proposes to separately list the storage stability requirement for residue samples. This requirement is currently included in the plant and animal metabolism data requirement. A change of this nature is intended to highlight an aspect of a test requirement for the regulated community.

iv. *Merging two data requirements into a single requirement.* For example, EPA proposes to merge the terrestrial field dissipation study with the long-term field dissipation study because both studies provide similar information.

Each data requirement for which a revision is proposed is discussed in detail in subsequent units of this preamble. Readers are referred to the table in Unit XXIII. for a line-by-line listing of every current and proposed data requirement and the types of changes proposed. If no change is proposed, the table contains a notation to that effect.

VII. General Provisions of Part 158 (Subpart A)

A. General

Subpart A serves as an introduction to the data requirements in part 158. As proposed, current material has been substantially revised to be more concise and easier to understand. EPA has eliminated much of the redundancy in current subpart A and streamlined the remaining material. Unless otherwise superseded by part 174, the regulations of this part apply to plant-incorporated protectants.

1. *New material.* New content has been added to subpart A. Specifically, EPA has added new § 158.3 containing definitions relevant to part 158 as a whole. In this proposal, EPA has referred to statutory definitions in FIFRA and FFDCA, and has included only a single new definition, that of "applicant." This definition is intended to provide an inclusive term that covers all persons who submit data to the Agency for any purpose, including applicants for registration, reregistration, or experimental use permit under FIFRA, petitioners for tolerance or exemption under FFDCA, and registrants who are required to submit data to maintain registration. The term "applicant" is proposed to be used for all such persons. The definition is drawn from the definition of "application for research or marketing permit," in 40 CFR 160.3, which also relates to data development. EPA requests comment on whether additional definitions are needed.

2. *Disposition of current subpart A material.* The following sections of current subpart A are proposed to be deleted or substantially revised. The following Table 2 explains each section.

TABLE 2.—DISPOSITION OF CURRENT SUBPART A MATERIAL

Section	Title	Disposition
158.20	Overview	Paragraph (a) deleted Paragraph (b). Content contained in proposed § 158.1, Purpose and Scope. Paragraph (c) deleted.
158.25	Applicability of data requirements	Deleted as redundant or unnecessary. Applicability of this part to various regulatory actions is contained in proposed § 158.5
158.30	Timing of the imposition of data requirements	Deleted as unnecessary and not relevant. This section addresses approval of registration actions, which is properly covered in part 152, and is not relevant to data requirements.
158.32	Format of data submissions.	Retained and revised. Discussed in Unit VII.B.
158.33	Procedures for claims of confidentiality of data.	Retained and revised. Discussed in Unit VII.C.
158.34	Flagging of studies for potential adverse effects.	Retained. Criteria revised.
158.35	Flexibility of the data requirements	Deleted as redundant. Mainly contains cross-references to similar material elsewhere in part 158.
158.40	Consultation with the Agency.	Deleted. Consultation with the Agency is encouraged in several sections of proposed part 158.
158.45	Waivers	Retained and revised. Discussed in Unit VII.E.
158.50	Formulator's exemption	Information to be relocated to 40 CFR 152.85, which covers the formulator's exemption.
158.55	Agricultural vs. Non-agricultural pesticides	Deleted as unnecessary. Material is covered in individual subparts of proposal, which are organized by agricultural and no-agricultural use patterns.
158.60	Minor uses	Deleted as unnecessary. Definitions and minor use policies are largely governed by statutory mandates and priorities, not regulatory policies.
158.65	Biochemical and microbial pesticides	Deleted. Material will be considered for inclusion in future revisions of biochemical and microbial data requirements.
158.70	Acceptable protocols	Revised.

TABLE 2.—DISPOSITION OF CURRENT SUBPART A MATERIAL—Continued

Section	Title	Disposition
158.75	Requirements for additional data	Paragraph (a) retained. Paragraph (b) deleted as unnecessary. This material is covered by paragraph (a).
158.80	Acceptability of data	Paragraph (a) moved to § 158.70(a) - now refers to "cited." Paragraph (b) deleted. Paragraph (c) retained. Paragraph (d) revised.
158.85	Revision of data requirements and guidelines	Deleted as unnecessary. Guideline references are contained in tables in each subpart.

B. Format of Data Submissions

EPA proposes to reorganize for clarity the data submission requirements of § 152.32. EPA would eliminate descriptions of EPA assignment of MRID numbers, as this internal action does not bear upon applicant requirements. Applicants would continue to format data submissions in support of regulatory actions according to current Agency procedures. The proposed rule makes clear that administrative non-data elements of a submission (forms, labels, and correspondence) are not subject to formatting requirements.

The Agency also proposes to eliminate specific media and copy requirements from the regulatory text because these requirements are subject to change as the Agency implements new strategies to reduce the paperwork burden on data submitters and to simplify the submission process. The Agency intends to provide updated guidance in a new PR Notice that will supersede PR Notice 86–5. EPA has a web page that provides guidance for both paper and electronic data submission.

After a series of pilots EPA has developed a standard for electronic submission of data using Adobe Acrobat Portable Document Format and related tools for pesticide data submitters to create electronic versions of documents. Extensive guidance has been developed and posted on the EPA web page dedicated to electronic submissions(*http://www.epa.gov/oppfead1/edsgoals.htm*). As experience is gained, and in consultation with stakeholders, EPA intends to refine its guidance.

Registrants should note that regulations in part 159 concerning FIFRA sec. 6(a)(2) submissions require that such data be formatted according to the requirements of this section.

C. Confidential Business Information

EPA proposes to clarify its policies on confidentiality claims asserted by submitters and on the release of information by the Agency. Section 158.33 discusses information that may be claimed as confidential and the procedures for asserting such a claim. It also discusses information that may be released by EPA, and circumstances under which such information can be released. Any release of information by EPA would be in accordance with FIFRA sec. 10, FFDCA sec. 408, and EPA regulations under the Freedom of Information Act (5 U.S.C. 552) found in 40 CFR part 2. The revisions to procedures for asserting confidentiality claims would not apply to data submitted to the Agency before the date of promulgation of this rule. Further regulatory provisions regarding confidentiality can be found at 40 CFR part 2.

1. *Confidentiality of 408 information.* EPA also proposes to implement the revised confidentiality provisions in FFDCA sec. 408(i). Prior to the changes made in FFDCA by FQPA in 1996, confidentiality of information submitted in support of a tolerance or exemption was governed by old sec. 408(f), which made all such information confidential until publication of a regulation establishing a tolerance or exemption (unless the submitter explicitly waived confidential protection). This section was replaced in 1996 by current sec. 408(i), which provides in part; "Data and information that are or have been submitted to the Administrator under this section or sec. 348 of this title in support of a tolerance or an exemption from a tolerance shall be entitled to confidential treatment for reasons of business confidentiality and to exclusive use and data compensation to the same extent provided by secs 3 and 10 of the Federal Insecticide, Fungicide, and Rodenticide Act." EPA has never formally interpreted the meaning of sec. 408(i) with respect to confidential information.

The likely intent of Congress was to accord information submitted in support of a tolerance or exemption the same confidentiality protections that apply to data submitted under FIFRA, especially considering the extent to which FIFRA and FFDCA were intertwined more closely by FQPA. Treating information submitted under the two statutes identically means that they are subject to the same protections (*e.g.*, restrictions on disclosure of entire studies to multinational corporations in accordance with FIFRA sec. 10(g)) and the same disclosure requirements (*e.g.*, mandatory public availability of safety and efficacy information in accordance with FIFRA 10(d)(1)). In fact, this discussion may be largely academic, because EPA expects that nearly all data submitted under part 158 in support of a tolerance or exemption will also be information submitted under FIFRA. The only exception would pertain to import tolerances or exemptions for pesticides that are not used in the United States, submissions which are uncommon. All references in this preamble to FIFRA sec. 10 are therefore intended to apply equally to information submitted pursuant to FFDCA 408.

2. *Safety and efficacy information.* Information pertaining to the safety and efficacy of registered pesticides must in most cases be made available to the public. The existing provisions in 40 CFR 158.33 regarding the confidentiality of safety and efficacy information have in some cases been unclear to registrants and applicants, resulting in confusion regarding what information is claimed as confidential. EPA seeks to clarify these provisions, and to clear up some long-standing misconceptions as to the eligibility of inert ingredient and process information for confidential treatment.

FIFRA sec. 10(d)(1) provides that "information concerning the objectives, methodology, results, or significance of any test or experiment performed on or with a registered or previously registered pesticide or its separate ingredients, impurities, or degradation products, and any information concerning the effects of such pesticide on any organism or the behavior of such pesticide in the environment, including, but not limited to, data on safety to fish and wildlife, humans and other mammals, plants, animals, and soil, and studies on persistence, translocation

and fate in the environment, and metabolism" must be made available to the public. EPA considers metabolites to be a form of "degradation product" within the meaning of sec. 10(d)(1).

Excepted from that mandatory disclosure requirement is certain information pertaining to manufacturing and quality control processes and to inert ingredients, which is given qualified protection under FIFRA secs. 10(d)(1)(A), (B), or (C). This exception has been frequently misinterpreted to mean that all such information is made categorically confidential by sec. 10(d)(1). In fact, as decided by the *District Court for the District of Columbia in NCAP v. Browner*, 941 F.Supp. 197, 201 (D.D.C. 1996), the statute makes information subject to FIFRA sections 10(d)(1)(A), (B), or (C) neither categorically confidential nor categorically public. Instead, the information may be entitled to confidential treatment, but only if it meets the requirements of sec. 10(b) (generally, trade secrets and information whose disclosure is likely to cause substantial harm to the competitive position of the submitter).

EPA believes that, with the exception of information pertaining to a pesticide that has never been registered, all information submitted in accordance with part 158 (including information submitted in connection with an application for a tolerance or exemption) constitutes safety and efficacy information subject to sec. 10(d)(1). All of the information subject to part 158 concerns "the effects of such pesticide on any organism or the behavior of such pesticide in the environment." This includes not only studies regarding hazard and fate, but also information such as product chemistry, which is collected by the Agency for the very purpose of determining the effects of the pesticide on organisms and its behavior in the environment.

In addition to providing submitters with an opportunity to designate information as subject to one of the exceptions in FIFRA secs. 10(d)(1)(A), (B), or (C) (a feature also contained in the current version of § 158.33), EPA proposes to include a provision that all information that has not been so designated and that pertains to a registered or previously registered pesticide be deemed non-confidential by operation of law, without further notice to the submitter (subject to the requirements of sec. 10(g) regarding disclosure to multinational entities). This provision would not apply to information that was submitted prior to May 4, 1988, the effective date of the current regulation contained in § 158.33, and thus the first time that claims under sec. 10 (d)(1)(A), (B), or (C) were required to be identified.

3. *Information pertaining to unregistered pesticides.* Although safety and efficacy information (which by definition pertains only to registered or previously registered pesticides) is made publicly available by statute, if the information pertains to unregistered pesticides (including both applications for new active ingredients and import tolerances for pesticides used only outside the United States) it is not subject to the same mandatory disclosure requirement. Such information may be entitled to confidential treatment if it meets the requirements of sec. 10(b). In practice, EPA believes that information relating to the effects of unregistered pesticides that is not within one of the exceptions in FIFRA sec. 10(d)(1)(A), (B), or (C) will seldom meet this test. Much of the information in studies is valuable only to the extent that it can be used for registration/tolerance purposes, and protection from unauthorized submission or citation of a study by persons other than the submitter is provided by the FIFRA and FFDCA data compensation provisions and by FIFRA sec. 10(g). Moreover, because such information becomes publicly available once the pesticide is registered, competitors will eventually be able to get access to the information. Thus, confidentiality should normally be appropriate only when disclosure of the information prior to registration would give competitors an advance look at information that they could use to their advantage.

At the same time, the period prior to registration is of special importance for public participation in the registration process. Under FIFRA sec. 3(c)(4), EPA publishes a **Federal Register** notice announcing receipt of an application for registration of a product involving a new active ingredient or changed use pattern, and gives the public an opportunity to comment on the application. Implicit in the opportunity to comment is the availability of sufficient information to evaluate the risks and benefits of the product. Although requests for pre-registration information may be made under the Freedom of Information Act, the amount of time involved in contacting the submitter to clarify claims, obtaining substantiation of the confidentiality claim, and making a final determination on the claim make it very difficult for the public to get access to important information on a timely basis.

Because of the possibility that some pre-registration information may be legitimately confidential, EPA does not believe that it can categorically determine all such information to be non-confidential. The provisions in this proposal requiring the submitter to specify which information is claimed as confidential will simplify access to information not so claimed, but EPA is soliciting comment on other mechanisms to facilitate public access to pre-registration information.

4. *Confidentiality claims for plant-incorporated protectant information.* Part 174 was incorporated into 40 CFR effective September 17, 2001. The regulations in part 158 apply to plant-incorporated protectants unless otherwise superseded by part 174. In addition to complying with the requirements of § 158.33, any confidentiality claims for information subject to 40 CFR part 174 (plant-incorporated protectants) must be substantiated at the time of submission as described in § 174.9.

5. *Disclosure of data to multinational entities.* Also included is a proposed provision governing the release of data to foreign or multinational pesticide companies. Under sec. 10(g) of FIFRA, EPA requires that any person requesting information from the Agency affirm that he or she is not an "entity engaged in the production, sale, or distribution of pesticides in countries other than the United States or in addition to the United States" and that the information will not be disclosed to such an entity. The requirement for such an affirmation applies to all data received by the Agency under FIFRA (and FFDCA) and is not limited to confidential business information.

In Class Determinations 3–85 (50 FR 48833, November 27, 1985) and 1–99 (64 FR 70019, December 15, 1999) EPA elucidated the criteria for determining whether information and documents derived from studies or reports submitted to the agency are subject to the restrictions of FIFRA sec. 10(g). In order to be outside the scope of sec. 10(g), documents must not (1) "contain or consist of any complete unpublished report submitted to EPA " or (2) "contain or consist of excerpts or restatements of any such report which reveal the full methodology and complete results of the study, test, or experiment, and all explanatory information necessary to understand the methodology or interpret the results." (50 FR 48834). Although the application of these class determinations is limited to data reviews created by the Agency (3–85) and information regarding unreasonable adverse effects of

pesticides on the environment submitted in connection with sec. 6(a)(2) of FIFRA (1–99), the rationale behind the class determinations applies to all data which meet the criteria quoted in this paragraph. In order to facilitate the timely release to the public of important safety and efficacy information beyond that contained in data reviews and 6(a)(2) notices, EPA is proposing to codify these determinations with respect to all information submitted in accordance with part 158.

6. *Release to state and foreign governments with consent.* EPA also is including in this proposal a provision to facilitate the release and exchange of information with State and foreign regulatory agencies. In an effort to promote harmonization and to conserve resources through work share programs, the exchange of data often is beneficial and desirable. Applicants would have the option of signing a statement authorizing the Agency to release information contained in their documents for such purposes. Although most governments provide protection for confidential information, EPA cannot guarantee how a particular government would treat specific information disclosed to it. Consequently, the submitter should be aware of any risk involved before granting consent to disclosure. However, EPA would not view disclosure to a government that protected confidential information as otherwise waiving confidential treatment for the information.

D. Flagging Criteria

EPA proposes to revise the flagging requirements of § 158.34, established in 1985, without changing the substance of the requirement. Currently, applicants for registration and amended registration, and submitters of data under FIFRA sec. 3(c)(2)(B) are required to flag certain toxicology studies that show results potentially indicating an adverse effect. EPA proposes to make minor revisions to update and clarify the criteria to encompass the new types of toxicology studies being proposed today. Specifically, EPA proposes to:

1. Reduce the number of study criteria from 11 to 7 by combining certain studies under one criterion. The new criteria would eliminate distinctions between subchronic and chronic studies in most cases.

2. Combine reproductive, prenatal developmental toxicity and developmental neurotoxicity studies under one criterion to better focus on effects on children and infants.

3. Consolidate the criteria that address the No-Observed-Adverse-Effect Levels (NOAEL) into a single criterion covering all studies from which NOAELs are derived. In so doing, EPA would change references to cholinesterase inhibition to "acute toxicity." This change acknowledges that NOAELs are now derived for a number of acute toxicity effects, not just cholinesterase inhibition. In a similar vein, EPA would eliminate the specific "less than 10X" and "less than 100X" triggers for NOAEL study flagging in favor of a more general description of "less than the current NOAEL." Both of these changes could result in more studies being flagged.

4. Update the guidelines references, and terminology, *e.g.*, teratogenicity studies are now called prenatal developmental toxicity studies; the ADI is now referred to as the RfD. EPA believes that these revisions to the criteria will simplify the application of the criteria by submitters, even though additional studies may be required to be flagged.

E. Waivers

EPA proposes to reformat its waiver process, currently contained in § 158.45, but to retain its provisions. This proposal retains the flexibility of the current provisions for applicants to request, and EPA to evaluate, the need for data on a case-by-case basis depending on individual chemicals and use patterns. One of the benefits of updating part 158 as proposed today is that the improvements in clarity and transparency of the data requirements will greatly assist both the Agency and applicants in addressing data waivers.

1. *Waiver requests submitted as part of an application for registration.* Waiver requests submitted in conjunction with an application for registration, amended registration, experimental use permit, or petition for tolerance are considered in the context, and in the same time frame, as the application is considered, based upon the application review period in FIFRA sec. 33. The review periods currently range from 90 days for minor amendments to as much as 3 years for new chemical applications. Consideration of waiver requests (and there may be multiple requests in a single application) is done by Agency scientists when the application is reviewed scientifically.

2. *Waiver requests submitted in response to Data Call-Ins for studies that are required in part 158.* In the case of DCIs for data requirements that are contained in part 158, EPA believes that it will be able to make waiver decisions in a reasonably prompt timeframe since the need for the data has been established, the criteria upon which the data are required (use pattern, exposure pattern, chemical characteristics, etc.) have been elaborated, and the conditionalities associated with its imposition have been carefully considered in the development of this proposal. In other words, much of the evaluative process associated with a data waiver has already been done. Thus EPA will be able to judge an adequately supported waiver request against these existing factors to determine whether a waiver can be granted.

Moreover, the improved transparency of the requirements and conditions in new part 158 means that an applicant will be able to ascertain with reasonable certainty the likelihood that EPA would consider favorably a waiver request. EPA believes that improved clarity will also reduce the number of frivolous, inappropriate, or ill-supported waiver requests. Thus, EPA believes it will be able to respond in a reasonable period of time to a waiver request. If EPA requires a lengthy period to reach a decision on a waiver request which is denied, the Agency will generally consider time extensions to accommodate legitimate and reasonable registrant needs, whether to define acceptable protocols, evaluate alternative tests that might satisfy the Agency's requirements, or allow for consideration of laboratory capacity.

F. Minor Uses

Current § 158.60 outlines a number of non-regulatory policies EPA adopted to limit the economic impact of data requirements on minor use products while ensuring that the Agency had adequate data to assess the potential risks and benefits of these pesticides. Because minor use policies by themselves are somewhat fluid and subject to change periodically, EPA proposes to remove § 158.60. EPA, however, remains committed to the minor use program by imposing the mandates contained in FIFRA that relate to minor uses, such as extending exclusive use of minor use data, granting minor use waivers, and expediting minor use registrations. The Agency believes that tiered testing, outlined elsewhere in this proposal, coupled with its waiver policy in § 158.45 and priority review status, limit the economic burden for all pesticides by ensuring that registrants are required to develop only those studies that are essential for an appropriate safety evaluation.

VIII. How to Use the Data Tables (Subpart B)

EPA proposes to revise subpart B to update use patterns and clarify the steps needed to determine the appropriate data requirements from the tables in subparts, D, E, F, J, K, N, O, and U. Pesticide use patterns that are used to determine required testing have been revised for all of the data requirements tables to reflect the expanded use patterns contained in this proposal (see below).

A. Expanded Use Patterns

EPA proposes to subdivide the current 9 major use patterns listed in Appendix A of part 158 to 15 to more fully address nonagricultural uses. The revised use patterns would be terrestrial food crop, terrestrial feed crop, and terrestrial nonfood crop; aquatic food crop, aquatic nonfood crop, aquatic nonfood outdoor use and aquatic nonfood industrial use; greenhouse food crop and greenhouse nonfood crop; forestry; residential outdoor; indoor food; indoor nonfood; indoor medical; and indoor residential use. As mentioned above, the Agency proposes to remove the Pesticide Use Index (Appendix A) from the regulations because it is not a requirement. Instead, the Index will become a separate guidance document and placed on EPA's website and made available to the public. A guidance document would be easier to update and would provide the regulated community with the most current information.

B. Clarifying How to Use the Data Tables

Subpart B would contain a step-wise process to assist the applicant in determining the data needed to support its particular product. As with current practice, the actual data and studies required may be modified on an individual basis to fully characterize the use and properties of specific pesticide products under review. While EPA is attempting to assist the applicant in this subpart, it is important to emphasize that it is the applicant's obligation under FIFRA to demonstrate that an individual product meets the standard under FIFRA and/or FFDCA. Accordingly, applicants are encouraged to consult with the Agency on the appropriate data requirements as proposed here as they relate to their specific product prior to and during the registration process.

EPA is continuing its current system of identifying the applicability of data requirements in the data tables. Because of the variety of chemicals and use patterns, and because EPA must retain flexibility to tailor data requirements to its needs, it uses only qualitative descriptors in the tables. These are used for convenience to make the table format feasible, but serve only as a general indication of the applicability of a data requirement. In all cases, the test notes referred to in the table must be consulted to determine the actual applicability of the data requirement.

The table descriptors NR (not required), R (required), and CR (conditionally required) can be viewed as markers along a spectrum of the likelihood that the data requirement applies. The use of R does not necessarily indicate that a study is always required, but that it is more likely to be required than not. The use of CR means a study is less likely to be required. Although only an approximation, if percentages were to be assigned, R could be viewed as representing the range of 50% to 100% and CR the range up to 50%. EPA welcomes comment on ways to characterize the data requirements that would better serve applicant needs.

EPA is continuing its longstanding system of identifying test substances in the tables. The standard descriptors of test substance are the following:

1. The technical grade of active ingredient (TGAI), used when evaluating the inherent toxicity or chemical characteristics of a pesticide.
2. The manufacturing use product (MP), used in certain product chemistry tests, usually for labeling purposes.
3. The pure active ingredient (PAI), used in certain product chemistry tests requiring extremely basic chemical properties or manufacturing process information.
4. The pure active ingredient, radioactive (PAIRA), used primarily in residue chemistry studies when residues at very low levels (ppm) must be quantified in plant or animal tissue.
5. The end-use product (EP), used as the test substance when the Agency wants to refine its hazard or chemical profile based on actual concentrations, or needs to determine the impact of added inert ingredients on the hazard or chemical profile.
6. The typical end-use product (TEP), used as a representative product in tests that might otherwise require duplicative testing of a number of EPs.

Where changes in the test substance are proposed, such changes are described in the discussion of each proposed revision. EPA welcomes comment on its test substances and how the Agency uses them in a testing regimen. Such comments should be made in the context of the specific data requirement for which changes are proposed.

C. Identifying Data for Experimental Use Permits (EUPs)

Finally, the Agency is requesting comment on the best way to identify data requirements for EUPS. Some people believe that the brackets indicating what data requirements also apply to EUPs in the current data tables complicate the tables with extraneous symbols and codes. In an effort to make the data tables simpler and easier for an applicant to understand, one suggestion is to separate the EUP data requirements from the main data tables and make them a stand-alone table. Revised EUP data requirements could be housed in 40 CFR part 158 (data requirements) or in part 172 (EUP requirements). As part of this proposal, EUP data requirements for each discipline have been identified either in the regulatory text accompanying the data table or, as brackets, within the body of the table, itself. In general, the Agency proposes to retain the existing data requirements for EUPs with a few minor changes in the areas of environmental fate and ecological effects. The Agency is soliciting opinions on this approach or other approaches that may prove more efficient and useful to the applicant. If an alternative approach is accepted, the Agency may in the final rule, reformat the regulatory text or data tables.

D. Test Guidelines

The guidelines for the environmental fate series are currently being updated and where applicable, harmonized with the guidelines established by the OECD. Therefore, the Agency is showing the current guideline numbers in the preamble, regulatory text, and tables. If, before the final rule has been promulgated, these guidelines have been issued, EPA will insert the new guideline numbers in the Final Rule.

E. Purposes of the Registration Data Requirements

The Agency proposes to retain the material currently in § 158.202 Purposes of the registration data requirements in subpart D, Data Requirements Tables. Since a series of new subparts will replace subpart D, this material will be moved to subpart B.

IX. Product Chemistry Data Requirements (Subpart D)

A. General

The Agency uses product chemistry information to determine whether impurities of toxicological or environmental concern are present in pesticides and formulated products.

Product chemistry data requirements are comprised of product identity and composition data along with the physical and chemical characteristics of a pesticides, plus any intentionally added ingredients and impurities in the final pesticide product. Included in this subpart are the specific, detailed requirements for product identity and chemical analysis. The Agency is proposing two additional data requirements and other minor revisions that would clarify the applicability of existing requirements. For example, the Agency proposes to revise the definition of an active ingredient and end-use product to include nitrogen stabilizers, which were added to the definition of "pesticide" in 1996.

The Agency proposes to list entries in the data requirements table for product identification, composition, analysis, and certification of limits requirements. These requirements are currently contained in § § 158.155 through 158.180, and are proposed to be retained unchanged as new § § 158.320 through 158.355. Inclusion in the table for product chemistry is for the convenience of applicants--the requirements themselves are not affected by including them in the table. The test notes refer applicants to the subsequent section that discuss the requirements in detail.

The Agency's current policy as described in Pesticide Registration Notice 98–1 (January 12, 1998) allows applicants and registrants to submit a summary of the physical and chemical properties of non-integrated pesticide products, EPA Form 8570–36, rather than submit the studies upon which these data are based. The self-certification statement (EPA Form 8570–37) must be signed and dated by the applicant certifying that the submitted information was conducted in full compliance with the regulations (Attachment 2 to PR notice 98–1). The PR notice applies to applications for registration of manufacturing-use and end-use products of all pesticide products produced by a non-integrated formulation system.

B. Proposed Product Chemistry Data Requirements

1. *Newly imposed data requirements.* None.

2. *Newly codified data requirements*—i. *UV/visible light absorption.* The Agency proposes to add a requirement for data on the ultraviolet (UV)/visible light absorption in the 200–800 nanometers wavelength range (guideline 830.7050) as part of the basic data in the characterization and identification of a compound. This information will be used in conjunction with the photodegradation in water study (§ 158.1100) to determine if photodegradation is a possible route of dissipation in the environment. In order for a pesticide to undergo direct photolysis in the environment, it must absorb energy in the wavelength range emitted by sunlight. While the UV/visible light absorption spectrum will indicate whether or not the chemical absorbs in this range and hence may potentially photodegrade, it does not actually measure the photodegradation rate or identify photodegradates. Accordingly, test note 2 for the photodegradation study states that the photodegradation in water study will not be required when the electronic absorption spectra, measured at pHs 5, 7, and 9, of the chemical and its hydrolytic products, if any, show no absorption or tailing between 290 and 800 nm.

ii. *Particle size, fiber length, and diameter distribution.* The Agency proposes to add the conditional requirements for data on particle size, fiber length, and diameter distribution (guideline 830.7520). This study would be conditionally required for water insoluble test substances ($<10^{-6}$ g/l) and fibrous test substances with diameter ≥0.1 µm. Data from this study are needed in the environmental fate assessment to estimate potential chemical drift to nontarget areas.

3. *Revised data requirements*—i. *Stability to temperatures, metals, and metal ions.* The Agency proposes to change the requirement for stability data (guideline 830.6313) from "required" to "conditionally required."Data on the stability to metals and metal ions is required only if the active ingredient is expected to come in contact with either material during storage. This proposed change does not alter the nature of the requirement.

ii. *Explodability.* The Agency proposes to change the requirement for explodability data (guideline 830.6316) from "required" to "conditionally required." Since pesticides do not typically fall under this category, these data are only required for products that are potentially explosive. This proposed change does not alter the nature of the requirement.

iii. *Partition coefficient (n-octanol/water).* The Agency proposes to change the requirement from "conditionally required" to "required" (guidelines 830.7550, 830.7560, and 830.7570). The Agency is requiring this study because the majority of currently registered pesticides are organic non-ionic chemicals that are not expected to significantly hydrolyze or solubilize in water. In the event a chemical fully hydrolyzes or is completely soluble in water, this data requirement would be waived. This proposed change does not alter the nature of the requirement nor the conditions under which it is imposed.

iv. *Density, dissociation constant, and vapor pressure.* The Agency proposes to add test notes for the data requirements for density/relative density/bulk density (guideline 830.7300), dissociation constant (guideline 830.7370), and vapor pressure (guideline 830.7950) to better identify when these study requirements are applicable. These proposed minor changes do not expand the product chemistry requirement. Instead, they clarify the requirements by specifying which physical states or chemical forms the requirements apply.

X. Terrestrial and Aquatic Nontarget Organisms Data Requirements (Subpart E)

A. General

The Agency uses a tiered system of ecological effects testing to assess the potential risks of pesticides to aquatic and terrestrial vertebrates, invertebrates, and plants. These tests include studies arranged in a hierarchy from basic laboratory tests to applied field tests. The results of each tier are evaluated to determine the potential impacts on fish, wildlife and other nontarget organisms, and to indicate whether further laboratory and/or field studies are needed. These data requirements provide the Agency with ecological effects information, which, in turn, allows the Agency to determine if precautionary statements concerning toxicity or potential adverse effects to nontarget organisms are necessary.

Higher tiered studies may be required when basic toxicity data and predicted exposure levels or environmental conditions suggest the potential for adverse effects. Field data are used to examine acute and chronic adverse effects on captive or monitored populations under natural or near-natural environments. Such studies are required only when the potential for adverse effects is high, based on the results of lower tier studies, or to confirm the need for mitigation measures. In some cases, the results of field studies may give rise to the need for further testing.

B. Proposed Requirements

The Agency is proposing two additional data requirements as well as other minor revisions that would clarify the existing data requirements. In some cases, the proposal is to change the

existing test requirement from "conditionally required" to "required " or "not required." The data requirements for nontarget insects, formerly in § 158.590, would be moved under this proposal to subpart E to consolidate the data requirements for nontarget organisms. Other changes include changes in test substance, conditions under which the test is required, and clarification of test notes.

In addition, as discussed in more detail in this section, the Agency proposes to require an additional test species for the avian oral toxicity study, because current data requirements may not adequately characterize the risks that pesticides pose to songbirds. The Agency also proposes to conditionally require sediment testing to better assess the effects of sediment bound pesticide residues in aquatic environments. The Agency is proposing to require independent laboratory validation of environmental chemistry methods for terrestrial and aquatic field testing.

Finally, the Agency is proposing to eliminate the requirement for avian dietary testing for indoor and greenhouse uses, and to simplify the test notes for these requirements. The Agency invites comments on all aspects of these data requirements.

1. *Newly imposed data requirements.* None.

2. *Newly codified data requirements.* The Agency proposes to add testing of aquatic organisms exposed to treated sediment to better assess the effects of sediment bound pesticide residues in aquatic environments. Environmental risk estimates should be based on exposure data from the water column, sediment, and pore water (the water occupying space between sediment or soil particles), however, with the exception of field studies, the current data requirements are limited to water column exposures. The effects of sediment bound pesticides (or their degradates) on aquatic environments cannot be accurately assessed from bioassays on compounds suspended in the water column alone. For example, lipophilic or hydrophobic chemicals can dissipate from the water column, but may remain in the aquatic environment adsorbed to sediment. Sediment bound pesticides may differ significantly from pesticides in solution, showing different physical, chemical, and biological properties, chemical partitioning, bioavailability, concentrations in interstitial or pore water, exposure from sediment ingestion and possible manifestations of food chain effects. By serving as a potential pesticide sink, exposure to these compounds may lead to significant environmental risk to a wide variety of fish and aquatic invertebrates which live and feed at the bottom of a lake or stream. Sediment toxicity testing is needed to assess the bioavailability of a sediment bound compound and to characterize the possible impact to sediment dwelling organisms. The Agency does not believe these studies will be commonly required.

EPA's Contaminated Sediment Management Strategy (USEPA 1998) (Ref. 3) has been recently developed to provide a more unified approach to testing and risk assessment of aquatic species which inhabit and feed in the benthic environment. Testing would consist of whole sediment (spiked) tests; testing can also consist of chronic whole sediment toxicity tests and/or sampling for residues and biological monitoring of pesticides in the sediment after exposure. EPA has developed test protocols for chronic whole sediment tests of invertebrates. Test guidelines will be developed from these protocols. Protocols for further tests (*e.g.*, acute pore water tests) and for vertebrate species are under consideration. Registrants are urged to meet with the Agency prior to development of their own protocols.

i. *Whole sediment: acute toxicity to invertebrates, freshwater and marine.* The Agency is proposing to conditionally require data for acute invertebrate sediment testing (guidelines 850.1735 and 850.1740) for terrestrial uses, aquatic food and nonfood outdoor uses, and forestry uses. This study would be required when the soil partition coefficient (K_d) is ≥ 50 mg/L, indicating the ability to absorb to sediment, and if the half-life of the pesticide in the sediment is ≤ 10 days in either the aerobic soil or aquatic metabolism studies. Registrants would need to consult with the Agency on appropriate test protocols.

ii. *Whole sediment: chronic toxicity to invertebrates.* The Agency proposes to conditionally require this study for the same use patterns as the above sediment toxicity tests. The study would be triggered when the estimated environmental concentration is greater than or equal to the acute sediment EC_{50}/LC_{50} or the soil partition coefficient (K_d) is ≥ 50 mg/L, indicating the ability to absorb to sediment; and if the half-life of the pesticide in the sediment is >10 days in either the aerobic soil or aquatic metabolism studies. Registrants would need to consult with the Agency on appropriate test protocols.

3. *Revised data requirements—Avian oral toxicity.* The Agency proposes to require for certain uses, an additional test species for the acute avian oral toxicity study (guideline 850.2100), which currently recommends the use of mallard ducks or bobwhite quail. Testing on a passerine species (*i.e.*, redwing blackbird) would be required for outdoor uses. The Agency is proposing to add this passerine species because of concern in the scientific community that data from tests with mallards or quail may not always adequately characterize the risks that pesticides pose to songbirds. Recent evaluation of the data collected over the past 10 years indicates passerines are more sensitive to pesticides than larger birds such as mallards and quail (which are currently the recommended test species) (Ref. 2) and in 1996, the SAP supported the need for testing on passerines. In addition to comments on the proposed addition of a passerine species for the acute oral toxicity study, the Agency requests comments on whether this species should replace the existing bobwhite/mallard species or otherwise be conditional, and if so what criteria or triggers should be used to determine when the data should be required.

The Agency proposes to revise and simplify the test notes for the avian acute toxicity test. The single current footnote is structurally complex, so EPA has subdivided it into 4 test notes that are easier to understand and apply.

In addition, the Agency proposes to conditionally require testing of the typical end-use product (TEP) of granular and non-granular end-use products because the inherent toxicity of end-use products is better defined by testing the product. End-use products may contain chemicals that enhance efficacy by acting as solvents, stickers, and wetting agents. Although these chemicals are listed as inerts, their individual toxicity or combination with one another or the active ingredient (a.i.), may be more toxic than the technical grade of the active ingredient (TGAI).

i. *Avian dietary toxicity.* In the current regulation, the Agency requires the subacute avian dietary toxicity study (guideline 850.2200) for terrestrial and aquatic (food crop and nonfood), forestry, and domestic outdoor uses, and conditionally requires this study for indoor and greenhouse (food crop and nonfood) use sites, as part of a set of 4 basic avian (acute and dietary) and aquatic toxicity studies. The results are used in decisions regarding environmental hazard statements on product labeling. Since the avian acute oral study more accurately reflects the inherent exposure to birds in this scenario, the Agency is proposing to no

longer require the avian dietary study for indoor and greenhouse uses.

This proposal would also add as a conditional requirement data on one avian species for aquatic nonfood residential uses if the acute avian oral LD_{50} of the TGAI is less than or equal to 100 mg a.i./kg. Data would be required on a second species for this use if the avian dietary lethal concentration to cause mortality in 50% of the test animals (LC_{50}) in the first species tested is less than or equal to 500 ppm a.i. in the diet. The Agency is proposing to conditionally require the second species because the data will provide some assurance that EPA is not basing an assessment on a single species which might be highly sensitive (or the opposite) when compared to other birds. This particular use category (aquatic nonfood residential) is relatively small-scale, so the current regulations require testing on only one species. However, in the event that this test shows high toxicity, this concern is addressed by the conditional requirement for testing on a second species.

ii. *Wild mammal toxicity.* The Agency proposes to amend this conditional data requirement to eliminate the requirement for aquatic nonfood residential uses. In splitting the current aquatic use category, EPA is able to tailor the requirement to those use situations for which the data are needed (aquatic food and nonfood uses). The conditionality of the requirement would be unchanged, that is, required on a case-by-case basis depending on the results of lower toxicology tier studies, such as acute and subacute testing, intended use pattern, and environmental fate characteristics that indicate potential exposure.

iii. *Avian reproduction.* Because some pesticides are stable in the environment, or can be stored in plant tissues that may be used by birds as a food source, avian reproduction testing (guideline 850.2300) is conditionally required for pesticides to which birds are exposed repeatedly or continuously during or preceding the breeding season. In addition, research has shown that even short-term exposures to pesticides can lead to significant adverse reproductive effects. For example, several organophosphorus insecticides have been shown to significantly reduce egg production and lead to changes in eggshell quality within days of dietary exposure (Refs. 4, 5 and 6). Therefore, EPA proposes to require these studies for terrestrial (food crop, feed crop, and nonfood), aquatic food crop and nonfood outdoor, forestry, and residential outdoor uses.

iv. *Simulated or actual field testing for mammals and birds.* Current part 158 conditionally requires field testing (guideline 850.2500) for terrestrial and aquatic (food crop and nonfood), forestry, and domestic outdoor uses. The Agency proposes to expand this conditional requirement to include terrestrial feed crop and aquatic nonfood outdoor uses, as well. The requirement would be based on the results of lower tiered studies such as acute and subacute bird and mammal testing, intended use pattern, and environmental fate characteristics that indicate potential exposure. Testing would be required only for those products that appear to pose significant risks to nontarget wildlife. The Agency is also proposing to require independent laboratory validation of the environmental chemistry methods used to generate data associated with this study.

v. *Acute toxicity: freshwater fish.* Currently part 158 requires the freshwater fish toxicity study (guideline 850.1075) for terrestrial and aquatic (food crop and nonfood), forestry, and domestic outdoor uses and conditionally requires these studies for greenhouse (food crop and nonfood) and indoor uses.

Although indoor and greenhouse uses usually require only one species of fish to be tested, in some instances a second fish species may be needed. For example, a chemical may be shown to be stable in the environment (*i.e.*, hydrolysis study), have moderate toxicity (1 ppm LC_{50} < 10 ppm) in the acute fish toxicity study, and may be released into the aquatic environment through effluent discharge. In such cases, the results of the two required acute aquatic toxicity studies (fish and invertebrates) may not be sufficient to rule out greater toxicity in a second species of fish. Testing on a second species will provide some assurance that EPA is not basing an assessment on a species that is highly sensitive (or the opposite) when compared with another species. Therefore, in these cases, the Agency proposes to conditionally require a third acute study on a second species of fish to correlate with the results of the previous two acute aquatic studies and to ensure that the labeling is adequate to protect aquatic species. The additional study increases the likelihood that effluent criteria and product labeling reflect the pesticide's risk and inherent toxicity.

vi. *Acute toxicity—estuarine and marine organisms.* Acute data from estuarine testing enables the Agency to perform a risk assessment by comparing the toxic concentrations with the estimated or monitored levels in estuaries. The Agency proposes to change the conditional requirement for the acute LC_{50}/EC_{50} testing (guidelines 850.1025, 850.1035, 850.1045, 850.1055, and 850.1075) for terrestrial, aquatic (food crop and nonfood outdoor), residential outdoor, and forestry uses to required testing, and change the aquatic nonfood residential use to "not required." Generally, three out of the five studies would be needed to satisfy the data requirement. Registrants may request a waiver of the study if the crop is never associated with coastal counties or there is a geographical restriction for a site that would normally be of concern.

vii. *Chronic toxicity—fish early-life stage and aquatic invertebrate life-cycle.* Currently, the Agency conditionally requires fish early-life stage and aquatic invertebrate life-cycle studies (guidelines 850.1300, 850.1350, and 850.1400) for terrestrial food and nonfood, aquatic food and nonfood, forestry, and domestic outdoor uses. These studies are not required for greenhouse food and nonfood, and indoor uses. The Agency is proposing several revisions that would clarify the applicability of the requirements. The first is to list the fish early-life stage and aquatic invertebrate life-cycle studies as separate requirements in the data table; then identify each test organism as a freshwater or saltwater species.

For the freshwater fish early-life stage and invertebrate life-cycle studies, the Agency proposes to change the conditional requirement for terrestrial and aquatic (food crop and nonfood) and forestry uses to required, and change the aquatic nonfood residential use to not required.

Currently, the freshwater invertebrate life cycle and fish early life stage tests are conditionally required for terrestrial, aquatic (food crop and nonfood), and forestry uses. When promulgated in 1984, one basis for the conditional nature of the requirements was that only one of the two tests was required, depending on whether fish or invertebrates were more sensitive in the acute studies. However, when a pesticide enters the aquatic environment, both groups of organisms will be exposed. Moreover, acute sensitivity is not a reliable indicator of chronic sensitivity, whether in the same or a different group of organisms, so that chronic data are needed regardless of the results of acute testing.

The proposed change to "not required" for aquatic nonfood residential use is due to the fact that the current "aquatic nonfood" use pattern is proposed to be split into aquatic

nonfood outdoor and aquatic nonfood residential. As the latter represents a much smaller use pattern, the Agency believes that data requirements can be reduced or eliminated for aquatic nonfood residential uses.

In addition, the Agency proposes to require both of these tests for all turf uses including residential, since exposure varies. This change is warranted because the relative sensitivity of fish and invertebrates can vary widely across chemicals. Currently, only the most sensitive of the two organisms, either fish or aquatic invertebrates, as determined by Tier I acute studies, is tested. However, since both organisms will be exposed when a pesticide enters an aquatic environment and the acute sensitivity of an invertebrate may not accurately predict the chronic sensitivity in fish and vice versa, the Agency believes that both species should be tested for chronic effects. The Agency cannot make the assumption that a chemical is not chronically toxic at much lower concentrations than some ratio of the LC_{50} value would suggest.

viii. *Aquatic organism bioavailability/biomagnification/toxicity tests.* The Agency proposes to eliminate the requirement for these studies for aquatic nonfood residential or residential outdoor uses since exposure is expected to be minimal (*i.e.*, insufficient quantities to accumulate in the tissues of aquatic organisms (guidelines 850.1710, 850.1730, and 850.1850).

ix. *Simulated or actual field testing for aquatic organisms.* The Agency is clarifying that the conditional requirement (guideline 850.1950) applies to turf, however these studies would no longer be required for aquatic nonfood residential uses since exposure is expected to be minimal.

x. *Honeybee acute contact toxicity.* EPA is proposing to require this study (guideline 850.3020) for terrestrial (food crop, feed crop, and nonfood), aquatic food crop and nonfood (outdoor), forestry, and residential outdoor uses. This study is being added to the battery of studies required to support outdoor uses when honeybees are likely to be exposed to pesticides. Previously, the requirement was limited to outdoor use patterns when the crop may be in bloom and thereby be attractive to honey bees. The change from "conditionally required" to "required" is to address those situations where blooming, pollen-shedding, or nectar-producing parts of nontarget plants adjacent to or within the treated area may be attractive to honey bees. Registrants may request a waiver of the study if use practices significantly restrict exposure of the pesticide to honey bees.

xi. *Honeybee-toxicity of residues on foliage.* The current regulation conditionally requires honeybee toxicity of residues on foliage studies (guideline 850.3030) for terrestrial and aquatic (food crop and nonfood), forestry, and domestic outdoor uses. The study is required when the formulation contains one or more active ingredients having an acute LD_{50} of less than 1 µg/bee. The Agency proposes to amend the requirement to require testing on the TEP when the formulation contains one or more active ingredients having an acute LD_{50} of <11 µg/bee, as determined in the acute contact study, and the use pattern indicates that honey bees may be exposed. The proposed data requirements rule (48 FR 53192) which was published in 1982, listed the correct value of <11 µg/bee for the honeybee study.

xii. *Field testing for pollinators.* The Agency proposes to include terrestrial (feed crop) and aquatic nonfood (aquatic outdoor and residential) uses where honeybees are likely to be exposed to pesticides as a conditional requirement (guideline 850.3040).

C. Data Requirements Specific to Endangered Species Assessments and Determinations

Over the last several years, the Agency has been requiring, on a case-by-case basis for certain pesticides, data demonstrating specific geographic location(s) of threatened and endangered species (listed species), which can then be compared with areas of potential pesticide use. These data have been required when EPA determined that the estimated environmental concentration of the pesticide when applied according to the labeling appears to exceed the Agency's numeric concern levels for listed species. The specific species for which location information was needed, has been determined on a case-by-case basis based upon the use pattern of the pesticide and the sites on which it may be used. These special data are currently not required by part 158, and have only been requested on a few occasions; however, the Agency anticipates that they may be requested in the future in connection with other registration and reregistration actions. In response to a Data Call-In notice for data on the location of all listed species, an industry task force is working to develop a database that may partly fulfill Agency needs, *i.e.*, geographic locations where potentially affected species are thought to occur. Access to the task force data by other registrants who may be required to provide such data in the future would be made available through appropriate data sharing mechanisms. Although the anticipated expanded burden on registrants is not large since it does not entail experimental or laboratory procedures, it is nevertheless not likely to be inconsequential. Consequently, the Agency is requesting comment on its utility and appropriateness.

In addition, through discussions about methods to evaluate the potential risks of pesticides to listed species, EPA and the Fish and Wildlife Service and the National Marine Fisheries Service (jointly referred to as the Services) identified several aspects of EPA's current approach for which there is some scientific uncertainty. While the Services agreed that EPA was using the best available scientific and commercial information to assess risks to listed species, the Services and EPA also agreed that where uncertainties existed, further research and investigation might help to develop improved risk assessment approaches. The Agency recognizes that such research also could lead, in the long run, to additional data requirements for registration. Accordingly, the Agency seeks input on research areas that may be necessary to effectively characterize potential risks to listed endangered species from pesticide use. These include research to address the following types of uncertainties:

- Product use information by geographic location below the state and county levels
- Toxicity data and environmental fate measurements/exposure model predictions with end use products
- Toxicity data from surrogate species that quantify dose-response relationships for effects relevant to critical life stages of endangered species
- Measured or estimated values of physiological, biochemical, and morphological characteristics of endangered species and surrogate species to refine chemical-specific interspecies toxicity extrapolations
- Toxicity, exposure, uptake and elimination data to better determine any differences in interspecies sensitivity of non-target and endangered plant species exposed to herbicides
- Toxicity data to characterize potential effects to freshwater mussels
- Toxicity data to characterize potential effects to reptiles and amphibians.

The Agency seeks comment on:

1. The relative value of each of these research areas in better refining assessments of potential risks to listed species.

2. Input on specific research directions in these areas, including methodologies, protocols etc., that would be appropriate and useful in assessing the potential risks to listed species.

3. Other types of research that would be of value in refining potential risks of a pesticide to a listed species.

4. The extent to which potential research areas reflect uncertainties that apply to pesticides generically; to chemical stressors generically, or to types of pesticides or chemicals stressors.

XI. Toxicology Data Requirements (Subpart F)

A. General

Toxicology studies are required by the Agency to assess the hazard of the pesticide to humans and domestic animals. These hazard data, when combined with exposure data, form the basis for the human risk assessment. Generally, using animals as a surrogate for humans, tests are carried out by the oral, dermal or inhalation route depending on the pesticide's pattern of use and physical form. The duration of the toxicity study approximates the estimated duration of human exposure, while considering species differences in maturational milestones and overall life span. Typical exposures may be "acute" (single dose), "subchronic" (intermediate), or "chronic" (long-term). If a pesticide is used on food and requires a tolerance, the dietary exposure may be over a lifetime, or a significant portion of a lifetime, and thus chronic/cancer and multi-generation reproductive studies would be required. Studies would be required to assess the hazard during a potentially susceptible stage of life, *e.g.*, prenatal developmental studies and developmental neurotoxicity studies, and to measure end points not always observed in the basic toxicity test battery, *e.g.*, acute and subchronic neurotoxicity studies.

In addition, EPA's Risk Assessment Guidelines set forth principles and procedures to guide EPA scientists in the conduct of Agency risk assessments, and to inform Agency decision makers and the public about these procedures. The guidelines emphasize that risk assessments will be conducted on a case-by-case basis, giving full consideration to all relevant scientific information. This case-by-case approach means that Agency experts review the scientific information on each agent and use the most scientifically appropriate interpretation to assess risk. The guidelines also stress that this information will be fully presented in Agency risk assessment documents, and that Agency scientists will identify the strengths and weaknesses of each assessment by describing uncertainties, assumptions, and limitations, as well as the scientific basis and rationale for each assessment.

This proposal includes the requirements for pesticides retained from the current 40 CFR 158.340 as well as proposed revisions that have been peer reviewed by the SAP. The basic data set proposed here includes toxicity studies needed to support high exposure pesticides, such as food use pesticides.

1. Acute studies (oral, dermal, and inhalation toxicity tests, eye and skin irritation tests and dermal sensitization)
2. Subchronic (90–day) feeding studies in rodents and nonrodents
3. Chronic feeding studies in rodents and nonrodents
4. Cancer studies in two species of rodents (rat and mouse preferred)
5. Prenatal developmental toxicity studies in rodents and nonrodents (rat and rabbit preferred)
6. Two-generation reproduction study in rodents (rat preferred)
7. General metabolism study in rodents
8. Mutagenicity battery
9. Acute and subchronic neurotoxicity studies in rats
10. Immunotoxicity study in rodents
11. Developmental neurotoxicity study in rodents

B. Approach

1. *Options for generating data.* A required sequence of toxicological testing for new pesticides is not specified by the Agency. Rather, most decisions regarding the order of testing are left up to the individual registrant, based upon the understanding that there are many factors that could affect the testing progression. It is recommended, however, that the development of pharmacokinetic information, including data relevant to developing systems, be initiated early in the testing process in order to aid in the appropriate design of the studies and the interpretation of toxicological findings in adult and immature (developing) animals.

Generally, data requirements will proceed from single to multiple exposures, from shorter to longer duration, and from simpler to more complex. Different studies may be conducted simultaneously and various studies may be done in combination as well (an approach encouraged by the Agency to optimize resources and reduce the number of animals used in testing). Knowledge gained from results of earlier studies should be used to design subsequent study protocols in order to attain the greatest confidence in the results of the higher-order studies. For instance, conducting the subchronic (90–day) feeding study prior to the two-generation reproduction study would provide information on target organs that may be affected and that need to be specifically evaluated in the two-generation reproduction study.

2. *Options for submitting nonfood use data.* In proposed § 158.510 for nonfood uses of pesticides, EPA proposes to implement two approaches for complying with the toxicology data requirements. The first option, which parallels the testing scheme in the current regulations, would allow registrants and applicants to submit a set of acute, subchronic, chronic, and other toxicological studies on the active ingredient, with the specific makeup of the set of study requirements being based upon anticipated human exposure to the pesticide, as determined by the Agency. The makeup of the set of studies required for non-food use chemicals will be determined by the Agency based on the use pattern and expected exposure scenarios for the chemical. The following two examples illustrate the Agency's approaches:

i. A fairly volatile pesticide is used in the home where long-term exposure by both inhalation and dermal routes are expected. In this case, the toxicity studies required would be similar to that for a food-use chemical.

ii. In another example, a termite control pesticide is buried in the lawn near the house. There is very little exposure to anyone including the applicator. In this case, only Tier 1 data would be needed. In general, the level of toxicity studies will be determined by the magnitude, frequency and duration of the estimated human exposure. If hazards are identified based upon review of these studies, the Agency would decide what types of actual human exposure data (*i.e.*, applicator and post-application studies) also would be required to evaluate risk.

The second option would allow registrants and applicants of nonfood use pesticides to submit both toxicological studies and human exposure data simultaneously. For this option, toxicological data would be submitted under a tiered system. Agency review of the first-tier toxicological studies and the simultaneously submitted exposure data then would determine the need, for second- or third-tier toxicological studies. This option would permit flexibility in study requirements based on the identification and characterization of adverse treatment-

related toxicological effects and dose-response information, and estimates of potential human exposure. Additional second- or third-tier studies would be required on a case-by-case basis.

Under this second option, the required first-tier studies would consist of: Acute studies, a subchronic 90–day dermal study or a subchronic 90–day inhalation study, an acute and subchronic neurotoxicity screening battery in the rat, prenatal developmental toxicity studies in two species, two-generation reproduction study in rodents (rat preferred), immunotoxicity study in rodents, and a full initial battery of mutagenicity studies. The conditionally required second-tier studies would include both subchronic 90–day feeding studies, and sometimes a dermal penetration study. Depending on the results of completed studies, conditionally required third-tier studies would include both Chronic Feeding studies, both carcinogenicity studies, a reproduction study, and a metabolism study. In addition, depending upon the results in the initial neurotoxicity and mutagenicity batteries, further neurotoxicity or mutagenicity testing may be required to address possible identified risk concerns.

C. Proposed Toxicology Data Requirements

EPA's proposed toxicology data requirements encompass studies expected to improve the Agency's understanding of the potential pesticide hazard to humans, including subpopulations such as infants and children. The proposed table in this subpart contains the toxicology data requirements EPA would rely on to identify potential hazards to humans and domestic animals for all conventional pesticides. These include acute, subchronic and chronic toxicity studies, as well as carcinogenicity, prenatal developmental toxicity, reproductive toxicity, mutagenicity, neurotoxicity and other specialized studies.

EPA recognizes that toxicology testing represents a large economic burden on registrants and incorporates the use of test animals. Consequently, the Agency works with industry, the scientific community, and advocates, to ensure that data requirements are imposed only when needed to make a sound scientific safety finding required under the law. Because of this concern, the Agency has adopted guidelines whereby several toxicological endpoints may be derived from one study and has instituted other avenues for combining studies. The Agency also recognizes that, in general, lower exposure uses often correlate with lower risk. Consequently, the Agency has adopted an approach that tends to levy more extensive data requirements on high exposure uses like food uses. It is also reflected in the tiering system for data submissions for nonfood uses and in the layout of the data tables.

1. *Newly imposed data requirements—Immunotoxicity.* The Agency proposes to require immunotoxicity testing for all pesticides. Immunotoxicity testing is necessary to evaluate the potential of a chemical to produce adverse effects on the immune system. Immune system suppression has been associated with increased incidences of infections and neoplasia. In 1993, the National Research Council reviewed the technical literature and found that some pesticides are immunosuppressive (NRC, 1993). Because of the potential for pesticides to adversely impact the immune system, the EPA has developed a test guideline (870.7800) for immunotoxicity. The immunotoxicity test guideline was reviewed and endorsed by the FIFRA Science Advisory Panel and EPA's Science Advisory Board in 1996, and published in 1998 as part of the Office of Prevention, Pesticides and Toxic Substances' harmonized test guidelines.

Because the immune system is highly complex, studies not specifically conducted to assess immunotoxic endpoints are inadequate to characterize a pesticide's potential immunotoxicity, even if some tissues subject to immunotoxic insult are examined. While data from hematology, lymphoid organ weights, and histopathology of routine chronic or subchronic toxicity studies may offer useful information on potential immunotoxic effects, these endpoints alone are insufficient to predict immunotoxicity (Refs. 7 and 8). Therefore, the Agency is proposing to require functional immunotoxicity testing along with the data from endpoints in other studies to predict the potential risk of pesticides on the immune system more accurately. The Agency invites public comment on all aspects of its proposed data requirement for functional immunotoxicity.

2. *Newly codified data requirements—*
i. *prenatal developmental toxicity.* The Agency proposes to change the name of this requirement from "Teratogenicity" to "Prenatal Developmental Toxicity" to correspond with the name of the guideline (870.3700). An information based approach to testing is preferred which utilizes the best available knowledge on the chemical to develop a study protocol and testing strategy. Currently, both studies are required for food use pesticides, but for nonfood uses, only one prenatal developmental toxicity study is required, and the results of that study may trigger the conditional requirement for a second species. However, the response to developmental insult in one species is not necessarily the same in another species. The pharmaceutical thalidomide, which produces severe malformations in rabbits (and humans) but not rats following *in utero* exposure, is a classic example of this species-related difference in response. Additionally, the dose at which maternal or prenatal developmental toxicity is observed may not be the same across species, and the severity of the response in dams or fetuses may also differ. Consequently, there is a concern that the current testing paradigm for non-food use pesticides may not adequately characterize potential hazards to pregnant women and their fetuses. Given that the prenatal developmental toxicity study is used extensively to establish endpoints and doses for acute, short-term, and intermediate-term risk assessment, EPA believes it necessary to require studies in two species for all nonfood pesticides.

The Agency encourages registrants consider the use of combined study protocols in satisfying this requirement. A prenatal developmental toxicity study segment could be added to a two-generation reproduction study in rodents (guideline 870.3800). This can be accomplished by utilizing a second mating of the parental animals of either generation. The dams would undergo cesarean section at one day prior to expected delivery and a separate evaluation would proceed as specified in guideline 870.3700. By combining protocols in this manner, a single study would satisfy the requirement for both prenatal developmental and reproductive toxicity in the rodent. While it is recognized that the cost of the reproduction study would increase somewhat due to the additional work scope, the total cost of the combined study would be substantially less than that incurred by conducting the two studies separately. Moreover, a combined reproduction/developmental protocol would not require the purchase of additional animals, and would increase the efficient utilization of the animals being studied. The second required prenatal developmental toxicity study would then be performed on the rabbit.

ii. *Neurotoxicity.* Neurotoxicity studies evaluate the potential of a substance to adversely affect the structure and function of the adult

nervous system. Since promulgation of the toxicology data requirements in 1984, there has been an increasing concern on the part of the scientific and public health communities that some pesticides may produce functional or structural effects on the nervous system that are not readily observed or adequately characterized in standard toxicological studies. The Agency believes that the current set of neurotoxicity studies are inadequate for some chemicals in their observation of behavioral effects and do not use optimal methods to evaluate the nervous tissue structure and function. To detect and characterize these potential effects more fully in certain chemicals, a battery of more sensitive testing would be required. Several neurotoxicity studies are proposed to be added to the already existing neurotoxicity study requirements for all conventional pesticide registrations. The objective of the new acute and subchronic battery is to evaluate the incidence and severity of the functional and/or behavioral effects, the level of motor activity, and the histopathology of the nervous system following exposure to a pesticide.

A new adult neurotoxicity test battery of seven studies would replace the current adult neurotoxicity test requirements. The current adult neurotoxicity test battery consists of three studies: acute delayed neurotoxicity (hen), 90–day neurotoxicity (hen), and 90–day neurotoxicity (mammal). In the current part 158, an adult acute neurotoxicity study in mammals is not listed. However, an adult subchronic neurotoxicity study is required if the acute oral, dermal, or inhalation toxicity studies show neurotoxicity or neuropathy. Currently, the neurotoxicity studies can be triggered either by statistically and/or biologically significant findings.

Under the proposal, some of these tests would be routinely required and others would be conditionally required. Two studies that would be required are an acute and a subchronic 90–day neurotoxicity study (guideline 870.6200) in rats. The acute study would be required to detect possible effects resulting from a single exposure. The subchronic study is intended to detect possible effects resulting from repeated or longer-term exposures. The requirement for a subchronic neurotoxicity study also may be satisfied by incorporating the required neurotoxicity testing into the standard 90–day subchronic feeding study in rats (guideline 870.3100). The acute and subchronic neurotoxicity studies in adult rats, in addition to providing data on the potential for neurotoxicity, also provide a basis for comparison of the potential for age-related differences in impacts on the nervous system with results from the developmental neurotoxicity study, if needed, for the same chemical.

A new, conditionally required, 28–day delayed neurotoxicity study in hens (guideline 870.6100) would be added. The 28–day delayed neurotoxicity test would be required if results of the acute neurotoxicity study (guideline 870.6100) indicate significant statistical or biological effects, or if other available data indicate the potential for this type of delayed neurotoxicity, as determined by the Agency. The Summary Report of the 1990 OECD Ad Hoc Meeting (Ref. 9) adds:

> In the assessment and evaluation of the toxic characteristics of organophosphorus substances, the determination of the subchronic delayed neurotoxicity may be carried out, usually after initial information on delayed neurotoxicity has been obtained by acute testing or by the demonstration of inhibition and aging of neurotoxic esterase and acetylcholinesterase in hen neural tissue.

The Agency believes that to evaluate the specific type of delayed neurotoxicity associated with some organophosphorus esters and related substances, a subchronic 28–day study in hens, rather than a 90–day study, would provide sufficient data. Thus, the duration of the subchronic hen study has been shortened from 90 days to 28 days. This is based on the finding that test chemicals reach equilibrium from both a pharmacokinetic and pharmacodynamic perpective; that is, the levels that cause effects, *i.e.*, LOAELs and NOELs, would be stable after 28 days of exposure. Another reason is that the 28–day study is able to identify effects as well as the 90–day study in that it includes a requirement for dosing 7 days a week, while the 90–day study only doses 5 days per week, allowing for some intermittent recovery. This change was recommended by a panel of experts at a 1990 OECD ad hoc meeting on various issues in neurotoxicity testing (Ref. 9). Hence, the 90–day study requirement has been deleted from the proposed table. The conditional testing requirement for the acute delayed neurotoxicity study in hens (guideline 870.6100) would be unchanged.

The last three studies that comprise the neurotoxicity test battery are also new data requirements. The scheduled controlled operant behavior, peripheral nerve function, and sensory evoked potential neuropathology studies would be conditionally required if the results of the acute and/or the subchronic neurotoxicity studies show adverse effects on the central nervous system which affect learning, memory or performance, or adverse effects on visual, auditory, or somatosensory senses and/or concerns for peripheral neuropathy. The scheduled controlled operant behavior study (guideline 870.6500) evaluates substances that have been observed to produce neurotoxic signs in other studies (*e.g.*, central nervous system depression or stimulation), as well as substances with a structural similarity to neurotoxicants which affect learning, memory, or performance. The peripheral nerve function study (guideline 870.6850) evaluates substances that have been shown to produce peripheral neuropathy or other neuropathological changes in other studies, as well as substances with a structural similarity to those causing such effects. The sensory evoked potential neurophysiology study (guideline 870.6855) evaluates substances that may affect the visual, auditory, or somatosensory (body sensation) senses. Substances tested include those expected to affect these senses or to detect changes based on data from other studies or based on their structural similarity to substances that do affect these senses. The scheduled controlled operant behavior, peripheral nerve function, and sensory evoked potential neurophysiology studies are being proposed at this time to be conditionally required, subject to the results of acute or subchronic neurotoxicity testing or for other reasons, such as structure activity considerations or to more fully characterize any neurotoxic effects seen in the acute and subchronic studies. The Agency believes that these three studies will be rarely required.

iii. *Developmental neurotoxicity (DNT).* The Agency is proposing that developmental neurotoxicity testing be conditionally required for conventional food use and nonfood use pesticides. In implementing this conditional requirement, registrants are encouraged to apply what is known about the chemical and its toxicity to develop a rational, science-based approach to this testing; this is discussed in more detail below. A DNT would be required (Ref. 10) using a weight-of-the-evidence approach when:

1. The pesticide causes treatment-related neurological effects in adult animal studies, such as:
   - Clinical signs of neurotoxicity
   - Neuropathology
   - Functional or behavioral effects

2. The pesticide causes treatment-related neurological effects in

developing animals, following pre- and/or postnatal exposure such as:

- Nervous system malformations or neuropathy
- Brain weight changes in offspring
- Functional or behavioral changes in the offspring

3. The pesticide elicits a causative association between exposures and adverse neurological effects in human epidemiological studies

4. The pesticide evokes a mechanism that is associated with adverse effects on the development of the nervous system, such as:

- SAR relationship to known neurotoxicants
- Altered neuroreceptor or neurotransmitter responses

In practice, EPA evaluates each pesticide using all available toxicological information that might indicate a need for a developmental neurotoxicity study. The developmental neurotoxicity study (guideline 870.6300) has been requested on a case-by-case basis for certain chemicals for food use and nonfood use registrations since the guideline was finalized in 1991. The Agency is proposing to conditionally require developmental neurotoxicity studies for all neurotoxic pesticides and/or when other criteria are met that indicated a potential for toxicity to the developing nervous system, based upon a weight-of-evidence evaluation of the toxicological database.

The criteria used in this evaluation were developed through extensive scientific peer review, including a 1999 FIFRA SAP expert review (and public comment) on the use of the FQPA 10X factor in pesticide risk assessment (Ref. 11). The Panel concluded that these criteria were reasonable and useful indicators which would increase concern for pre-/postnatal toxicity. EPA proposes the (conditional) addition of the developmental neurotoxicity study to the toxicology testing requirements since the two developmental toxicity studies do not include an in-depth assessment of the development of the nervous system. The SAP acknowledged that the criteria were not adequate for identifying every potential developmental neurotoxicant, supporting the Agency's concern about the criteria's limitations. Accordingly, the SAP agreed with the Agency's approach of calling in the full range of neurotoxicity studies, including developmental neurotoxicity, for existing conventional chemistry food-use pesticides that are known neurotoxicants, and for all new conventional food-use pesticides.

The prenatal developmental toxicity study (guideline 870.3700) and the two-generation reproduction study (guideline 870.3800), evaluate the potential for toxicity to offspring following pre- and/or postnatal exposure to a test substance. The prenatal developmental toxicity study, in which the maternal animals are exposed during pregnancy, is designed to assess fetal growth, viability, and the presence of structural alterations (*i.e.*, variations and malformations that can be detected by careful external, visceral, and skeletal examinations of each fetus). The two-generation reproduction study evaluates fetal and pup growth and development, offspring survival, clinical observations, reproductive system maturation and function, and postmortem findings (*i.e.*, organ weights, macro- and microscopic pathology). The developmental neurotoxicity study is designed to evaluate test animals for functional and behavioral deficiencies, as well as structural alterations to the nervous system, that may result from pesticide exposure that occurs *in utero* and/or during early postnatal life.

Currently, discussions on alternative testing paradigms are underway by the International Life Sciences Institute (ILSI) Health and Environmental Sciences Institute (HESI) under the Agricultural Chemical Safety Assessment Technical Committee. The consensus of this effort to date (ILSI, 2001) (Ref. 12) is that toxicological testing should move away from a rigid guideline-based screening approach and towards a more knowledge-based approach such as is currently used for pharmaceutical testing (*e.g.*, the International Committee on Harmonization, 1994). The Agency is in conceptual agreement with this philosophy and proposes to consider the basic precepts of such a toxicology testing paradigm in the application of the toxicology testing requirements that are used to support pesticide regulatory decisions (*i.e.*, § 158.500).

Under this paradigm, both the selection of studies that would be required, as well as the design of the tests themselves, could be influenced by other substantive and reliable information about the pesticide. Such information could include toxicity and dose-response data from other guideline or non-guideline studies, structure-activity relationships, data on the mechanism or mode of action of the chemical, pharmacokinetic data, studies that examine age-related sensitivity or susceptibility to chemical exposure, and information on potential or actual exposure to humans. These data could be used to inform a more targeted testing approach in the design of studies or to support a position that the requirement for specific toxicology tests listed in part 158 should be waived (under the authority described in § 158.45). For example, on a chemical-by-chemical basis, the design of prenatal developmental toxicity and/or two-generation reproductive toxicity studies (both of which examine toxicological effects on immature animals) could be refined, or alternative tests that examine appropriate functional or structural endpoints would be considered. The proposed HESI approach to testing pesticides is anticipated to be published early summer 2005. Once published, the Agency would consider this approach and make appropriate recommendations following internal and external peer review.

In the case of the developmental neurotoxicity study, a thorough evaluation of all available information, including data on the pharmacokinetics and mode of action of the pesticide (if such data exist), could lead to different conclusions regarding the appropriate way to approach testing. For some chemicals, it might be concluded that adequate testing of the developing nervous system would be best accomplished with a standard developmental neurotoxicity study (guideline 870.6300). Refinements to the guideline study could include, for example, changes to the route and/or duration of exposure (*e.g.*, initiation of dosing to maternal animals prior to gestation day 6, or direct gavage administration to pups during lactation), the evaluation of appropriate biomarkers of exposure or effect, the use of more targeted functional, behavioral, or cognitive testing in offspring, or the histopathological and/or morphometric evaluation of particular regions of the central or peripheral nervous system that are known to be affected by either the chemical or chemical class. For other chemicals, the information in the toxicological data base could lead to the conclusion that an alternative test should be performed instead of a guideline developmental neurotoxicity study, alternative chemical-specific methods could be identified as a preferred option.

In the case of organophosphorus and n-methyl carbamate pesticides whose primary mode of neurotoxic action is inhibition of acetyl cholinesterase, a comparative cholinesterase assay could be conducted in lieu of the DNT given that the inhibition of cholinesterase (ChEI) is the most sensitive effect for these classes of chemicals. Regulation on a threshold (or benchmark) dose for

ChEI should be protective of neurotoxicity. Another example of such a testing scenario would be the use of a comprehensive screen of functional and structural thyroid perturbation (*i.e.*, including T3, T4, and TSH levels) in adult and young animals, for a thyrotoxic chemical that has no other indications of direct nervous system toxicity. In such a case, it can be assumed that identification of maternal or offspring thyroid perturbations would signal any potential alterations in nervous system development, and that minimal effects on the thyroid would be detected at lower dose levels than would result in the types of frank functional, behavioral, or structural alterations that can be detected in the developmental neurotoxicity study. Therefore, it can be presumed that regulation of the chemical on the basis of threshold thyroid effects would be protective of any treatment-related alterations in neurological development that might potentially occur at higher doses. Alternatively, evaluation of the toxicology and exposure data bases for a pesticide may lead to the conclusion that there is no need to conduct a developmental neurotoxicity study, when there is reliable evidence demonstrating the lack of potential for neurotoxicity and/or for human exposure.

Whenever feasible, the Agency encourages registrants to conduct developmental neurotoxicity studies in combination with a two-generation reproduction study. In addition, if preliminary evidence indicates the need for evaluation of structural or functional toxicity of other organ systems in immature animals, these could also be examined within the context of the reproduction study. For developmental neurotoxicity assessment, this can be accomplished, for example, by utilizing the second generation (F_2) offspring that are produced in the reproduction study to conduct the functional, behavioral, and neuropathological testing that is integral to the developmental neurotoxicity protocol. A combined reproduction/developmental neurotoxicity protocol reduces the total number of animals assigned to testing (as compared to the number of animals required when the two studies are conducted independently), and results in a more efficient utilization of the animals already on test. Other benefits of using a combined study approach for any type of targeted functional testing in offspring would include the evaluation of a population of offspring with maximized exposure duration (*i.e.*, that have been treated throughout pre- and postnatal life), greater assurance that steady state levels of test substance in the animals have been achieved prior to testing, and an evaluation of effects within the larger context of assessments of maternal and neonatal toxicity and offspring growth and development. Additionally, combined studies are likely to cost less and take less time, and reduce inter and intra-laboratory variability. The Agency invites public comment on all aspects of its proposed data requirements for developmental neurotoxicity.

iv. *Mutagenicity.* A battery of mutagenic tests is currently required to assess the potential of the test chemical to adversely affect the genetic material in the cell and subsequently serve as part of the Agency's weight-of-the-evidence approach for classifying potential human carcinogens. Mutagenicity data are also used to evaluate potential heritable effects in humans. The Agency is proposing to change the specific types of tests to be performed to satisfy the mutagenicity testing requirement (Refs. 13, 14 and 15). Mutagenicity testing would no longer be subdivided into the categories of gene mutation, structural chromosomal aberrations, and other genotoxic effects, with selection from a wide range of mutagenicity tests allowed to satisfy these categories. A more specific initial battery of mutagenicity tests and relevant information would be required to support the registration of each pesticide product. This initial battery would consist of a bacterial reverse mutation assay with *Salmonella typhimurium* and *Escherichia coli* (guideline 870.5100), an assay with mammalian cells in culture (guideline 870.5300), and an *in vivo* cytogenetics assay (guidelines 870.5385 or 870.5395).

The Agency has selected the bacterial assay because it is a primary test for detecting intrinsic mutagenicity of many classes of biologically active chemicals. The genetics of each test strain of *Salmonella* and select strains of *E coli* have been well-validated and the assay is easy to perform, is used routinely throughout the world, and has an extensive data base of tested chemicals. The mammalian cells in culture assay will detect a wider spectrum of possible genetic endpoints not assayed in the bacterial test. The *in vivo* cytogenetics assay provides an important examination of the potential effect a test compound may have on an intact mammalian system. Data from this study provides information on *in vivo* metabolism, repair capabilities, pharmacokinetic factors (*e.g.*, biological half-life, absorption, distribution, excretion) and target organ/tissue effects.

Since there are many different mutagenicity tests available besides those in the initial battery, other types of testing by the registrant or other investigators may have been performed in the course of product research and development. In addition to the initial battery, data from such mutagenicity tests must be submitted to the Agency, along with a reference list of all studies and papers known to the applicant or registrant concerning the mutagenicity of the test chemical. Having this information at the beginning of a mutagenicity assessment will greatly facilitate EPA's effort to provide a more accurate assessment of the mutagenicity of the pesticide in question.

3. *Revised data requirements*—i. *Acute oral and dermal toxicity.* In addition to performing studies using the TGAI, current requirements give the applicant a choice of performing these studies on the end-use product or a diluted end-use product. However, the Agency has determined that studies using the end-use product (EP) provide the most useful data and would only require additional testing on the diluted form if the product met the conditions for a restricted use classification under § 152.170(b) or special review consideration under § 154.7(a)(1). Hence the Agency proposes to change the test substance to support a registration for an end-use product for these two studies (guidelines 870.1100 and 870.1200) to read "TGAI, EP, and possibly diluted EP." The Agency will notify the applicant when additional testing using the diluted product is required. The Agency invites public comment on all aspects of its proposal to modify the current use of the TGAI to include data from the same tests using the EP and possibly the diluted product.

ii. *Primary eye irritation, primary dermal irritation, and dermal sensitization.* EPA proposes to modify the existing data requirement for the EP to include testing with the TGAI. In order to more fully characterize the toxicity of the active ingredient of a pesticide, tests using the TGAI would now be required in addition to the test performed on the end-use product for these three studies (guidelines 870.2400, 870.2500 and 870.2600) to support the end-use product. Dermal and eye irritation and dermal sensitization testing of the TGAI have not previously been required in the toxicology data requirements table in § 158.340 for the EP. These data, however, serve to identify hazards from exposure to the eyes, skin, and associated mucous membranes to the active ingredient. The

Agency considers this information essential in accurately classifying the eye and skin irritation and the skin sensitization potential of the pesticide, and in determining whether any observed adverse effects are inherent to the active ingredient, or caused by the presence of other ingredients. The Agency invites public comment on all aspects of its proposal to modify the current use of the end-use product to include data from the same tests using the TGAI.

iii. *21–day dermal and 90–day dermal.* For both food and nonfood uses, dermal testing may be needed on the end-use product if the product, or any component in it, could lead to potentially toxic effects or could possibly increase the dermal absorption of the active ingredient. The Agency proposes to require a 21– to 28–day subchronic dermal toxicity test (guideline 870.3200) for all food use pesticides. This test is being changed from conditionally required to routinely required since it is generally needed for worker risk assessments. Analyses of exposure information have shown that this duration of exposure is typical for agricultural workers in various components of their job. Since not all food use applications pose worker risk, the requirement will be tailored to the potential for worker exposure.

Dermal toxicity testing for nonfood uses would be required if the dermal route is the major route of exposure. In this latter case, a 90–day study (guideline 870.3250) is proposed to be required, in lieu of the shorter, subchronic study. This proposed conditional requirement is necessary in order to assess potential hazards associated with dermal exposure. If the major route of exposure for nonfood uses is the dermal route, the 21– to 28–day subchronic dermal toxicity test is insufficient to identify potential hazards.

iv. *Carcinogenicity.* The Agency proposes to change the name of the oncogenicity study to carcinogenicity (guideline 870.4200) to correspond with the name of the guideline. In addition, the Agency has determined that 90–day subchronic range-finding studies generally are needed to select appropriate doses for use in these carcinogenicity studies, since cancer studies with doses that are too low and do not cause any adverse effects can be rejected. These range-finding studies have been performed routinely by most investigators prior to the start of their cancer studies and have been submitted regularly to the Agency for review. Since the carcinogenicity study requires testing on rats and mice (which may differ in their response), the 90–day range-finding studies also need to include both species.

The Agency is proposing to formalize this routine practice by including these studies in the part 158 data requirements. The requirement for the 90–day oral study (guideline 870.3100) will be modified to include "two rodent species- rat and mouse preferred". Both rodent species would be required for food use pesticides and conditionally required for nonfood uses.

v. *Reproduction.* Under the current toxicology data requirements, a reproduction study (guideline 870.3800) is required for all food use pesticides, and conditionally required for nonfood use pesticides based on the anticipated level of exposure. The Agency proposes to amend the data table and require a reproduction study for nonfood uses, but qualify the requirement to emphasize that the requirement is based on potential exposure. Data on reproductive effects for a nonfood pesticide would be required unless there is no significant human exposure, as determined by the Agency, in terms of the frequency, magnitude, or duration of the exposure. For example, products such as pesticide treated fabric, diapers, or bedding; insect repellent lotions; or constant-release aerosols for indoor use would require reproductive data. This data requirement is still exposure-based and as such will not always be necessary.

This change is predicated on the fact that reproductive toxicity testing endpoints are not assessed in any of the other required studies for the nonfood uses, and that these other studies do not provide adequate triggers which would indicate the potential for reproductive adverse effects.Multi-generation reproductive studies provide critical scientific information needed to characterize potential hazard to the human population during a number of sensitive life stages, *e.g.*, during *in utero* fetal development, perinatal life, adolescence, and adulthood. These studies can be used to select endpoints and doses for use in risk assessment and are considered a primary data source for reliable reference dose calculations (Ref. 16).

The need for a reproduction study in Tier 1 is bolstered by information developed by the Pest Management Regulatory Agency (PMRA) of Canada. (Ref. 17). In 1997, PMRA provided to the Agency the results of a preliminary study, which retrospectively evaluated reproduction studies as they affected risk assessment needs. The study was presented in the context of antimicrobial pesticides, for which a tiered toxicology testing scheme was being discussed. However, the results apply to similar tiered testing schemes across a broader spectrum of uses, such as what EPA is proposing for nonfood uses.

One aspect of the PMRA study looked to determine whether a reduced Tier 1 set of toxicology studies (consisting of acute toxicity, subchronic toxicity, developmental toxicity, and mutagenicity studies, but not a reproduction study) would adequately identify reproductive endpoints or concerns for risk assessment purposes. PMRA's results are telling with respect to reproductive effects:

- For 67% of the evaluated chemicals (12/18) with reproductive endpoints of concern, the reduced Tier 1 data set would not have predicted reproductive effects identified in a reproduction study
- Reproductive effects were not limited to a particular class of pesticide
- Chemical structure was not useful as a predictive tool (of reproductive effects)
- Mutagenicity studies were not helpful (in predicting reproductive effects)

EPA believes their results support the inclusion of reproduction studies in the Tier 1 nonfood testing regimen.

vi. *Non-rodent chronic studies.* The Agency is considering eliminating the requirement for a 1–year dog study. Under the current toxicology data requirements, a 1–year non-rodent (dog) study (guideline 83–1) is required for all food use pesticides or for nonfood uses if use of the pesticide product is likely to result in repeated human exposure over a significant portion of the human life-span. Evidence in the published literature suggests that the study may not be needed. (Ref. 18) The Agency's impression from its reviews is consistent with the conclusion reached in that study. However, the Agency possesses a large body of dog studies submitted over the last three decades, and believes it appropriate to conduct a comprehensive and systematic analysis of those studies. EPA is in the process of conducting such an analysis and expects to present its preliminary analysis to the SAP in the spring of 2005. At that time, the analysis and other supporting documents would be made available for public review and comment. If this review confirms that the study is no longer needed, the Agency would in the final rule eliminate the requirement for the 1–year dog study. EPA specifically seeks comment on the possibility of eliminating the 1–year dog study.

D. Further Test Guideline Development

The data base to assess pre- and post-natal toxicity varies depending on the nature of the chemical. Some chemicals may need additional data in addition to the core data set for an adequate evaluation of potential hazards. The following studies may be required on a case-by-case basis to support the registration of particular pesticide products and the Agency has begun developing test guidelines for some of these studies. As the Agency's experience with these studies increases and if the studies are imposed more regularly, EPA may propose to include them in future revisions to part 158.

- pharmacokinetics in fetuses and/or young animals
- direct dosing of neonates prior to weaning for exposure through the maternal route
- specialized developmental neurotoxicity of more sensitive sensory and/or cognitive functions
- developmental immunotoxicity
- developmental carcinogenesis
- enhanced evaluation of potential endocrine disruption.

EPA solicits public comment on the Agency's possible request for such data, including the circumstances under which such data should be required.

XII. Nontarget Plant Protection Data Requirements (Subpart J)

A. General

Plant protection studies are used by the Agency to evaluate the potential for adverse pesticidal effects to nontarget terrestrial and aquatic plant species. Nontarget plants include crop plants growing within the target or treated area (such as crop plants which are growing with weeds or plants which are hosts for insects and disease organisms), and those growing outside the target area (adjacent crop plants, endangered plants, and plants that are important to fish and wildlife for food and cover). Data from the plant protection studies will be used to determine if protective measures, such as precautionary labeling, are needed.

Data on plant protection include short-term acute greenhouse and simulated or full field studies arranged in a hierarchy from basic tests to applied field tests. The results of each tier of tests must be evaluated to determine the potential of the pesticide to cause adverse effects, and to determine whether further testing is required. Tier I and II studies are short-term and relatively inexpensive. They are required broadly to assess a pesticide's potential to harm plants in the early stages of plant growth (the first 14 to 21 days). The short-term acute greenhouse studies provide basic toxicity data which are used in a deterministic risk assessment screen. These data are used to establish acute toxicity levels of the pesticide to the test organisms; to compare toxicity information with measured or estimated pesticide residues in the environment in order to assess potential impacts on plants; and to indicate whether further greenhouse and/or field studies are needed.

If additional, more refined, information is needed, Tier III field studies would be triggered. Simulated field and full field studies may be required when basic data and environmental conditions suggest that the risk exceeds the Agency's level of concern for nontarget plants and the information sought is necessary to adequately refine the Agency's assessment of risk. Data from these studies are used to estimate the potential for adverse effects on plant reproduction and survival, taking into account the measured or estimated residues in the environment.

B. Proposed Plant Protection Data Requirements

EPA is not proposing major changes to the plant protection data requirements from those currently listed in part 158. The proposed data requirements are being expanded to include use patterns where the potential for off-target exposure via surface run-off and spray drift are likely, or for uses that may result in discharges to the aquatic environment. The seed germination study would be eliminated.

In addition, the Agency is proposing to require independent laboratory validation of the environmental chemistry methods for terrestrial and aquatic field testing. Other changes include changes in test substance, conditions under which a test is required or in some cases, not required, and clarification of test notes. These changes are not expected to increase the burden of the existing data requirements.

1. *Newly imposed data requirements.* None.

2. *Newly codified data requirements.* None.

3. *Revised data requirements*—i. *Seed germination.* The Agency proposes to eliminate the requirement for the seed germination study (guideline 850.4200). The information from this study would be obtained from the accompanying seedling emergence study (guideline 850.4100) which is currently required.

ii. *Seedling emergence and vegetative vigor.* Currently, Tier I seedling emergence (guideline 850.4100) and vegetative vigor (guideline 850.4150) studies are required for terrestrial and aquatic nonfood and forestry uses. Tier II tests (guidelines 850.4225 and 850.4250) are conditionally required for the same use patterns and are triggered by the results of the Tier I studies. Due to the potential for surface run-off or spray drift, EPA proposes to expand the seedling emergence and vegetative vigor data requirements to terrestrial food and feed crops, aquatic food crops, and residential outdoor uses. These studies would not be required for aquatic residential uses since limited exposure is expected from this use site.

The Agency also proposes that seedling emergence and vegetative vigor studies be conducted using the TEP instead of the currently required TGAI. The TEP that contains the highest percentage of active ingredient, and/or is the most commonly used, would be required. TEP testing eliminates the need for a separate solvent control because the solvent is already contained in the product formulation.

The Agency also proposes that vegetative vigor studies with granular or bait formulations not be required. Since the protocol for this study requires that the pesticide be applied directly to the plant surface, tests using granular or bait formulations would not be practical.

iii. *Aquatic plant growth (algal and aquatic vascular plant toxicity).* Currently the Agency requires Tier I aquatic plant growth studies for terrestrial and aquatic nonfood and forestry uses, and conditionally requires Tier II studies for these same use patterns using five aquatic plant species (*Pseudokershneria subcapitata* (green algae), *Skeletonema costatum* (marine diatom), *Anabaena flos-aquae* (blue-green cyanobacteria), *Navicula sp.* (freshwater diatom), and *Lemna gibba* (floating vascular macrophyte)) (guidelines 850.4400 and 850.5400). Again, due to the potential for off-target exposure via surface run-off and spray drift, the Agency proposes to extend this requirement to terrestrial food and feed crops, aquatic food crop, and residential outdoor uses. Tier II aquatic plant growth studies are proposed to be conditionally required for aquatic nonfood residential uses, using either the TGAI of TEP.

iv. *Terrestrial field and aquatic field.* The Agency is proposing to extend these Tier III conditional requirements (guideline 850.4300 and 850.4450, respectively) from terrestrial and aquatic nonfood and forestry uses to terrestrial food and feed crop, aquatic food crop, and residential outdoor uses when off-target movement appears likely (*e.g.*, use

patterns that readily release the pesticide into the environment). These phytotoxicity data are needed to evaluate the level of pesticide exposure to non-target terrestrial and aquatic plants and to assess the impact of pesticides on endangered and threatened plants. The Agency is also proposing to require independent laboratory validation of the environmental chemistry methods used to generate data associated with these studies. Independent laboratory validation is used to ensure the accuracy and reproducibility of the analytical methods that were used to conduct field studies. For example, independent laboratory validations have been required for food residue methods since 1989. EPA instituted this requirement because analytical protocols were often poorly written and incomplete in terms of the descriptions of all the necessary steps. The Agency scientists spent excessive amounts of time confirming that the methods worked properly and in some cases they could not duplicate the results of the studies. Since the independent laboratory validations have been required, a higher percentage of methods is successfully validated by EPA scientists and less time is required to do so. For laboratory tests, we rely on Good Laboratory Practice Standards (GLP) to assure the quality and integrity of the data submitted to the Agency. Ensuring reproducibility and quality of studies used in EPA's decision-making are also key components of EPA's Information Quality Guidelines.

XIII. Post-application Exposure Data Requirements (Subpart K)

A. General

While toxicology data depict the potential hazard of a pesticide, residue chemistry, applicator and post-application data serve to estimate the potential exposure to the chemical. Residue chemistry data (subpart O) provide EPA with dietary exposure information, applicator (subpart U) and post-application (subpart K) exposure data provide exposure data from other routes, such as dermal, inhalation, and oral.

The post-application data requirements are being revised because the existing data requirements no longer meet the needs of the Agency to protect human health from unreasonable adverse risks in all post-application settings. Data to determine post-application exposure are essential to assess the risk to people resulting from exposure to pesticides after they have been applied. Results from the post-application residue studies assess the presence of pesticide residues, while exposure monitoring data are used to determine the quantity of the pesticide and any of its potentially harmful degradates or metabolites to which people may be exposed. These data, in conjunction with appropriate toxicology information, are used to determine whether post-application risks are of concern at residential and occupational sites, and to develop, when appropriate, post-application restrictions.

The 1984 data requirements were developed to assess the risks to agricultural workers and others who must enter a treated field. The data were, and still are, required to protect these workers from exposures resulting from pesticide residues remaining on crops. Over the years, occupational safety concerns have led to the development of a number of state and federal programs for agricultural worker protection. More recently, the Agency has become increasingly concerned about post-application risks to persons in occupational settings other than conventional food, feed and fiber crop agriculture. Additional studies and information are needed to assess the risks to workers in nurseries and greenhouses, forests, golf courses, animal facilities, and other settings where a person may be exposed to pesticides. Depending on the setting and the type of application, exposure can result from residues on foliage (including turf grass), soil, or indoor surfaces.

The proposed data requirements also are being expanded to encompass potential risks from other settings where people may be exposed, such as golf courses, recreation areas, schools, and hospitals, regardless of whether they are on the job or are simple bystanders. The Agency has long been aware of the need for exposure data in this area. Under current practice, post-application exposure data are generally required for both occupational and residential settings. Currently, post-application exposure studies are required on a case-by-case basis when specific exposure and toxicity criteria triggers have been met. Moreover, FFDCA now mandates that EPA perform additional scientific analyses which have not been a routine part of the Agency's risk assessment process, such as the assessment of aggregate exposures from multiple pathways including dietary and non-dietary routes. Such exposures to pesticides have been associated with a significant proportion of reported incidents in the record.

Residential use sites, for data requirement purposes, encompass more than what would normally be considered homeowner use. A "resident" is a member of the general public, and "exposure" from a residential use site includes post-application exposure to anyone who, in the course of their daily activities, comes in contact with a pesticide after it has been applied. Post-application residential exposure to pesticides can occur in a variety of indoor and outdoor environments, and a vast number of different human activities can occur at these sites after the pesticides has been applied. Data reflecting new exposure patterns are required to determine whether a product may be used safely in and around homes, golf courses, parks, recreation areas, schools, hospitals, and public buildings. Numerous pesticides contribute to outdoor residential exposure including lawn chemicals, landscaping and garden products, rodent poison, and treated lumber. Indoor exposures can result from ant and roach killers, termite treatments, pet flea and tick products, and treated paint. While use of some products may result in intermittent exposures, use of others can result in people's exposure to the pesticide or its residues on a daily basis. In addition to acute or episodic exposures, chronic exposure to pesticides used in residential settings may be of concern.

EPA's current post-application exposure data base is not comprehensive, especially regarding exposures to pesticides in nonagricultural settings. The new data that would be collected under the approach outlined in this proposal would allow the Agency to conduct improved exposure assessments for residential and occupational sites. In addition, such post-application studies would allow the Agency to assess aggregated and cumulative risks to consumers, with special emphasis on children. The Agency invites public comment on all aspects of its proposed data requirements for post-application exposure.

B. Criteria for Testing

EPA proposes to revise the toxicity and exposure criteria for post-application exposure studies. The Agency currently requires pesticide post-application exposure data when it determines that risks resulting from post-application exposures may be a concern in occupational or residential settings. The criteria for requiring post-application exposure monitoring data would be expanded to include a wider number of potential exposure scenarios in both occupational and non-occupational settings. The

determination of whether or not a pesticide meets these criteria would be made by the Agency on a case-by-case basis.

1. *Toxicity criteria.* In the 1984 regulations, EPA required post-application exposure data if the pesticide was classified as category I for acute dermal toxicity. EPA, however, is proposing to modify the toxicity criteria for requiring post-application exposure data. While the Agency remains concerned about pesticides that are highly toxic by the dermal route or that cause other significant effects by the dermal route, there is also strong concern about other types of toxic effects such as neurotoxicity, developmental effects and general systemic effects which are seen in oral studies, but would be relevant to any risk related to post-application exposure.

EPA is proposing that the toxicity criteria be based on all aspects of the toxicity of the active ingredient. Post-application exposure data would be required, as determined by the Agency, if the active ingredient meets any of the following including:

- Evidence of potentially significant adverse effects have been observed in applicable toxicity studies,
- Scientifically sound epidemiological or poisoning incident data indicate that adverse health effects may have resulted from post-application exposure to the pesticide.

2. *Exposure criteria.* EPA proposes to expand the exposure criteria that would trigger post-application exposure studies to include residential settings and certain occupational settings both indoors and outdoors. Specifically, EPA is proposing the following exposure criteria. When there is potential exposure to humans from post-application pesticide residues from any media, typically, these exposures fall into the following areas.

i. *For outdoor uses:*

- Occupational human post-application exposure to pesticide residues on plants or in soil could occur as the result of cultivation, pruning, harvesting, mowing or other work related activity. Such plants include agricultural food, feed, and fiber commodities, forest trees, horticultural plants in commercial greenhouses or nurseries, and turf grass,
- Residential human post-application exposure to pesticide residues on plants or in soil could occur. Such plants include turf grass, fruits, vegetables, and ornamentals grown at sites, including, but not limited to, homes, parks, and recreation areas.

ii. *For indoor uses*:

- Occupational human post-application exposure to pesticide residues could occur following the application of the pesticide to indoor spaces or surfaces at agricultural or commercial sites, such as, but not limited to, agricultural animal facilities and industrial or manufacturing facilities,
- Residential human post-application exposure to pesticide residues could occur following the application of the pesticide to indoor spaces or surfaces at residential sites, such as, but not limited to, inside homes, daycare centers, hospitals, schools, and other public buildings.

The need for data from potential exposure resulting from situations not covered by these examples should be discussed with the Agency.

C. Proposed Post-application Exposure Data Requirements

At a minimum, residue dissipation, exposure studies, and selected toxicity data are needed to assess post-application risk and determine, when appropriate, entry restrictions. Product use information, including registrant-generated or other surveys on actual use, and descriptions of human activity information are also used to define and refine post-application exposure and risk estimates.

The dissipation of pesticide residues may occur on foliage, soil, or indoor surfaces. To determine dissipation rate. the Agency uses, depending on the use of the pesticide, dislodgeable foliar residue dissipation data, turf grass transferable residue dissipation data, soil residue dissipation data, and/or indoor surface residue dissipation data. To determine the level of post-application human exposure, EPA may use dermal exposure, inhalation exposure, and/or nondietary ingestion studies. In some instances, such as exposure to swimmers, where passive dosimetry methods are not feasible, EPA may require a biological monitoring study. The Agency does not believe that this study will be commonly required. Certain toxicity data also are used in conjunction with the dissipation and exposure data. Typically, this information is obtained through existing toxicity data requirements (see Unit XI of this preamble and subpart F in the proposed regulatory text).

Post-application exposure monitoring data are proposed to be pesticide- or formulation-specific, however, surrogate exposure data may be submitted, if appropriate. In general, the studies required for estimating post-application exposure are dependent upon the pesticide site and use patterns, potentially exposed populations, significant exposure routes, and the time duration over which the exposure occurs. The employment of exposure mitigating measures, such as packaging or use restrictions, *e.g.*, tamper-resistant bait stations, may alleviate the need for some or all of the data requirements in subpart K. Data would be required when any of the testing criteria is met. The Agency does not believe that "full" studies will be commonly required. Applicants are strongly encouraged to consult with the Agency to determine specific data requirements for their product.

1. *Newly imposed data requirements.* None.

2. *Newly codified data requirements.* EPA is proposing to base its data requirements for post-application exposure information on two distinct use patterns: occupational and residential. In doing so, the Agency proposes to expand the data requirements for post-application exposure data to include residential sites, nonagricultural sites, and agricultural sites other than conventional food, feed and fiber crop agriculture, which would include greenhouses, nurseries, forests, and animal facilities. New data requirements include indoor surface residue dissipation, biological monitoring data, product use and human activity information, nondietary ingestion exposure, and data reporting and calculation methodologies.

i. *Indoor surface residue dissipation.* The Agency proposes to add the Indoor Surface Residue Dissipation study (guideline 875.2300) as a new post–application exposure data requirement. These data characterize the pesticide residues found inside buildings on surfaces such as flooring, carpets, upholstery, counter tops, and other treated surfaces after the pesticide has been used. The measurement of indoor pesticide residues is particularly important for characterizing exposure to subpopulations that may spend a large portion of their time indoors, such as children or the elderly. Such data will be used to determine whether or not a pesticide could be safely used in an indoor residential or occupational setting.

ii. *Biological monitoring.* Biological monitoring data (guideline 875.2600) measure the amount of chemical to which a person has been internally exposed. This is done by measuring pesticide and/or metabolite compound concentrations in selected human tissues, fluids, or bodily wastes (feces and/or urine). EPA proposes to conditionally require biological

monitoring studies as an alternative to passive dosimetry techniques. The Agency is providing this alternative because, typically, an exposure assessment will be performed relying on generic passive dosimetry data, which measures the potential dose or amount of the chemical on skin or in the air. However, passive dosimetry data usually overestimate exposure, because they only provide estimates of potential exposure, not measurements of absorbed dose. A biological monitoring study performed under the same label use conditions as the passive dosimetry study will provide data on the actual absorbed dose and will result in more accurate and refined risk assessments. Often, biological monitoring studies are voluntarily submitted by registrants. Again, both passive dosimetry studies and biological monitoring studies are always performed under real-world conditions and are representative of actual post application activities.

In addition, the Agency proposes to allow registrants to submit biological monitoring data in addition to, or in lieu of, dermal or inhalation passive dosimetry data provided adequate pharmacokinetic data are available and sufficiently understood to interpret the results.

iii. *Product use information.* EPA is proposing to require product use information (guideline 870.2700) for both the occupational and residential use patterns. Product use information will provide EPA with information about how the pesticide is actually used and applied. Data will include major use sites, typical application methods, ranges and typical values for application rates, timing and number of applications per season or per year, geographical distribution of use, use surveys, post-application entry restrictions, restricted-entry intervals, any available surveys that provide use information, and other use information relevant to potential exposure following a pesticide application. This use information will enable the Agency to conduct more accurate and realistic risk assessments, thus enabling the Agency to levy appropriate limitations on use to mitigate potential risks.

iv. *Description of human activity.* In addition to use information, the Agency proposes a new requirement describing the possible activities (guideline 875.2800) in which people may be engaged after a site has been treated. Human activities play a crucial role in the nature and magnitude of exposure to pesticides. These data are also useful for evaluating potential differences in exposures between different subpopulations (*i.e.*, adults and children), and for determining how specific activity patterns affect exposure levels. Data would include information on types of human activities associated with use of the pesticide, principal source(s) of exposure, conditions (if any) mitigating exposure, expected frequency and duration of activities (including hours per day and days per year), description of exposed population, typical clothing worn and equipment used, any available surveys that provide human activity information, and other relevant use data.

In many cases, product use information coupled with the description of human activity information are used to help the Agency determine the most likely route(s) of exposure, whether through the skin, through the lungs, or through incidental ingestion.

v. *Data reporting and calculations information.* EPA proposes to require registrants to submit data reporting and calculation information whenever post-application exposure data are submitted. Data reporting and calculations information (guideline 875.2900) is an important component needed to assess the validity of the studies and the accuracy of the exposure calculations. Minimal information that must be submitted includes a description of the purpose of the study and what requirement(s) it is intended to satisfy, a summary of the study, a comprehensive section on materials, methods, and calculations, a section interpreting the scientific results of the study, a discussion of quality assurance, identification of the location of the raw data, and any relevant references, communications, and protocols.

vi. *Nondietary ingestion exposure.* The Agency proposes to conditionally require a nondietary ingestion exposure study (guideline 875.3000) to evaluate the potential oral exposures to humans, particularly children, from pesticide residues from sources other than food. Nondietary ingestion exposure would be expected in residential settings following applications such as:

(1) lawns (soil that contains pesticide residues);

(2) residential plantings (pesticide-treated foliage);

(3) outdoor surfaces (decks);

(4) indoor surfaces (pesticide-treated paint chips);

(5) residential fabrics (clothing, bedding, carpets);

(6) insect and rodent baits.

Nondietary ingestion may also occur through hand-to-mouth orobject-to-mouth transfer of pesticide residues during activities performedby children (e.g., crawling) that put them in close proximity with treatedsurfaces.

Studies would address such concerns as examining behavior patterns,monitoring the amount of soil or residue in the rinsate from hand-washing,and developing science-based models or formulas to estimate theinadvertent exposure. The results from these studies will be used toassess the risks associated with the incidental ingestion of pesticides bychildren following pesticide applications in residential settings. TheAgency is primarily concerned with nondietary exposures immediatelyfollowing application of the pesticide, therefore dissipation studiesalone would not provide the information needed to assess risks fromnondietary ingestion exposures. This study would not be required foroccupational uses.

3. *Revised data requirements.* In addition to newly codified test requirements, EPA proposes to make significant changes to the existing post-application exposure data requirements. The use patterns requiring testing would be expanded from conventional food, feed, and fiber crop agricultural use sites to include other use sites as well. In some cases, the test requirement would change from "conditionally required" to "required," and/or the test notes have been reworded to be clearer and easier to understand.

i. *Dislodgeable foliar residue dissipation and turf transferable residues.* The Dislodgeable Foliar Residue Dissipation study (guideline 875.2100) is currently conditionally required for evaluation of post-application conventional food, feed, and fiber crop agricultural exposure. The Agency proposes to expand this requirement to include testing for greenhouse, nursery, forest, and residential settings and change it from "conditionally required" to "required" for all use patterns. Applicants are encouraged to consult with the Agency to determine their applicable data needs. Like dislodgeable foliar residues, turf grass transferable residues are the amount of pesticide residues deposited onto the leaf surface that have not been absorbed into the leaf or dissipated from the surface, and that can be dislodged from the leaf surface. Turf grass transferable residues are pesticide residues on the surfaces of treated lawns, sod farms, golf courses, or other turf grass that are available for transfer to exposed humans (*e.g.*, golf course workers and golfers, adults and children at residences, reentry workers on sod farms) when they contact the treated turf surfaces. These additional tests are necessary to evaluate dermal exposures

resulting from contact with pesticide-treated plant surfaces, whether residential or occupational.

ii. *Soil residue dissipation.* The Agency proposes to also expand the Soil Residue Dissipation study (guideline 875.2200) to include broader agricultural (greenhouse, nursery, forest) and residential settings. This study would be required for occupational use sites and conditionally required for residential use sites. Soil residue dissipation data are used with toxicological endpoints of concern and concurrent human dermal exposure monitoring data to produce quantitative post-application risk assessments and to determine whether post-application risks from contact with treated soil are of concern at residential and occupational sites. TBTH and methyl parathion for use in nut tree plantations are examples of situations in which EPA found that these were exposures of concern. Without this data, the Agency would not be able to estimate exposure in these scenarios.

iii. *Dermal and inhalation exposure.* The Agency proposes to expand the data requirements for Dermal and Inhalation Exposure studies (guidelines 875.2400 and 875.2500) to include post-application exposure in occupational and residential (indoor and outdoor) settings. Both studies would be required instead of conditionally required for all use patterns. Currently, EPA requires dermal post-application exposure data when agricultural workers are expected to have contact with pesticide-treated food, feed, or fiber crops growing outdoors. The Agency proposes to expand the data requirements to include persons exposed to pesticide residues in residential settings and in other occupational settings, such as greenhouses, nurseries, forests, golf courses, and certain indoor environments. The Agency needs post-application dermal and inhalation data in order to perform the residential risk assessments needed to fulfill the requirements of the Food Quality Protection Act. In addition, the original requirements were not broad enough to assess risks to occupational workers in greenhouses, nurseries, forests, golf courses, and certain indoor environments, where post-application exposures may be a concern. The Agency has imposed two major DCI's for dermal and inhalation exposure data for agricultural chemicals (*e.g.*, diazinon, iprodione, and chlorsulfuron) and for those applied to lawns (*e.g.*, MCPA, triadimefon, trichlorfon, isofenphos, and cyfluthrin).

4. *Use of surrogate data.* Surrogate data are data collected for another pesticide that may be applicable to the pesticide under review. Surrogate post-application exposure data are data generated using comparable methods and under similar conditions, and where contact with the treated surfaces is likewise similar. The assumption in the use of surrogate data is that in many post-application scenarios, the physical parameters of the contact with residues on varying surfaces (*e.g.*, foliage, turf grass, soil, indoor surfaces), not the chemical properties of the pesticide itself, are most important in determining the level of residue transfer from treated surfaces to people.

At this time, EPA generally is not allowing the use of surrogate data for any of the post-application residue data (guidelines 875.2100, 875.2200, 875.2300, and 875.3000). EPA encourages applicants and registrants to generate needed exposure data using the pesticide product for which the registration is sought. Surrogate data are, however, accepted under certain circumstances for post-application exposure monitoring. The Agency recognizes the need to impose exposure data requirements judiciously to avoid unnecessary economic burdens on applicants. Surrogate exposure data estimations must have adequate information to address post- application exposure data requirements and must contain adequate replicates of acceptable quality data to reflect the exposure of concern, such as the type of plant or indoor surface and the post-application activity. When the data meet these criteria, the residue transfer coefficients derived from surrogate studies may be used to assess the occupational and residential post-application exposure to the pesticide. When surrogate data, however, prove inadequate for the Agency to estimate likely exposures, applicants and registrants will be required to submit the data required in subpart K.

Surrogate data may be obtained from several reliable sources. Some surrogate post-application data for workers in agricultural settings is available through the Agricultural Reentry Task Force. The task force has submitted to the Agency post-application exposure data. A database was developed that contains transfer coefficients for various agricultural work tasks and crops. Some surrogate post-application data for pesticide applications in residential settings is available through the Outdoor Residential Exposure Task Force. This task force submitted data to the Agency on post-application exposures following the use of different types of pesticide formulations typically found in outdoor residential settings.

In addition, the Agency may accept surrogate exposure data estimations from other agencies, such as the National Institute of Occupational Safety and Health (NIOSH), the Occupational Safety and Health Administration (OSHA), or the OECD to satisfy post-application exposure data requirements, if the data meet the basic quality assurance, quality control, good laboratory practice, and other scientific requirements set by EPA. Moreover, if EPA determines that industrial standards, such as the workplace standards set by OSHA, provide adequate protection for a particular pesticide use pattern exposure, data may not be required for that use pattern. The Agency invites public comment on all aspects of its proposal regarding the use of surrogate exposure data.

XIV. Environmental Fate Data Requirements (Subpart N)

A. General

Under current part 158, EPA requires a series of individual laboratory studies as well as field studies to assess the behavior and fate of a pesticide in the environment. Controlled environmental fate and transport laboratory studies are used to determine the persistence, mobility, and bioconcentration potential of a pesticide active ingredient and its major degradates. The studies offer information on how, or by what mechanism, the pesticide degrades or dissipates, the rate at which it degradates or dissipates, where it goes, and what transformation products are formed. Data from these studies are used as inputs to exposure models. These models estimate the expected environmental concentrations of the pesticide and its degradates under various environmental and use conditions. The laboratory studies also help to focus field study design by providing information on which transformation products are likely to be produced, and thus need to be tracked, and the environmental media (*e.g.*, soil, sediment, water, air) that should be sampled, including the depth to which soil/sediment samples should be collected.

A conceptual model (hypothesis) is developed using assumptions derived from the laboratory data. Since the laboratory studies are controlled and evaluate specific fate and transport properties individually (*i.e.*, degradation, metabolism, mobility, and bioconcentration), they allow for the development of a conceptual model that includes only those fate processes and degradates that are "significant" to the pesticide in question. Although

laboratory data are the foundation for the hypothesis and the basis for the conceptual model approach, field studies provide the primary mechanism for testing and refining the hypothesis for the environmental fate and transport of a pesticide. Field studies give site-specific information on the fate and transport of a pesticide and its degradates under actual use conditions.

The field and laboratory data are integrated to characterize the persistence and transport of the pesticide and its degradates in the environment. From these data, quantitative environmental fate and drinking water exposure assessments are developed. Model-estimated environmental concentrations of the pesticide in different media under various pesticide application and site scenarios are calculated. These estimates of exposure are used in conjunction with toxicity data to assess whether a pesticide has the potential to cause adverse effects on human health and the environment, such as, wildlife, fish, and plants, including endangered species.

Persistence studies assess what happens to a pesticide when it interacts with water, soil, air, and sunlight. Mobility studies attempt to predict the potential of the pesticide to volatilize into the atmosphere, move into ground or surface waters, or bind to soil. Bioconcentration studies evaluate the potential to partition to aquatic biota and the degree to which bioconcentration can be reversed should external exposure to the active ingredient or degradates be reduced or eliminated. These studies are designed to help characterize how a pesticide active ingredient dissipates once it is released into the environment and to identify the major degradates that may result from these processes.

Degradation studies include hydrolysis, photodegradation in water, photodegradation in air, and photodegradation on soil. The hydrolysis study determines the potential of the pesticide to degrade from the influence of water alone. Photodegradation studies determine the potential to degrade in water, soil, or air when exposed to sunlight. During these studies, data are also collected concerning the identity, formation and persistence of major degradates.

Metabolism studies include aerobic soil metabolism, anaerobic soil metabolism, anaerobic aquatic metabolism, and aerobic aquatic metabolism. The soil microbial metabolism studies determine the persistence of the pesticide when it interacts with soil microorganisms under aerobic and anaerobic conditions. The aquatic metabolism studies produce similar data, but are generated by pesticide interaction with microorganisms in a water/sediment system. These studies also identify the significant degradates that result from biological degradation.

Mobility studies, which include leaching, adsorption/desorption, and volatility, provide information on the mode of transport and eventual destination of the pesticide in the environment. Scientists can predict the degree of pesticide mobility in soil from data generated from leaching and adsorption/desorption studies.

Bioconcentration studies in aquatic organisms are used to estimate the potential of a pesticide, under controlled laboratory conditions, to partition to the organisms from respiratory and dermal exposures. These studies also provide information on the degree to which bioconcentration of a pesticide or degradate can be reversed should pesticide levels in the surrounding aquatic environment be reduced.

Field studies which identify the environmental dissipation processes, assess the transformation, transport, and fate of a pesticide under actual use conditions with typically applied pesticide product at representative field sites. These studies characterize the relative importance of each route of dissipation of the pesticide and its major degradates. Data generated from field dissipation studies can provide more realistic estimates (albeit limited in time and space) of the persistence and transport of an active ingredient and its degradates when the pesticide product is applied under actual use conditions.

B. Proposed Environmental Fate Data Requirements

The Agency is proposing to revise the environmental fate data requirements. The Agency is proposing to expand the applicable use pattern for the aerobic soil metabolism, terrestrial field dissipation, and aquatic field dissipation studies. The ground water monitoring study would be added as a separate requirement in the table.

The Agency is also proposing to require independent laboratory validation of the environmental chemistry methods used to generate data associated with the dissipation studies. Two residue studies, confined and field rotational crops, would be moved to the residue chemistry data requirements (subpart O). The long-term soil field dissipation study would be merged with the terrestrial field dissipation study. The accumulation study in irrigated crops would be eliminated. Other changes include conditions under which the tests are required or in some circumstances not required, and clarification of test notes.

1. *Newly imposed data requirements--aerobic soil metabolism.* The Agency is proposing to conditionally require this test (guideline 835.4100) for aquatic food crop and aquatic nonfood uses in cases where the pesticide is applied to aquatic sites that are intermittently dry. Such sites include, but are not limited to cranberry bogs and rice paddies. EPA is proposing this change because pesticides which are applied to these sites are more likely to follow degradative pathways that resemble terrestrial rather than aquatic systems. This change was presented to the SAP in 1994, which endorsed the change.

2. *Newly codified data requirements—i.Terrestrial field dissipation.* The Agency is clarifying that this requirement (guideline 835.6100) also applies to terrestrial feed crop uses, and is proposing to conditionally require this study for aquatic uses involving application to aquatic sites that are intermittently dry. Such sites include, but are not limited to cranberry bogs and rice paddies. This change was endorsed by the SAP in 1994. While the laboratory studies are designed to address one dissipation process at a time, terrestrial field dissipation studies address pesticide loss as a combined result of chemical and biological processes (*e.g.*, hydrolysis, photolysis, microbial transformation) and physical migration (*e.g.*, volatilization, leaching, plant uptake). Pesticide dissipation may proceed at different rates under field conditions and may result in formation of degradates at levels different from those observed in laboratory studies. Data from these studies can reduce potential overestimation of exposure and risk and can confirm assumptions of low levels of toxic degradates. Results can be used to propose scenario-specific effective risk mitigation. The Agency also proposes to merge this requirement with the long-term field dissipation study (formerly guideline 164–5). The current regulations specify that the long-term field dissipation study is required for pesticides that do not readily dissipate in soil. The field dissipation study would be extended in duration for pesticides that are persistent so that the decline curves for the parent chemical and important degradates can be fully characterized. Since the expanded applicability only applies to uses where the cultural practice of the crop includes periods where the soil is deliberately kept covered with water

then dried, such as in rice or cranberries, the frequency of requesting this study will be quite low. The Agency is also proposing to require independent laboratory validation of environmental chemistry methods for this study to ensure the accuracy and reproducibility of the data, as previously discussed.

ii. *Aquatic field dissipation.* EPA proposes to conditionally require the aquatic field dissipation study (guideline 835.6200) for terrestrial food crop, feed crop, and nonfood uses. The conditions for requiring the study would be:

a. high persistence;
b. high mobility;
c. high potential to bioaccumulate;
d. high acute toxicity to aquatic organisms;
e. high potential for aquatic exposure.

Factors such as environmental fate properties, target crops and application methods which are taken into account when determining if the potential for aquatic exposure is high. For example, a persistent and mobile pesticide that is aerially applied is more likely to runoff, drift, and persist in surface water compared to one that degrades rapidly by hydrolysis and is soil incorporated. Since the expanded applicability only applies to uses where the cultural practice of the crop includes periods where the soil is deliberately kept covered with water then dried, such as in rice or cranberries, the frequency of requesting this study will be quite low. The Agency also proposes to require independent laboratory validation for test methods used to generate data associated with this study to ensure the accuracy and reproducibility of the data, as previously discussed.

iii. *Ground water monitoring.* Ground water monitoring studies are designed to determine or confirm the potential of a pesticide or its degradates to reach ground water. The Agency proposes to add a ground water monitoring study (guideline 835.7100) as a conditional requirement for all of the terrestrial uses and for forestry uses. The requirement for ground water monitoring is conditional upon consideration of the toxicological characteristics of the pesticides and its potential to leach into ground water. This study would be triggered if the weight of the evidence of available data indicates that the pesticide and/or its degradates may leach into ground water. Ground water monitoring data may also be requested by the Agency if the existing data base is found to be inadequate to support decisions that are protective of ground water resources.

The likelihood of a pesticide to leach to ground water is initially evaluated by considering the persistence and mobility of the chemical indicated in environmental fate laboratory studies and the field dissipation study required under part 158, and through use of a screening-level simulation model. When the potential for environmental risk is indicated, or cannot be evaluated definitively by this screening assessment, monitoring is used to evaluate the potential of a pesticide to contaminate ground water resources. The results of prospective ground water monitoring studies can provide evidence not available from laboratory studies that natural factors cause a pesticide to degrade without contamination of water resources. Alternatively, they can provide evidence to indicate that ground water contamination could result from use according to the pesticide label, and they can help to quantify the levels at which that can occur.

In providing answers about the potential of a pesticide to leach into ground water and the magnitude of contamination under the most environmentally vulnerable and typical use conditions, ground water monitoring data give risk managers the information they need to make appropriate regulatory decisions. Measured concentrations of pesticides in ground water from prospective ground water monitoring studies are used as screening estimates of potential drinking water exposure for human dietary risk assessments. These studies are also often the best tool with which to estimate pesticide concentrations in drinking water drawn from shallow private wells. Monitoring of private drinking water wells is not required under the Safe Drinking Water Act, and data are therefore scarce for most pesticides.

Under certain circumstances, the Agency also requires ground water monitoring in specified use areas in order to investigate the extent of ground water contamination from previous pesticide use. The use-specific and soil-specific data from field scale monitoring studies also are intended to provide verification for estimates from modeling used to predict the impact of long-term pesticide use on water quality in other use areas. The results of prospective ground water monitoring studies have been and will be used to develop and improve models which allow the Agency to better evaluate the leaching potential of pesticides when data are scarce.

If a pesticide is determined to have a strong potential to leach into ground water and in doing so, poses a risk to human health or the environment, the Agency intends to work with industry to develop the appropriate risk reduction and mitigation measures. Thus, in some cases, ground water monitoring would be required to confirm the effectiveness of these mitigation actions or any other regulatory measures and to elicit appropriate regulatory responses that effectively prevent pollution of ground water resources. The Agency believes that this study will be rarely required.

The Agency is also proposing to require independent laboratory validation of the environmental chemistry methods used to generate data associated with this study. As previously discussed, this evaluation will be used by the Agency reviewers to verify the results of the data submitted.

3. *Revised data requirements—i. Hydrolysis.* EPA proposes to clarify that the requirement for this study applies to terrestrial feed crop and aquatic residential uses. In addition, EPA would conditionally require hydrolysis testing for indoor food and nonfood uses. Hydrolysis testing (guideline 835.2120) may be required to support products for indoor food and nonfood uses for which environmental exposure is likely. Such use sites include, but are not limited to, agricultural premises, in or around farm buildings, barnyards, beehives, and fish or seafood processing premises. The proposed changes reflect concern about the potential movement of pesticides and their degradates into the environment.

ii. *Photodegradation in water.* The Agency is clarifying the applicability of the photodegradation in water study (guideline 835.2240) to reduce the frequency of the requirement, based upon the UV/visible absorption spectrum data submitted as part of the product chemistry data. (§ 158.310) The Agency proposes to indicate in a test note that data on photodegradation in water would not be required in cases where the electronic absorption spectra, measured at pHs 5, 7, and 9 of the chemical and its hydrolysis products, if any, do not show absorption or tailing between 290 and 800 nanometers. These testing parameters were announced in an Environmental Fate and Effects Division Policy Note in March 1992, as well as the 1993 Pesticide Reregistration Rejection Rate Analysis - Environmental Fate (EPA 738–R–93–010).

iii. *Photodegradation on soil.* Currently, photodegradation on soil studies (guideline 835.2410) are conditionally required for terrestrial food crop and forestry uses, with the test note indicating that studies are not required if the use involves application to soils solely by injection of the product into the soil or by incorporation

of the product into the soil upon application. The Agency is proposing to change the designation of the requirement for this study from conditionally required for terrestrial food crop and forestry uses to required, expand the use patterns to include terrestrial nonfood uses, and retain the test note indicating when the studies will not be required. This change represents current practice and is in accord with international harmonization efforts under NAFTA.

iv. *Photodegradation in air.* Data from photodegradation in air studies (guideline 835.2370) provide information about the potential of the pesticide to degrade in air when it interacts with sunlight. Because of the potential for exposure to highly volatile pesticides in greenhouses, residential, and certain outdoor settings, EPA is proposing to expand the requirement from terrestrial food crop to terrestrial feed crop and nonfood, greenhouse food crop and nonfood, forestry, and residential outdoor uses on a conditional basis. This requirement is based on use patterns and other pertinent factors including but not limited to Henry's law constant (the solubility of a gas is directly proportional to the partial pressure exerted by the gas). In combination with volatility studies, this information is needed to develop a profile of the pesticide in the atmosphere. In view of methodological difficulties with the study, including, but not limited to, wall effects, the test note has been amended to recommend consultation with the Agency before tests are performed.

v. *Anaerobic aquatic metabolism.* EPA proposes to require this study (guideline 835.4400) for terrestrial food crop, feed crop, and terrestrial nonfood uses where the pesticide is likely to move from the site of application to nearby aquatic systems. Anaerobic aquatic metabolism studies measure the formation of pesticide residues in water and hydrosoil under anaerobic or oxygen-poor conditions. Since the degradation or dissipation rates and pathways of pesticides in aquatic systems can be different from those of terrestrial systems, soil metabolism studies alone may not be adequate to cover these use patterns.

vi. *Aerobic aquatic metabolism.* The Agency is clarifying that this requirement (guideline 835.4300) applies to aquatic residential uses, and is proposing to expand this requirement to include terrestrial food crop, feed crop, and nonfood, and forestry uses. Aerobic aquatic metabolism studies measure the formation of pesticide residues under aerobic or oxygen-rich conditions in water or sediment while the pesticide is dispersed in aquatic environments. Since the degradation or dissipation rates and pathways of pesticides in aquatic systems can be different from those of terrestrial systems, soil metabolism studies alone may not be adequate to cover these use patterns.

Note also that the Agency is reasserting that Anaerobic Soil Metabolism studies (guideline 835.4200) are required for terrestrial food crop, feed crop, and terrestrial nonfood uses. Due to a printing error, this data requirement was inadvertently omitted from the data tables in 1991 and subsequent publications of the CFR. This action would restore the data requirement in the table. The scope and nature of the requirement would not change.

vii. *Forestry field dissipation.* EPA is proposing to change the status of the forestry dissipation study (guideline 835.6300) from required to conditionally required. Forestry use patterns are broad in scope, range from the application of pesticides to individual trees, to aerial applications covering very large areas, and may apply to tree farms or reforestation efforts. As a result, it is difficult to extrapolate data from tests in particular forestry systems to other forests of regulatory interest. Therefore, this study would need to be tailored to address exposures of concern for particular uses. When the Agency determines that a study is needed, a suggested protocol would need to be submitted and approved by the Agency prior to initiation of the study. The Agency believes that this study will be rarely required. The Agency also proposes to require independent laboratory validation for test methods used to generate data associated with this study to ensure the accuracy and reproducibility of the data, as previously discussed.

viii. *Accumulation in fish.* EPA is proposing minor clarifications to this study requirement (guideline 850.1730). As such, the revised data tables would indicate that this conditional requirement applies to terrestrial feed crop and aquatic residential uses. Further, the Agency proposes to indicate in the test note that studies are required unless:

a. The octanol/water partition coefficients of the pesticide/major degradates are less than 1,000 (indicative of a relatively low potential for accumulation in fish),

b. There are no potential exposures to fish and other nontarget aquatic organisms, or

c. The hydrolytic half-life is less than 5 days at pH 5, 7, and 9.

ix. *Accumulation in aquatic nontarget organisms.* EPA is proposing to expand the conditional requirement for a nontarget aquatic organism accumulation study to terrestrial food crop, feed crop, and nonfood uses; and aquatic food and aquatic nonfood residential uses (guideline 850.1950). The study would be triggered if significant concentrations of the active ingredient and/or its principal degradation products are likely to occur in aquatic environments and may potentially accumulate in aquatic organisms. The Agency proposes to require this study in situations involving direct application of the pesticide to aquatic systems, from various terrestrial sites where run-off or other movement of the pesticide into nearby aquatic systems is likely, or in intercropping situations involving aquatic animal species and traditional aquatic plant crops, *e.g.*, crayfish and rice. The Agency believes that this study will be rarely required.

x. *Confined and field rotational crops.* Because the presence of residues in rotational crops is primarily a dietary risk concern, the Agency proposes to move the data requirements for confined and field rotational crops (guidelines 860.1850 and 860.1900) from environmental fate data requirements to residue chemistry data requirements (subpart O).

xi. *Accumulation studies in irrigated crops.* The Agency proposes to eliminate the environmental fate requirement for the accumulation studies in irrigated crops (formerly guideline 165– 3). Pesticide residue data and information to address the potential for pesticides to be present in crops irrigated with treated water may be obtained from the Magnitude of the Residue in Irrigated Crops study (guideline 860.1540) in subpart O.

XV. Residue Chemistry Data Requirements (Subpart O)

A. General

Residue chemistry data are used by the Agency to estimate people's dietary exposure to pesticide residues from food. The residue chemistry data base is designed to determine the composition of the pesticide residue and how much of that residue is present in the food people eat. Residue chemistry studies include those which define the nature of the residue, *i.e.*, metabolism studies, and those which measure how much of

the residue of concern is present in food, feed, and water, *i.e.*, magnitude of the residue studies. Most food use pesticides require both types of studies. Both plant and livestock metabolism studies are needed to determine the breakdown of the pesticide in a living system, that is, whether the parent compound stays intact or is converted into metabolites. Occasionally, the metabolites are toxic and, as such, are included in the analyses as a residue of concern. Magnitude of the residue studies, also called residue field trials, are done for all foods, such as, fruit and vegetable crops, processed foods, meat and poultry products (including milk and eggs), potable water, fish, and other instances where food may be exposed to pesticide treatment.

In addition to dietary risk assessments, residue chemistry data are used to establish pesticide tolerances which, in turn, are used for enforcement purposes (see Unit XV.B. below). Therefore, methods for detecting the presence and amount of the residue are needed. Detection methods are used by EPA for study validation purposes, and by FDA, USDA, and the states for food inspection purposes.

EPA is proposing changes to the residue chemistry data requirements to better estimate dietary exposure to pesticide residues in or on food or feed, to more accurately assess and reassess tolerances and tolerance exemptions, and to provide additional tools for the enforcement of pesticide residue tolerances to ensure that food entering the commercial market meets the "reasonable certainty of no harm" standard under FFDCA. The Agency is proposing to codify data needs that have evolved since the 1984 regulations were issued, and clarify and simplify existing data requirements.

B. Tolerances

1. *Residue chemistry data.* Residue chemistry data are used to assess human dietary exposure and establish tolerances (or tolerance exemptions) for pesticide residues present in food and feed. Pesticide tolerances are listed in 40 CFR part 180. Tolerances are used primarily for enforcement purposes and represent the maximum legal amount of pesticide residue allowed in or on food or animal feed in interstate commerce. Results from data generated from crop field trials are used to set the tolerance for that particular crop. A tolerance or exemption from tolerance must be established for a pesticide to be registered under FIFRA for uses on the food or feed, and for food or feed bearing pesticide residues to be imported into the United States. Wherever possible, EPA tries to harmonize its tolerances with Maximum Residue Levels (MRLs) established by other countries.

2. *Import tolerances.* In cases where a pesticide is not registered in the United States, interested persons may submit a petition requesting that EPA establish a tolerance or tolerance exemption for residues of a pesticide in or on a commodity to allow that treated commodity to be legally imported. These tolerances, called import tolerances, can be established for any food or feed commodity, but are usually established for foods grown outside the United States and its territories, such as bananas or coffee. For new tolerances with no accompanying U.S. registration, part 158 will require that tolerance petitioners provide the information and/or data necessary to make the required safety finding under FFDCA. While there is generally no distinction in data requirements between an import tolerance and any other tolerance issued by EPA, some important differences occur in the way data is generated. This usually includes residue data representative of the pesticide's use in the exporting country. EPA issued proposed guidance for registrants of import tolerances in June 2000 (65 FR 35069). EPA expects to issue its final guidance on import tolerances in the near future.

C. Proposed Residue Chemistry Data Requirements

The residue chemistry data table has been modified to include general use patterns that include food uses, plus the residential outdoor use pattern. EPA is not proposing significant changes to the residue chemistry data requirements from those currently listed in part 158. Two data requirements would be added as separate requirements in the data table. These data (storage stability and multiresidue methods) have been imposed by the Agency on a case-by-case basis. The Reduction In Residue study is now called "anticipated residues;" a longstanding independent method validation is being proposed; and two residue studies, confined and field rotational crops, which were formerly environmental fate data requirements, would be moved to the residue chemistry data requirements. Other changes include changes in test substance, conditions under which the test is required, and clarification of test notes. These are not expected to substantively increase the nature or burden of the existing data requirement.

1. *Newly imposed data requirements.* None.

2. *Newly codified data requirements*—i. *Storage stability.* The Agency proposes to add a storage stability study (guideline 860.1380) as an explicit requirement to validate the Magnitude of the Residue studies. Magnitude of the residue studies address how levels of pesticide residues in samples of human foods and livestock feeds are determined. These samples are often stored for extended periods of time prior to analysis. Since tolerances are based on residues at the time of harvest (or sample collection) and the residues may be lost by processes such as degradation and volatilization during storage prior to analysis, storage stability data depicting the presence of residues during this period are critical to validation of the results of the field trial studies. Such data have been required previously as a part of the magnitude of the residue studies, but will now be codified as a separate requirement in the data tables.

ii. *Multiresidue methods.* The Agency also proposes to codify a multiresidue methods study (guideline 860.1360) as a separate requirement. Multiresidue methodology data are currently part of the residue analytical method requirement. These data are important in designing pesticide monitoring and enforcement programs, and as such, multiresidue methodology data is being proposed as a separate requirement. In food monitoring programs, it is not practical or feasible to test for individual pesticides. Since the residue analytical method requirement is intended to refer to a method that is specific for one pesticide (sometimes called a "single residue method") and the multiresidue procedures currently used are designed to measure as many pesticides as possible, it is clearer to list these as two separate data requirements. The Agency will amend the test note to stress that any analytical methodology must be evaluated for its ability to detect metabolites included in the tolerance expression.

3. *Revised data requirements*—i. *Nature of the residue in livestock.* Also called an animal metabolism study, EPA is proposing several small changes to the Nature of the Residue in Livestock Study (guideline 860.1300). First, the Agency proposes to require livestock metabolism studies whenever a pesticide is applied to crops used for livestock feed and would indicate this change in the test note for this study. In 1984, livestock metabolism studies were conditionally required and were triggered by the presence of residues in the livestock feed. The Agency changed its policy in July 1989 and now proposes to incorporate it by regulation. The data provides essential information

on the potential transfer and bioconcentration of residues in meat and milk for all pesticides applied to feed items. Therefore, in cases where pesticide misuse results in residues on feed items not expected to have residues from approved uses, the Agency will have data from which to estimate the potential residues in the affected animal commodities.

The Agency is also proposing to change the test substance for this study from the pure active ingredient, radio-labeled (PAIRA) "and plant metabolites" to the PAIRA "or plant metabolite." The test substance "metabolites" will be changed to "metabolite" to prevent dosing with more than one compound in any one study. This is needed because in studies involving simultaneous dosing with both the active ingredient and plant metabolites, it is impossible to determine the amount of metabolite due to active metabolism from that introduced through dosing. Simultaneous dosing with the active ingredient and any metabolites may not produce useful results, because the active ingredient and metabolites may have different metabolic pathways that cannot be differentiated. In most cases dosing with only the parent compound is necessary. However, in cases where plant and animal metabolites are found to differ, a separate study in which livestock are dosed with a unique plant metabolite may also be required.

The livestock metabolism study would be required when a pesticide is applied to livestock premises or is used in livestock drinking water. Such applications may result in both oral and dermal exposure of animals to the pesticide and, depending on the results, may precipitate magnitude of the residue studies to quantify the residues in meat, milk, poultry, and eggs. Finally, the Agency proposes to delete the conditional requirement for the nature of the residue in livestock study for residential outdoor uses since livestock are not found in this use pattern.

ii. *Residue analytical methods.* Residue analytical methods are used to validate the residue field trial studies in plant and animal commodities and as a means of enforcement of established tolerances. The Agency proposes to change the test substance for residue analytical methods (guideline 860.1340) from the "TGAI and metabolites" to the "residue of concern." This will focus the study on only those chemicals with potential toxicity, typically the pure active ingredient and other compounds of concern (*i.e.*, metabolites and degradates), and not on the other components of the TGAI.

As part of this data requirement, the Agency is also proposing to require an independent laboratory validation of residue analytical methods to ensure the accuracy and reproducibility of data used for tolerance enforcement purposes. As previously discussed, this policy has been in place since 1988.

iii. *Magnitude of the residue in processed food and feed.* The Agency proposes to change the test substance for processing studies (guideline 860.1520) from an end-use product (EP) to a "typical" end-use product (TEP). A processing study is needed for only one representative end-use product proposed for use on a given commodity or site. For a given active ingredient, the Agency believes that, in general, variations of the formulation will not affect the behavior of the active ingredient with respect to processing a raw agricultural commodity bearing residues of that chemical. This change would codify a longstanding practice in EPA.

iv. *Magnitude of the residue in meat, milk, poultry, and eggs.* In line with the livestock metabolism study, the Agency proposes to change the test substance for the meat/milk/poultry/egg study (guideline 860.1480). Due to the difficulties in interpreting results of studies in which a mixture is fed, the Agency is currently discouraging the feeding of mixtures and is instead requesting the feeding of isolated compounds in livestock studies. Hence, the test substance will be changed to read a single plant metabolite instead of metabolites in the plural. Provided that plant and animal metabolites are the same, the parent compound must be the test substance in livestock feeding studies. If any plant metabolite exists that is not also an animal metabolite, a separate feeding study may be required involving dosing with that unique plant metabolite. The Agency will inform the applicant when this additional testing is required. It is rare that this study is requested.

Unlike the livestock metabolism studies, however, livestock feeding studies are generally not required when residues are not demonstrated to be present in the feed. The Agency proposes to clarify that data generally are not required when:

1. Residues are not found on feed items or

2. Livestock metabolism studies indicate minimal transfer of the pesticide residue to tissues, milk or eggs. For those pesticides which leave non-detectable or low residues in feed items and for which the livestock metabolism study shows little transfer of radioactivity to tissues, the Agency may be able to conclude that data on the level of residues in livestock and their byproducts are not necessary.

v. *Magnitude of the residue in potable water, fish, and irrigated crops.* Like the study for processed food and feed commodities, the Agency proposes to change the test substance from an EP to a TEP to determine pesticide residues in potable water, fish, and irrigated crops (guideline 860.1400). Residue data are needed for only one representative end-use product of each formulation type proposed for use on a given commodity or site. For each formulation type for a given active ingredient, the Agency believes that, in general, variations of the formulation will not affect the behavior of the active ingredient.

vi. *Anticipated residues.* The Agency proposes to change the title of the Reduction of Residue study to Anticipated Residues. The new title emphasizes the Agency's intent to use, where appropriate and feasible, data showing the actual residues in food as consumed, as opposed to residues in crops at harvest. For example, market basket surveys can be one way of generating better dietary exposure estimates. The Agency also proposes to indicate in the test note that alternative data, such as market basket surveys, may be required.

The Agency also proposes to add a test note to this study to address the need for residue data on acutely toxic pesticides in single servings of raw agricultural commodities. Most residue data provided to the Agency are based on composited samples. For example, 20 apples collected from different trees may be blended together prior to determining the pesticide residues. This procedure is adequate for estimating dietary risk from pesticides whose toxic effects arise from exposure over a long time period; however, data on composited samples may not be adequate for assessing acute risk from ingestion of single servings of a raw agricultural commodity bearing pesticide residues (*e.g.*, one apple). This proposed analysis of single serving sizes will allow the Agency to more accurately assess acute dietary risks. This additional study would be required only where commodities are consumed in single serving amounts. Historically, the Agency has only asked for this study once. EPA expects that the utility of this study would be for old chemicals with risk concerns. However, for newer chemicals (*e.g.*, reduced risk chemicals) which are the focus of these data requirements, this requirement would rarely be invoked.

vii. *Confined and field rotational crops.* Because the presence of residues

in rotational crops is primarily a dietary risk concern, the Agency proposes to move the data requirements for confined and field rotational crops (guidelines 860.1850 and 860.1900) from an environmental fate requirement (subpart N) to subpart O. The Agency also proposes to revise the test note addressing the requirement for the Field Rotational Crop study. Currently, a Field Rotational Crop study is required when significant pesticide residues are found in the soil at the time of planting. The use of soil residues alone to predict crop residues does not take into account the metabolites of chemicals in the soil and the differing abilities of plants to take up such residues. Since the confined study involves the actual measurement of residues in rotational crops under worst-case conditions, the Agency believes that it is more appropriate to use the results of the Confined Rotational Crop study as a screen for potential residues in crops grown under field conditions and the footnote for the field study will be revised to reflect this approach.

XVI. Applicator Exposure Data Requirements (Subpart U)

A. General

Individuals who handle pesticides are subject to potential risks stemming from pesticide exposure. Because of this, exposure data tailored specifically to address pesticide handlers are crucial. Pesticide handlers (*i.e.*, applicators) are persons who mix, load, apply, or otherwise come into contact with pesticides during the application process. An applicator can be a professional or a homeowner. The risks to applicators is evaluated based upon the results of the toxicity and human exposure studies. Monitoring data are used to quantify the exposure. The proposed data requirements for applicator exposure would allow the Agency to conduct improved exposure assessments for those who handle pesticides.

The current data requirements in part 158 do not contain studies to determine applicator exposure from pesticide use. The Agency, however, has long been aware of the necessity for applicator data to assess the risks from handling pesticides and has frequently asked for such data. In 1987, the Agency published guidelines for such studies. Since that time, applicator exposure studies have been requested when specific exposure and toxicity criteria triggers were met. Since EPA believes these data are essential for fulfilling its mandate to protect human health from pesticide risk, including aggregated and cumulative risks, it is proposing to make the applicator exposure studies a standard part of its regulatory data requirements.

EPA proposes to codify requirements for application exposure data in part 158 as a new subpart U. The purpose of codifying these data requirements is to assist pesticide registrants and others in determining which studies are required, and aid them in designing and conducting field studies that measure potential dermal and respiratory exposure to pesticides during handling activities. These test requirements cover exposure monitoring studies for people involved in mixing, loading, and applying pesticides; flagging during aerial applications; and other tasks, such as cleaning of equipment and spill cleanup that result in direct contact with pesticides. The requirements cover not only agricultural applicators, but other occupational applicators and residential applicators as well.

B. Criteria for Testing

The Agency proposes to establish toxicity and exposure criteria for applicator exposure studies. These criteria are based on the toxicity of the active ingredient and the proposed exposure pattern of the product.

1. *Toxicity criteria.* EPA proposes that applicator exposure data be required for occupational and residential exposures for pesticide active ingredients that indicate potential adverse effects from toxicity studies, such as developmental toxicity, carcinogenicity, neurotoxicity, reproductive toxicity, immunotoxicity, 90–day oral toxicity, 21–day dermal toxicity, 90–day inhalation toxicity, and chronic feeding.

Specifically, EPA is proposing that the toxicity criteria be based on the toxicity of the active ingredient. Applicator exposure monitoring data would be required, as determined by the Agency, if the active ingredient meets any of the following criteria:

i. Evidence of potentially significant adverse effects have been observed in applicable toxicity studies. For example, toxicity studies may indicate that the active ingredient is a possible or likely human carcinogen and that carcinogenic risk can be assessed using a linear extrapolation approach with a Q_1*. Or, toxicity studies may indicate that the active ingredient may cause developmental, neurotoxic, reproductive, or immunotoxic effects or may inhibit cholinesterase and establish a toxicological endpoint of concern that can be used to assess risks to applicators and other handlers.

ii. Scientifically sound epidemiological or poisoning incident data indicate that adverse health effects may have resulted from handling of the pesticide. For example, EPA reviews data in the:

a. Office of Pesticide Programs Incident Data System reports of incidents from various sources, including registrants, other federal and state health and environmental agencies and individual consumers);

b. Toxic Exposure Surveillance System (a national data collection system of Poison Control Center data);

c. National Pesticide Information Center database (NPIC is a toll-free information service supported by the Office of Pesticide Programs that fields calls about human and animal incidents); and

d. California Department of Pesticide Regulation exposure incident database. California physicians are required, by statute, to report to their local health officer all occurrences of illness suspected of being related to exposure to pesticides. The majority of the incidents involve workers. CDPR has collected uniform data on suspected pesticide poisonings since 1982.

2. *Exposure criteria.* EPA proposes to establish exposure criteria that would trigger applicator exposure studies. In determining what studies are required, EPA considers the product's use patterns, use surveys, application methods, whether the product is for indoor or outdoor use, whether the exposure is expected to be occupational or residential, the duration of the exposure (*i.e.*, short-term, intermediate-term, or long-term), whether sensitive subpopulations might be exposed, and other criteria. Applicator exposure monitoring studies would be required if either dermal or respiratory exposure is likely to occur during the prescribed use. Applicants are strongly encouraged to consult with the Agency to determine applicable data needs.

Specifically, EPA is proposing the following exposure criteria. Data would be required, as determined by the Agency, if either of the following conditions is met:

i. Dermal exposure is likely to occur when used as directed on the label,

ii. Respiratory exposure is likely to occur when used as directed on the label.

Because these exposure scenarios are covered under the broad categories of occupational and residential, the table in § 158.1520 lists only these two use patterns.

The Agency may also require data when exposure is likely, when the pesticide is used in a commonly recognized and widespread manner. Thus, if the Agency knows that a

particular product or class of products is frequently used in a manner that isn't directed on the label, the Agency can still require data.

C. Proposed Applicator Exposure Data Requirements

1. *Newly imposed data requirements.* None.

2. *Newly codified data requirements.* EPA is proposing seven separate data elements for applicator exposure data.

i. *Dermal exposure studies.* The Agency proposes to add data requirements for both outdoor and indoor dermal exposure studies (guidelines 875.1100 and 875 1200) in order to estimate the dermal exposure to persons directly handling pesticides. Dermal exposures can and do occur at levels that can cause adverse effects. Dermal applicator exposure studies employ passive dosimetry techniques which estimate the amount of a chemical impinging on the surface of the skin. The amount of pesticide potentially available for absorption through the skin can be estimated by trapping the material before it contacts the skin or by removing the material that has contacted the skin before it has been absorbed.

ii *Inhalation exposure studies.* To estimate occupational and residential human post-application inhalation exposure to pesticide residues, the Agency proposes to add data requirements for both outdoor and indoor inhalation exposure studies (guidelines 875.1300 and 875.1400). Inhalation exposures can and do occur at levels that can cause adverse effects. Protocols must be submitted for approval prior to initiation of the study. Details for developing protocols are available from the Agency.

iii. *Biological monitoring.* Data from biological monitoring studies (guideline 875.1500) provide the Agency with estimates of the internal dose or amount of a pesticide in the body. EPA proposes to allow the submission of biological monitoring data in addition to, or in lieu of, dermal or inhalation exposure data provided the human pharmacokinetics of the pesticide residue is sufficiently understood to permit the back calculation to determine the total internal dose. Biological monitoring offers the advantage of assessing the internal dose, as opposed to the exposure or amount of chemical coming in contact with the surface of the skin or available for inhalation in the lungs as measured using passive dosimetry techniques. Biological monitoring is being proposed as a conditional requirement.

iv. *Data reporting and calculations information.* EPA proposes to require registrants to submit data reporting and calculation information (guideline 875.1600) whenever handler exposure data are submitted. Data reporting and calculations information is important because it allows EPA to assess the quality of an applicator exposure study and the accuracy of the exposure calculations derived from the study. Information that must be submitted includes a description of the purpose of the study and what requirement(s) it is intended to satisfy, a summary of the study, a comprehensive section on materials, methods, and calculations, a section interpreting the scientific results of the study, a discussion of quality assurance, identification of the location of the raw data, and any references, communications, and protocols relevant to the conduct of the study.

v. *Product use information.* EPA is proposing to require product use information (guideline 875.1700) for both the occupational and residential use patterns. Product use information assists EPA to more accurately assess pesticide exposure to applicators by describing how the pesticide is actually used and applied in occupational and residential settings. EPA requires this information because differences in use can translate to significant differences in exposure, and thus risk. The required information is to encompass a description of the application of the pesticide and include the range and typical values for: Application rates; amount of formulated product or active ingredient handled per day and per year or season; acreage or area treated per day and per year or season; timing of and number of treatments per year or season for private and commercial handlers; exposure time per activity; types of handling equipment used, geographical distribution of usage; any available surveys that provide use information, and other relevant use data.

3. *Use of surrogate data.* To support the registration of a pesticide product, EPA encourages applicants and registrants to generate needed exposure data with the particular pesticide product. However, the Agency recognizes the need to impose exposure data requirements judiciously to minimize the economic burdens on applicants, and at the same time, obtain sufficient data and information for exposure and risk assessments. Therefore, whenever possible, surrogate data will be used to assess the occupational and residential exposure to pesticides. Because the Agency does not commonly require these studies and because surrogate data is often available, the Agency does not expect that "full" studies will often be needed. However, when surrogate data prove inadequate for the Agency to estimate likely exposures, applicants and registrants would be required to submit the additional data proposed in subpart U.

Surrogate applicator exposure data may adequately satisfy these data requirements under certain circumstances. Surrogate applicator data must be generated using comparable methods and under similar usage conditions as the product under review. Surrogate exposure data estimations must have adequate information to address handler exposure data requirements and must contain adequate replicates of acceptable quality data to reflect the specific use prescribed by the label, including formulation type, application equipment, methods and rates, personal protective equipment, engineering controls and other pertinent use directions or restrictions.

Surrogate data may be obtained from several reliable sources. For many years, the Agency has been expanding its Pesticide Handlers Exposure Database (PHED) which provides surrogate data for a wide variety of handler exposure scenarios. PHED is a generic database containing measured exposure data for persons involved in the handling or application of pesticides in the field and contains data for over 2000 monitored exposure events. Users can select data from each major PHED file (*e.g.*, mixer/loader, applicator, flagger, or mixer/loader/applicator) and construct exposure scenarios that are representative of the use of the chemical. Although the PHED database was originally developed for the agricultural workplace, it now contains information that is applicable to other pesticide use scenarios, including residential settings. In general, PHED is not appropriate for assessing highly volatile or gaseous pesticides (*e.g.*, fumigants). EPA, Health Canada, pesticide registrants, and other interested entities are participating in a task force to update, refine, and expand the handler exposure database.

Some surrogate data for outdoor pesticide applications in residential settings (occupational and residential handlers) also is available through the Outdoor Residential Exposure Task Force. The Task Force has submitted data to the Agency on mixer, loader, and applicator exposures during use of several types of equipment typically found in residential settings. The Agency may accept surrogate exposure data estimations from NIOSH, OSHA,

and OECD to satisfy handler exposure data requirements, if the data meet the basic quality assurance, quality control, good laboratory practice, and other scientific requirements set by EPA. Moreover, if EPA determines that industrial standards, such as the workplace standards set by OSHA, provide adequate protection under the standard set by FIFRA for a particular pesticide use pattern, applicator exposure data may not be required for that use pattern.

XVII. Data Requirements Not Affected by this Proposal

EPA is proposing today a major restructuring of current part 158 for clarity and comprehensibility, but is not proposing substantive revisions to all portions of current part 158. Several specific sections of part 158 may be revised in the future, including the following:

- Section 158.440 Spray drift data requirements
- Section 158.640 Product performance data requirements
- Section 158.690 Biochemical pesticide data requirements
- Section 158.740 Microbial pesticide data requirements

In addition, the Agency intends later to propose other changes to current part 158, including the creation of separate subparts to address data requirements for the registration of antimicrobial pesticide products and biochemical and microbial pesticide products.

In order to accommodate the restructuring of part 158 without creating confusion for readers of this proposal, EPA proposes to revise the Table of Contents for part 158 to include the future subpart designations for these sections, and to add and reserve the appropriate subparts in the revised part 158. The regulatory text of the sections for which no change is proposed is not reprinted in this proposal, and EPA is not requesting comment on any aspect of those unchanged data requirements.

If EPA does not issue these other proposals before this proposal is issued in final form, EPA will transfer the contents of the current part 158 that are not specifically addressed in this proposal into their new subparts, essentially unchanged. This step will be necessary because at that time subpart D which currently contains the sections will be redesignated to contain only product chemistry data requirements.

At the same time, EPA expects to make needed technical revisions to accommodate the new structure of part 158, without changing the substance of the data requirements. For example, section numbers will be assigned within the new subpart; cross-references will be updated; and footnotes will be restructured as test notes and given Arabic numerals, *e.g.*, footnote (iv) would become test note (4). EPA believes these minor technical revisions can be accommodated within the final rule without specific proposal at this time.

XVIII. Peer Review

A. National Research Council Recommendations

In 1988, Congress directed the National Academy of Sciences to study the vulnerability of infants and children to dietary pesticides. The National Research Council was charged with "examining scientific and policy issues faced by government agencies, particularly EPA, in regulating pesticide residues in foods consumed by infants and children." In so doing, the NRC was asked to:

- Examine the adequacy of current risk assessment policies and methods;
- Assess information on the dietary intakes of infants and children;
- Evaluate data on pesticide residues in the food supply;
- Identify toxicological issues; and
- Develop relevant research priorities.

The Council reviewed current EPA practices and data requirements related to dietary risk assessment as well as testing modifications planned by the Agency. In 1993, the NRC issued a report (Ref. 1) entitled, "Pesticides in the Diets of Infants and Children." The panel of experts concluded that, at that time, EPA approaches to data requirements and risk assessments emphasized the evaluation of the effects of pesticides in mature animals and, in general, there was a lack of data on pesticide toxicity in developing organisms.

The Council was not specifically charged with evaluating the data requirements as proposed today. Nonetheless, the Council made recommendations with respect to regulatory needs for data development that EPA is today proposing:

- The report stated the need to investigate the effects of pesticide exposure on immunotoxic responses in infants and children. "Analysis of the impact or toxicity of agricultural chemicals on the immune system is essential. Regulatory development of a battery of consensus tests is critical to protect the developing immune system." (Ref. 1, p. 110).
- The report supported the Agency's proposed requirement for acute and subchronic neurotoxicity testing for pesticides and "encourages the agency to make this a general requirement for all food-use pesticides." (Ref. 1, p. 156).
- The report strongly encouraged further work in the area of developmental neurotoxicity. "Neurodevelopmental effects must be part of the battery of end points evaluated for toxicants.... Regulatory development of a battery of consensus tests will be .... necessary to ensure public confidence." (Ref. 1, p. 110).
- The report suggested that the Agency impose a requirement for developmental toxicity for all classes of pesticides registered for food uses. "A modified reproductive/developmental toxicity study in the rat is suggested for registration of all food-use pesticides.... the committee recommends that this study be made a requirement for registration for all food-use pesticides." (Ref. 1, p. 155)

Other recommendations by the Council included an *in utero* chronic toxicity/carcinogenicity test and the inclusion of thyroid function into existing tests. The Council also recommended a conditional requirement for visual system toxicity testing, especially for cholinesterase-inhibiting compounds. These recommendations were brought to the SAP and are discussed in Unit XVIII.B. Other recommendations arising from the NRC report are still being considered for use on a case-by-case basis, as summarized in the list of potential data requirements in Unit XI.D.

B. FIFRA Science Advisory Panel

In 1994, EPA held a 2-day meeting of the SAP to review the Agency's proposed amendments to the data requirements for pesticide registrations contained in 40 CFR part 158. The SAP was asked to comment on each data requirement and identify, in their opinion, which ones were necessary to fully and thoroughly evaluate the potential hazard of a chemical compound and which ones were not intrinsically useful in providing practical scientific information. The revisions presented to the Panel, *i.e.*, the changes to the data requirements presented in this notice, were generally endorsed. Data requirements, as they related to the application of the newly mandated FFDCA safety factor, were also presented to the SAP in 1998 and 1999. No new issues of a scientific nature have surfaced since these meetings that would warrant SAP review. Copies of documents prepared for the SAP and the final reports from each of the meetings can be found on EPA's web site at *http://www.epa.gov/scipoly/sap*. A copy of the 1994 final report also can be found in the public

docket for this rulemaking. The Panel's comments and conclusions are summarized below.

1. *Terrestrial and aquatic nontarget organisms.* In 1994, EPA requested comment from the SAP on the merits of requiring sediment and pore water toxicity testing to its data requirements for pesticides and whether the Agency's proposed tiered approach is appropriate. The Agency also requested comment on proposals to add additional testing requirements. The Panel believed that the addition of sediment and pore water testing would provide additional useful information and the proposed tiered approach appeared to provide a reasonable sequence of tests. Further, the Panel supported the requirement of both fish early lifestage and invertebrate life-cycle tests for certain aquatic and terrestrial uses and the addition of granular and other typical end-use products in avian oral testing. The SAP agreed that the avian reproduction test be expanded to include all outdoor uses, but the test protocol should be flexible in order to reflect more accurately the environmental fate of the chemical.

2. *Toxicology.* At the 1994 meeting, EPA put forth the revisions to part 158 that included acute and subchronic neurotoxicity studies, as well as immunotoxicity studies in adults as first tier tests. The Agency also included in its presentation several studies recommend by the NRC in their 1993 report. In its final report the SAP offered comments and cited some specific recommendations for improvement.

For the few studies the SAP did not endorse, the Panel could not find a significant scientific justification for the routine use of the data. For example, due to increased concerns about the potential effects of pesticides on the visual system, special visual system testing was suggested by the NRC as a data requirement. The Panel, however, concluded that there was insufficient scientific evidence to require special visual system testing. After reviewing its toxicology data base, at that time, for visual effects, *i.e.*, pathological damage to the eye, EPA found that only five organophosphates and one carbamate exhibited visual effects. Cholinesterase-inhibition was considered the more sensitive endpoint and using this as an endpoint would be protective of the supposed visual system effects. Therefore, since the Agency already was regulating these pesticides at much lower doses than those expected to produce adverse effects on visual systems, it concluded that there was already adequate protection from any possible visual effects.

Similarly, the SAP did not recommend additional testing on *in utero* exposure in carcinogenicity studies, a 90–day drinking water study, nor testing for thyroid function or other endocrine effects in routine chronic studies. Regarding the need to examine the potential perinatal or postnatal toxicity from pesticide residues in the diets of children, the Panel did not believe a special new study was warranted. In each of these instances the SAP thought it was premature to include a data requirement in part 158 until methods have been scientifically validated and guidelines developed, and the data could be scientifically evaluated to yield meaningful results.

In 1998, EPA presented the SAP an issues paper on the use of the FQPA safety factor to address the special sensitivity of infants and children to pesticides. Here the Agency presented the Panel another, and more detailed, discussion of the toxicology data base, especially in regard to developmental neurotoxicity testing criteria and requirements. The developmental neurotoxicity study specifically was put in the context of the appropriateness of a possible additional safety factor. At that time, the SAP did not reach a consensus on whether this study should be routinely or conditionally required. The issue of what is a complete and reliable data set was brought before the SAP again in May 1999. The majority of the Panel supported the Agency's approach to applying data requirements but advised the Agency to revisit the first tier toxicology data base every few years to update data requirements as needed. The Panel also agreed with the Agency in the need to require the neurotoxicity battery of studies, including developmental neurotoxicity testing, for new conventional high exposure, *i.e.*, food use, pesticide registrations.

3. *Nontarget plant protection.* In 1994, EPA presented the SAP with its plant protection data requirements. The SAP was asked to provide specific information or guidance on a number of issues. The SAP supported the elimination of the seed germination test. In addition, the Panel recommended changing the test substance from the technical grade active ingredient to the typical end-use product for terrestrial plant studies and eliminating Tier I testing of phytotoxins on terrestrial plants.

4. *Occupational and residential exposure.* Data requirements for exposure assessment for both applicators and those exposed to pesticides post-application were presented to the SAP in 1994. The Agency did not present any specific questions on exposure assessment for application or post-application exposure, and, by comparison to other subparts addressed in the response, the SAP had relatively few comments on data revisions for exposure monitoring and assessment. Several areas of clarification were advised, especially with regard to what data would be needed for what use patterns. It was also suggested that the Agency work with representatives from industry to develop a clear set of guidelines for both residential and occupational settings.

Working in collaboration with Health Canada, and OECD, EPA drafted guidelines for post-application exposures studies. They were peer-reviewed by EPA's Office of Research and Development, the California Department of Pesticide Regulation, representatives from academia, and the American Crop Protection Association. The Agency presented its post-application exposure guidelines and standard operating procedures to the SAP in 1998 and again in 1999. In 1999, the SAP approved and commended the Agency for making significant strides toward developing scenario-based residential and non-occupational exposure assessments that are sufficiently conservative as to not underestimate exposures. (Ref. 11)

5. *Environmental fate.* Three of the significant changes that the Agency is proposing for the environmental fate data requirements, *i.e.*, conditionally requiring aerobic soil metabolism and terrestrial field dissipation for aquatic uses involving sites that are intermittently dry, and conditionally requiring ground water monitoring for terrestrial and forestry use, were presented to the SAP at the 1994 meeting. The SAP endorsed these changes as well as the independent laboratory validation of analytical methods.

6. *Residue chemistry.* In 1994, EPA presented the SAP with its residue chemistry data requirements. While no specific questions were directly posed to the Panel, the SAP made a few comments. The SAP endorsed the independent laboratory validation of analytical methods, the establishment of a separate data requirement for multiresidue methodology, and a requirement for storage stability data. In addition, the Panel supported the Agency's efforts to identify the circumstances under which single serving analyses would be needed for acutely toxic pesticides.

XIX. International Harmonization of Data Requirements

EPA is working closely with other countries toward greater uniformity in testing, reviewing and evaluating pesticides. The benefits of international regulatory cooperation on pesticides are potentially great: improved science through greater information exchange, and reduced regulatory and resource burdens on national governments and regulated parties through harmonized pesticide registration review. Over the last several years, substantial progress has been made toward international cooperation on pesticide regulatory review. Member countries of the OECD, including the United States, have agreed upon harmonized guidance for the formats of industry data submissions (dossiers) and country data review reports (monographs). Countries now frequently exchange pesticide reviews or consult with one another on key technical aspects of a review. EPA has worked jointly with Canada, dividing up detailed evaluation work on a number of pesticides. The Agency has entered into information exchange and comparative review arrangements on a pilot basis with other countries, as well. The objective of these work sharing arrangements has been to pool scientific knowledge and to use resources in the most efficient way possible.

As the international regulatory community works toward greater harmonization on pesticide review, attention has turned to data requirements, how they compare from one country to another and what can or should be done to establish common requirements. To the extent that data requirements for pesticide registration are similar, sharing reviews and comparing evaluations is easier and more meaningful. Establishing similar requirements also can reduce the resources that must be spent to conduct testing. Requirements that differ considerably from one country to another can mean that registrants who are looking to register a pesticide in more than one country must conduct many different studies to satisfy all the various national requirements.

The United States and Canada have worked together to harmonize data requirements across all disciplines. Data requirements and protocols for the two countries have been carefully compared. The data requirements proposed in this document represent U.S. national requirements but they reflect extensive consultation with Canada and are harmonized with Canada's requirements to a high degree. The two countries plan to continue to work together to keep data requirements for all disciplines as similar as possible.

OECD Member countries have had discussions about harmonizing data requirements within the OECD community. The pesticide industry took on the complex task of looking at data requirement differences among Member countries to identify areas that might benefit from harmonization. They presented their preliminary findings to the OECD Working Group on Pesticides meeting in June 2001. They reported, consistent with the positions of scientific reviewers in OECD Member countries, that toxicology data requirements are quite similar across countries. Issues can arise sometimes, however, because study protocols or guidelines used to generate the studies to meet the requirements are not always harmonized. In other words, a particular study requirement might be the same from one country to the next, but the study submitted to meet the requirement can run into problems if done according to a protocol that is acceptable in one country but not another. Overall, however, it appears that reasonable harmonization has been achieved for toxicology studies done according to OECD Guidelines revised since 1997. This does not mean that there is no room for additional harmonization work on toxicology data requirements and study guidelines, but rather that there are other testing areas where there is much less consistency on data requirements and study protocols across countries.

Ecotoxicological and environmental fate studies present a particular challenge for harmonization. Data requirements in these areas can differ considerably from one country to another depending upon how countries' tiered approaches to data requirements are applied. National data requirements have to be tied to national use patterns and environmental and ecological conditions. A reliable environmental hazard assessment, for example, must be based on studies that accurately reflect the climate, soil types and agricultural practices of the country doing the assessment. Because ecological and environmental studies must be representative of national conditions to adequately support national risk assessments, harmonization of data requirements and study protocols for these types of studies can be difficult. Harmonization can require extensive dialogue between scientists to determine which data requirements can act as common requirements. Harmonization can also involve protocol/guideline development or revisions in order for the studies produced to meet common data requirements to be widely accepted.

XX. Research Involving Human Subjects

In the United States, all research with human subjects conducted or supported by the Federal government is governed by a set of regulations referred to as the Common Rule. The Common Rule contains requirements designed to protect human subjects of research and to ensure that they are treated ethically. EPA, along with 16 other federal departments and agencies, promulgated the Common Rule in 1991. See 40 CFR part 26 (EPA's Common Rule). In all of the scientific research with human subjects conducted or supported by EPA, the Agency has been and remains committed to full compliance with the Common Rule

Both the current version of part 158 and the version of part 158 being proposed contain requirements for the conduct of studies that involve testing with human participants. These studies include: metabolism and pharmacokinetic studies, biological monitoring studies, human exposure studies, and insect repellent efficacy studies. It should be noted that neither the current nor proposed version of the part 158 contains a provision that requires testing of human participants in a study designed to identify or quantify a toxic endpoint. If studies required under part 158 were conducted or supported by EPA (or another Federal agency), they would be subject to the Common Rule. Although the Common Rule applies only to research conducted or supported by Federal agencies, EPA recognizes that many public and private research and academic institutions and private companies, both in the United States and in other countries, including non-federal U.S. and non-U.S. governmental organizations, have their own specific policies related to the protection of human participants in research.

EPA has been considering its policies and rules regarding the conduct of studies involving human participants by organizations that are not part of the Federal government and that do not receive support from a Federal agency. (These are referred to as "third party" researchers). On February 8, 2005 (70 FR 6661)(FRL–7695–4), EPA issued a **Federal Register** Notice announcing that it plans to conduct rulemaking to make the provisions of the Common Rule, 40 CFR part 26, applicable to certain newly conducted third-party human studies. The Notice also indicated that EPA may propose to adopt some or all of the Department of Health and Human

Services' (DHHS) protections for research with vulnerable populations. The DHHS rules are contained in 45 CFR part 46, subparts B (pregnant women, human fetuses, and neonates), C (prisoners), and D (children) and apply when members of these groups are being considered as potential participants in covered research.

XXI. ILSI Work on New Toxicity Paradigm

The Health and Environmental Sciences Institute (HESI)/International Life Sciences Institute initiated a project in 2001 titled "Developing Strategies for Agricultural Safety Evaluation." The purpose of this project was to bring together scientific experts from government, academia and industry, including the international community to determine whether the current testing paradigm for pesticide chemicals could be made more efficient and accurate. Agency scientists from EPA's Office of Pesticide Programs and Office of Research and Development are involved in this project. The HESI technical work groups have developed a tiered approach that takes into account the toxicological properties and the use pattern of the chemicals, and attempts to minimize the number of animals necessary to produce a thorough health assessment of the chemicals of interest. The HESI reports are anticipated to be submitted for publication in the *Journal Critical Reviews and Toxicology*, April 2005. The draft HESI papers can currently be viewed in PDF format at *http://hesi.ilsi.org/publications/pubslist.cfm?publicationid=578*. Once the reports are published (anticipated for summer 2005), the Agency will consider the HESI tier approach, as well as other available proposals on toxicology testing including the ongoing National Academy of Sciences project on the future of toxicology testing, to determine what revisions to current testing guidelines and data requirements may be appropriate. Before considering regulatory approaches, the Agency will need to develop scientific position papers concerning the new approach for Agency internal and external review (including review by the FIFRA Science Advisory Panel), and public comment. Regulatory changes will be made, as needed, to keep the data requirements current, as stated in proposed § 158.30(b).

Information on the HESI project can be found at the following website: *http://hesi.ilsi.org/index.cfm?pubentityid=55*. Information on the NAS project can be found at the following website: *http://www4.nas.edu/webcr.nsf/5c50571a75df494485256a95007a091e/f6b42dd0563b352e85256e5d0007281e*.

XXII. Animal Welfare Concerns

The Agency is committed to the development and use of alternative approaches to animal testing. The Agency understands many people's concern about the use of animals for research and data development purposes. EPA has received comments concerning the use of new and revised test methods which would reduce the number of test animals in studies, or refine procedures to make them less stressful to animals. Where testing is needed to develop scientifically adequate data, the Agency is committed to reducing or replacing, wherever possible, the number of animals used for testing by incorporating *in vitro* (non-animal) test methods or other alternative approaches that have been scientifically validated and have received regulatory acceptance. EPA considers these goals and commitments to be important considerations in developing health effects data, consistent with the essential need to conduct scientifically sound chemical hazard/risk assessments in support of the Agency's mission.

Taking into consideration principles of sound science and the requirements of FIFRA to protect humans (including sensitive subpopulations) and the environment from unreasonable uncertainty of no harm from pesticide exposure, the Agency is committed to avoiding unnecessary or duplicative animal testing. For example, currently EPA accepts data on the pH of a chemical as a screen to judge whether the chemical may be corrosive to the eye or skin. Making this determination avoids actual testing on animals. Many long-term studies can be combined so that several toxicological end-points can be discerned from fewer studies. The Agency already has bridging and batching policies in place to allow the use of acute toxicity, sensitization, or irritation test data on products to be used to support other products. At EPA's initiative, these policies have been incorporated into the new Globally Harmonized System for Classification and Labeling.

The Agency plays an important role in the Federal Interagency Committee for the Validation of Alternative Methods (ICCVAM) (*http://iccvam.niehs.nih.gov/home.htm*). ICCVAM, a standing committee made up of 15 federal agencies and established through the National Institute of Environmental Health Sciences, which works to:

1. Encourage the reduction of the number of animals used in testing.

2. Seek opportunities to replace test methods requiring animals with alternative test methods when acceptable alternative methods are available.

3. Refine existing test methods to optimize animal use when there is no substitute for animal testing.

ICCVAM convenes independent peer review panels to evaluate specific proposed test methods and has developed consensus criteria for judging the validation status of test methods.

Guideline 870.1100 references the use of appropriate alternative test protocols as a means of reducing the number of animals used to evaluate acute effects of chemical exposure. Yet the Agency and the scientific community also recognize that test guidelines are designed to be updated and supplemented frequently. As new tests and test batteries are validated, the Agency presents them to the SAP. The Agency considers the SAP's determination of the reliability of the test guidelines and their applicability to meeting its regulatory needs under FIFRA. After SAP review, the Agency is planning to incorporate validated *in vitro* screening data for skin corrosion to its test guidelines. As other appropriate alternative or *in vitro* methods become available, they will continue to be added to the test guidelines.

XXIII. Summary of Changes Being Proposed

Table 3 contains a line-by-line listing of every data requirement contained in current part 158, as well as new requirements proposed today, organized in the order of the proposed new subparts D through U. Columns 1 and 2 contain Pesticide Assessment Guideline numbers and current titles, respectively. Columns 3 and 4 contain OPPTS Harmonized Guidelines numbers and proposed titles, respectively. Column 5 contains an explanation of the changes proposed for each requirement, or that no change is proposed.

TABLE 3.—PART 158: PROPOSED CHANGES TO DATA REQUIREMENTS[1]

Guideline No.	Current requirement	Guideline No.	Proposed requirement	Change
Subpart D—Product Chemistry and Guideline No.				
Product Identity and Composition				
61–1	Product composition	830.1550	Product identity and composition	No changes.
61–2	Description of materials used to produce the product	830.1600	Description of materials used to produce the product	No changes.
61–2	Description of production process	830.1620	Description of production process	No changes.
61–2	Description of formulation process	830.1650	Description of formulation process	No changes.
61–2	Discussion of formulation of impurities	830.1670	Discussion of formulation of impurities	No changes.
62–1	Preliminary analysis	830.1700	Preliminary analysis	No changes.
62–2	Certified limits	830.1750	Certified limits	No changes.
62–3	Enforcement analytical method	830.1800	Enforcement analytical method	No changes.
64–1	Submittal of samples	830.1900	Submittal of samples	No changes.
Physical and Chemical Properties				
63–2	Color	830.6302	Color	No changes.
63–3	Physical state	830.6303	Physical state	No changes.
63–4	Odor	830.6304	Odor	No changes.
63–5	Melting point	830.7200	Melting point/melting range	No changes.
63–6	Boiling point	830.7220	Boiling point/boiling range	No changes.
63–7	Density, bulk density, or specific gravity	830.7300	Density/relative density/bulk density	Clarified test note to better identify when this test requirement is applicable.
63–8	Solubility	830.7840 830.7860	Water solubility	No changes.
63–9	Vapor pressure	830.7950	Vapor pressure	Clarified test note to better identify when this test requirement is applicable.
63–10	Dissociation constant	830.7370	Dissociation constants in water	Clarified test note to better identify when this test requirement is applicable.
63–11	Octanol/water partition coefficient	830.7550 830.7560 830.7570	Partition coefficient (n-octanol/water)	Changed from "conditionally required" to "required."
63–12	pH	830.7000	pH	No changes.
63–13	Stability	830.6313	Stability to normal and elevated temperatures, metals, and metal ions	Changed from "required" to "conditionally required."
63–14	Oxidizing or reducing action	830.6314	Oxidation/reduction: chemical incompatability	No changes.
63–15	Flammability	830.6315	Flammability	No changes.
63–16	Explodability	830.6316	Explodability	Changed from "required" to "conditionally required."

TABLE 3.—PART 158: PROPOSED CHANGES TO DATA REQUIREMENTS[1]—Continued

Guideline No.	Current requirement	Guideline No.	Proposed requirement	Change
63–17	Storage stability	830.6317	Storage stability	No changes.
63–18	Viscosity	830.7100	Viscosity	No changes.
63–19	Miscibility	830.6319	Miscibility	No changes.
63–20	Corrosion characteristics	830.6320	Corrosion characteristics	No changes.
63–21	Dielectric breakdown voltage	830.6321	Dielectric breakdown voltage	No changes.
	None	830.7050	UV/visible light absorption	Proposed requirement.
	None	830.7520	Particle size, fiber length, and diameter distribution	Proposed conditional requirement.
Subpart E—Nontarget Organisms Data Requirements				
Avian and Mammalian Testing				
71–1	Avian oral LD_{50}	850.2100	Avian oral toxicity	Added testing on a second species (passerine) for some uses. Expanded requirement to include testing with the TEP. Clarified test note to better identify when this test requirement is applicable.
71–2	Avian dietary LC_{50}	850.2200	Avian dietary toxicity	Changed from "conditionally required" to "not required" for greenhouse and indoor uses. Added a conditional requirement for testing one avian species for aquatic nonfood residential uses. Data on a second avian species may also be required.
71–3	Wild mammal toxicity	850.2400	Wild mammal toxicity	Clarified test note to better identify when this test is applicable.
71–4	Avian reproduction	850.2300	Avian reproduction	Changed from "conditionally required" to "required" for terrestrial, aquatic food, aquatic nonfood outdoor, forestry, and residential outdoor uses.
71–5	Simulated or actual field testing-mammals and birds	850.2500	Simulated or actual field testing	Expanded conditional requirement to terrestrial feed and aquatic nonfood outdoor uses. Added independent laboratory validation of methods.
Sediment Testing				
	None	850.1735 850.1740	Whole sediment—acute invertebrates (freshwater and marine)	Proposed conditional requirement.
	None	None	Whole sediment—chronic invertebrates (freshwater and marine)	Proposed conditional requirement.
Nontarget Insect Testing				
141–1	Honey bee acute contact LD_{50}	850.3020	Honey bee acute contact toxicity	Changed from "conditionally required" to "required" for all terrestrial, aquatic food, aquatic nonfood outdoor, forestry, and residential outdoor uses.
141–2	Honey bee—toxicity of residues on foliage	850.3030	Honey bee—toxicity of residues on foliage	Clarified test note.
141–4	Honey bee subacute feeding study	141–4	Honey bee subacute feeding study	Eliminated requirement.

TABLE 3.—PART 158: PROPOSED CHANGES TO DATA REQUIREMENTS[1]—Continued

Guideline No.	Current requirement	Guideline No.	Proposed requirement	Change
141–5	Field testing for pollinators	850.3040	Field testing for pollinators	Expanded conditional requirement to terrestrial feed and aquatic nonfood (outdoor and residential) uses.
142–1	Acute toxicity to aquatic insect	142–1	Acute toxicity to aquatic insect	No changes.
142–1	Aquatic insect life-cycle study	142–1	Aquatic insect life-cycle study	No changes.
142–3	Simulated or actual field testing for aquatic insects	142–3	Simulated or actual field testing for aquatic insects	No changes.
143–1 143–2 143–3	Nontarget insect testing—predators and parasites	143–1 143–2 143–3	Nontarget insect testing—predators and parasites	No changes.
Aquatic Organism Testing				
72–1	Freshwater fish LC_{50}	850.1075	Freshwater fish toxicity	Added conditional requirement for a second species of fish for greenhouse and indoor uses. Added testing requirement using the TEP.
72–2	Acute LC_{50} freshwater invertebrates	850.1010	Acute toxicity freshwater invertebrates	No changes
72–3	Acute LC_{50} estuarine and marine organisms	850.1025 850.1035 850.1045 850.1055 850.1075	Acute toxicity estuarine and marine organisms	Changed from "conditionally required" to "required" for terrestrial, aquatic (food and nonfood outdoor), residential outdoor, and forestry uses; changed the aquatic nonfood residential use to "not required."
72–4	Fish early-life stage and Aquatic invertebrate life-cycle	850.1300	Aquatic invertebrate life-cycle (freshwater)	Changed from "conditionally required" to "required" for terrestrial, aquatic (food and nonfood outdoor), and forestry uses. Changed the aquatic nonfood residential use to "not required."
72–4	None	850.1350	Aquatic invertebrate life-cycle (saltwater)	Expanded the conditional requirement to include terrestrial feed and aquatic nonfood outdoor uses. Changed the aquatic nonfood residential use to "not required."
72–4	None	850.1400	Fish early-life stage (freshwater)	Changed from "conditionally required" to "required" for terrestrial, aquatic (food and nonfood outdoor), and forestry uses. Changed the aquatic nonfood residential use to "not required."
72–4	None	850.1400	Fish early-life stage (saltwater)	Expanded the conditional requirement to include terrestrial feed and aquatic nonfood outdoor uses. Changed the aquatic nonfood residential use to "not required."
72–5	Fish life-cycle	850.1500	Fish life-cycle	No changes.
72–6	Aquatic organism accumulation	850.1710 850.1730 850.1850	Aquatic organisms bioavailability/ biomagnification/toxicity tests	Changed from "conditionally required" to "not required" for aquatic nonfood residential and residential outdoor uses.
72–7	Simulated or actual field testing—aquatic organisms	850.1950	Simulated or actual field testing—aquatic organisms	Changed from "conditionally required" to "not required" for aquatic nonfood residential uses. Clarified that the conditional requirement applies to turf use.

TABLE 3.—PART 158: PROPOSED CHANGES TO DATA REQUIREMENTS[1]—Continued

Guideline No.	Current requirement	Guideline No.	Proposed requirement	Change
Subpart F—Toxicology Data Requirements				
Acute Testing				
81–1	Acute oral toxicity—rat	870.1100	Acute oral toxicity—rat	Modified test substance.
81–2	Acute dermal toxicity	870.1200	Acute dermal toxicity	Modified test substance.
81–3	Acute inhalation toxicity—rat	870.1300	Acute inhalation toxicity—rat	No changes.
81–4	Primary eye irritation—rabbit	870.2400	Primary eye irritation—rabbit	Added testing using the TGAI to support end-use products.
81–5	Primary dermal irritation	870.2500	Primary dermal irritation	Added testing using the TGAI to support end-use products.
81–6	Dermal sensitization	870.2600	Dermal sensitization	Added testing using the TGAI to support end-use products.
81–7	Acute delayed neurotoxicity—hen	870.6100	Delayed neurotoxicity (acute)—hen	No changes.
	None	870.6200	Acute neurotoxicity—rat	Replaces current neurotoxicity battery.
Subchronic Testing				
82–1	90–day Feeding—rodent	870.3100	90–day Feeding—rodent	Requirement modified to include 2 rodent species.
82–1	90–day Feeding—non-rodent	870.3150	90–day Feeding—non-rodent	No changes.
82–2	21–day Dermal	870.3200	21–day Dermal	Changed from "conditionally required" to "required" for all food uses. Not required for nonfood uses.
82–3	90–day Dermal	870.3250	90–day Dermal	Changed from "conditionally required" to "required" for all nonfood uses.
82–4	90–day Inhalation—rat	870.3465	90–day inhalation—rat	No changes.
82–5	90–day Neurotoxicity—mammal	870.6200	90–day Neurotoxicity—rat	Changed from "conditionally required" to "required."
82–5	90–day Neurotoxicity—hen	870.6100	28–day Neurotoxicity—hen	Proposed conditional requirement. Replaces 90–day neurotoxicity hen study.
Chronic Testing				
83–1	Chronic feeding—rodent and non-rodent	870.4100	Chronic feeding—rodent and non-rodent	No changes.
83–2	Oncogenicity—rat and mouse, preferred	870.4200	Carcinogenicity—rat and mouse, preferred	Changed name. Proposed requirement to perform range finding studies.
Developmental Toxicity and Reproduction				
83–3	Teratogenicity—2 species	870.3700	Prenatal developmental toxicity—rat and rabbit, preferred	Changed name. Testing required on a 2nd species for food and nonfood uses.
83–4	Reproduction—2 generation	870.3800	Reproduction	Changed from "conditionally required" to "required" for nonfood uses based on potential exposure.

TABLE 3.—PART 158: PROPOSED CHANGES TO DATA REQUIREMENTS[1]—Continued

Guideline No.	Current requirement	Guideline No.	Proposed requirement	Change
	None	870.6300	Developmental neurotoxicity	Proposed conditional requirement. To conduct developmental neurotoxicity testing utilizing information about the chemical and its toxicity to develop a science—based approach to testing.
Mutagenicity Testing				
84–2	Gene mutation	870.5100	Bacterial reverse mutation assay	Replaces current mutagenicity battery.
84–2	Structural chromosome aberration	870.5300 870.5375	*In vitro* mammalian cell assay	Replaces current mutagenicity battery.
84–4	Other genotoxic effects	870.5385 870.5395	*In vivo* cytogenetics	Replaces current mutagenicity battery.
			Other mutagenicity studies	No changes.
Special Testing				
85–1	General metabolism	870.7485	General metabolism	No changes.
85–2	Dermal penetration	870.7600	Dermal penetration	No changes.
86–1	Domestic animal safety	870.7200	Companion animal safety	No changes.
	None	870.6500	Scheduled controlled operant behavior	Replaces current neurotoxicity battery.
	None	870.6850	Peripheral nerve function	Replaces current neurotoxicity battery.
	None	870.6855	Neurophysiology: sensory evoked potentials	Replaces current neurotoxicity battery.
	None	870.7800	Immunotoxicity	New requirement. Required for food uses and nonfood uses.
Subpart J—Nontarget Plant Protection				
121–1	Target area phytotoxicity	850.4025	Target area phytotoxicity	No changes.
Nontarget area phytotoxicity—Tier I				
122–1	Seed germination/seedling emergence	850.4200	Seed germination	Eliminated requirement.
122–1	Seed germination/Seedling emergence	850.4100	Seedling emergence	Expanded requirement to include terrestrial food and feed, aquatic food, and residential outdoor uses. Changed test substance from TGAI to TEP.
122–1	Vegetative vigor	850.4150	Vegetative vigor	Expanded requirement to include terrestrial food and feed, aquatic food, and residential outdoor uses. Changed test substance from TGAI to TEP. Eliminated requirement for data on granular and bait formulations.
122–2	Aquatic plant growth	850.4400 850.5400	Aquatic plant growth	Expanded requirement to include terrestrial food and feed, aquatic food, and residential outdoor uses.
Nontarget area phytotoxicity—Tier II				
123–1	Seed germination	850.4200	Seed germination	Eliminated requirement.

TABLE 3.—PART 158: PROPOSED CHANGES TO DATA REQUIREMENTS[1]—Continued

Guideline No.	Current requirement	Guideline No.	Proposed requirement	Change
123–1	Seedling emergence	850.4225	Seedling emergence	Expanded conditional requirement to include terrestrial food and feed, aquatic food, and residential outdoor uses. Changed test substance from TGAI to TEP.
123–1	Vegetative vigor	850.4250	Vegetative vigor	Expanded conditional requirement to include terrestrial food and feed, aquatic food, and residential outdoor uses. Changed test substance from TGAI to TEP. Eliminated requirement for data on granular and bait formulations.
123–2	Aquatic plant growth	850.4400 850.5400	Aquatic plant growth	Expanded conditional requirement to include terrestrial food and feed, aquatic food, residential outdoor, aquatic nonfood residential, and indoor uses.
Nontarget area phytotoxicity - Tier III				
124–1	Terrestrial field	850.4300	Terrestrial field	Expanded conditional requirement to include terrestrial food and feed, aquatic food, and residential outdoor uses. Added requirement for independent method validation.
124–2	Aquatic field	850.4450	Aquatic field	Expanded conditional requirement to include terrestrial food and feed, aquatic food, and residential outdoor uses. Added requirement for independent method validation.
Subpart K—Post-application Exposure				
132–1	Foliar dissipation	875.2100	Dislodgeable foliar residue dissipation and turf transferable residues	Revised testing criteria. Expanded use sites to include testing for greenhouses, nurseries, forests, residential settings, and turf grass. Changed from "conditionally required" to "required".
132–2	Soil dissipation	875.2200	Soil residue dissipation	Revised testing criteria. Expanded use sites to include testing for greenhouses, nurseries, forests, and residential (conditionally required) settings.
	None	875.2300	Indoor surface residue dissipation	Proposed requirement. Subject to revised testing criteria.
133–3	Dermal exposure	875.2400	Dermal exposure	Revised testing criteria. Expanded use sites to include testing for greenhouses, nurseries, forests, residential settings, and turf grass. Changed from "conditionally required" to "required".
133–4	Inhalation exposure	875.2500	Inhalation exposure	Revised testing criteria. Expanded use sites to include testing for greenhouses, nurseries, forests, residential settings, golf courses, and certain indoor environments. Changed from "conditionally required" to "required."

TABLE 3.—PART 158: PROPOSED CHANGES TO DATA REQUIREMENTS[1]—Continued

Guideline No.	Current requirement	Guideline No.	Proposed requirement	Change
	None	875.2600	Biological monitoring	Proposed conditional requirement. Subject to revised testing criteria
	None	875.2700	Product use information	Proposed requirement. Subject to revised testing criteria.
	None	875.2800	Description of human activity	Proposed requirement. Subject to revised testing criteria.
	None	875.2900	Data reporting and calculations	Proposed requirement. Subject to revised testing criteria.
	None	875.3000	Nondietary ingestion exposure	Proposed requirement for residential uses. Not required for occupational uses. Subject to revised testing criteria
Subpart N–Environmental Fate				
Degradation Testing				
161–1	Hydrolysis	835.2120	Hydrolysis	Expanded conditional requirement to include indoor food and nonfood, and residential indoor uses.
161–2	Photodegradation in water	835.2240	Photodegradation in water	Clarified conditions for when study is required.
161–3	Photodegradation on soil	835.2410	Photodegradation on soil	Changed from "conditionally required" to "required" for terrestrial food and forestry uses. Expanded requirement to include terrestrial nonfood uses.
161–4	Photodegradation in air	835.2370	Photodegradation in air	Expanded conditional requirement to include all terrestrial, greenhouse, forestry, and residential outdoor uses.
Metabolism Testing				
162–1	Aerobic soil metabolism	835.4100	Aerobic soil metabolism	New expanded conditional requirement to include aquatic uses where the pesticide is applied to aquatic sites that are intermittently dry.
162–2	Anaerobic soil metabolism	835.4200	Anaerobic soil metabolism	Reinserted. Erroneously omitted from published CFR.
162–4	Aerobic aquatic metabolism	835.4300	Aerobic aquatic metabolism	Expanded requirement to include all terrestrial and forestry uses.
162–3	Anaerobic aquatic metabolism	835.4400	Anaerobic aquatic metabolism	Expanded requirement to include all terrestrial uses.
Mobility Testing				
163–1	Leaching and adsorption/desorption	835.1230 835.1240	Leaching and adsorption/desorption	No changes.
163–2	Volatility (Lab)	835.1410	Laboratory volatility	No changes.
163–3	Volatility (Field)	835.8100	Field volatility	No changes.
Dissipation Testing				

TABLE 3.—PART 158: PROPOSED CHANGES TO DATA REQUIREMENTS[1]—Continued

Guideline No.	Current requirement	Guideline No.	Proposed requirement	Change
164–1	Soil	835.6100	Terrestrial field dissipation	Expanded conditional requirement to include aquatic uses involving application to aquatic sites that are intermittently dry. Merged with the long-term field dissipation study. Added independent laboratory validation of methods.
164–2	Aquatic (sediment)	835.6200	Aquatic field dissipation	Expanded conditional requirement to include all terrestrial uses. Clarified conditions for when study is required. Added independent laboratory validation of methods.
164–3	Forestry	835.6300	Forestry dissipation	Changed from "required" to "conditionally required." Added independent laboratory validation of methods.
164–4	Combination and tank mixes	835.6400	Combination and tank mixes	No changes.
164–5	Soil, long term		None	Merged with the terrestrial field dissipation study.
Accumulation Testing				
165–1	Confined rotational crops		None	Moved to Subpart O—Residue Chemistry.
165–2	Field rotational crops		None	Moved to Subpart O—Residue Chemistry.
165–3	Accumulation in irrigated crops		None	Eliminated requirement.
165–4	Accumulation in fish	850.1730	Accumulation in fish	Clarified conditions for when study is required.
165–5	Accumulation in aquatic nontarget organisms	850.1950	Accumulation in aquatic nontarget organisms	Expanded conditional requirement to include all terrestrial uses.
	None	835.7100	Ground water monitoring	Proposed conditional requirement. Added independent laboratory validation of methods.
Subpart O—Residue Chemistry				
Supporting Information				
171–2	Chemical identity	860.1100	Chemical identity	No changes.
171–3	Directions for use	860.1200	Directions for use	No changes.
171–6	Proposed tolerance	860.1550	Proposed tolerance	No changes.
171–7	Reasonable grounds in support of the petition	860.1560	Reasonable grounds in support of the petition	No changes.
171–13	Submittal of analytical reference standards	860.1650	Submittal of analytical reference standards	No changes.
Nature of the Residue				
171–4	Nature of the residue in plants	860.1300	Nature of the residue in plants	No changes.

TABLE 3.—PART 158: PROPOSED CHANGES TO DATA REQUIREMENTS[1]—Continued

Guideline No.	Current requirement	Guideline No.	Proposed requirement	Change
171–4	Nature of the residue in animals	860.1300	Nature of the residue in animals	Clarified test substance. Expanded requirement to include: 1. Testing whenever treated crops used for feed. 2. Cases when a pesticide is applied to livestock premises or is used in livestock drinking water. Eliminated requirement for residential outdoor use.
Analytical Methods				
171–4	Residue analytical method	860.1340	Residue analytical method	Clarified test substance. Added independent laboratory validation requirement.
	None	860.1360	Multiresidue method	Previously part of the residue analytical method study.
Magnitude of the Residue Testing				
	None	860.1380	Storage stability data	Previously part of the magnitude of the residue studies.
171–4	Crop field trials	860.1500	Crop field trials	No changes.
171–4	Processed food/feed	860.1520	Processed food/feed	Clarified test substance.
171–4	Meat/milk/poultry/eggs	860.1480	Meat/milk/poultry/eggs	Clarified test substance. Clarified conditions for when study is required.
171–4	Potable water	860.1400	Potable water	Clarified test substance.
171–4	Fish	860.1400	Fish	Clarified test substance.
171–4 165–3	Irrigated crops	860.1400	Irrigated crops	Clarified test substance.
171–4	Food handling	860.1460	Food handling	No changes.
171–5	Reduction in Residues		Anticipated residues	Name change. Expanded requirement to include testing on a single serving.
165–1	Confined rotational crops	860.1850	Confined rotational crops	Moved from Environmental Fate data requirements.
165–2	Field rotational crops	860.1900	Field rotational crops	Moved from Environmental Fate data requirements. Modified conditions for when study is required.
Subpart U—Applicator Exposure				
	None	875.1100 875.1600	Dermal outdoor exposure	Proposed requirement. Subject to new testing criteria.
	None	875.1200 875.1600	Dermal indoor exposure	Proposed requirement. Subject to new testing criteria.
	None	875.1300 875.1600	Inhalation outdoor exposure	Proposed requirement. Subject to new testing criteria.
	None	875.1400 875.1600	Inhalation indoor exposure	Proposed requirement. Subject to new testing criteria.

TABLE 3.—PART 158: PROPOSED CHANGES TO DATA REQUIREMENTS[1]—Continued

Guideline No.	Current requirement	Guideline No.	Proposed requirement	Change
	None	875.1500 875.1600	Biological monitoring	Proposed conditional requirement. Subject to new testing criteria.
	None	875.1600	Data reporting and calculations	Proposed requirement. Subject to new testing criteria.
	None	875.1700	Product use information	Proposed requirement. Subject to new testing criteria.

[1] If the study requirement is not identified as a "new requirement," then the change has been required on a case-by-case basis.

XXIV. Public Comments Sought

EPA invites you to provide your views on the various options as proposed, other approaches, the potential impacts of the various options (including possible unintended consequences), and any data or information that you would like the Agency to consider during the development of the final rule. In addition, the Agency welcomes specific comments on the following topics of particular interest to the Agency:

1. *Ensuring high quality data to meet EPA's mandates.* These proposed revisions to the pesticide data requirements in part 158 are intended to ensure that the Agency has the data required to support a determination of "reasonable certainty of no harm" under FFDCA and are an integral part of the data needed for an "unreasonable adverse effects" determination under FIFRA. In developing this proposed rule, EPA has evaluated its data needs to conduct the significantly expanded risk assessments required by new statutory mandates. EPA believes that this proposal describes the data needed (and only the data needed) for this purpose. The Agency welcomes your specific comments on the need for, value of, and any alternatives to, the data requirements described in this document to meet its mandates.

2. *Ensuring a sound scientific basis that is consistent with advances in scientific understanding.* These proposed revisions are intended to ensure that the data requirements in part 158 reflect current scientific understanding and scientific advances since they were issued in 1984. As discussed throughout this document, and summarized in Unit XVIII, many of these proposed revisions have been presented to, and reflect the advice and recommendations of the NRC or SAP. Issues and related materials that are brought by EPA to the SAP undergo a public review and comment opportunity before the SAP issues its report with recommendations to the Agency. The Agency welcomes your comments on the scientific basis of this proposed rule.

3. *Improving the transparency and usefulness of part 158.* Many of the revisions proposed in this document are intended to improve the usefulness of part 158 in identifying the specific data requirements that could apply to a particular pesticide application. As with the original design of part 158 in 1984, given the variety in pesticide chemistry, exposure, and hazard, these revisions are intended to retain a fair amount of flexibility in their application, while improving clarity and transparency to the regulated community. In future efforts to improve clarity and usefulness, EPA intends to issue separate revisions addressing antimicrobial pesticides, biochemical and microbial pesticides, which will highlight data requirements that apply to those pesticides. The Agency welcomes your specific comments on the Agency's efforts in this respect as described in this document and your specific suggestions for further improvements. In particular, the Agency welcomes public comment on the clarity of the proposed data requirements and the relationship between the proposed data requirements and EPA's statutory determinations.

4. *Estimating costs and benefits.* As summarized in Unit XXVII.A., the Agency has prepared a qualitative assessment of the benefits of the proposed rule, and estimates the potential annual costs to the regulated community of approximately $50 million more than current data requirements as described in part 158. The Agency believes that the costs of the rule are justified by the benefits from enhanced protection of human health and the environment. The Agency welcomes comments on its economic analysis of the proposed rule, as well as on its underlying assumptions and economic data. Describe any assumptions and provide any technical information and/or data that you used. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced. As indicated in Unit V.B.1, EPA's underlying principle in developing the proposed revisions has been to strike an appropriate balance between the need for adequate data to make the statutorily mandated determinations and informed risk management decisions, while minimizing data collection burdens on pesticide applicants. The Agency welcomes your specific comments on the Agency's efforts described in this document and your specific suggestions for further improvements.

5. *Enhancing international harmonization.* EPA is active in a number of scientific harmonization and regulatory coordination efforts through international and regional organizations, and directly with other countries, in order to develop common or compatible international approaches to pesticide review and registration. In addition, EPA has encouraged registrants to coordinate data submissions in the three NAFTA countries to facilitate joint reviews. The Agency believes that these proposed revisions reflect these efforts, and welcomes your comments on this specific point.

6. *Reducing, replacing and refining the use of animals in generating required data.* As discussed in Unit XXII, where testing is needed to develop scientifically adequate data, the Agency is committed to reducing or replacing, wherever possible, the number of animals used for testing by incorporating *in vitro* (non-animal) test methods or other alternative approaches that have been scientifically validated and have received regulatory acceptance. The Agency understands that many people remain concerned about the use of animals for research and data development purposes, and has received several requests for more expeditious adoption of alternate methods. The Agency plays an important role in the Federal interagency efforts to encourage the

reduction of the number of animals used in testing; seek opportunities to replace test methods requiring animals with alternative test methods when acceptable alternative methods are available; and refine existing test methods to optimize animal use when there is no substitute for animal testing. Recognizing the different roles of data requirements and test guidelines, the Agency welcomes your specific comments on its efforts to ensure that the data requirements continue to provide sufficient flexibility to allow for the use of alternative approaches that have been scientifically validated and have received regulatory acceptance. The Agency welcomes specific recommendations on ways to reduce the number of animals tested while still allowing the Agency to meet its statutory obligations.

XXV. References

The Agency has established an official docket for this rulemaking under Docket ID No. OPP–2004–0387. All of the documents that have been included in that docket are listed in the "EDOCKET" index available at *http://www.epa.gov/edocket*. Select "Quick Search" and then use the Docket ID No. to access the index. The following is a listing of the documents that are specifically referenced in this proposed rule. These documents, and other supporting materials, are included in the docket index. Please note that the official docket includes the documents located in the docket as well as the documents that are referenced in those documents. As indicated previously, not all docket materials are available electronically, but all publicly available docket materials are available through the Docket facility as described under **ADDRESSES**.

1. National Research Council, "Pesticides in the Diets of Infants and Children," National Academy Press, Washington, D.C., 1993.

2. Mineau et al., 2001. Pesticide Acute Toxicity Reference Values for Birds, *Review of Environmental Contamination and Toxicology*, 170: 13–74.

3. U.S. Environmental Protection Agency. 1998. EPA's Contaminated Sediment Management Strategy. EPA–823–R–98–001. Office of Water, 4305, Washington, D.C. *http://www.epa.gov/waterscience/cs/stratndx.html*.

4. Bennett et al., Overview of Methods for Evaluating Effects of Pesticides on Reproduction in Birds., U.S. EPA, Environmental Research Laboratory, Corvalis, OR., EPA 600/3–91/048.

5. Bennet et al., 1990. Effects on the Duration and Timing of Dietary Methyl Parathion Exposure on Bobwhite Reproduction, *Environmental Toxicology and Chemistry*, 9: 1473–1480.

6. Bennett et al., 1991. Effects of Dietary Exposure to Methyl Parathion on Egg-laying and Incubation in Mallards, *Environmental Toxicology and Chemistry*, 10: 501–507.

7. Luster et al., 1992. Risk Assessment in Immunotoxicology I. Sensitivity and Predictability of Immune tests, *Fundam. Appl. Toxicol*, 18: 200–210.

8. Luster et al., 1993. Risk Assessment in Immunotoxicology II. Relationships Between Immune and Host Resistance Tests, *Fundamental amd Applied Toxicology*, 21: 71–82.

9. USEPA (1990) 1990 OECD Ad Hoc Meeting on Neurotoxicity Testing. Summary Report. September 1990. Eastern Research Group, MA.

10. Determination of the Appropriate FQPA Safety Factor(s) in Tolerance Assessment. Office of Pesticide Programs, U.S. Environmental Protection Agency, Washington D.C, February, 2002.

11. FIFRA Scientific Advisory Panel. SAP Report No. 99–03, May 25, 1999 FIFRA Scientific Advisory Panel Meeting, May 25–27, 1999, held at the Sheraton Crystal City Hotel, Arlington, Virginia.

12. ILSI (2001) Developing strategies for agricultural chemical safety evaluation, a report from an April 22–23, 2001 workshop. ILSI Health and Environmental Sciences Institute. *http://hesi.ilsi.org/activities/actslist.cfm?pubentityid=8&pubactivityid=261 2001 draft*).

13. USEPA (U.S. Environmental Protection Agency), Pesticide Assessment Guidelines, Subdivision F, Hazard Evaluation: Human and Domestic Animals, Series 84, Mutagenicity, Addendum 9, Office of Pesticides and Toxic Substances, EPA–540/09–91–122, NTIS Publication No. PB91–158394, Washington, DC, 1991.

14. K. Dearfield, A. Auletta, M. Cimino and M. Moore, Considerations in the U.S. Environmental Protection Agency's testing approach for mutagenicity, Mutation Research 258 (1991) 259–283.

15. USEPA (U.S. Environmental Protection Agency), Guidelines for mutagenicity risk assessment, 51 FR 34006–34012 (1986).

16. Dourson, M.L., Knauf, L.A., and Swartout, J.C. (1972). On Reference Dose (RfD) and its underlying toxicity data base. Toxicology and Industrial Health 8:171–189.

17. Health Canada, Pesticide Management Regulatory Agency (1997) Reproductive Toxicity Testing in Proposed 40 CFR part 158, Subdivision W – Data Requirements for Antimicrobial Pesticides. November 1997 draft. Attachment to memorandum from Don Grant (PMRA) to Norm Cook/Tim McMahon/Sue Makris (USEPA/OPP), December 1, 1997.

18. Spielmann, H., and Gerbracht, U. (2001). The use of dogs as second species in regulatory testing of pesticides. Part II: subacute, subchronic and chronic studies in the dog. *Archives of Toxicology* 75(1): 1–21.

19. U. S. EPA, 2004. "Economic Analysis of the Proposed Rule Changing Data Requirements for Conventional Pesticides," BEAD/OPP/USEPA. Washington, DC. Document ID No. 2004–0387–00.

XXVI. FIFRA Review Requirements

In accordance with FIFRA sec. 25(a), this proposal was submitted to the FIFRA SAP, the Secretary of Agriculture, and appropriate Congressional Committees. The SAP has waived its review of this proposal, and no comments were received from any of the Congressional Committees. USDA participated fully in the OMB interagency review process, and where warranted, changes were made to the proposal based upon its comments.

XXVII. Statutory and Executive Order Reviews

A. Executive Order 12866

Under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993), the Office of Management and Budget (OMB) determined that this proposed rule is a "significant regulatory action" under sec. 3(f) of the Executive Order because this action might raise novel legal or policy issues or otherwise have a potentially significant impact on pesticide producers or registrants of pesticide products. As a result of this OMB determination, EPA submitted this proposed rulemaking to OMB for review under Executive Order 12866 and any changes made in response to OMB comments have been documented in the public docket for this rulemaking as required by sec. 6(a)(3)(E) of the Executive Order.

EPA has prepared an economic analysis of the potential costs associated with this proposed action, which is contained in a document entitled "Economic Analysis of the Proposed Rule Changing Data Requirements for Conventional Pesticides" (Ref. 19). A copy of this Economic Analysis is available in the public docket for this action, and is briefly summarized here.

The cost of the proposed rule is calculated as the estimated costs for the

proposed changes to the existing data requirements as currently codified in 40 CFR part 158. Since most of the data requirements contained in this proposal have been applied on a case-by-case basis over the years to reflect the evolution of scientific understanding and concerns, the Agency further categorizes the proposed revisions that are not currently codified as either newly codified (*i.e.*, data requirements that are not currently in part 158, but are, in practice, required on a case-by-case basis) or expanded existing requirements (*i.e.*, change in frequency with which a currently codified data requirement would be imposed. For example, a change from conditionally-required to required, or visa versa. Another example is a change in use pattern for an existing requirement) or newly imposed (*i.e.*, data requirement have not been previously imposed).

Using the currently codified requirements as the baseline for the impact analysis, the total annual impact to the pesticide industry is estimated to be about $51 million. Of this estimated total annual impact, about $28.9 million per year represents the cost of new data requirements that were imposed over the years but were not specified in the existing part 158, and about $21.6 million represents the cost of modified or expanded existing data requirements (*i.e.*, data requirements for certain tests and use patterns in the CFR that are changing from conditionally required (CR) to required (R)). As they have been applied to an increasing number of registrations, these data requirements have become more regularly required and are now being proposed. Included in the $51 million is about $1.9 million that is attributable to newly imposed requirements. The costs of the newly imposed requirements represents the increase costs over current practices, and therefore provide the estimated practical impact of this proposed rule to the pesticide industry.

To calculate the potential costs associated with this proposal, EPA first identified the test necessary to generate the data required, and then gathered information on the price that laboratories might charge a firm to conduct that test for the firm. We assumed that the data required would always need to be generated, but often the data are already available because the firm generated it for their own use. In such cases, the firm would simply need to submit those data to EPA, which involves less burden and cost than generating it. Some firms may have surrogate data that could be used, while others may qualify for a waiver. Both of which also involve less costs than generating the data anew. For each test identified, we averaged the low and high cost estimates provided by the various laboratories. Variations can be related to differences in the assumptions about the test performed (*e.g.*, protocol, species used), or it could simply be a difference in the price charged by the laboratory.

EPA then used historical data on pesticide registration actions that occurred over a 7 year period (1996–2002) to identify the entities that sought pesticide registration actions in the past. The data required for each registration action depends on several factors, including the type of registration action (*e.g.*, registration of a new active ingredient food use, registration of a new active ingredient non-food use, registration and amendments to registrations involving a major new use); data category or discipline (*e.g.*, toxicology, residue chemistry, human exposure), and use pattern (how the product will be used). To estimate the average incremental cost of each type of registration action, the percentage of time a particular test was required was estimated by EPA scientists, based on their past experience in the program and their involvement in developing the new data requirements.

The Agency prepared an industry profile using the same historical data on pesticide registration actions to identify the companies involved in those actions, and based it on public information gathered about those companies. EPA also used this industry profile to analyze the potential impacts of the proposed rule on small businesses, the results of which are summarized in Unit XXVII.C. The incremental costs, and a more detailed discussion of the estimating methodology employed in the analysis are presented in the economic impact analysis prepared for this proposed rule (Ref. 19).

Since the likely overall impact of this proposal on businesses is small, the Agency believes that a deleterious effect on the availability of pesticides to users is unlikely. On balance, the Agency believes that the costs of the rule are justified by the benefits from enhanced protection of human health and the environment.

The data requirements in part 158 potentially apply to new pesticides submitted for registration, to new uses of currently registered pesticides, and to existing chemicals whose databases are subject to Agency review to determine if they continue to meet registration standards. For these existing chemicals, part 158 data requirements are potentially relevant to three review programs.

Reregistration (mandated in 1988) and tolerance reassessment (mandated in 1996) are well underway. Data requirements under those programs have largely been imposed on registrants of existing chemicals, and the data have been submitted. EPA anticipates that by the time this proposed rule is promulgated, few of the data requirements will remain to be imposed for existing chemicals. Only those that are "new" or "newly codified" (*e.g.*, developmental neurotoxicity, immunotoxicity, sediment testing) have not been broadly required and may be imposed in the future under the reregistration or tolerance reassessment programs. Continued data needs for existing chemicals must be imposed under the Agency's Data Call-In (DCI) program.

Should such data be needed for reregistration or tolerance reassessment after promulgation of this rule, EPA anticipates that it will articulate the specific burden and costs associated with each DCI pursuant to the appropriate Information Collection Request (ICR) approvals under the Paperwork Reduction Act (PRA). Since the approval process for the PRA requires that EPA characterize the information collection burdens and costs incurred by registrants to comply with a DCI, a complete estimate of the burden and costs for the DCIs will be provided at that time. EPA believes that the public process associated with the PRA approval for the DCI related ICRs is a reasonable way to account for the data costs without double counting the burden. Accordingly, in this proposal EPA has not evaluated the potential burden of the proposed data requirements on registrants of existing chemicals.

A third program, registration review, mandated in 1996, requires that EPA establish a program for the periodic review of existing chemicals (goal is every 15 years). Any data requirements to be levied under that program will also be imposed under a DCI. At this time, EPA is developing a proposed rule to establish procedures for this program. An Advance Notice of Proposed Rulemaking was published in the **Federal Register** on April 26, 2000 (65 FR 24585)(FRL–6488–9).

The data requirements in this proposed rule are expected to apply to all chemicals subject to registration review (*i.e.*, all existing chemicals), depending on the conditions expressed in both final rules (this part 158 and the future registration review rule). At this time EPA has not determined how the

registration review program will function. Until the registration review program is better defined, any estimates of burden/cost will be unreliable and highly speculative. Moreover, since the requirements will also be imposed via DCIs, such burdens will also be characterized under PRA procedures described earlier.

Accordingly, EPA intends to describe generally the burden and costs of potential data requirements at the time the registration review rule is proposed, and ultimately, to more accurately and fully characterize the individual DCI burden and costs during the public process associated with PRA approval.

B. Paperwork Reduction Act (PRA)

Pursuant to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an agency may not conduct or sponsor, and a person is not required to respond to an information collection request unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after appearing in the preamble of the final rule, are listed in 40 CFR part 9 and 48 CFR chapter 15, and included on the related collection instrument (*e.g.*, form or survey). Under the PRA, "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.

EPA has determined that this proposed rule imposes no significant additional information collection and paperwork burden. The information collection activity contained in this proposed rule, *i.e.*, the paperwork collection activities related to the submission of data to EPA in order to register a conventional pesticide product, are already approved by OMB under several existing ICRs. Specifically, the program activities which would generate a paperwork burden under this proposal are covered by the following ICRs:

1. The activities associated with the establishment of a tolerance are currently approved under OMB Control No. 2070–0024 (EPA ICR No. 0597);

2. The activities associated with the application for a new or amended registration of a pesticide are currently approved under OMB Control No. 2070–0060 (EPA ICR No. 0277);

3. The activities associated with the generation of data for reregistration are currently approved under OMB Control No. 2070–0107 (EPA ICR No. 1504); and

4. The activities associated with the generation of data for special review are currently approved under OMB Control No. 2070–0057 (EPA ICR No. 0922).

These existing ICRs cover the paperwork activities contained in this proposal because these activities already occur as part of the Agency's existing program activities. These program activities are an integral part of the Agency pesticide program and the corresponding ICRs will continue to be regularly renewed pursuant to the PRA. The approved burden in these ICRs were already increased in 1996 to accommodate the potential increased burden related to the implementation of the new safety standard imposed in 1996 by FQPA.

The total estimated average annual public reporting burden currently approved by OMB for these various activities ranges from 8 hours to approximately 3,000 hours per respondent, depending on the activity and other factors surrounding the particular pesticide product. Additional information about this estimate is provided in the Economic Analysis for this rulemaking.

Comments are requested on the Agency's need for this information, the accuracy of the burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. The Agency is particularly interested in receiving comment on the estimated testing costs and burdens that are presented in the Economic Analysis, as well as suggestions for how the Agency might best be able to provide updated and more detailed estimates in the context of the individual ICRs during the regular renewals of those ICRs every 3 years. Send comments to EPA as part of your overall comments on this proposed action in the manner specified in Unit I.C. In the final rule, the Agency will address any comments received regarding the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act

Pursuant to sec. 605(b) of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, the Agency hereby certifies that this proposal will not have a significant adverse economic impact on a substantial number of small entities. This determination is based on the Agency's economic analysis performed for this rulemaking, which is summarized in Unit XXVII.A., and a copy of which is available in the public docket for this rulemaking. The following is a brief summary of the factual basis for this certification.

As part of the economic analysis prepared for this rulemaking, EPA used historical data to prepare an industry profile of potentially impacted entities prepared for the economic analysis for this rulemaking, EPA determined that this proposed rule is not expected to impact any small not-for-profit organizations or small governmental jurisdictions. As such, the small entity impact analysis prepared as part of the economic analysis evaluated potentially impacted businesses that could be considered small businesses as defined by the Small Business Administration, which uses the maximum number of employees or sales for businesses in each industry sector, as that sector is defined by NAICS. For example, entities defined as Pesticide and Other Agricultural Chemical Manufacturing (325320) are considered to be a small business if they employ 500 or fewer people.

Although, as illustrated by the industry profile, the conventional pesticide industry is primarily composed of large, multi-national corporations, EPA used historical data to evaluate potential impacts on small firms that could be subject to the proposed requirements.

To determine the universe of small entities that could be subject to the proposed requirements, the Agency used workforce data to determine the size for 565 firms for which financial data had been gathered for the economic analysis. Based on that data, EPA determined that 449 qualified as small businesses using the SBA definition. Using the resulting ratio of 79%, the Agency estimated that out of the total 1804 firms in the pesticide industry, approximately 1434 firms might qualify as small and could make up the universe of small entities that could be subject to the proposed requirements.

EPA then used historical data to estimate the number of small entities potentially impacted, and the extent of that potential impact. EPA used workforce data gathered on 120 firms identified as impacted by the proposal using historical data to determine the size of 97 firms. Based on that data, we determined that 49 firms of the 97 firms (51%) qualified as small businesses.

Data was unavailable for 23 firms, but using the same ratio (51%), EPA estimated that a total of 61 small firms could be potentially impacted by the proposal. Out of the universe of 1434 small firms that could be subject to the proposed requirements, or out of the 61 small firms potentially impacted, only 35 small firms are expected to experience a cost increase representing 1% or more of gross sales, of which only 23 small firms are expected to experience a cost increase representing 3% or more of gross sales. Given these estimated impacts on small businesses, EPA has concluded that the proposed revisions will not have a significant adverse economic impact on a substantial number of small entities.

EPA is particularly interested in receiving comment from small businesses as to the benefits, costs and impacts of this proposed rule. Any comments regarding the estimated potential small entity economic impacts that this proposed regulatory action may impose on small entities should be submitted to the Agency in the manner specified in Unit I.

D. Unfunded Mandates Reform Act

Under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4), EPA has determined that this action does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. As described in Unit XXVII.A., the annual costs associated with this action are estimated to total $51 million. This cost represents the incremental cost to applicant and registrants attributed to the additional or modified data requirements contained in this proposal. In addition, since State, local, and tribal governments are rarely a pesticide applicant or registrant, the proposed rule is not expected to significantly or uniquely affect small governments. Accordingly, this action is not subject to the requirements of secs. 202 and 205 of UMRA.

E. Executive Order 13132

Pursuant to Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999), EPA has determined that this proposed rule does not have "federalism implications," because it will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in the Order. As indicated above, instances where a state is a registrant are extremely rare. Therefore, this proposed rule may seldom affect a state government. Thus, Executive Order 13132 does not apply to this proposed rule. In the spirit of the Order, and consistent with EPA policy to promote communications between the Agency and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

F. Executive Order 13175

As required by Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000), EPA has determined that this proposed rule does not have tribal implications because it will not have substantial direct effects on tribal governments, 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, as specified in the Order. As indicated above, at present, no tribal governments hold, or have applied for, a pesticide registration. Thus, Executive Order 13175 does not apply to this proposed rule. In the spirit of the Order, and consistent with EPA policy to promote communications between the Agency and State and local governments, EPA specifically solicits comment on this proposed rule from tribal officials.

G. Executive Order 13045

Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997) does not apply to this proposed rule because this action is not designated as an "economically significant" regulatory action as defined by Executive Order 12866 (see Unit XXVII.A.). Further. this proposal does not establish an environmental standard that is intended to have a negatively disproportionate effect on children. To the contrary, this action will provide added protection for children from pesticide risk. The proposed data requirements are intended to address risks that, if not addressed, could have a disproportionate negative impact on children. EPA will use the data and information obtained by this proposed rule to carry out its mandate under FFDCA to give special attention to the risks of pesticides to sensitive subpopulations, especially infants and children.

H. Executive Order 13211

This rule is not subject to Executive Order 13211, entitled *Actions concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) because it is not likely to have any significant adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, etc.) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This regulation proposes the types of data to be required to support conventional pesticide registration but does not propose to require specific methods or standards to generate those data. Therefore, this proposed regulation does not impose any technical standards that would require Agency consideration of voluntary consensus standards. The Agency invites comment on its conclusion regarding the applicability of voluntary consensus standards to this rulemaking.

J. Executive Order 12898

This proposed rule does not have an adverse impact on the environmental and health conditions in low-income and minority communities. Therefore, under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), the Agency has not considered environmental justice-related issues. Although not directly impacting environmental justice-related concerns, the collection of the information contained in this proposed rule will enable the Agency to protect human health and the environment by being better able to prioritize chemical substances of concern.

List of Subjects in 40 CFR Parts 152 and 158

Administrative practice and procedure, Agricultural commodities,

Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 28, 2005.

Stephen L. Johnson,

Acting Administrator.

Therefore, it is proposed that chapter I of title 40 of the Code of Federal Regulations be amended as follows:

PART 152—[AMENDED]

1. In part 152:

a. The authority citation continues to read as follows:

Authority: 7 U.S.C. 136–136y. Subpart U is also issued under 31 U.S.C. 9701.

b. In § 152.50, by amending paragraph (f)(1) by revising the reference "FIFRA sec. 3(c)(1)(D)" to read "FIFRA sec. 3(c)(1)(F)," and by revising paragraph (f)(2) to read as follows:

§ 152.50 Contents of application.

* * * * *

(f) * * *

(2) An applicant must furnish any data specified in part 158 of this chapter that are required by the Agency to determine that the product meets the registration standard of FIFRA sec. 3(c)(5) or 3(c)(7), as applicable, and FIFRA sec. 10. An applicant may request a waiver of any data requirement by following the procedures in § 158.45 of this chapter. Each study must comply with:

(i) Section 158.32 of this chapter, with respect to format of submission.

(ii) Section 158.33 of this chapter, with respect to studies for which a claim of trade secret or confidential business information is made.

(iii) Section 158.34 of this chapter, with respect to flagging for potential adverse effects.

(iv) Section 160.12 of this chapter, with respect to a statement whether studies were conducted in accordance with Good Laboratory Practices of part 160.

* * * * *

PART 158—[AMENDED]

2. In part 158:

a. By revising the authority citation to read as follows:

Authority: 7 U.S.C. 136–136y; 21 U.S.C. 346a.

b. By revising the table of contents for part 158 to read as follows:

c. By revising subpart A to read as follows:

Subpart A—General Provisions

§ 158.1 Purpose and scope.

(a) *Purpose.* The purpose of this part is to specify the kinds of data and information EPA requires in order to make regulatory judgements under FIFRA secs. 3, 4, and 5 about the risks and benefits of pesticide products. Further, this part specifies the data and information needed to determine the safety of pesticide chemical residues under FFDCA sec. 408.

(b) *Scope.* (1) This part describes the minimum data and information EPA typically requires to support an application for pesticide registration or amendment; support the reregistration of a pesticide product; or establish or maintain a tolerance or exemption from the requirement of a tolerance for a pesticide chemical residue.

(2) This part establishes general policies and procedures associated with the submission of data in support of a pesticide regulatory action.

(3) This part does not include study protocols, methodology, or standards for conducting or reporting test results; nor does this part describe how the Agency uses or evaluates the data and information in its risk assessment and risk management decisions, or the regulatory determinations that may be based upon the data.

§ 158.3 Definitions.

All terms defined in sec. 2 of the Federal Insecticide, Fungicide, and Rodenticide Act apply to this part and are used with the meaning given in the Act. Applicable terms from the Federal Food, Drug, and Cosmetic Act also apply to this part. Individual subparts may contain definitions that pertain solely to that subpart. The following additional terms apply to this part:

Applicant means any person or entity that applies to the Agency for:

(1) An application for registration, amended registration, or reregistration

of a pesticide product under FIFRA secs. 3, 4 or 24(c).

(2) An application for an experimental use permit under FIFRA sec. 5.

(3) An application for an exemption under FIFRA sec. 18.

(4) A petition or other request for establishment or modification of a tolerance, for an exemption for the need for a tolerance, or for other clearance under FFDCA sec. 408.

(5) A submission of data in response to a notice issued by EPA under FIFRA sec. 3(c)(2)(B).

(6) Any other application, petition, or submission sent to EPA intended to persuade EPA to grant, modify, or leave unmodified a registration or other approval required as a condition of sale or distribution of a pesticide.

(7) For the purposes of this part, an applicant includes a registrant.

Registration includes a new registration, amended registration and reregistration, unless stated otherwise.

§ 158.5 Applicability.

(a) This subpart describes the data that are required to support the registration of each pesticide product. The information specified in this part must be submitted with each application for new or amended registration or for reregistration, if it has not been submitted previously or if the previously submitted information is not complete and accurate.

(b) The requirements of this part apply to the following applicants:

(1) Any person who submits an application for a new or amended registration in accordance with FIFRA sec. 3.

(2) Any person who submits an application for an experimental use permit in accordance with FIFRA sec. 5.

(3) Any person who petitions the Agency to establish, modify, or revoke a tolerance or exemption from a tolerance in accordance with FFDCA sec. 408.

(4) Any person who submits data or information to support the continuation of a registration in accordance with FIFRA sec. 3 or 4.

§ 158.30 Flexibility.

(a) FIFRA provides EPA flexibility to require, or not require, data and information for the purposes of making regulatory judgements for pesticide products. EPA maintains its authority to tailor data needs to individual pesticide chemicals. The actual data required may be modified on an individual basis to fully characterize the use and properties, characteristics, or effects of specific pesticide products under review. The Agency encourages each applicant to consult with EPA to discuss the data requirements particular to its product prior to and during the registration process.

(b) The Agency cautions applicants that the data routinely required in this part may not be sufficient to permit EPA to evaluate the potential of the product to cause unreasonable adverse effects to man or the environment. EPA may require the submission of additional data or information beyond that specified in this part if such data or information are needed to appropriately evaluate a pesticide product.

(c) This part will be updated as needed to reflect evolving program needs and advances in science.

§ 158.32 Format of data submissions.

(a) *General.* (1) The requirements of this section apply to any data submitted or cited to EPA in support of any new, pending, or existing regulatory action under FIFRA or FFDCA, including, but not limited to:

(i) Registration, amended registration or reregistration.

(ii) Experimental use permit.

(iii) Data Call-in.

(iv) Establishment, modification or revocation of a tolerance or exemption.

(v) Submission of adverse effects information under FIFRA sec. 6(a)(2).

(2) The requirements of this section do not apply to administrative materials accompanying a data submission, including forms, labeling, and correspondence.

(b) *Transmittal document.* Each submission in support of a regulatory action must be accompanied by a transmittal document, which includes:

(1) Identity of the submitter.

(2) The transmittal date.

(3) Identification of the regulatory action with which the submission is associated, *e.g.*, the registration or petition number.

(4) A list of the individual documents included in the submission.

(c) *Individual documents.* Unless otherwise specified by the Agency, each submission must be in the form of individual documents or studies. Previously submitted documents should not be resubmitted unless specifically requested by the Agency, but should be cited with adequate information to identify the previously submitted document. Each study or document should include the following:

(1) A title page including the following information:

(i) The title of the study, including identification of the substance(s) tested and the test name or data requirement addressed.

(ii) The author(s) of the study.

(iii) The date the study was completed.

(iv) If the study was performed in a laboratory, the name and address of the laboratory, project numbers or other identifying codes.

(v) If the study is a commentary on or supplement to another previously submitted study, full identification of the other study with which it should be associated in review.

(vi) If the study is a reprint of a published document, all relevant facts of publication, such as the journal title, volume, issue, inclusive page numbers, and date of publication.

(2) The appropriate statement(s) regarding any data confidentiality claims as described in § 158.33.

(3) A statement of compliance or non-compliance with respect to Good Laboratory Practice Standards as required by 40 CFR 160.12, if applicable.

(4) A complete and accurate English translation must be included for any information that is not in English.

(5) A flagging statement as prescribed by § 158.34, if applicable.

§ 158.33 Confidential data.

(a) *Definitions.* For the purposes of this section:

(1) *Registered or previously registered pesticide* means any pesticide containing an active ingredient contained in a product that is, or has ever been, an active ingredient in a product registered under sec. 3 of FIFRA. A registered pesticide that is the subject of an application for a new use falls within the category of "registered or previously registered pesticide."

(2) *Safety and efficacy information* means information concerning the objectives, methodology, results, or significance of any test or experiment performed on or with a registered or previously registered pesticide or its separate ingredients, impurities, or degradation products, and any information concerning the effects of such pesticide on any organism or the behavior of such pesticide in the environment, including, but not limited to, data on safety to fish and wildlife, humans and other mammals, plants, animals, and soil, and studies on persistence, translocation and fate in the environment, and metabolism.

(b) *Applicability.* (1) This section applies to information submitted pursuant to this part. It supplements the general confidentiality procedures in 40 CFR part 2, subpart B, including FIFRA confidentiality procedures at 40 CFR 2.307. To the extent that provisions in this section conflict with those in 40 CFR part 2, subpart B, the provisions in

this section take precedence. The provisions of 40 CFR 2.308 do not apply to information to which this section applies. In addition to complying with the requirements of this section, any confidentiality claims for information subject to 40 CFR part 174 (plant-incorporated protectants) must be substantiated at the time of submission as described in § 174.9 of this chapter.

(2) FFDCA sec. 408(i) protects confidential information submitted in connection with an application for a tolerance or exemption to the same extent as FIFRA sec. 10. References in this section to FIFRA sec. 10 are deemed to apply equally to information submitted pursuant to FFDCA sec. 408, pursuant to the authority in sec. 408(i).

(c) *Method of asserting business confidentiality claims*—(1) *Claim required.* Information to which this section applies (and which is submitted on or after the effective date of this regulation) will be deemed as not subject to a confidentiality claim unless a claim for that information is made in accordance with the procedures specified in this paragraph. Information not subject to a confidentiality claim may be made available to the public without further notice, subject to the requirements of FIFRA sec. 10(g).

(2) *Statement required.* Upon submission to EPA, each document must be accompanied by a signed and dated document containing one of the following statements:

(i) *Statement 1.*

No claim of confidentiality, on any basis whatsoever, is made for any information contained in this document. I acknowledge that information not designated as within the scope of FIFRA sec. 10(d)(1)(A), (B), or (C)and which pertains to a registered or previously registered pesticide is not entitled to confidential treatment and may be released to the public, subject to the provisions regarding disclosure to multinational entities under FIFRAsec. 10(g).

(ii) *Statement 2.*

Information claimed as confidential has been removed to aconfidential attachment. No claims or markings on the document or any attachments, other than these statements and attachments submitted per in accordance with paragraph (c)(3) of this section, will be recognized as asserting a claim of confidentiality. The format of data submissions is set forth in § 158.32.

(3) *Confidential attachment.* (i) All information claimed as confidential must be submitted in a separate confidential attachment to the document and cross referenced to the specific location in the document from which it was removed. The confidential attachment must have its own title page and be paginated separately from the non-confidential document.

(ii) All information in the confidential attachment that consists of (or whose disclosure would in turn disclose) manufacturing or quality control processes must be individually identified in the confidential attachment as a claim for information within the scope of FIFRA sec. 10(d)(1)(A).

(iii) All information in the confidential attachment that consists of (or whose disclosure would in turn disclose) the details of any methods for testing, detecting, or measuring the quantity of any deliberately added inert ingredient of a pesticide, must be individually identified in the confidential attachment as a claim for information within the scope of FIFRA sec. 10(d)(1)(B).

(iv) All information in the confidential attachment that consists of (or whose disclosure would in turn disclose) the identity or percentage quantity of any deliberately added inert ingredient of a pesticide must be individually identified in the confidential attachment as a claim for information within the scope of FIFRA sec. 10(d)(1)(C).

(v) Information in the confidential attachment that is designated in accordance with paragraphs (c)(3)(ii) - (iv) of this section must be on a separate page from information that is not so designated.

(4) *Voluntary release of information to States and foreign governments.* Submitters are encouraged to include with the statement required under paragraph (c)(2) of this section the following additional statement to allow EPA to share information with State and foreign governments:

I authorize the Environmental Protection Agency to release any information contained in this document to State or foreign governments, without relinquishing proprietary rights or any confidentiality claims asserted above.

EPA will not consider such a statement to be a waiver of confidentiality or proprietary claims for the information.

(d) *Release of information.* (1) Safety and efficacy information that was submitted to EPA on or after May 4, 1988 and that has not been designated by the submitter as FIFRA sec. 10(d)(1)(A), (B), or (C) information in accordance with the applicable requirements of this section is not entitled to confidential treatment and may be disclosed to the public without further notice to the submitter, in accordance with paragraph (d)(2) of this section. Safety and efficacy information which has been designated by the submitter as FIFRA sec. 10(d)(1) (A), (B), or (C) information is entitled to confidential treatment only to the extent provided by FIFRA sec. 10(b), this section, and 40 CFR 2.208.

(2) Information that is not entitled to be protected as confidential in accordance with FIFRA sec. 10(b), this section and with EPA confidentiality regulations at 40 CFR part 2, subpart B, may be released to the public without the affirmation of non-multinational status provided under FIFRA sec. 10(g), provided that the information does not contain or consist of any complete unpublished report submitted to EPA, or excerpts or restatements of any such report which reveal the full methodology and complete results of the study, test, or experiment, and all explanatory information necessary to understand the methodology or interpret the results.

(3) Information designated as releasable to state or foreign governments in accordance with paragraph (c)(4) of this section may be released to such a government without further notice to the submitter. EPA will inform the State or foreign government of any of the confidentiality claims associated with the information.

§ 158.34 Flagging of studies for potential adverse effects.

(a) Any applicant who submits a study of a type listed in paragraph (b) of this section must submit with the study a statement in accordance with paragraph (c) of this section.

(b) The following table indicates the study types and the criteria to be applied to each. Column 1 lists the study types by name. Column 2 lists the associated Pesticide Assessment Guideline number. Column 3 lists the criteria applicable to each type of study. Column 4 lists the reporting code to be included in the statement specified in paragraph (c) of this section when any criterion is met or exceeded.

TABLE—FLAGGING CRITERIA

Study Type(s)	Guideline No.	Criteria: Treated animals show any of the following:	Criteria No.
Carcinogenicity or combined carcinogenicity/ chronic feeding study	870.4200, 870.3100, 870.3150	An incidence of neoplasms in males or females which increases with dose (positive trend $p \leq 0.05$); or	1
		A statistically significant (pairwise $p \leq 0.05$) increase of any type of neoplasm in any test group, males or females at any dose level, compared to concurrent control animals of the same sex; or	2
		An increase in any type of uncommon or rare neoplasms in any test group, males or females animals at any dose level, compared to concurrent controls of the same sex; or	3
		A decrease in the time to development of any type of neoplasms in any test group, males or females at any dose level, compared to concurrent controls of the same sex.	4
Prenatal developmental toxicity Reproduction and fertility Developmental neurotoxicity	870.3700 870.3800 870.6300	When compared to concurrent controls, treated offspring show a dose-related increase in malformations, pre- or post-natal deaths, or persistent functional or behavioral changes on a litter basis in the absence of significant maternal toxicity at the same dose level.	5
Neurotoxicity	870.6100 870.6200	When compared to concurrent controls, treated animals show a statistically or biologically significant increase in neuropathological lesions or persistent functional or behavioral changes.	6
Chronic feeding Carcinogenicity Reproduction and fertility Prenatal developmental toxicity Developmental neurotoxicity Acute or 90–day neurotoxicity	870.4100 870.4200 870.3800 870.3700 870.6300 870.6200	The no observed adverse effect level (NOAEL) from one of these studies is less than the NOAEL currently used by the Agency as the basis for either the acute or chronic reference dose.	7

(c) *Identification of studies.* For each study of a type identified in paragraph (b) of this section, the applicant (or registrant in the case of information submitted under FIFRA sec. 3(c)(2)(B)) shall include the appropriate one of the following two statements, together with the signature of the authorized representative of the company, and the date of signature:

1. *Statement 1.*

I have applied the criteria of 40 CFR 158.34 for flagging studies for potential adverse effects to the results of the attached study. This study neither meets nor exceeds any of the applicable criteria."

2. *Statement 2.*

I have applied the criteria of 40 CFR 158.34 for flagging studies for potential adverse effects to the results of the attached study. This study meets or exceeds the criteria numbered [insert all applicable reporting codes].

§ 158.45 Waivers.

(a) The data requirements specified in this part as applicable to a category of products will not always be appropriate for every product in that category. Some products may have unusual physical, chemical, or biological properties or atypical use patterns which would make particular data requirements inappropriate, either because it would not be possible to generate the required data or because the data would not be useful in the Agency's evaluation of the risks or benefits of the product. The Agency will waive data requirements it finds are inappropriate, but will ensure that sufficient data are available to make the determinations required by the applicable statutory standards.

(b)(1) Applicants are encouraged to discuss the request with the Agency before developing and submitting supporting data, information, or other materials.

(2) All waiver requests must be submitted to the Agency in writing. The request must clearly identify the data requirement(s) for which a waiver is sought along with an explanation and supporting rationale why the applicant believes the data requirement should be waived. In addition, the applicant must describe any unsuccessful attempts to generate the required data, furnish any other information which the applicant(s) believes would support the request, and when appropriate, suggest alternative means of obtaining data to address the concern which underlies the data requirement.

(c) The Agency will review each waiver request and subsequently inform the applicant in writing of its decision. If the decision could apply to more than the requested product, the Agency, in its discretion, may choose to send a notice to all registrants or publish a notice in the **Federal Register** announcing the decision. An Agency decision denying a written request to waive a data requirement is a final Agency action.

§ 158.70 Satisfying data requirements.

(a) *General policy.* The Agency will determine whether the data submitted or cited to fulfill the data requirements specified in this part are acceptable. This determination will be based on the design and conduct of the experiment from which the data were derived, and an evaluation of whether the data fulfill the purpose(s) of the data requirement. In evaluating experimental design, the Agency will consider whether generally accepted methods were used, sufficient numbers of measurements were made to achieve statistical reliability, and sufficient controls were built into all phases of the experiment. The Agency will evaluate the conduct of each experiment in terms of whether the study was conducted in conformance

with the design, good laboratory practices were observed, and results were reproducible. The Agency will not reject data merely because they were derived from studies which, when initiated were in accordance with an Agency-recommended protocol, even if the Agency subsequently recommends a different protocol, as long as the data fulfill the purposes of the requirements as described in this paragraph.

(b) *Good laboratory practices.* Applicants must adhere to the good laboratory practice (GLP) standards described in 40 CFR part 160 when conducting studies to support the registration, amended registration or reregistration of a pesticide product. Applicants must also adhere to GLP standards when conducting a study in support of a waiver request of any data requirement which is within the scope of the GLP requirements.

(c) *Agency guidelines.* EPA has published Pesticide Assessment Guidelines that contain standards for conducting acceptable tests, guidance on the evaluation and reporting of data, definition of terms, and suggested study protocols. Copies of the Pesticide Assessment Guidelines may be obtained through the National Service Center for Environmental Publications (NSCEP), or by visiting the agency's website at *www.epa.gov/pesticides.* EPA publications can be ordered online (*www.epa.gov/ncepihom/nepishom*), or by telephone at 1–800–490–9198.

(d) *Study protocols*—(1) *General.* Any appropriate protocol may be used to generate the data required by this part, provided that it meets the purpose of the test standards specified in the pesticide assessment guidelines, and provides data of suitable quality and completeness as typified by the protocols cited in the guidelines. Applicants should use the test procedure which is most suitable for evaluation of the particular ingredient, mixture, or product. Accordingly, failure to follow a suggested protocol will not invalidate a test if another appropriate methodology is used.

(2) *Organization for Economic Cooperation and Development (OECD) protocols.* Tests conducted in accordance with the requirements and recommendations of the applicable OECD protocols can be used to develop data necessary to meet the requirements specified in this part. Applicants should note, however, that certain of the OECD recommended test standards, such as test duration and selection of test species, are less restrictive than those recommended by EPA. Therefore, when using OECD protocols, care should be taken to observe the test standards in a manner such that the data generated by the study will satisfy the requirements of this part.

(e) *Combining studies.* Certain toxicology studies may be combined to satisfy data requirements. For example, carcinogenicity studies in rats may be combined with the rat chronic toxicity study. Combining appropriate studies may be expected to reduce usage of test animals as well as reduce the cost of studies. EPA encourages this practice by including standards for acceptable combined tests in the Pesticide Assessment Guidelines. Registrants and applicants are encouraged to consider combining other tests when practical and likely to produce scientifically acceptable results. Registrants and applicants, however, must consult with the EPA before initiating combined studies.

§ 158.75 Requirements for additional data.

The data routinely required by this part may not be sufficient to permit EPA to evaluate every pesticide product. If the information required under this part is not sufficient to evaluate the potential of the product to cause unreasonable adverse effects on man or the environment, additional data requirements will be imposed. However, EPA expects that the information required by this part will be adequate in most cases for an assessment of the properties of the pesticide.

§ 158.80 Use of other data.

(a) *Data developed in foreign countries.* With certain exceptions, laboratory and field study data developed outside the United States may be submitted in support of a pesticide registration. Data generated in a foreign country which the Agency will not consider include, but are not limited to, data from tests which involved field test sites or a test material, such as a native soil, plant, or animal, that is not characteristic of the United States. Applicants submitting foreign data must take steps to assure that U.S. materials are used, or be prepared to supply data or information to demonstrate the lack of substantial or relevant differences between the selected material or test site and the U.S. material or test site. Once submitted, the Agency will determine whether or not the data meet the data requirements.

(b) *Data generated for other purposes.* Data developed for purposes other than satisfaction of FIFRA data requirements, such as monitoring studies, may also satisfy data requirements in this part. Consultation with the Agency should be arranged if applicants are unsure about suitability of such data.

d. By revising subpart B to read as follows:

Subpart B—How to Use the Data Tables

§ 158.100 Pesticide use categories.

(a) *General use categories.* There are six broad use categories used in the data tables. The six broad categories include terrestrial outdoor uses, aquatic outdoor uses, greenhouse uses, forestry uses, residential outdoor uses, and indoor uses of all types. The 6 broad use categories are further subdivided into 15 general use categories which are the basis for data requirements established by use pattern. Within the data tables, general use categories have been combined into single columns when the data requirements are the same for the combined uses. If there are no data requirements for a specific use, the column for that use is not included in the table. The 15 general use pattern groups used in the data table in this part are:

(1) Terrestrial food crop use.
(2) Terrestrial feed crop use.
(3) Terrestrial nonfood crop use.
(4) Aquatic food crop use.
(5) Aquatic nonfood residential use.
(6) Aquatic nonfood outdoor use.
(7) Aquatic nonfood industrial use.
(8) Greenhouse food crop use.
(9) Greenhouse nonfood crop use.
(10) Forestry use.
(11) Residential outdoor use.
(12) Residential indoor use.
(13) Indoor food use.
(14) Indoor nonfood use.
(15) Indoor medical use.

(b) *Use pattern index.* The Use Pattern Index is a comprehensive list of specific pesticide use patterns. The use index is alphabetized separately by site for all agricultural and all nonagricultural uses. The Use Pattern Index associates each pesticide use pattern with one or more of the 15 general use categories. It should be used in conjunction with the data tables to determine the applicability of data requirements to specific uses. The Pesticide Use Pattern Index, which will be updated periodically, is available from the Agency or may be obtained from the Agency's website at *http://www.epa.gov/pesticides.*

(c) Applicants unsure of the correct use category for their particular product should consult the Agency.

§ 158.110 Required and conditionally required data.

Some data and information specified in this part are required (R) for the evaluation of some or all types of products. However, other data and

information specified as conditionally required (CR) are required only if the product's pattern of use, results of other tests, or other pertinent factors meet the criteria specified in those sections.

(a) Data designated as "required" (R) for products with a given use pattern are required by EPA to evaluate the risks or benefits of a product having that use pattern. Further clarification of the applicability of the data requirement often is located in the test notes accompanying the table.

(b) Data designated as "conditionally required" (CR) for products with a given use pattern are required by EPA to evaluate the risks or benefits of a product having that use pattern if the product meets the conditions specified in the notes accompanying the requirement. The determination of whether the data must be submitted is based on the product's use pattern, physical or chemical properties, expected exposure of nontarget organisms, and/or results of previous testing (for example, tier testing). Applicants must evaluate each applicable test note for the conditions and criteria to be considered in determining whether conditionally required data must be submitted.

§ 158.120 Determining data requirements.

As with current practice, the actual data and studies required may be modified on an individual basis to fully characterize the use and properties of specific pesticide products under review. While EPA is attempting to assist the applicant in this subpart, it is important to emphasize that it is the applicant's obligation under FIFRA to demonstrate that an individual product meets the standard under FIFRA and/or FFDCA. Accordingly, applicants are encouraged to consult with the Agency on the appropriate data requirements as set forth here as they relate to their specific product prior to and during the registration process.

(a) *Finding the appropriate data table.* (1) Pesticide data requirements for conventional chemical active ingredients and related substances are presented in subparts D, E, F, G, J, K, N, O, and U of this part in the form of a series of data tables, each addressing a particular scientific discipline or data topic. Data requirements for biochemical and microbial pest control agents are contained and are described separately within subparts L and M of this part, respectively.

(2) Key to table notations. R = required data; CR = conditionally required data; NR = Not required; MP = manufacturing-use product; EP = end-use product; TEP = typical end-use product; TGAI = technical grade of the active ingredient; PAI = "pure" active ingredient; PAIRA = "pure" active ingredient, radiolabeled; Choice = choice of several test substances depending on studies required. Brackets indicate which data requirements also apply to experimental use permits (EUPS).

(b) *Identifying required studies.* To determine the specific kinds of data needed to support the registration use of each pesticide product, the applicant should:

(1) Refer to the applicable subpart(s) of this part. These subparts describe the data requirements including data tables for each subject area.

(2) Select the general use pattern(s) that best covers the use pattern(s) specified on the pesticide product label as explained in § 158.100. All applicable use patterns must be included.

(3) Proceed down the appropriate general use pattern column in the table and note which tests are required (R), conditionally required (CR), or not required (NR). Required and conditionally required studies are described in § 158.110.

(4) Review the notes for each requirement to determine its applicability to the specific product proposed for registration.

(5)(i) Proceed down the Test substance columns and determine the appropriate test substance needed for that study. For toxicology studies, if the data are intended to support a manufacturing-use product, use the first column. If the data are intended to support an end-use product, use the information listed in the second column.

(ii) The test substances columns specify which substance is to be subjected to testing. Applicants should note that the substance that should be used when performing the study may or may not be the product itself. For example, the data from a certain study may be required to support the registration of an end-use product, but the test substance column may state that the particular test shall be performed using the technical grade of the active ingredient(s) in the end-use product.

(iii) Manufacturing-use products (MP) and end-use products (EP) containing a single active ingredient and no intentionally added inert ingredients are considered identical in composition to each other, and to the technical grade of the active ingredient (TGAI) from which they were derived. Therefore, the data from a test conducted using any one of these as the test substance is also suitable to meet the requirement (if any) for the same test to be conducted using either of the other substances.

(6) Refer to the Pesticide Assessment Guideline reference number for each study located in the last column. See § 158.70(c) for information pertaining to the guidelines and how to obtain copies.

§ 158.130 Purposes of the registration data requirements.

(a) *General.* The data requirements for registration are intended to generate data and information necessary to address concerns pertaining to the identity, composition, potential adverse effects and environmental fate of each pesticide.

(b) [Reserved].

(c) *Residue chemistry.* (1) Residue chemistry data are used by the Agency to estimate the exposure of the general population to pesticide residues in food and for setting and enforcing tolerances for pesticide residues in food or feed.

(2) Information on the chemical identity and composition of the pesticide product, the amounts, frequency and time of the pesticide application, and results of test on the amount of residues remaining on or in the treated food or feed, are needed to support a finding as to the magnitude and identity of residues which result in food or animal feed as a consequence of a proposed pesticide usage.

(3) Residue chemistry data are also needed to support the adequacy of one or more methods for the enforcement of the tolerance, and to support practicable methods for removing residues that exceed any proposed tolerance.

(d) *Environmental fate*—(1) *General.* The data generated by environmental fate studies are used to: assess the toxicity to man through exposure of humans to pesticide residues remaining after application, either upon reentering treated areas or from consuming inadvertantly-contaminated food; assess the presence of widely distributed and persistent pesticides in the environment which may result in loss of usable land, surface water, ground water, and wildlife resources; and, assess the potential environmental exposure of other nontarget organisms, such as fish and wildlife, to pesticides. Another specific purpose of the environmental fate data requirements is to help applicants and the Agency estimate expected environmental concentrations of pesticides in specific habitats where threatened or endangered species or other wildlife populations at risk are found.

(2) *Degradation studies.* The data from hydrolysis and photolysis studies are used to determine the rate of pesticide degradation and to identify pesticides

that may adversely affect nontarget organisms.

(3) *Metabolism studies.* Data generated from aerobic and anaerobic metabolism studies are used to determine the nature and availability of pesticides to rotational crops and to aid in the evaluation of the persistence of a pesticide.

(4) *Mobility studies.* These data requirements pertain to leaching, adsorption/desorption, and volatility of pesticides. They provide information on the mode of transport and eventual destination of the pesticide in the environment. This information is used to assess potential environmental hazards related to: contamination of human and animal food; loss of usable land and water resources to man through contamination of water (including ground water); and habitat loss of wildlife resulting from pesticide residue movement or transport in the environment.

(5) *Dissipation studies.* The data generated from dissipation studies are used to assess potential environmental hazards (under actual field use conditions) related to: reentry into treated areas; hazards from residues in rotational crops and other food sources; and the loss of land as well as surface and ground water resources.

(6) *Accumulation studies.* Accumulation studies indicate pesticide residue levels in food supplies that originate from wild sources or from rotational crops. Rotational crop studies are necessary to establish realistic crop rotation restrictions and to determine if tolerances may be needed for residues on rotational crops. Data from irrigated crop studies are used to determine the amount of pesticide residues that could be taken up by representative crops irrigated with water containing pesticide residues. These studies allow the Agency to establish label restrictions regarding application of pesticides on sites where the residues can be taken up by irrigated crops. These data also provide information that aids the Agency in establishing any corresponding tolerances that would be needed for residues on such crops. Data from pesticides accumulation studies in fish are used to establish label restrictions to prevent applications in certain sites so that there will be minimal residues entering edible fish or shell fish. These residue data are also used to determine if a tolerance or action level is needed for residues in aquatic animals eaten by humans.

(e) *Hazards to humans and domestic animals.* Data required to assess hazards to humans and domestic animals are derived from a variety of acute, subchronic and chronic toxicity tests, and tests to assess mutagenicity and pesticide metabolism.

(1) *Acute studies.* Determination of acute oral, dermal and inhalation toxicity is usually the initial step in the assessment and evaluation of the toxic characteristics of a pesticide. These data provide information on health hazards likely to arise soon after, and as a result of, short-term exposure. Data from acute studies serve as a basis for classification and precautionary labeling. For example, acute toxicity data are used to calculate farmworker reentry intervals and to develop precautionary label statements pertaining to protective clothing requirements for applicators. They also provide information used in establishing the appropriate dose levels in subchronic and other studies; provide initial information on the mode of toxic action(s) of a substance; and determine the need for child resistant packaging. Information derived from primary eye and primary dermal irritation studies serves to identify possible hazards from exposure of the eyes, associated mucous membranes and skin.

(2) *Subchronic studies.* Subchronic tests provide information on health hazards that may arise from repeated exposures over a limited period of time. They provide information on target organs and accumulation potential. The resulting data are also useful in selecting dose levels for chronic studies and for establishing safety criteria for human exposure. These tests are not capable of detecting those effects that have a long latency period for expression (*e.g.*, carcinogenicity).

(3) *Chronic studies.* Chronic toxicity (usually conducted by feeding the test substance to the test species) studies are intended to determine the effects of a substance in a mammalian species following prolonged and repeated exposure. Under the conditions of this test, effects which have a long latency period or are cumulative should be detected. The purpose of long-term oncogenicity studies is to observe test animals over most of their life span for the development of neoplastic lesions during or after exposure to various doses of a test substance by an appropriate route of administration.

(4) *Developmental toxicity and reproduction studies.* The developmental toxicity study is designed to determine the potential of the test substance to induce structural and/or other abnormalities to the fetus as the result of exposure of the mother during pregnancy. Two-generation reproduction testing is designed to provide information concerning the general effects of a test substance on gonadal function, estrus cycles, mating behavior, conception, parturition, lactation, weaning, and the growth and development of the offspring. The study may also provide information about the effects of the test substance on neonatal morbidity, mortality, and preliminary data on teratogenesis and serve as a guide for subsequent tests.

(5) *Mutagenicity studies.* For each test substance a battery of tests are required to assess potential to affect the mammalian cell's genetic components. The objectives underlying the selection of a battery of tests for mutagenicity assessment are:

(i) To detect, with sensitive assay methods, the capacity of a chemical to alter genetic material in cells.

(ii) To determine the relevance of these mutagenic changes to mammals.

(iii) When mutagenic potential is demonstrated, to incorporate these findings in the assessment of heritable effects, oncogenicity, and possibly, other health effects.

(6) *Metabolism studies.* Data from studies on the absorption, distribution, excretion, and metabolism of a pesticide aid in the valuation of test results from other toxicity studies and in the extrapolation of data from animals to man. The main purpose of metabolism studies is to produce data which increase the Agency's understanding of the behavior of the chemical in its consideration of the human exposure anticipated from intended uses of the pesticide.

(f) *Applicator and post-application exposure.* Data are used to evaluate exposures to persons in occupational and non-occupational settings, including agricultural, residential, commercial, institutional and recreational sites. Data include oral, dermal and inhalation exposure data, post-application residue data, post-application monitoring data, use information, and human activity information. These data, together with toxicology data, are used to determine whether application or post-application risks are of concern, and, where appropriate, to develop post-application restrictions such as reentry restrictions.

(g) *Pesticide spray drift evaluation.* Data required to evaluate pesticide spray drift are derived from studies of droplet size spectrum and spray drift field evaluations. These data contribute to the development of the overall exposure estimate and, along with data on toxicity for humans, fish and wildlife, or plants, are used to assess the potential hazard of pesticides to these organisms. A purpose common to all these tests is to provide data which will be used to determine the need for (and

appropriate wording for) precautionary labeling to minimize the potential adverse effect to nontarget organisms.

(h) *Hazards to nontarget organisms*—(1) *General.* The information required to assess hazards to nontarget organisms are derived from tests to determine pesticidal effects on birds, mammals, fish, terrestrial and aquatic invertebrates and plants. These tests include short-term acute, subacute, reproduction, simulated field, and full field studies arranged in a hierarchial or tier system which progresses from the basic laboratory tests to the applied field tests. The results of each tier of test must be evaluated to determine the potential of the pesticide to cause adverse effects, and to determine whether further testing is required. A purpose common to all data requirements is to provide data which determines the need for (and appropriate wording for) precautionary label statements to minimize the potential adverse effects to nontarget organisms.

(2) *Short-term studies.* The short-term acute and subchronic laboratory studies provide basic toxicity information which serves as a starting point for the hazard assessment. These data are used: to establish acute toxicity levels of the active ingredient to the test organisms; to compare toxicity information with measured or estimated pesticide residues in the environment in order to assess potential impacts on fish, wildlife and other nontarget organisms; and to indicate whether further laboratory and/or field studies are needed.

(3) *Long-term and field studies.* Additional studies (*i.e.*, avian, fish, and invertebrate reproduction, lifecycle studies and plant field studies) may be required when basic data and environmental conditions suggest possible problems. Data from these studies are used to: estimate the potential for chronic effects, taking into account the measured or estimated residues in the environment; and to determine if additional field or laboratory data are necessary to further evaluate hazards. Simulated field and/or field data are used to examine acute and chronic adverse effects on captive or monitored fish and wildlife populations under natural or near-natural environments. Such studies are required only when predictions as to possible adverse effects in less extensive studies cannot be made, or when the potential for adverse effects is high.

(i) *Product performance.* Requirements to develop data on product performance provide a mechanism to ensure that pesticide products will control the pests listed on the label and that unnecessary pesticide exposure to the environment will not occur as a result of the use of ineffective products. Specific performance standards are used to validate the efficacy data in the public health areas, including disinfectants used to control microorganisms infectious to man in any area of the inanimate environment and those pesticides used to control vertebrates (such as rodents, birds, bats and skunks) that may directly or indirectly transmit diseases to humans.

Subpart C [Removed and Reserved]

e. By removing and reserving subpart C.

f. By revising subpart D to read as follows:

Subpart D—Product Chemistry

§ 158.300 Definitions.

The following terms are defined for the purposes of this subpart:

Active ingredient means any substance (or group of structurally similar substances, if specified by the Agency) that will prevent, destroy, repel or mitigate any pest, or that functions as a plant regulator, desiccant, defoliant, or nitrogen stabilizer, within the meaning of FIFRA sec. 2(b).

End-use product means a pesticide product whose labeling: (1) Includes directions for use of the product (as distributed or sold, or after combination by the user with other substances) for controlling pests or defoliating, desiccating or regulating growth of plants, or as a nitrogen stabilizer, and (2) does not state that the product may be used to manufacture or formulate other pesticide products.

Formulation means: (1) The process of mixing, blending, or dilution of one or more active ingredients with one or more other active or inert ingredients, without an intended chemical reaction, to obtain a manufacturing-use product or an end-use product, or (2) the repackaging of any registered product.

Impurity means any substance (or group of structurally similar substances if specified by the Agency), in a pesticide product other than an active ingredient or an inert ingredient, including unreacted starting materials, side reaction products, contaminants, and degradation products.

Impurity associated with an active ingredient means: (1) Any impurity present in the technical grade of active ingredient; and (2) any impurity which forms in the pesticide product through reactions between the active ingredient and any other component of the product or packaging of the product.

Inert ingredient means any substance (or group of structurally similar substances if designated by the Agency), other than the active ingredient, which is intentionally included in a pesticide product.

Integrated system means a process for producing a pesticide product that: (1) Contains any active ingredient derived from a source that is not an EPA-registered product; or (2) contains any active ingredient that was produced or acquired in a manner that does not permit its inspection by the Agency under FIFRA sec. 9(a) prior to its use in the process.

Manufacturing-use product means any pesticide product other than an end-use product. A product may consist of the technical grade of active ingredient only, or may contain inert ingredients, such as stabilizers or solvents.

Nominal concentration means the amount of an ingredient which is expected to be present in a typical sample of a pesticide product at the time the product is produced, expressed as a percentage by weight.

Starting material means a substance used to synthesize or purify a technical grade of active ingredient (or the practical equivalent of the technical grade ingredient if the technical grade cannot be isolated) by chemical reaction.

Technical grade of active ingredient means a material containing an active ingredient: (1) Which contains no inert ingredient, other than one used for purification of the active ingredient; and (2) which is produced on a commercial or pilot plant production scale (whether or not it is ever held for sale).

§ 158.310 Product chemistry data requirements table.

(a) *General.* (1) Sections 158.100 through 158.130 describe how to use this table to determine the product chemistry data requirements for a particular pesticide product. Notes that apply to an individual test and include specific conditions, qualifications, or exceptions to the designated test are listed in paragraph (f) of the section.

(2) Depending on the results of the required product chemistry studies, appropriate use restrictions, labeling requirements, or special packaging requirements may be imposed.

(3) All product chemistry data, as described in this section, are required to be submitted to support a request for an experimental use permit.

(b) *Use patterns.* Product chemistry data are required for all pesticide products and are not use specific.

(c) *Test substance.* Data requirements that list only the manufacturing-use product as the test substance apply to

products containing solely the technical grade of the active ingredient and manufacturing-use products to which other ingredients have been intentionally added.

(d) *Key.* R=Required; CR=Conditionally required; MP=Manufacturing-use product; NR=Not required; EP=End-use product; TGAI=Technical grade of the active ingredient; PAI=Pure active ingredient.

(e) *Table.* The following table shows the data requirements for product chemistry. The table notes are shown in paragraph (f) of this section.

PRODUCT CHEMISTRY DATA REQUIREMENTS

Guideline Number	Data Requirement	Use Pattern	Test substance to support		Test Note No.
		All	MP	EP	
Product Identity and Composition					
830.1550	Product identity and composition	R	MP	EP	1
830.1600	Description of materials used to produce the product	R	MP	EP	2
830.1620	Description of production process	R	MP	EP	3
830.1650	Description of formulation process	R	MP	EP	4
830.1670	Discussion of formulation of impurities	R	MP, and possibly TGAI	EP, and possibly TGAI	5
830.1700	Preliminary analysis	CR	MP, and possibly TGAI	EP, and possibly TGAI	6, 9, 10
830.1750	Certified limits	R	MP	EP	7
830.1800	Enforcement analytical method	R	MP	EP	8
830.1900	Submittal of samples	CR	MP, PAI and TGAI	EP, PAI, TGAI	9, 11
Physical and Chemical Properties.					
830.6302	Color	R	MP and TGAI	TGAI	9
830.6303	Physical state	R	MP and TGAI	EP and TGAI	9
830.6304	Odor	R	MP and TGAI	TGAI	9
830.6313	Stability to normal and elevated temperatures, metals, and metal ions	R	TGAI	TGAI	9, 12
830.6314	Oxidation/reduction: chemical incompatability	CR	MP	EP	13
830.6315	Flammability	CR	MP	EP	14
830.6316	Explodability	CR	MP	EP	15
830.6317	Storage stability	R	MP	EP	
830.6319	Miscibility	CR	MP	EP	16
830.6320	Corrosion characteristics	R	MP	EP	
830.6321	Dielectric breakdown voltage	CR	NR	EP	17
830.7000	pH	CR	MP and TGAI	EP and TGAI	9, 18
830.7050	UV/visible light absorption	R	TGAI	TGAI	
830.7100	Viscosity	CR	MP	EP	19
830.7200	Melting point/melting range	R	TGAI or PAI	TGAI or PAI	9, 20
830.7220	Boiling point/boiling range	R	TGAI or PAI	TGAI or PA	9, 21
830.7300	Density/relative density/bulk density	R	MP and TGAI	EP and TGAI	9, 22
830.7370	Dissociation constants in water	R	TGAI or PAI	TGAI or PAI	9, 23
830.7520	Particle size, fiber length, and diameter distribution	CR	TGAI or PAI	TGAI or PAI	24

PRODUCT CHEMISTRY DATA REQUIREMENTS—Continued

Guideline Number	Data Requirement	Use Pattern	Test substance to support		Test Note No.
		All	MP	EP	
830.7550 830.7560 830.7570	Partition coefficient (n-octanol/water)	CR	TGAI or PAI	TGAI or PAI	25
830.7840 830.7860	Water solubility	R	TGAI or PAI	TGAI or PAI	9
830.7950	Vapor pressure	R	TGAI or PAI	TGAI or PAI	9, 26

(f) *Test notes.* The following test notes are applicable to the product chemistry data requirements in the table to paragrpah (e) of this section:

1. Data must be provided in accordance with § 158.320.
2. Data must be provided in accordance with § 158.325.
3. Data must be provided in accordance with § 158.330.
4. Data must be provided in accordance with § 158.335.
5. Data must be provided in accordance with § 158.340.
6. Data must be provided in accordance with § 158.345.
7. Data must be provided in accordance with § 158.350.
8. Data must be provided in accordance with § 158.355.
9. If the TGAI cannot be isolated, data are required on the practical equivalent of the TGAI.
10. Data are required if the product is produced by an integrated system.
11. Basic manufacturers are required to provide the Agency with a sample of each TGAI used to formulate a product produced by an integrated system when the new TGAI is first used as a formulating ingredient in products registered under FIFRA. A sample of the active ingredient (PAI) suitable for use as an analytical standard is also required at this time. Samples of end-use products produced by an integrated system must be submitted on a case-by-case basis.
12. Data on the stability to metals and metal ions is required only if the active ingredient is expected to come in contact with either material during storage.
13. Required when the product contains an oxidizing or reducing agent.
14. Required when the product contains combustible liquids.
15. Required when the product is potentially explosive.
16. Required when the product is an emulsifiable liquid and is to be diluted with petroleum solvent.
17. Required when the EP is a liquid and is to be used around electrical equipment.
18. Required when the test substance is soluble or dispersible in water.
19. Required when the product is a liquid.
20. Required when the TGAI is solid at room temperature.
21. Required when the TGAI is liquid at room temperature.
22. True density or specific density are required for all test substances. Data on bulk density is required for MPs that are solid at room temperature.
23. Required when the test substance contains an acid or base functionality (organic or inorganic) or an alcoholic functionality (organic).
24. Required for water insoluble test substances ($<10^{-6}$ g/l) and fibrous test substances with diameter ≥0.1 μm.
25. Required for all organic chemicals unless they dissociate in water or are partially or completely soluble in water.
26. Not required for salts.

§ 158.320 Product identity and composition.

Information on the composition of the pesticide product must be furnished. The information required by paragraphs (a), (b), and (f) of this section must be provided for each product. In addition, if the product contains is produced by an integrated system, the information on impurities required by paragraphs (c) and (d) of this section must be provided.

(a) *Active ingredient.* The following information is required for each active ingredient in the product:

(1) If the source of any active ingredient in the product is an EPA-registered product:

(i) The chemical and common name (if any) of the active ingredient, as listed on the source product.

(ii) The nominal concentration of the active ingredient in the product, based upon the nominal concentration of active ingredient in the source product.

(iii) Upper and lower certified limits of the active ingredient in the product, in accordance with § 158.350.

(2) If the source of any active ingredient in the product is not an EPA-registered product:

(i) The chemical name according to Chemical Abstracts Society (CAS) nomenclature, the CAS Registry Number, and any common names.

(ii) The molecular, structural, and empirical formulae and the molecular weight or weight range.

(iii) The nominal concentration.

(iv) Upper and lower certified limits of the active ingredient in accordance with § 158.350.

(v) The purpose of the ingredient in the formulation.

(b) *Inert ingredients.* The following information is required for each inert ingredient (if any) in the product:

(1) The chemical name of the ingredient according to Chemical Abstracts Society nomenclature, the CAS Registry Number, and any common names (if known). If the chemical identity or chemical composition of an ingredient is not known to the applicant because it is proprietary or trade secret information, the applicant must ensure that the supplier or producer of the ingredient submits to the Agency (or has on file with the Agency) information on the identity or chemical composition of the ingredient. Generally, it is not required that an applicant know the identity of each ingredient in a mixture that he uses in his product. However, in certain circumstances, the Agency may require that the applicant know the identity of a specific ingredient in such a mixture. If the Agency requires specific knowledge of an ingredient, it will notify the applicant in writing.

(2) The nominal concentration in the product.

(3) Upper and lower certified limits in accordance with § 158.350.

(4) The purpose of the ingredient in the formulation.

(c) *Impurities of toxicological significance associated with the active ingredient.* For each impurity associated with the active ingredient that is determined by EPA to be toxicologically significant, the following information is required:

(1) Identification of the ingredient as an impurity.

(2) The chemical name of the impurity.

(3) The nominal concentration of the impurity in the product.

(4) A certified upper limit, in accordance with § 158.350.

(d) *Other impurities associated with the active ingredient.* For each other impurity associated with an active ingredient that was found to be present in any sample at a level ≥0.1 percent by

weight of the technical grade active ingredient the following information is required:

(1) Identification of the ingredient as an impurity.

(2) The chemical name of the impurity.

(3) The nominal concentration of the impurity in the final product.

(e) *Impurities associated with an inert ingredient.* [Reserved]

(f) *Ingredients that cannot be characterized.* If the identity of any ingredient or impurity cannot be specified as a discrete chemical substance (such as mixtures that cannot be characterized or isomer mixtures), the applicant must provide sufficient information to enable EPA to identify its source and qualitative composition.

§ 158.325 Description of materials used to produce the product.

The following information must be submitted on the materials used to produce the product:

(a) *Products not produced by an integrated system.* (1) For each active ingredient that is derived from an EPA-registered product:

(i) The name of the EPA-registered product.

(ii) The EPA registration number of that product.

(2) For each inert ingredient:

(i) Each brand name, trade name, common name, or other commercial designation of the ingredient.

(ii) All information that the applicant knows (or that is reasonably available to him) concerning the composition (and, if requested by the Agency, chemical and physical properties) of the ingredient, including a copy of technical specifications, data sheets, or other documents describing the ingredient.

(iii) If requested by the Agency, the name and address of the producer of the ingredient or, if that information is not known to the applicant, the name and address of the supplier of the ingredient.

(b) *Products produced by an integrated system.* (1) The information required by paragraph (a)(1) of this section concerning each active ingredient that is derived from an EPA-registered product (if any).

(2) The following information concerning each active ingredient that is not derived from an EPA-registered product:

(i) The name and address of the producer of the ingredient (if different from the applicant).

(ii) Information about each starting material used to produce the active ingredient, as follows:

(A) Each brand name, trade name, or other commercial designation of the starting material.

(B) The name and address of the person who produces the starting material or, if that information is not known to the applicant, the name and address of each person who supplies the starting material.

(C) All information that the applicant knows (or that is reasonably available to him), concerning the composition (and if requested by the Agency, chemical or physical properties) of the starting material, including a copy of all technical specifications, data sheets, or other documents describing it.

(3) The information required by paragraph (a)(2) of this section concerning each inert ingredient.

(c) *Additional information.* On a case-by-case basis, the Agency may require additional information on substances used in the production of the product.

§ 158.330 Description of production process.

If the product is produced by an integrated system, the applicant must submit information on the production (reaction) processes used to produce the active ingredients in the product. The applicant must also submit information about the formulation process, in accordance with § 158.335.

(a) Information must be submitted for the current production process for each active ingredient that is not derived from an EPA-registered product. If the production process is not continuous (a single reaction process form starting materials to active ingredient), but is accomplished in stages or by different producers, the information must be provided for each such production process.

(b) The following information must be provided for each process resulting in a separately isolated substance:

(1) The name and address of the producer who uses the process, if not the same as the applicant.

(2) A general characterization of the process (*e.g.*, whether it is a batch or continuous process).

(3) A flow chart of the chemical equations of each intended reaction occurring at each step of the process, and of the duration of each step and of the entire process.

(4) The identity of the materials used to produce the product, their relative amounts, and the order in which they are added.

(5) A description of the equipment used that may influence the composition of the substance produced.

(6) A description of the conditions (*e.g.*, temperature, pressure, pH, humidity) that are controlled during each step of the process to affect the composition of the substance produced, and the limits that are maintained.

(7) A description of any purification procedures (including procedures to recover or recycle starting materials, intermediates or the substance produced).

(8) A description of the procedures used to assure consistent composition of the substance produced, *e.g.*, calibration of equipment, sampling regimens, analytical methods, and other quality control methods.

§ 158.335 Description of formulation process.

The applicant must provide information on the formulation process of the product (unless the product consists solely of a technical grade of active ingredient) as required by the following sections:

(a) Section 158.330(b)(2), pertaining to characterization of the process.

(b) Section 158.330(b)(4), pertaining to ingredients used in the process.

(c) Section 158.330(b)(5), pertaining to process equipment.

(d) Section 158.330(b)(6), pertaining to the conditions of the process.

(e) Section 158.330(b)(8), pertaining to quality control measures.

§ 158.340 Discussion of formation of impurities.

The applicant must provide a discussion of the impurities that may be present in the product, and why they may be present. The discussion should be based on established chemical theory and on what the applicant knows about the starting materials, technical grade of active ingredient, inert ingredients, and production or formulation process. If the applicant has reason to believe that an impurity that EPA would consider toxicologically significant may be present, the discussion must include an expanded discussion of the possible formation of the impurity and the amounts at which it might be present. The impurities which must also be discussed are the following, as applicable:

(a) *Technical grade active ingredients and products produced by an integrated system.* (1) Each impurity associated with the active ingredient which was found to be present in any analysis of the product conducted by or for the applicant.

(2) Each other impurity which the registrant or applicant has reason to believe may be present in his product at any time before use at a level ≥0.1 percent (1,000 ppm) by weight of the technical grade of the active ingredient, based on what he knows about the following:

(i) The composition (or composition range) of each starting material used to produce his product.

(ii) The impurities which the applicant knows are present (or believes are likely to be present) in the starting materials, and the known or presumed level (or range of levels) of these impurities.

(iii) The intended reactions and side reactions which may occur in the production of the product, and the relative amounts of byproduct impurities produced by such reactions.

(iv) The possible degradation of the ingredients in the product after its production but prior to its use.

(v) Post-production reactions between the ingredients in the product.

(vi) The possible migration of components of packaging materials into the pesticide.

(vii) The possible carryover of contaminants from use of production equipment previously used to produce other products or substances.

(viii) The process control, purification and quality control measures used to produce the product.

(b) *Products not produced by an integrated system.* Each impurity associated with the active ingredient which the applicant has reason to believe may be present in the product at any time before use at a level ≥0.1 percent (1,000 ppm) by weight of the product based on what he knows about the following:

(1) The possible carryover of impurities present in any registered product which serves as the source of any of the product's active ingredients. The identity and level of impurities in the registered source need not be discussed or quantified unless known to the formulator.

(2) The possible carryover of impurities present in the inert ingredients in the product.

(3) Possible reactions occurring during the formulation of the product between any of its active ingredients, between the active ingredients and inert ingredients, or between the active ingredient and the production equipment.

(4) Post-production reactions between any of the product's active ingredients and any other component of the product or its packaging.

(5) Possible migration of packaging materials into the product.

(6) Possible contaminants resulting from earlier use of equipment to produce other products.

(c) *Expanded discussion.* On a case-by-case basis, the Agency may require an expanded discussion of information of impurities:

(1) From other possible chemical reactions.

(2) Involving other ingredients.

(3) At additional points in the production or formulation process.

§ 158.345 Preliminary analysis.

(a) If the product is produced by an integrated system, the applicant must provide a preliminary analysis of each technical grade of active ingredient contained in the product to identify all impurities present at 0. 1 percent or greater of the technical grade of the active ingredient. The preliminary analysis should be conducted at the point in the production process after which no further chemical reactions designed to produce or purify the substances are intended.

(b) Based on the preliminary analysis, a statement of the composition of the technical grade of the active ingredient must be provided. If the technical grade of the active ingredient cannot be isolated, a statement of the composition of the practical equivalent of the technical grade of the active ingredient must be submitted.

§ 158.350 Certified limits.

The applicant must propose certified limits for the ingredients in the product. Certified limits become legally binding limits upon approval of the application. Certified limits will apply to the product from the date of production to date of use, unless the product label bears a statement prohibiting use after a certain date, in which case the certified limits will apply only until that date.

(a) *Ingredients for which certified limits are required.* Certified limits are required on the following ingredients of a pesticide product:

(1) An upper and lower limit for each active ingredient.

(2) An upper and lower limit for each inert ingredient.

(3) If the product is a technical grade of active ingredient or is produced by an integrated system, an upper limit for each impurity of toxicological significance associated with the active ingredient and found to be present in any sample of the product.

(4) On a case-by-case basis, certified limits for other ingredients or impurities as specified by EPA.

(b) *EPA determination of standard certified limits for active and inert ingredients.* (1) Unless the applicant proposes different limits as provided in paragraph (c) of this section, the upper and lower certified limits for active and inert ingredients will be determined by EPA. EPA will calculate the certified limits on the basis of the nominal concentration of the ingredient in the product, according to the table in paragraph (b)(2) of this section.

(2) Table of standard certified limits.

STANDARD CERTIFIED LIMITS

If the nominal concentration (N) for the ingredient and percentage by weight for the ingredient is:	The certified limits for that ingredient will be as follows:	
	Upper Limit	Lower Limit
N ≤1.0%	N + 10%N	N - 10%N
1.0% ≤N ≤20.0%	N + 5%N	N - 5%N
20.0%≤N≤100.0%	N + 3%N	N - 3%N

(c) *Applicant proposed limits.* (1) The applicant may propose a certified limit for an active or inert ingredient that differs from the standard certified limit calculated according to paragraph (b)(2) of this section.

(2) If certified limits are required for impurities, the applicants must propose a certified limit. The standard certified limits may not be used for such substances.

(3) Certified limits should:

(i) Be based on a consideration of the variability of the concentration of the ingredient in the product when good manufacturing practices and normal quality control procedures are used.

(ii) Allow for all sources of variability likely to be encountered in the production process.

(iii) Take into account the stability of the ingredient in the product and the possible formation of impurities between production and sale or distribution.

(4) The applicant may include an explanation of the basis of his proposed certified limits, including how the certified limits were arrived at (*e.g.*, sample analysis, quantitative estimate based on production process), and its accuracy and precision. This will be particularly useful if the range of the certified limit for an active or inert ingredient is greater than the standard certified limits.

(d) *Special cases.* If the Agency finds unacceptable any certified limit (either standard, or applicant proposed), the Agency will inform the registrant or applicant of its determination and will provide supporting reasons. The Agency may also recommend alternative limits to the applicant. The Agency may require, on a case-by-case basis, any or all of the following:

(1) More precise limits.

(2) More thorough explanation of how the certified limits were determined.

(3) A narrower range between the upper and lower certified limits than that proposed.

(e) *Certification statement.* The applicant must certify the accuracy of the information presented, and that the certified limits of the ingredients will be maintained. The following statement, signed by the authorized representative of the company, is acceptable:

I hereby certify that, for purposes of FIFRA sec. 12(a)(1)(C), the description of the composition of [*insert product name*], EPA Reg. No. [*insert registration number*], refers to the composition set forth on the Statement of Formula and supporting materials. This description includes the representations that: (1) No ingredient will be present in the product in an amount greater than the upper certified limit or in an amount less than the lower certified limit (if required) specified for that ingredient in a currently approved Statement of Formula (or as calculated by the Agency); and (2) If the Agency requires that the source of supply of an ingredient be specified, that all quantities of such ingredient will be obtained from the source specified in the Statement of Formula.

§ 158.355 Enforcement analytical method.

An analytical method suitable for enforcement purposes must be provided for each active ingredient in the product and for each other ingredient or impurity that the Agency determines to be toxicologically significant.

g. By adding subpart E to read as follows:

Subpart E—Terrestrial and Aquatic Nontarget Organisms

§ 158.400 Terrestrial and aquatic nontarget organisms data requirements table.

(a) *General.* Sections 158.100 through 158.130 describe how to use this table to determine the terrestrial and aquatic nontarget data requirements for a particular pesticide product. Notes that apply to an individual test including specific conditions, qualifications, or exceptions to the designated test are listed in paragraph (e) of this section.

(b) *Use patterns.* (1) The terrestrial use pattern includes products classified under the general use patterns of terrestrial food crop, terrestrial feed crop, and terrestrial nonfood crop. The greenhouse use pattern includes products classified under the general use patterns of greenhouse food crop and greenhouse nonfood crop. The indoor use pattern includes products classified under the general use patterns of indoor food, and indoor nonfood use.

(2) Data are also required for the general use patterns of aquatic food crop, aquatic nonfood residential, aquatic nonfood outdoor, forestry and residential outdoor use.

(3) In general, for all outdoor end-use products including turf, the following studies are required: two avian oral LD_{50}, two avian dietary LC_{50}, two avian reproduction studies, two freshwater fish LC_{50}, one freshwater invertebrate EC_{50}, one honeybee acute contact LD_{50}, one freshwater fish early-life stage, one freshwater invertebrate life-cycle, and three estuarine acute LC_{50}/EC_{50} studies - fish, oyster, and mysid. All other outdoor residential uses, *i.e.*, gardens and ornamental will not usually require the freshwater fish early-life stage, the freshwater invertebrate life-cycle, and the acute estuarine tests.

(c) Key: R=Required; CR=Conditionally required; NR=Not required; []=Required or conditionally required for an experimental use permit; TGAI=Technical grade of the active ingredient; TEP=Typical end-use product; PAI=Pure active ingredient; Commas between the test substances (*i.e.*, TGAI, TEP) indicate that data may be required on the TGAI or the TEP depending on the conditions set forth in the test note.

(d) *Table.* The following table shows the data requirements for nontarget terrestrial and aquatic organism. The table notes are shown in paragraph (e) of this section.

TERRESTRIAL AND AQUATIC NONTARGET ORGANISM DATA REQUIREMENTS

Guideline Number	Data Requirement	Use Pattern								Test substance	Test Note No.
		Terrestrial	Aquatic			Forestry	Residential Outdoor	Greenhouse	Indoor		
			Food	Nonfood							
				Outdoor	Residential						
Avian and Mammalian Testing											
850.2100	Avian oral toxicity	[R]	[R]	[R]	R	[R]	[R]	CR	CR	TGAI, TEP	1, 2, 3, 4
850.2200	Avian dietary toxicity	[R]	[R]	[R]	CR	[R]	[R]	NR	NR	TGAI	1, 3, 5, 6
850.2400	Wild mammal toxicity	CR	CR	CR	NR	CR	CR	NR	NR	TGAI	7
850.2300	Avian reproduction	R	R	R	NR	R	R	NR	NR	TGAI	1, 5
850.2500	Simulated or actual field testing	CR	CR	CR	NR	CR	CR	NR	NR	TEP	8, 9
Aquatic Organisms Testing											

TERRESTRIAL AND AQUATIC NONTARGET ORGANISM DATA REQUIREMENTS—Continued

Guideline Number	Data Requirement	Use Pattern								Test substance	Test Note No.
		Terrestrial	Aquatic			Forestry	Residential Outdoor	Greenhouse	Indoor		
			Food	Nonfood							
				Outdoor	Residential						
850.1075	Freshwater fish toxicity	[R]	[R]	[R]	R	[R]	R	CR	CR	TGAI, TEP	1, 2, 10, 11
850.1010	Acute toxicity freshwater invertebrates	[R]	[R]	[R]	R	[R]	R	CR	CR	TGAI, TEP	1, 2, 11, 12
850.1025 850.1035 850.1045 850.1055 850.1075	Acute toxicity estuarine and marine organisms	R	R	R	NR	R	R	NR	NR	TGAI, TEP	1, 11, 13, 14
850.1300	Aquatic invertebrate life-cycle (freshwater)	R	[R]	[R]	NR	[R]	CR	NR	NR	TGAI	1, 12, 14
850.1350	Aquatic invertebrate life-cycle (saltwater)	CR	CR	CR	NR	CR	CR	NR	NR	TGAI	14, 16, 17
850.1400	Fish early-life stage (freshwater)	R	[R]	[R]	NR	[R]	CR	NR	NR	TGAI	1, 14, 15
850.1400	Fish early-life stage (saltwater)	CR	CR	CR	NR	CR	CR	NR	NR	TGAI	14, 17, 18
850.1500	Fish life-cycle	CR	CR	CR	NR	CR	CR	NR	NR	TGAI	19, 20
850.1710 850.1730 850.1850	Aquatic organisms bioavailability, biomagnification, toxicity	CR	CR	CR	NR	CR	NR	NR	NR	TGAI, PAI, degradate	21
850.1950	Simulated or actual field testing for aquatic organisms	CR	CR	CR	NR	CR	CR	NR	NR	TEP	9, 22
Sediment Testing											
850.1735	Whole sediment: acute freshwater invertebrates	CR	CR	CR	NR	CR	NR	NR	NR	TGAI	23
850.1740	Whole sediment: acute marine invertebrates	CR	CR	CR	NR	CR	NR	NR	NR	TGAI	23
--	Whole sediment: chronic invertebrates freshwater and marine	CR	CR	CR	NR	CR	NR	NR	NR	TGAI	24
Insect Pollinator Testing											
850.3020	Honey bee acute contact toxicity	[R]	[R]	[R]	NR	[R]	R	NR	NR	TGAI	1
850.3030	Honey bee toxicity of residues on foliage	CR	CR	CR	NR	CR	CR	NR	NR	TEP	25
850.3040	Field testing for pollinators	CR	CR	CR	CR	CR	CR	NR	NR	TEP	26

TERRESTRIAL AND AQUATIC NONTARGET ORGANISM DATA REQUIREMENTS—Continued

Guideline Number	Data Requirement	Use Pattern								Test substance	Test Note No.
		Terrestrial	Aquatic			Forestry	Residential Outdoor	Greenhouse	Indoor		
			Food	Nonfood							
				Outdoor	Residential						
Nontarget Insect Testing											
142–1	Acute toxicity to aquatic insects	--	--	--	--	--	--	--	--	TGAI	27
142–1	Aquatic insect life-cycle	--	--	--	--	--	--	--	--	TEP	27
142–3	Simulated or actual field testing for aquatic insects	--	--	--	--	--	--	--	--	TEP	27
143–1 143–2 143–3	Predators and parasites	--	--	--	--	--	--	--	--	TEP	27

(e) *Test notes.* The following test notes apply to terrestrial and aquatic nontarget organisms data requirements in the table to paragraph (d) of this section:

1. Data using the TGAI are required to support all outdoor end-use product uses including, but not limited to turf. Data are generally not required to support end-use products in the form of a gas, a highly volatile liquid, a highly reactive solid, or a highly corrosive material.

2. For greenhouse and indoor end-use products, data using the TGAI are required to support manufacturing-use products to be reformulated into these same end-use products or to support end-use products when there is no registered manufacturing-use product. Avian acute oral not required for liquid formulations for greenhouse and indoor uses. Study not required if there is no potential for environmental exposure.

3. Data using the TEP are conditionally required based on the results of the avian acute oral (TGAI) and avian subacute dietary tests, intended use pattern, and environmental fate characteristics that indicate potential exposure.

4. Data are preferred on redwing blackbird (*Agelaius phoneiceus*) and either mallard or bobwhite quail for terrestrial, aquatic, forestry, and residential outdoor uses. Data are preferred on mallard or bobwhite quail for indoor and greenhouse uses.

5. Data are preferred on mallard and bobwhite quail.

6. For aquatic nonfood residential uses, data are required to support liquid and solid formulated products on one species if the avian oral LD_{50} of the TGAI is less than or equal to 100 mg a.i./kg. Data on a second species are required if the avian dietary LC_{50} in the first species tested is less than or equal to 500 ppm a.i. in the diet.

7. Tests are required based on the results of lower tier toxicology studies, such as the acute and subacute testing, intended use pattern, and environmental fate characteristics that indicate potential exposure.

8. Tests are required based on the results of lower tier studies such as acute, subacute or reproduction bird and mammal testing, intended use pattern, and environmental fate characteristics that indicate potential exposure.

9. Environmental chemistry methods used to generate data associated with this study must include results of a successful confirmatory method trial by an independent laboratory. Test standards and procedures for independent laboratory validation are available as addenda to the guideline for this test requirement.

10. Data are preferred on rainbow trout and bluegill for terrestrial, aquatic, forestry, and residential outdoor uses. For indoor and greenhouse uses, testing with only one of either fish species is required. Generally, a second species will not be required for indoor and greenhouse use if the selected species LC_{50} is 1 ppm or less. However, if the TGAI is stable in the hydrolysis study, and the LC_{50} value of the first fish tested is between 1 ppm and 10 ppm, then testing with both species is required.

11. Freshwater fish LC_{50} (the most sensitive of the species tested) using the TGAI, freshwater invertebrate EC_{50} (preferably *Daphnia*), and acute LC_{50}/EC_{50} estuarine and marine organisms studies using the EP or TEP are required for any product which meets any of the following conditions:

i. The end-use pesticide will be introduced directly into an aquatic environment (*e.g.*, aquatic herbicides and mosquito larvicides) when used as directed.

ii. The maximum expected environmental concentration (MEEC) or the estimated environmental concentration in the aquatic environment is equal to or greater than one-half the LC_{50} or EC_{50} of the TGAI when the EP is used as directed.

iii. An ingredient in the end-use formulation other than the active ingredient is expected to enhance the toxicity of the active ingredient or to cause toxicity to aquatic organisms.

12. Data are preferred on *Daphnia magna.*

13. Data are preferred on eastern oyster (*Crassostrea virginica*) and oppossum shrimp (*America mysis*) formerly (*Mysidopsis bahia*) and silver side (*Menidia sp.*)

14. Data are generally not required for other, non-turf, outdoor residential uses, *i.e.*, gardens and ornamentals.

15. Data are preferred on rainbow trout. If fathead minnow (*Pimephales promelus*) is used, a 96 hour LC_{50} on that species must also be provided.

16. Data are preferred on oppossum shrimp (*America mysis*) formerly (*Mysidopsis bahia*).

17. Data are required on estuarine species if the product is:

i. Intended for direct application to the estuarine or marine environment.

ii. Expected to enter this environment in significant concentrations because of its expected use or mobility patterns.

iii. If the acute LC_{50} or EC_{50}< 1 mg/l.

iv. If the estimated environmental concentration in water is equal to or greater than 0.01 of the acute EC_{50} or LC_{50} and any of the following conditions exist:

A. Studies of other organisms indicate the reproductive physiology of fish and/or invertebrates may be affected.

B. Physicochemical properties indicate bioaccumulation of the pesticide.

C. The pesticide is persistent in water (*e.g.*, half-life in water greater than 4 days).

18. Data are preferred on sheepshead minnow (*Cypinodon variegatus*).

19. Data are required on estuarine species if the product is intended for direct application to the estuarine or marine environment, or the product is expected to enter this environment in significant concentrations because of its expected use or mobility patterns.

20. Data are required if the end-use product is intended to be applied directly to water, or is expected to be transported to water from the intended use site, and when any of the following conditions apply:

i. If the estimated environmental concentration [See Hazard Evaluation Division Standard Evaluation Procedure Ecological Risk Assessment (EPA–540/09–86–167)] is greater than or equal to 0.1 of the no-observed-effect level in the fish early life-stage or invertebrate life-cycle test;

ii. If studies of other organisms indicate that the reproductive physiology of fish may be affected.

21. Required based on the results of fish or aquatic nontarget organism accumulation studies (guidelines 850.1730 and 850.1950).

22. Tests are required based on the results of lower tier studies such as acute and chronic aquatic organism testing, intended use pattern, and environmental fate characteristics that indicate significant potential exposure.

23. Testing is required if the soil partition coefficient (K_d) is equal to or greater than 50 and the half-life of the pesticide in the sediment is equal to or less than 10 days in either the aerobic soil or aquatic metabolism studies. Registrants should consult with the Agency on appropriate test protocols.

24. Testing is required if:

i. The estimated environmental concentration is equal to or greater than the acute sediment EC_{50}/LC_{50}.

ii. The soil partition coefficient (K_d) is equal to or greater than 50.

(iii) The half-life of the pesticide in the sediment is greater than 10 days in either the aerobic soil or aquatic metabolism studies. Registrants should consult with the Agency on appropriate test protocols.

25. Data required only when the formulation contains one or more active ingredients having an acute LD_{50} of <11 µg/bee as determined in the honey bee acute contact study (guideline 850.3020) and the use pattern(s) indicate(s) that honey bees may be exposed to the pesticide.

26. Required if any of the following conditions are met:

i. Data from other sources (Experimental Use Permit program, university research, registrant submittals, etc.) indicate potential adverse effects on colonies, especially effects other than acute mortality (reproductive, behavioral, etc.);

ii. Data from residual toxicity studies indicate extended residual toxicity.

iii. Data derived from studies with arthropods other than bees that indicate potential chronic, reproductive, or behavioral effects.

27. This requirement is reserved pending further evaluation by EPA to determine what and when data should be required, and to develop appropriate test methods.

h. By adding subpart F to read as follows:

Subpart F—Toxicology

§ 158.500 Toxicology data requirements table.

(a) *General.* Sections 158.100 through 158.130 describe how to use this table to determine the toxicology data requirements for a particular pesticide product. Notes that apply to an individual test and include specific conditions, qualifications, or exceptions to the designated test are listed in paragraph (e) of this section.

(b) *Use patterns.* (1) Food use patterns include products classified under the general use patterns of terrestrial food crop use, terrestrial feed crop use, aquatic food crop use, greenhouse food crop use, and indoor food use.

(2) Nonfood use patterns include products classified under the general use patterns of terrestrial nonfood crop use, aquatic nonfood crop use, aquatic nonfood outdoor use, greenhouse nonfood crop use, forestry use, residential outdoor use, indoor nonfood use, and indoor residential use.

(c) *Key.* R=Required; CR=Conditionally required; NR=Not required; []=Required or conditionally required for an experimental use permit; MP=Manufacturing-use product; EP=End-use product; TGAI=Technical grade of the active ingredient; PAI=Pure active ingredient; PAIRA=Pure active ingredient radio-labeled; Choice=Choice of several test substances depending on study required.

(d) *Table.*The following table shows the toxicology data requirements. The table notes are shown in paragraph (e) of this section.

TABLE—TOXICOLOGY DATA REQUIREMENTS

Guideline Number	Data Requirements	Use Pattern		Test substance to support		Test Note No.
		Food	Nonfood	MP	EP	
Acute Testing						
870.1100	Acute oral toxicity—rat	[R]	[R]	MP and TGAI	TGAI, EP, and possibly diluted EP	1, 2
870.1200	Acute dermal toxicity	[R]	[R]	MP and TGAI	TGAI, EP, and possibly diluted EP	1, 2, 3
870.1300	Acute inhalation toxicity - rat	[R]	[R]	MP and TGAI	TGAI and EP	4
870.2400	Primary eye irritation - rabbit	[R]	[R]	MP	TGAI and EP	3
870.2500	Primary dermal irritation	[R]	[R]	MP	TGAI and EP	1, 3
870.2600	Dermal sensitization	[R]	[R]	MP	TGAI and EP	3, 5
870.6100	Delayed neurotoxicity (acute) - hen	[CR]	[CR]	TGAI	TGAI	6
870.6200	Acute neurotoxicity - rat	R	R	TGAI	TGAI	7
Subchronic Testing						
870.3100	90–day Oral - rodent	[R]	CR	TGAI	TGAI	8, 9

TABLE—TOXICOLOGY DATA REQUIREMENTS—Continued

Guideline Number	Data Requirements	Use Pattern		Test substance to support		Test Note No.
		Food	Nonfood	MP	EP	
870.3150	90–day Oral - non-rodent	[R]	CR	TGAI	TGAI	8
870.3200	21/28–day Dermal	R	NR	TGAI	TGAI and EP	10, 11
870.3250	90–day Dermal	CR	R	TGAI	TGAI and EP	11, 12
870.3465	90–day Inhalation - rat	CR	CR	TGAI	TGAI	13, 14
870.6100	28–day Delayed neurotoxicity-hen	CR	CR	TGAI	TGAI	15
870.6200	90–day Neurotoxicity - rat	R	R	TGAI	TGAI	7, 16
Chronic Testing						
870.4100	Chronic oral - rodent and non-rodent	[R]	CR	TGAI	TGAI	17, 18, 19
870.4200	Carcinogenicity - two rodent species - rat and mouse preferred	R	CR	TGAI	TGAI	9, 17, 18, 19, 20, 21
Developmental Toxicity and Reproduction						
870.3700	Prenatal Developmental toxicity - rat and rabbit, preferred	[R]	R	TGAI	TGAI	22, 23, 24, 25, 26
870.3800	Reproduction	[R]	R	TGAI	TGAI	26, 27, 28
870.6300	Developmental neurotoxicity	CR	CR	TGAI	TGAI	26, 27, 28
Mutagenicity Testing						
870.5100 870.5300 870.5375	Bacterial reverse mutation assay *In vitro* mammalian cell assay	[R] [R]	R R	TGAI TGAI	TGAI TGAI	29 29, 30
870.5385 870.5395	*In vivo* cytogenetics	[R]	R	TGAI	TGAI	29, 31
Special Testing						
870.7485	Metabolism and pharmacokinetics	R	CR	PAI or PAIRA	PAI or PAIRA	32
870.7200	Companion animal safety	CR	CR	--	Choice	33
870.7600	Dermal penetration	CR	CR	Choice	Choice	34
870.6500	Scheduled controlled operant behavior	CR	CR	TGAI	TGAI	35
870.6850	Peripheral nerve function	CR	CR	TGAI	TGAI	35
870.6855	Neurophysiology: sensory evoked potentials	CR	CR	TGAI	TGAI	35
870.7800	Immunotoxicity	R	R	TGAI	TGAI	

(e) *Test notes.* The following test notes are applicable to toxicological data requirements in paragraph (d) of this section:

1. Not required if test material is a gas or a highly volatile liquid.

2. Diluted EP testing is required to support the end product registration if results using the EP meet the criteria for restricted use classification under § 152.170(b) or special review consideration under § 154.7(a)(1).

3. Not required if test material is corrosive to skin or has a pH of less than 2 or greater than 11.5.

4. Required if the product consists of, or under conditions of use will result in, a respirable material (*e.g.*, gas, vapor, aerosol, or particulate).

5. Required if repeated dermal exposure is likely to occur under conditions of use.

6. Required if the test material is an organophosphorus substance, which includes uncharged organophosphorus esters, thioesters, or anhydrides of organophosphoric, organophosphonic, or organophosphoramidic acids, or of related phosphorothioic, phosponothioic, or phosphorothioamidic acids, or is structurally related to other substances that may cause the delayed neurotoxicity sometimes seen in this class of chemicals.

7. Additional measurements such as cholinesterase activity for certain pesticides, *e.g.*, organophosphates and some carbamates, will also be required. The route of exposure must correspond with the primary route of exposure.

8. Required in rat for nonfood use pesticides if oral exposure could occur, such as through drinking water.

9. A 90–day range-finding study in both rats and mice is required to determine dose levels if carcinogenicity studies are required. If the mouse carcinogenicity study is not required, the 90–day mouse subchronic study is likewise not required.

10. Required for agricultural uses or if repeated human dermal exposure may occur. Not required if an acceptable 90–day dermal toxicity study is performed and submitted.

11. EP testing is required if the product, or any component of it, may increase dermal absorption of the active ingredient(s) as determined by testing using the TGAI, or increase toxic or pharmacologic effects.

12. Required for food uses if either of the following criteria is met:

i. The use pattern is such that the dermal route would be the primary route of exposure.

ii. The active ingredient is known or expected to be metabolized differently by the dermal route of exposure than by the oral route, and a metabolite is the toxic moiety.

13. Required if there is the likelihood of significant repeated inhalation exposure to the pesticide as a gas, vapor, or aerosol.

14. Based on estimates of the magnitude and duration of human exposure, studies of shorter duration, *e.g.*, 21– or 28–days, may be sufficient to satisfy this requirement. Registrants should consult with the Agency to determine whether studies of shorter duration would meet this requirement.

15. Required if results of acute neurotoxicity study (guideline 870.6100) indicate significant statistical or biological effects, or if other available data indicate the potential for this type of delayed neurotoxicity, as determined by the Agency.

16. All 90–day subchronic studies in rats can be designed to simultaneously fulfill the requirements of the 90–day neurotoxicity study using separate groups of animals for testing. Although the subchronic guidelines include the measurement of neurological endpoints, they do not meet the requirement of the 90–day neurotoxicity study (guideline 870.6200).

17. Required if either of the following are met:

i. The use of the pesticide is likely to result in repeated human exposure over a considerable portion of the human lifespan, as determined by the Agency.

ii. The use requires a tolerance or an exemption from the requirement of a tolerance be established.

18. Based on the results of the acute and subchronic neurotoxicity studies, or other available data, a combined chronic toxicity and neurotoxicity study may be required.

19. Studies which are designed to simultaneously fulfill the requirements of both the chronic oral and carcinogenicity studies (*i.e.*, a combined study under guideline 870.4300) may be conducted. Minimum acceptable study durations are:

i. Chronic rodent feeding study (food use) - 24 months.

ii. Chronic rodent feeding study (nonfood use) - 12 months.

iii. Chronic nonrodent feeding study - 12 months.

iv. Mouse carcinogenicity study - 18 months.

v. Rat carcinogenicity study - 24 months.

20. Required if any of the following, as determined by the Agency, are met:

i. The use of the pesticide is likely to result in significant human exposure over a considerable portion of the human life span which is significant in terms of either time, duration, or magnitude of exposure.

ii. The use requires a tolerance or an exemption from the requirement of a tolerance be established.

iii. The active ingredient, metabolite, degradate, or impurity (A) is structurally related to a recognized carcinogen, (B) causes mutagenic effects as demonstrated by *in vitro* or *in vivo* testing, or (C) produces a morphologic effect in any organ (*e.g.*, hyperplasia, metaplasia) in subchronic studies that may lead to a neoplastic change.

21. If this study is modified or waived, a subchronic 90–day oral study (guideline 870.3100) conducted in the same species may be required.

22. Testing in two species is required for all uses.

23. Unless the chemical or physical properties of the test substance, or the pattern of exposure, suggest a more appropriate route of exposure, the oral route, by oral intubation, is preferred.

24. Additional testing by other routes may be required if the pesticide is determined to be a prenatal developmental toxicant after oral dosing.

25. May be combined with the two-generation reproduction study in rodents (870.3800) by utilizing a second mating of the parental animals in either generation. The dams are to undergo a cesarean section at one day prior to expected delivery date and evaluated separately as specified in guideline 870.3700.

26. An information-based approach to testing is preferred, which utilizes the best available knowledge on the chemical (hazard, pharmacokinetic, or mechanistic data) to determine whether a standard guideline study, an enhanced guideline study, or an alternative study should be conducted to assess potential hazard to the developing animal, or in some cases to support a waiver for such testing. Registrants should submit any alternative proposed testing protocols and supporting scientific rationale to the Agency prior to study initiation.

27. A DNT would be required using a weight-of-the-evidence approach when:

i. The pesticide causes treatment-related neurological effects in adult animal studies (i.e, clinical signs of neurotoxicity, neuropathology, functional or behavioral effects).

ii. The pesticide causes treatment-related neurological effects in developing animals, following pre- and/or postnatal exposure (*i.e.*, nervous system malformations or neuropathy, brain weight changes in offspring, functional or behavioral changes in the offspring).

iii. The pesticide elicits a causative association between exposures and adverse neurological effects in human epidemiological studies.

iv. The pesticide evokes a mechanism that is associated with adverse effects on the development of the nervous system (*i.e.*, SAR relationship to known neurotoxicants, altered neuroreceptor or neurotransmitter responses).

28. The use of a combined study that utilizes the two-generation reproduction study in rodents (870.3800) as a basic protocol for the addition of other endpoints or functional assessments in the immature animal is encouraged.

29. At a minimum, an initial battery of mutagenicity tests with possible confirmatory testing is required. Other relevant mutagenicity tests that may have been performed, plus a complete reference list must also be submitted.

30. Choice of assay using either:

i. Mouse lymphoma L5178Y cells, thymidine kinase (tk) gene locus, maximizing assay conditions for small colony expression or detection.

ii. Chinese hamster ovary (CHO) or Chinese hamster lung fibroblast (V79) cells, hypoxanthine-guanine phosphoribosyl transferase (hgprt) gene locus, accompanied by an appropriate *in vitro* test for clastogenicity.

ii.) CHO cells strains AS52, xanthine-guanine phosphoribosyl transferase (xprt) gene locus.

31. Choice of assays. Assays using rodent bone marrow, using either metaphase analysis (aberrations), or micronucleus assay are preferred.

32. Required when chronic or carcinogenicity studies are required. May be required if significant adverse effects are seen in available toxicology studies and these effects can be further elucidated by metabolism studies.

33. May be required if the product's use will result in exposure to domestic animals through, but not limited to, direct application or consumption of treated feed.

34. Required if toxic effects are identified in the oral or inhalation study. A risk assessment assuming that dermal absorption is equal to oral absorption must be performed to determine if the study is required, and to identify the doses and duration of exposure for which dermal absorption is to be quantified.

35. May be required based on adverse effects seen in the acute or subchronic neurotoxicity screening studies, or other studies, or if the test substance is structurally related to a chemical known to cause effects best assessed by these studies.

§ 158.510 Tiered testing options for nonfood pesticides.

For nonfood use pesticides only, applicants have two options for generating and submitting required toxicology (§ 158.500) and human exposure (§ 158.820, § 158.1110, and § 158.1420) studies. The options in this paragraph do not apply to pesticides used in or on food. Applicants are to select one of the following:

(a) Acute, subchronic, chronic, and other toxicological studies on the active ingredient must be submitted together. The specific makeup of the set of toxicology study requirements is based

on the anticipated exposure to the pesticide as determined by the Agency. If hazards are identified based upon review of these studies, specific exposure data will be required to evaluate risk.

(b) Certain toxicological and exposure studies must be submitted simultaneously with the toxicology data submitted in a tiered system. Exposure data must be submitted along with first tier toxicology data. The requirement for additional second and third level toxicology testing will be determined by the Agency based on the results of the first tiered studies.

(1) The required first-tier toxicology studies consist of:

(i) Battery of acute studies (guidelines 870.1100 - 870.2600)

(ii) A subchronic 90–day dermal study (guideline 870.3250) or a subchronic 90–day inhalation study (guideline 870.3465)

(iii) An acute and subchronic neurotoxicity screening battery in the rat (guidelines 870.6100 and 870.6200); a developmental neurotoxicity study in the rat (guideline 870.6300)

(iv) Prenatal developmental toxicity studies in both the rat and rabbit (guideline 870.3700).

(v) Reproduction and fertility studies in rats (guideline 870.3800)

(vi) Battery of mutagenicity studies (guideline 870.5100 - 870.5395)

(vii) Immunotoxicity study (guideline 870.7800)

(2) The conditionally required second-tier studies include:

(i) Subchronic 90–day feeding studies in both the rodent and nonrodent (guidelines 870.3100 and 870.3150)

(ii) Dermal penetration study (guideline 870.7600)

(3) The conditionally required third-tier studies include:

(i) Chronic feeding studies in both the rodent and nonrodent (guideline 870.4100)

(ii) Carcinogenicity (guidelines 870.4200)

(iii) Metabolism study (guideline 870.7485)

(iv) Additional mutagenicity testing (no guideline number)

Subpart G—Product Performance

i. By adding subpart G entitled "Product Performance".

§ 158.610 [Redesignated from § 158.640]

j. By redesignating § 158.640 as § 158.610 and adding redesignated § 158.610 to subpart G.

Subparts H-I [Reserved]

k. By adding and reserving subparts H and I.

l. By adding subpart J to read as follows:

Subpart J—Nontarget Plant Protection

§ 158.700 Nontarget plant protection data requirements Table.

(a) *General.* Sections 158.100 through 158.130 describe how to use this table to determine the nontarget plant data requirements for a particular pesticide product. Notes that apply to an individual test include specific conditions, qualifications, or exceptions to the designated test are listed in paragraph (e) of this section.

(b) *Use patterns.* (1) The terrestrial use pattern includes products classified under the general use patterns of terrestrial food crop, terrestrial feed crop, and terrestrial nonfood. The aquatic use pattern includes the general use patterns of aquatic food crop, aquatic nonfood residential, and aquatic nonfood outdoors.

(2) Data are also required for the general use patterns of forestry use and residential outdoor use.

(c) *Key.* R=Required; CR=Conditionally required; NR=Not required; TGAI=Technical grade of the active ingredient; TEP=Typical end-use product.

(d) *Table.* The following table shows the nontarget plant protection data requirements. The table notes are shown in paragraph (e) of this section.

TABLE—NONTARGET PLANT PROTECTION DATA REQUIREMENTS

Guideline Number	Data Requirement	Use Pattern			Test substance	Test Note No.
		Terrestrial	Aquatic	Forestry and Residential Outdoor		
Nontarget Area Phytotoxicity - Tier I						
850.4100	Seedling emergence	R	R	R	TEP	1, 2, 3
850.4150	Vegetative vigor	R	R	R	TEP	1, 2
850.4400 850.5400	Aquatic plant growth (algal and aquatic vascular plant toxicity)	R	R	R	TEP or TGAI	1, 2
Nontarget Area Phytotoxicity - Tier II						
850.4225	Seedling emergence	CR	CR	CR	TEP	1, 3, 4, 5
850.4250	Vegetative vigor	CR	CR	CR	TEP	1, 4, 5
850.4400 850.5400	Aquatic plant growth (algal and aquatic vascular plant toxicity)	CR	CR	CR	TEP or TGAI	1, 4, 6
Nontarget Area Phytotoxicity - Tier III						
850.4300	Terrestrial field	CR	CR	CR	TEP	1, 7, 8
850.4450	Aquatic field	CR	CR	CR	TEP	1, 8
Target Area Phytotoxicity						
850.4025	Target area phytotoxicity	CR	CR	CR	TEP	1, 7, 9

(e) *Test notes.* The following test notes apply to the table in paragraph (d) of this section.

1. Not required for contained pesticide treatments such as bait boxes and pheromone traps unless adverse effects reports are received by the Agency.
2. Required for all outdoor pesticide uses except for known phytotoxicants (such as herbicides, desiccants, defoliants).
3. Generally not required for granular formulations. May be requested on a case-by-case basis.
4. Required for known phytotoxicants such as herbicides, desiccants, defoliants, and plant growth regulators.
5. Required if a terrestrial species exhibits a 25 percent or greater detrimental effect in Tier I.
6. Required if an aquatic species exhibits a 50 percent or greater detrimental effect in Tier I.
7. Not required for aquatic residential uses.
8. Environmental chemistry methods used to generate data must include results of a successful confirmatory method trial by an independent laboratory.
9. Tests are required based on the results of lower tier phytotoxicity studies, adverse incident reports, intended use pattern, and environmental fate characteristics that indicate potential exposure.

m. By adding subpart K to read as follows:

Subpart K—Post-application Exposure

§ 158.800 General requirements.

(a) Certain measures taken to reduce or mitigate exposure may affect the need for data. Where label, formulation, or packaging and use restrictions, *e.g.*, child-resistant bait stations, are expected to significantly decrease or eliminate exposure, these data requirements may not be required.

(b) If EPA determines that industrial standards, such as the workplace standards set by Occupational Safety and Health Administration, provide adequate protection for a particular pesticide use pattern, post-application exposure data may not be required for that use pattern. Applicants should consult with the Agency on appropriate testing before the initiation of studies.

(c) The Agency may accept surrogate exposure data from other sources to satisfy post-application exposure data requirements if the data meet the basic quality assurance, quality control, good laboratory practice, and other scientific needs of EPA. In order to be acceptable, among other things, the Agency must find that the surrogate exposure data have adequate information to address post-application exposure data requirements and contain adequate replicates of acceptable quality data to reflect the specific use prescribed on the label and the post-application activity of concern, including formulation type, application methods and rates, type of activity, and other pertinent information. The Agency will consider using such surrogate data for evaluating human exposure on a case-by-case basis.

§ 158.810 Criteria for testing

Exposure data described in § 158.820(d) are required based upon toxicity and exposure criteria. Data are required if a product meets, as determined by the Agency, either or both of the toxicity criteria in paragraph (a) of this section and either or both of the exposure criteria in paragraph (b) of this section.

(a) *Toxicity criteria.* (1) Evidence of potentially significant adverse health effects have been observed in any applicable toxicity studies.

(2) Scientifically sound epidemiological or poisoning incident data indicate that adverse health effects may have resulted from post-application exposure to the pesticide.

(b) *Exposure criteria.* When there is potential exposure to humans from post-application pesticide residues from any media, typically, these exposures fall into the following areas.

(1) *For outdoor uses.* (i) Occupational human post-application exposure to pesticide residues on plants or in soil could occur as the result of cultivation, pruning, harvesting, mowing or other work related activity. Such plants include agricultural food, feed, and fiber commodities, forest trees, ornamental plants, and turf grass.

(ii) Residential human post-application exposure to pesticide residues on plants or in soil could occur. Such plants may include turf grass, fruits, vegetables, and ornamentals grown at sites, including, but not limited to, homes, parks, and recreation areas.

(2) *For indoor uses.* (i) Occupational human post-application exposure to pesticide residues could occur following the application of the pesticide to indoor spaces or surfaces at agricultural or commercial sites, such as, but not limited to, agricultural animal facilities and industrial or manufacturing facilities.

(ii) Residential human post-application exposure to pesticide residues could occur following the application of the pesticide to indoor spaces or surfaces at residential sites, such as, but not limited to, inside homes, daycare centers, hospitals, schools, and other public buildings.

The need for data from potential exposure resulting from situations not covered by these examples should be discussed with the Agency.

§ 158.820 Post-application exposure data requirements table

(a) *General.* Sections 158.100 through 158.130 describe how to use this table to determine the post-application data requirements for a particular pesticide product. Notes that apply to an individual test and include specific conditions, qualifications, or exceptions to the designated test are listed in paragraph (e) of this section.

(b) *Use patterns.* (1) Occupational use patterns include products classified under the general use patterns of terrestrial food crop, terrestrial feed crop, terrestrial nonfood use, aquatic food crop, aquatic nonfood use, aquatic nonfood outdoor, aquatic nonfood industrial, forestry, greenhouse food, greenhouse nonfood, indoor food, and indoor nonfood. Occupational use patterns also include commercial ("for hire") applications to residential outdoor and indoor sites.

(2) Residential use patterns include residential outdoor use and indoor residential use. These use patterns are limited to nonoccupational, *i.e.*, nonprofessional, pesticide applications.

(c) *Key.* R=Required; CR=Conditionally required; NR=Not required; TEP=Typical End-use product.

(d) *Table.* The data requirements listed in the following table pertain to pesticide products that meet the testing criteria outlined in § 158.810. The table notes are shown in paragraph (e) of this section.

POST-APPLICATION EXPOSURE DATA REQUIREMENTS

Guideline Number	Data Requirement	Use Pattern		Test Substance	Test Note No.
		Occupational	Residential		
875.2100	Dislodgeable foliar residue and turf transferable residues	R	R	TEP	1, 2, 3, 4, 5

POST-APPLICATION EXPOSURE DATA REQUIREMENTS—Continued

Guideline Number	Data Requirement	Use Pattern		Test Substance	Test Note No.
		Occupational	Residential		
875.2200	Soil residue dissipation	R	CR	TEP	1, 2, 6, 7
875.2300	Indoor surface residue dissipation	R	R	TEP	1, 2, 8, 9
875.2400	Dermal exposure	R	R	TEP	1, 2, 10, 11, 12
875.2500	Inhalation exposure	R	R	TEP	1, 10, 11, 12
875.2600	Biological monitoring	CR	CR	TEP	1, 12, 13
875.2700	Product use information	R	R	TEP	--
875.2800	Description of human activity	R	R	TEP	--
875.2900	Data reporting and calculations	R	R	TEP	14
875.3000	Nondietary ingestion exposure	NR	R	TEP	1, 11, 15

(e) *Test notes.* The following test notes apply to the data requirements in the table to paragraph (d) of this section:

1. Protocols must be submitted for approval prior to the initiation of the study. Details for developing protocols are available from the Agency.

2. Bridging applicable residue dissipation data to dermal exposure data is required.

3. Turf grass transferable residue dissipation data are required when pesticides are applied to turf grass. Dislodgeable foliar residue dissipation data are required when pesticides are applied to the foliage of plants other than turf grass.

4. Data are required for occupational sites, if (i) there are uses on turf grass or other plant foliage, and (ii) the human activity data indicate that workers are likely to have post-application dermal contact with treated foliage while participating in typical activities.

5. Data are required for residential sites if there are uses on turf grass or other plant foliage.

6. Data are required for occupational sites, if (i) there are outdoor or greenhouse uses to or around soil or other planting media, and (ii) the human activity data indicate that workers are likely to have post-application dermal contact with treated soil or planting media while participating in typical activities.

7. Data are required for residential sites if the pesticide is applied to or around soil or other planting media both outdoors and indoors, *e.g.*, residential greenhouse or houseplant uses.

8. Data are required for occupational sites if the pesticide is applied to or around on non-plant surfaces, *e.g.*, flooring or countertops, and if the human activity data indicate that workers are likely to have post-application dermal contact with treated indoor surfaces while participating in typical activities.

9. Data are required for residential sites if the pesticide is applied to or around non-plant surfaces, *e.g.*, flooring and countertops.

10. Data are required for occupational sites if the human activity data indicate that workers are likely to have post-application exposures while participating in typical activities.

11. Data are required for residential sites if post-application exposures are likely.

12. Biological monitoring data may be submitted in addition to, or in lieu of, dermal and inhalation exposure data provided the human pharmocokinetics of the pesticide and/or metabolite/analog compounds (*i.e.*, whichever method is selected as an indicator of body burden or internal dose) allow for a back-calculation to the total internal dose.

13. Data are required when passive dosimetry techniques are not applicable for a particular exposure scenario, such as a swimmer exposure to pesticides.

14. Data reporting and calculations are required when any post-application exposure monitoring data are submitted.

15. The selection of a sampling method will depend on the nondietary pathway(s) of interest. Data must be generated to consider all potential pathways of nondietary ingestion exposure that are applicable (*e.g.*, soil ingestion, hand-to-mouth transfer, and object-to-mouth transfer of surface residues).

Subpart L—Biochemical Pesticides

n. By adding subpart L entitled "Biochemical Pesticides."

§ 158.910 [Redesignated from § 158.690]

o. By redesignating § 158.690 as § 158.910 and adding § 158.910 to subpart L.

Subpart M—Microbial Pesticides

p. By adding subpart M entitled "Microbial Pesticides."

§ 158.1010 [Redesignated from 158.740]

q. By redesignating § 158.740 as § 158.1010 and adding redesignated § 158.1010 to subpart M.

r. By adding subpart N to read as follows:

Subpart N—Environmental Fate

§ 158.1100 Environmental Fate Data Requirements Table.

(a) *General.* Sections 158.100 through 158.130 describe how to use this table to determine the environmental fate data requirements for a particular pesticide product. Notes that apply to an individual test including specific conditions, qualifications, or exceptions to the designated test are listed in paragraph (e) of this section.

(b) *Use patterns.* (1) The terrestrial use pattern includes products classified under the general use patterns of terrestrial food crop, terrestrial feed crop, and terrestrial nonfood. The aquatic use pattern includes the general use patterns of aquatic food crop, aquatic nonfood residential, and aquatic nonfood outdoors. The greenhouse use pattern includes both food and nonfood uses. The indoor use pattern includes food, nonfood, and residential indoor uses.

(2) Data are also required for the general use patterns of forestry use and residential outdoor use.

(c) *Key.* R=Required; CR=Conditionally required; NR=Not required; []=Required or conditionally required for an experimental use permit; TGAI=Technical grade of the active ingredient; TEP=Typical end-use product; PAIRA=Pure active ingredient radio-labeled.

(d) *Table.*The following table list the data requirements that pertain to environmental fate. The table notes are shown in paragraph (e) of this section.

ENVIRONMENTAL FATE DATA REQUIREMENTS

Guideline Number	Data requirement	Use pattern						Test substance	Test Note No.
		Terrestrial	Aquatic	Greenhouse	Indoor	Forestry	Residential Outdoors		
Degradation Studies—Laboratory									
835.2120	Hydrolysis	[R]	[R]	[R]	CR	[R]	[R]	TGAI or PAIRA	1
835.2240	Photodegradation in water	R	R	NR	NR	R	NR	TGAI or PAIRA	2
835.2410	Photodegradation on soil	R	NR	NR	NR	R	NR	TGAI or PAIRA	3
835.2370	Photodegradation in air	CR	NR	CR	NR	CR	CR	TGAI or PAIRA	4
Metabolism Studies - Laboratory									
835.4100	Aerobic soil	[R]	CR	R	NR	[R]	R	TGAI or PAIRA	5
835.4200	Anaerobic soil	R	NR	NR	NR	NR	NR	TGAI or PAIRA	--
835.4300	Aerobic aquatic	R	[R]	NR	NR	R	NR	TGAI or PAIRA	--
835.4400	Anaerobic aquatic	R	R	NR	NR	R	NR	TGAI or PAIRA	--
Mobility Studies									
835.1230 835.1240	Leaching and adsorption/ desorption	[R]	R	R	NR	[R]	R	TGAI or PAIRA	--
835.1410	Volatility - laboratory	CR	NR	CR	NR	NR	NR	TEP	4
835.8100	Volatility - field	CR	NR	CR	NR	NR	NR	TEP	--
Dissipation Studies - Field									
835.6100	Terrestrial	R	CR	NR	NR	NR	R	TEP	5, 6
835.6200	Aquatic (sediment)	CR	R	NR	NR	NR	NR	TEP	6, 7
835.6300	Forestry	NR	NR	NR	NR	CR	NR	TEP	6, 8
835.6400	Combination and tank mixes	CR	CR	NR	NR	NR	NR	TEP	9
Accumulation Studies									
850.1730	Fish	[CR]	[CR]	NR	NR	[CR]	NR	TGAI or PAIRA	10
850.1950	Aquatic nontarget organisms	CR	CR	NR	NR	CR	NR	TEP	11
Ground Water Monitoring									
835.7100	Ground water monitoring	CR	NR	NR	NR	CR	NR	TEP	6, 8, 12

(e) *Test notes.* The following test notes apply to the data requirements in the table to paragraph (d) of this section.

1. Study is required for indoor uses in cases where environmental exposure is likely to occur. Such sites include, but are not limited to, agricultural premises, in or around farm buildings, barnyards, and beehives.

2. Not required when the electronic absorption spectra, measured at pHs 5, 7, and 9, of the chemical and its hydrolytic products, if any, show no absorption or tailing between 290 and 800 nm.

3. Not required when the chemical is to be applied only by soil injection or is incorporated in the soil.

4. Requirement based on use patterns and other pertinent factors including, but not limited to, Henry's Law Constant. In view of methodological difficulties with the study of photodegradation in air, prior consultation with the Agency regarding the protocol is recommended before the test is performed.

5. Required for aquatic food and nonfood crop uses for aquatic sites that are intermittently dry. Such sites include, but are not limited to cranberry bogs and rice paddies.

6. Environmental chemistry methods used to generate data associated with this study must include results of a successful confirmatory method trial by an independent laboratory. The environmental chemistry methods must include a statement of no data confidentiality claims, *i.e.*, non-CBI. Test standards and procedures for independent laboratory validation are available as addenda to the guideline for this test requirement.

7. Requirement for terrestrial uses is based on potential for aquatic exposure and if pesticide residues have the potential for persistence, mobility, nontarget aquatic toxicity or bioaccumulation. Not required for aquatic residential uses.

8. Agency approval of a protocol is necessary prior to initiation of the study.

9. Requirement based on use patterns and other environmental factors that indicate potential exposure.

10. Not required when the octanol/water partition coefficients of the pesticide and its major degradates are less than 1,000; or there are no potential exposures to fish and other nontarget aquatic organisms; or the hydrolytic half-life is less than 5 days at pH 5, 7, and 9.

11. Required if significant concentrations of the active ingredient and/or its principal degradation products are likely to occur in aquatic environments and may accumulate in aquatic organisms.

12. Required if the weight of evidence indicates that the pesticide and/or its degradates is likely to leach to ground water, taking into account other factors such as the toxicity of the chemicals(s), available monitoring data, and the vulnerability of ground water resources in the pesticide use area.

s. Subpart O is added to read as follows:

Subpart O—Residue Chemistry

§ 158.1200 Definitions.

The following terms are defined for the purposes of this subpart:

Livestock, for the purposes of this section, includes all domestic animals that are bred for human consumption, including, but not limited to, cattle, swine, sheep, and poultry.

Plant or animal metabolite means a pesticide chemical residue that is the result of biological breakdown of the parent pesticide within the plant or animal.

Residue of concern means the parent pesticidal compound and its metabolites, degradates, and impurities of toxicological concern.

Tolerance, for the purposes of this section, includes the establishment of a new tolerance or tolerance exemption, or amended tolerance or tolerance exemption.

§ 158.1210 Residue chemistry data requirements table.

(a) *General.* (1) Sections 158.100 through 158.130 describe how to use this table to determine the residue chemistry data requirements for a particular pesticide product. Notes that apply to an individual test and include specific conditions, qualifications, or exceptions to the designated test are listed in paragraph (e) of this section.

(2) All residue chemistry data requirements, as described in this section, are required for an experimental use permit.

(b) *Use patterns.* (1) Data are required or conditionally required for all pesticides used in or on food and for residential outdoor uses where food crops are grown. Food use patterns include products classified under the general use patterns of terrestrial food crop use, terrestrial feed crop use, aquatic food crop use, greenhouse food crop use, and indoor food use.

(2) Data may be required for nonfood uses if pesticide residues may occur in food or feed as a result of the use. Data requirements for these nonfood uses will be determined on a case-by-case basis. For example, most products used in or near kitchens require residue data for risk assessment purposes even though tolerances may not be necessary in all cases. Food uses in general require a more extensive database to characterize the extent of the exposure, whereas nonfood uses which are of shorter duration, may require fewer studies. Uses include products classified under the general use patterns of terrestrial nonfood crop use, aquatic nonfood crop use, aquatic nonfood outdoor use, greenhouse nonfood crop use, forestry use, indoor nonfood use, and indoor residential use.

(c) *Key.* R=Required; CR=Conditionally required; NR=Not required; TGAI=Technical grade of the active ingredient; PAI=Pure active ingredient; PAIRA=Pure active ingredient radio-labeled; Residue of concern= the active ingredient and its metabolites, degradates, and impurities of toxicological concern; TEP=Typical end-use product.

(d) *Table.* The following table list the data requirements for residue chemistry related to food uses. The table notes are shown in paragraph (e) of this section.

TABLE—RESIDUE CHEMISTRY DATA REQUIREMENTS FOR FOOD USES

Guideline Number	Data Requirement	Use Pattern					Test substance	Test Note No.
		Terrestrial Food or Feed	Aquatic Food	Greenhouse Food	Indoor Food	Residential Outdoor		
Supporting Information								
860.1100	Chemical identity	R	R	R	R	R	TGAI	--
860.1200	Directions for use	R	R	R	R	R	--	--
860.1550	Proposed tolerance	R	R	R	CR	NR	--	1
860.1560	Reasonable grounds in support of petition	R	R	R	CR	NR	--	1
860.1650	Submittal of analytical reference standards	R	R	R	CR	NR	PAI and residue of concern	1, 2
Nature of the residue								
860.1300	Nature of the residue in plants	R	R	R	CR	CR	PAIRA	3, 4

TABLE—RESIDUE CHEMISTRY DATA REQUIREMENTS FOR FOOD USES—Continued

Guideline Number	Data Requirement	Use Pattern					Test substance	Test Note No.
		Terrestrial Food or Feed	Aquatic Food	Greenhouse Food	Indoor Food	Residential Outdoor		
860.1300	Nature of the residue in livestock	CR	CR	CR	CR	NR	PAIRA or radiolabeled plant metabolite	1, 5, 6
860.1850	Confined rotational crops	CR	CR	NR	NR	NR	PAIRA	7
Analytical methods								
860.1340	Residue analytical methods	R	R	R	CR	CR	Residue of concern	1, 3, 8, 9, 10
860.1360	Multiresidue method	R	R	R	CR	NR	Residue of concern	1, 11
Magnitude of the residue								
860.1380	Storage stability	R	R	R	CR	CR	TEP or residue of concern	1, 3, 10, 12
860.1500	Crop field trials	R	R	R	CR	CR	TEP	3, 10, 14
860.1520	Processed food or feed	CR	CR	CR	CR	NR	TEP	1, 15
860.1480	Meat/milk/poultry/eggs	CR	CR	CR	CR	NR	TGAI or plant metabolite	1, 16, 17, 18
860.1400	Potable water	NR	R	NR	NR	NR	TEP	19
860.1400	Fish	NR	R	NR	NR	NR	TEP	5
860.1400	Irrigated crops	NR	CR	NR	NR	NR	TEP	20
860.1460	Food handling	NR	NR	NR	CR	NR	TEP	1, 21
860.1540	Anticipated residues	CR	CR	CR	CR	NR	Residue of concern	1, 13, 22
860.1900	Field rotational crops	CR	CR	NR	NR	NR	TEP	23

(e) *Test notes.* The following test notes apply to the data requirements in the table to paragraph (d) of this section.

1. Required if indoor use could result in pesticide residues in or on food or feed.

2. Material safety data sheets must accompany standards as specified by OSHA in 29 CFR 1910.1200.

3. Required for residential outdoor use on food crops if home gardens are to be treated or the home garden use is different from the agricultural use pattern on which the tolerance is established.

4. Required for indoor uses where the pesticide is applied directly to food, in order to determine metabolites and/or degradates. Not required when only indirect contact with food would occur (*e.g.*, crack and crevice treatments).

5. Data for fish are required for all pesticides applied directly to water inhabited, or will be inhabited, by fish that may be caught or harvested for human consumption.

6. Required when a pesticide is to be applied directly to livestock, to livestock premises, to livestock drinking water, or to crops used for livestock feed. If results from the plant metabolism study show differing metabolites in plants from those found in animals, an additional livestock metabolism study involving dosing with the plant metabolite(s) may also be required.

7. Required when it is reasonably foreseeable that a food or feed crop could be subsequently planted on the site of the pesticide application.

8. A residue analytical method suitable for enforcement purposes is required whenever a numeric tolerance (including temporary and time-limited tolerance) is proposed, and may be required for a tolerance exemption.

9. New analytical methods to be used for enforcement purposes must include results from an independent laboratory validation.

10. A residue method, storage stability data, and crop field trials are required for the nonfood crop tobacco (green, freshly harvested). Depending on the level of residues found on the green tobacco, additional data may be required on cured/dried tobacco and pyrolysis products (guideline 860.1000).

11. Data are required to determine whether FDA/USDA multiresidue methodology would detect and identify the pesticides and any metabolites.

12. Data are required for any magnitude of the residue study unless analytical samples

are stored frozen for 30 days or less, and the active ingredient is not known to be volatile or labile.

13. Studies using single serving samples of a raw agricultural commodity may be needed for acutely toxic pesticides and/or their metabolites. These residue studies must be conducted using a statistical design accepted by the Agency.

14. Required for indoor uses which are direct postharvest treatments of raw agricultural commodities (*e.g.*, fungicidal waxes or stored grain fumigants).

15. Data on the nature and level of residues in processed food/feed are required if residues could potentially concentrate on processing thus requiring the establishment of a separate tolerance higher than that of the raw agricultural commodity. Studies, however, may be waived if it can be demonstrated that residues do not concentrate on processing.

16. Required when the pesticide use is a direct application to livestock.

17. Data are required if pesticide residues are present in or on livestock feed items. These studies, however, may be waived by the Agency in cases where the residue levels are low or the animal metabolism studies indicate negligible transfer of the pesticide and/or metabolite(s) to tissues, milk, and eggs.

18. If results from the plant metabolism study show differing metabolites in plants from those found in animals, an additional livestock feeding study involving dosing with the plant metabolite(s) may also be required.

19. Data are required whenever a pesticide may be applied directly to water, unless it can be demonstrated that the treated water would not be available for human or livestock consumption.

20. Data are required when a pesticide is to be applied directly to water that could be used for irrigation or to irrigation facilities such as irrigation ditches.

21. Data are required whenever a pesticide may be used in a food handling or feed handling establishment.

22. Required when residues at the tolerance level may result in a risk of concern. These data may include washing, cooking, processing or degradation studies as well as market basket surveys for a more precise residue determination.

23. Required if pesticide or metabolite residues of toxicological concern are found in crops at the appropriate plant back intervals from a confined rotational crop study (guideline 860.1850).

Subpart P—Pesticide Management and Disposal

t. By adding subpart P consisting of § 158.1300 which is reserved.

Subpart R—Spray Drift

u. By adding subpart R entitled "Spray Drift."

§ 158.1410 [Redesignated from 158.440]

v. By redesignating § 158.440 as § 158.1410 and adding redesignated § 158.1410 to subpart R.

w. Subpart U is added to read as follows:

Subpart U—Applicator Exposure

§ 158.1500 General requirements.

(a) If EPA determines that industrial standards, such as the workplace standards set by OSHA, provide adequate protection from risk under FIFRA for a particular pesticide use pattern, exposure data may not be required for that use pattern. Applicants should consult with the Agency on appropriate testing prior to the initiation of studies.

(b) The Agency may accept surrogate exposure data estimations from other sources to satisfy applicator exposure data requirements if the data meet the basic quality assurance, quality control, good laboratory practice, and other scientific requirements set by EPA. In order to be acceptable, the Agency must find that the surrogate exposure data estimations have adequate information to address applicator exposure data requirements and contain adequate replicates of acceptable quality data to reflect the specific use prescribed on the label and the applicator activity of concern, including formulation type, application methods and rates, type of activity, and other pertinent information. The Agency will consider using such surrogate data for evaluating human exposure on a case-by-case basis.

§ 158.1510 Criteria for testing.

Applicator exposure data are required based on toxicity and exposure criteria. Data are required if a product meets, as determined by the Agency, at least one of the toxicity criteria in paragraph (a) of this section and either of the exposure criteria in paragraph (b) of this section.

(a) *Toxicity criteria.* (1) Evidence of potentially significant adverse effects have been observed in any applicable toxicity studies.

(2) Scientifically sound epidemiological or poisoning incident data indicate that adverse health effects may have resulted from handling of the pesticide.

(b) *Exposure criteria.* (1) Dermal exposure may occur during the prescribed use.

(2) Respiratory exposure may occur during the prescribed use.

§ 158.1520 Applicator exposure data requirements table.

(a) *General.* Sections 158.100 through 158.130 describe how to use this table to determine the application data monitoring data requirements for a particular pesticide product. Notes that apply to an individual test and include specific conditions, qualifications, or exceptions to the designated test are listed in paragraph (e) of this section.

(b) *Use patterns.* (1) Occupational use patterns include products classified under the general use patterns of terrestrial food crop, terrestrial feed crop, terrestrial nonfood use, aquatic food crop, aquatic nonfood use, aquatic nonfood outdoor, aquatic nonfood industrial, forestry, greenhouse food, greenhouse nonfood, indoor food use, indoor nonfood use, and indoor medical use. Occupational use patterns also include commercial ("for hire") applications to residential outdoor and indoor sites.

(2) Residential use patterns include residential outdoor use and indoor residential use. These use patterns are limited to nonoccupational, *i.e.*, nonprofessional, pesticide applications.

(c) *Key.* R=Required; CR=Conditionally required; TEP=Typical end-use product.

(d) *Table.* The data requirements listed pertain to pesticide products that meet the testing criteria outlined in § 158.1510. The table notes are shown in paragraph (e) of this section.

APPLICATOR EXPOSURE DATA REQUIREMENTS

Guideline Number	Data requirement	Use pattern		Test substance	Test Note No.
		Occupational	Residential		
875.1100	Dermal outdoor exposure	R	R	TEP	1, 2, 3, 4
875.1200	Dermal indoor exposure	R	R	TEP	1, 2, 5, 6
875.1300	Inhalation outdoor exposure	R	R	TEP	1, 2, 3, 4

APPLICATOR EXPOSURE DATA REQUIREMENTS—Continued

Guideline Number	Data requirement	Use pattern		Test substance	Test Note No.
		Occupational	Residential		
875.1400	Inhalation indoor exposure	R	R	TEP	1, 2, 5, 6
875.1500	Biological monitoring	CR	CR	TEP	1, 2
875.1600	Data reporting and calculations	R	R	TEP	7
875.1700	Product use information	R	R	TEP	--

(e) *Test notes.* The following notes apply to the data requirements in the table to paragraph (d) of this section:

1. Protocols must be submitted for approval prior to the initiation of the study. Details for developing protocols are available from the Agency.

2. Biological monitoring data may be submitted in addition to, or in lieu of, dermal and inhalation exposure data, provided the human pharmocokinetics of the pesticide and/or metabolite/analog compounds (*i.e.*, whichever method is selected as an indicator of body burden or internal dose) allow for the back calculation to actual dose.

3. Data are required for outdoor, occupational site if the product is applied outdoors.

4. Data are required for residential use sites if the product is applied outdoors.

5. Data are required for occupational sites if the product is applied indoors.

6. Data are required for residential use sites if the product is applied indoors.

7. Data reporting and calculations are required when handler exposure data are submitted.

Subpart V—Inert Ingredients

x. By adding subpart V consisting of § 158.1600 which is reserved.

Subpart W—Antimicrobial Pesticides

y. By adding subpart W consisting of § 158.1700 which is reserved.

Appendix A [Removed]

z. By removing Appendix A.

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March 11, 2005

Part III

Election Assistance Commission

Publication of State Plans Pursuant to the Help America Vote Act; Notice

ELECTION ASSISTANCE COMMISSION

Publication of State Plans Pursuant to the Help America Vote Act

AGENCY: U.S. Election Assistance Commission (EAC).

ACTION: Notice.

SUMMARY: Pursuant to sections 254(a)(11)(A) and 255(b) of the Help America Vote Act (HAVA), Public Law 107–252, the U.S. Election Assistance Commission (EAC) hereby causes to be published in the **Federal Register** material changes to HAVA State plans previously submitted by Oklahoma, South Dakota, and Texas.

DATES: This notice is effective upon publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bryan Whitener, Telephone 202–566–3100 or 1–866–747–1471 (toll-free).

SUBMIT COMMENTS: Any comments regarding the plans published herewith should be made in writing to the chief election official of the individual States at the address listed below.

SUPPLEMENTARY INFORMATION: On March 24, 2004, the U.S. Election Assistance Commission published in the **Federal Register** the original HAVA State plans filed by the 50 States, the District of Columbia and the Territories of American Samoa, Guam, Puerto Rico, and the U.S. Virgin Islands. 69 FR 14002. HAVA anticipated that States, Territories and the District of Columbia would change or update their plans from time to time pursuant to HAVA section 254(a)(11) through (13). HAVA sections 254(a)(11)(A) and 255 require EAC to publish such updates.

The submissions from Oklahoma, South Dakota and Texas address material changes in the administration of their original State plans and, in accordance with HAVA section 254(a)(12), provide information on how the State succeeded in carrying out the previous State plan. Among other matters, South Dakota and Texas are submitting changes that address the HAVA requirements payment allocated to the State in Fiscal Year 2004, a prerequisite for the States to receive these funds. Oklahoma had previously addressed the use of such funds and appears to be making no material changes to that use. (Oklahoma has received its 2003 and 2004 requirements payments. Texas has received its 2003 requirements payment. South Dakota's certification for its 2003 requirements payment is pending.)

Upon the expiration of 30 days from March 11, 2005, these States will be eligible to implement any material changes addressed in the plans that are published herein, in accordance with HAVA section 254(a)(11)(C). At that time, in accordance with HAVA section 253(d), South Dakota and Texas also may file a statement of certification to obtain the fiscal year 2004 requirements payments. These statements of certification must confirm that the State is in compliance with all of the requirements referred to in HAVA section 253(b) and must be provided to the Election Assistance Commission in order for the State to receive a requirements payment under HAVA Title II, Subtitle D.

EAC notes that plans published herein include only those that have already met the notice and comment requirements of HAVA section 256, as required by HAVA section 254(a)(11)(B). EAC wishes to acknowledge the effort that went into revising the State plans and encourages further public comment, in writing, to the chief election official of the individual States at the address listed below.

Chief State Election Officials

Oklahoma

The Honorable Michael Clingman, Secretary, State Election Board, P.O. Box 53158, Oklahoma City, Oklahoma 73152, Phone: 405/521–2391, Fax: 405/521–6457, E-mail: *elections@oklaosf.state.ok.us.*

South Dakota

The Honorable Chris Nelson, Secretary of State, State Capitol Bldg., Ste 204, 500 E Capitol, Pierre, South Dakota 57501–5070, Phone: 605/773–3537, Fax: 605/773–6580, E-mail: *sdsos@state.sd.us.*

Texas

The Honorable Roger Williams, Secretary of State, P.O. Box 12887, Austin, Texas 78711–2887, Phone: 512/463–5770, Fax: 512/475–2761, E-mail: *secretary@sos.state.tx.us.*

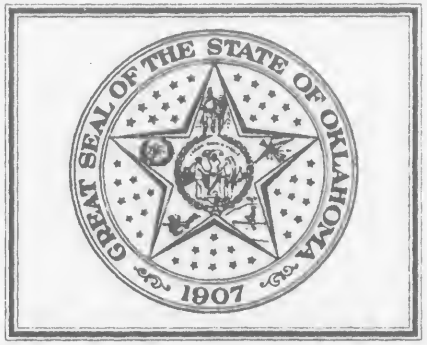
Thank you for your interest in improving the voting process in America.

Dated: March 4, 2005.

Gracia M. Hillman,

Chair, U.S. Election Assistance Commission.

BILLING CODE 6820–YN–P



STATE OF OKLAHOMA PLAN For Implementation of the Help America Vote Act of 2002

Report on Progress of
HAVA
Implementation

November, 2004

Oklahoma State Election Board

State of Oklahoma Plan for Implementation of the Help America Vote Act of 2002

Report on Progress of HAVA Implementation November, 2004

The purpose of this document is to report the progress of implementation of HAVA in Oklahoma since the completion of the state plan just over one year ago. This document contains no material changes to the plans set forth in the August 18, 2003, version of the state plan.

State Election Board staff, in consultation with County Election Board personnel serving on the Local Election Professionals Working Committee and in the Regional Coordinator program, developed procedures and materials for provisional voting, voter identification requirements, voter information requirements, and administrative complaint procedures that became effective on January 1, 2004. The Secretary of the State Election Board adopted these procedures as emergency rules on December 17, 2003. Following review and approval by the Governor as required by the Oklahoma Administrative Procedures Act, the emergency rules became effective on February 3, 2004 — the date of Oklahoma's Presidential Preferential Primary Election.

State Election Board staff, again in consultation with the Working Committee members and Regional Coordinators, also developed training for County Election Board personnel and for Precinct Officials.

Finally, the Secretary of the State Election Board submitted recommendations to the Oklahoma Legislature both for new law and amendments to existing law that will extend the provisions of HAVA to all elections conducted by County Election Boards in Oklahoma. These recommendations became Senate Bill 1346 which was approved by both the State House of Representatives and the State Senate and was signed by the Governor on June 4, 2004. Senate Bill 1346 becomes effective on July 1, 2005.

Three federal elections have been held so far in 2004 — the Presidential Preferential Primary Election, the regular state Primary Election, and the state Runoff Primary Election — in which the provisional voting, voter identification, and other HAVA-related procedures already in effect have been used. Voter turnout at all these elections was relatively light, so the real test of these new procedures will occur in the General Election on November 2, 2004.

(1) How the State will use the requirements payment to meet the requirements of title III, and, if applicable under section 251(a)(2), to carry out other activities to improve the administration of elections.

- **Implementation of Provisional voting [Sec. 302(a)].** Provisional voting has been implemented for federal elections only by emergency rules which became effective February 3, 2004. In addition to the promulgation, publication, and distribution of the emergency rules, special precinct supplies (provisional ballot affidavit envelopes, informational materials, and containers) were produced and/or purchased by the State Election Board and distributed to County Election Boards; OEMS software modifications were written, tested, and installed; training programs for both County Election Board personnel and Precinct Officials were developed; and materials for said programs were produced and distributed.

- **Implementation of voter identification requirements [Sec. 303(b)(2)].** Voter identification requirements have been implemented for federal elections only by emergency rules which became effective on February 3, 2004. In addition to the promulgation of the emergency rules, OEMS software modifications were written and installed to identify voters required to show identification at the polls on federal election days and/or to record receipt of identification submitted with voter registration applications. The instructions that accompany the Oklahoma Voter Registration Application form were revised to include information about identification requirements and to inform applicants of the option to submit identification with the voter registration application form.

- **Coordination of state databases [Sec. 303(a)].** No change.

- **Upgrades for state voter registration database [Sec. 303(a)].** The Secretary of the State Election Board requested a waiver to delay these upgrades until 2006. Staff members are investigating options, but a specific plan to accomplish the upgrade is not yet in place.

- **Polling place technology enhancements [Sec. 301].** State Election Board staff members are investigating available options but a specific plan is not yet in place.

- **Design and/or evaluation of new voting device system.** No change.

- **Support for newly created federal agencies.** No change.

Oklahoma State Election Board

- **Improved process for uniformed services and overseas voters [Title VII and UOCAVA].** State legislation allowing UOCAVA voters to receive and return ballots by fax was implemented by emergency rules effective February 3, 2004. State legislation requiring election officials to accept and count for federal offices absentee ballots received from overseas uniformed services and overseas civilian voters up to fourteen days following the state Runoff Primary Election was implemented by emergency rules which became effective on July 22, 2004. However, no federal offices were on the ballot for the state Runoff Primary Election in 2004.

- **Improved process for disabled voters [Sec. 301 (a)(3)].** No change.

- **Improved process for language minority voters [Sec. 301(a)(4)].** All voter information material posted at polling places on election day is now available in Spanish, and whenever possible the Spanish translation is printed side-by-side with the English version. All such materials have been distributed statewide, reaching many more Spanish-speaking voters than would be the case if they were distributed only in the two counties required by the Voting Rights Act to provide Spanish materials.

- **Improvement in voter outreach programs.** No change.

- **Study of implementation of all-mail elections in Oklahoma.** No change.

- **Precinct Official training.** The State Election Board staff recruited a group of County Election Board Secretaries and other personnel to conduct training for Precinct Officials on new procedures and requirements resulting from HAVA. Precinct Official training was conducted in December, 2003, and in January, 2004, in every county and consisted of two parts. The regular Precinct Official training program was presented by the County Election Board Secretary and staff in each county and a special segment devoted to the new provisional voting and voter identification procedures which was conducted by one of the specially trained "HAVA trainers."

(2) How the State will distribute and monitor the distribution of the requirements payment to units of local government or other entities in the State for carrying out the activities described in paragraph (1), including a description of—

(A) the criteria to be used to determine the eligibility of such units or entities for receiving the payment; and

(B) the methods to be used by the State to monitor the performanee of the units or entities to whom the payment is distributed, consistent with the performanee goals and measures adopted under paragraph (8).

No change

(3) How the State will provide for programs for voter education, election official education and training, and poll workcr training which will assist the State in meeting the requirements of title III.

The publications listed on pages 11-12 were revised for 2004. No additional progress will occur until decisions concerning a new voting device system have been made.

(4) How the State will adopt voting system guidelines and processes which are consistent with the requirements of section 301.

No change

(5) How the State will establish a fund described in sub-section (b) for purposes of administering the State's activities under this part, including information on fund management.

No change

(6) The State's proposed budget for activities under this part, based on the State's best estimates of the costs of such activities and the amount of funds to be made available, including specific information on—

(A) the costs of the activities required to be carried out to meet the requirements of title III;
(B) the portion of the requirements payment which will be used to carry out activities to meet such requirements; and
(C) the portion of the requirements payment which will be used to carry out other activities.

Of the initial $5,000,000.00 payment received in May, 2003, the State Election Board spent $37,721.90 as of October 31, 2004.

$29,180.00 Compensation for Provisional Voting Officers for Presidential Preferential Primary Election, Primary Election, and Runoff Primary Election (Compensation for PVOs

for the General Election also will be paid from these funds.)

$7,541.90 HAVA Planning Meetings (Advisory Committee, Working Committee, "HAVA Trainers" training, and HAVA Training for Precinct Officials)

$1,000.00 Other

(7) How the State, in using the requirements payment, will maintain the expenditures of the State for activities funded by the payment at a level that is not less than the level of such expenditures maintained by the State for the fiscal year ending prior to November 2000.

No change

(8) How the State will adopt performance goals and measures that will be used by the State to determine its success and the success of units of local government in the State in carrying out the plan, including timetables for meeting each of the elements of the plan, descriptions of the criteria the State will use to measure performance and the process used to develop such criteria, and a description of which official is to be held responsible for ensuring that each performance goal is met.

No change

(9) A description of the uniform, nondiscriminatory State-based administrative complaint procedures in effect under section 402.

The Secretary of the State Election Board promulgated emergency rules establishing the complaint procedure required by section 402 of HAVA. The emergency rules were approved by the Governor on January 28 and became effective on February 3, 2004. Following is a summary of the procedure.

A complaint must be made in writing and must be signed and sworn by the complainant before a Notary Public. A complaint must include at least the following information: the complainant's name and mailing address, the nature of the complaint, the nature of the desired solution, and a request for a hearing, if one is desired. Complaints are submitted to the Secretary of the State Election Board. Immediately upon receipt of a complaint, a State Election Board staff member marks the original document with a "received" stamp that includes the date, assigns a unique case number, sets the date and time for a hearing if one is requested, and issues an Order for Hearing. The Secretary reviews the written complaint and assigns one or more staff members to investigate the allegations in the complaint.

In the event a hearing is scheduled, the Secretary serves as the hearing officer to hear any testimony and review any evidence that may be presented by the complainant, and also reviews the results of the staff investigation. Within 90 days of the receipt of a complaint, the Secretary determines whether a violation of title III has occurred. If no violation of title III is found, the Secretary dismisses the complaint. If a violation is found to have occurred, the Secretary provides a remedy. The Secretary shall make and publish a written report of the final determination.

If the Secretary fails to meet the 90-day deadline, the complaint shall be resolved through arbitration within an additional 60 days. The Secretary shall be represented by the state Attorney General's office and the complainant by chosen legal counsel. An arbitrator shall hear testimony and review evidence as necessary and shall negotiate a resolution of the complaint. The arbitrator's decision is final and binding upon all parties.

The emergency rules were published in *The Oklahoma Register* on March 1, 2004 (Volume 21, Number 9, page 561 et seq). Following the adoption, approval and publication of the emergency rules, the State Election Board staff discovered that some text had been inadvertently omitted from Section 230:55-9-7. The section was subsequently adopted again with the missing text restored and the section was again approved by the Governor and became effective on July 22, 2004. The section was again published in *The Oklahoma Register* on September 1, 2004, (Volume 21, Number 20, page 3152 et seq) and per Oklahoma law, it supersedes the original version, but has the same expiration date (July 14, 2005) as the original. The emergency rules are available online at www.sos.state.ok.us.

The Secretary of the State Election Board intends to initiate a permanent rulemaking action on these rules in either December, 2004, or January, 2005, with the intent of having permanent rules for the complaint procedure in effect no later than July 14, 2005. The permanent rulemaking process in Oklahoma includes a 30-day public comment period prior to the adoption of permanent rules, review and approval by the legislature and the Governor after adoption, and finally, publication in the *Register* prior to becoming effective.

(10) If the State received any payment under title I, a description of how such payment will affect the activities proposed to be carried out under the plan, including the amount of funds available for such activities.

Of the several activities listed, those concerning training for County Election Board personnel and Precinct Officials, promulgation of emergency rules, and revision of various forms and publications all have been accomplished.

(11) How the State will conduct ongoing management of the plan, except that the State may not make any material change in the administration of the plan unless the change

(A) is developed and published in the *Federal Register* in accordance with section 255 in the same manner as the State plan;
(B) is subject to public notice and comment in accordance with section 256 in the same manner as the State plan; and
(C) takes effect only after the expiration of the 30-day period which begins on the date the change is published in the *Federal Register* in accordance with subparagraph (A).

No change

(12) In the case of a State with a State plan in effect under this subtitle during the previous fiscal year, a description of how the plan reflects changes from the State plan for the previous fiscal year and of how the State succeeded in carrying out the State plan for such previous fiscal year.

Oklahoma's original state plan was completed and submitted to the Federal Election Commission in August, 2003. It was published by the Election Assistance Commission in the *Federal Register* on March 24, 2004. The state plan has been reviewed by State Election Board staff and this document developed to identify the areas in which specific tasks have been completed or in which progress has occurred, and those in which no action has yet been taken.

This document has been circulated to the Advisory Committee members and all have approved its contents.

(13) A description of the committee which participated in the development of the State plan in accordance with section 255 and the procedures followed by the committee under such section and section 256.
A member of the original State Plan Advisory Committee, Tulsa County Election Board Secretary Scott Orbison, died in April, 2004. Gene Pace, the new Tulsa County Election Board Secretary, will assume the place previously occupied by Mr. Orbison on the Advisory Committee in the event that future action by the committee is necessary.

The State Plan Advisory Committee has not met since June 3, 2003, when the original state plan was approved for release for public comment. While no additional meetings are planned, the members received a copy of this document to review and approve.

State Election Board Assistant Secretary Carol Slater, whose knowledge and experience were

invaluable and irreplaceable assets to the Oklahoma election system, died on July 31, 2004. The position of Assistant Secretary has not yet been filled.

The Local Election Professional Working Committee added a new member, Wagoner County Election Board Secretary Jason Rousselot, late in 2003. The Working Committee has met twice in 2004 to review the provisional voting and voter identification procedures and recommend any necessary changes.

The first of these meetings was held on April 23, 2004, and the members had several important recommendations as a result of having used the procedures on February 3, 2004, in Oklahoma's Presidential Preferential Primary Election. The emergency rules were subsequently amended and submitted for approval by Governor Brad Henry prior to the regular state Primary Election scheduled on July 27, 2004.

The second meeting was held September 30, 2004, to again review the procedures and to evaluate the changes made and implemented in the Primary and Runoff Primary Elections. The committee had no additional recommendations for change.

Appendix A: Administrative Complaint Procedure

Following are the emergency administrative rules adopted by the Secretary of the State Election Board which became effective on February 3, 2004. These rules were adopted in accordance with the requirements and procedures of Oklahoma Administrative Procedures Act [75 O.S. § 250 et seq]. The rules were published in the *Oklahoma Register* on March 1, 2004. No public comments have been received. An error was discovered in one section following publication. A small amount of text was inadvertently omitted from the section. The error was corrected by adopting the section again and submitting it for gubernatorial approval as required by state law. The correction was published in the *Oklahoma Register* on September 1, 2004. No public comments have been received.

The rules will be adopted under permanent rulemaking procedures and submitted for gubernatorial and legislative review early in 2005. Permanent rules will be in effect no later than July 1, 2005.

The emergency rules currently are available online at http://www.sos.state.ok.us/oar. Official copies are available only from the office of the Secretary of State. An order form and price information is available on the website referenced above. Unofficial copies are available from the State Election Board.

Oklahoma Administrative Code
Title 230. State Election Board
Chapter 55. Help America Vote Act Procedures
Subchapter 9. Complaints

230:55-9-1. Purpose
The purpose of the rules in this subchapter is to establish a procedure to receive, investigate and resolve complaints of alleged violations of the provisions and requirements of title III of the Help America Vote Act of 2002 (HAVA). This procedure is required by title IV of HAVA.

230:55-9-2. Complaints
(a) Any person who believes that a violation of title III of HAVA has occurred, is occurring, or is about to occur, may file a complaint with the Secretary of the State Election Board. Any such complaint shall be in writing, shall be notarized, and shall be signed and sworn by the complainant. A complaint shall include at least the following information.
(1) Complainant's name and mailing address
(2) The nature of the complaint

(3) The nature of the solution sought.

(4) A request for a hearing on the record, if desired. (A hearing shall be required only if requested in the complaint.)

(5) Any additional information pertinent to the complaint.

(b) The Secretary of the State Election Board shall provide, upon request, a form to be used to make a written complaint. Use of the form is not required. Any written complaint containing the information outlined in (a) of this Section shall be accepted.

230:55-9-3. Receiving complaints

Upon receipt of a written complaint alleging a violation of title III of HAVA, the Secretary of the State Election Board shall cause the following steps to be performed.

(1) The original complaint shall be marked with a "received" stamp that includes the date.

(2) A State Election Board staff member shall assign a unique case number to the complaint.

(3) If the complaint includes a request for a hearing on the record, the Secretary shall set a date and time for the hearing and shall issue an Order for Hearing.

230:55-9-4. Investigation of complaint

The Secretary of the State Election Board shall review the complaint and shall assign one or more members of the State Election Board staff to investigate the allegations contained in the complaint. Specific investigatory procedures shall be determined in consultation with the office of the Attorney General.

230:55-9-5. Hearing

In the event that the complainant requests a hearing on the record, the Secretary of the State Election Board shall serve as the hearing officer. In the absence of the Secretary, the Assistant Secretary of the State Election Board shall serve as hearing officer. The Secretary shall hear any testimony and shall review any evidence offered by the complainant.

230:55-9-6. Resolution of complaint

Not more than 90 days following the receipt of a complaint, the Secretary of the State Election Board shall make a final determination with respect to the complaint. If the Secretary finds that there has been no violation of title III of HAVA, the Secretary shall dismiss the complaint. In the event the Secretary finds that a violation of title III of HAVA has occurred, the Secretary shall provide a remedy. The Secretary shall publish the results of the investigation and the final determination.

230:55-9-7. Alternative dispute resolution for complaint

If the Secretary of the State Election Board fails to meet the deadline for making a final determination as provided in 230:55-9-6, the complaint shall be resolved within 60 days under the following procedure.

(1) The Secretary of the State Election Board shall be represented by the office of the Attorney General.

(2) The complainant may be represented by his or her own chosen legal counsel ~~or by a certified arbitrator~~.

(3) ~~The parties shall negotiate~~ A certified arbitrator shall be engaged to hear the complaint and to conduct negotiations between the parties to reach a satisfactory resolution of the complaint. The arbitrator shall be authorized to resolve the complaint and the arbitrator's decision shall be binding on all parties.

[In this section, over striking represents text removed and underscoring represents text added. These changes were made in a second emergency rulemaking action which became effective on July 22, 2004.]

Appendix B: Statistics on provisional voting from 2004 elections

Election Date – 02/03/2004									
			Ballots Not Counted						
Reason Issued	Cntd	Part Cntd	DIS	NID	NR	PCT	PTY	Total	Total
ID Required	35	0	0	1	0	0	0	1	36
Not on Registry	27	0	0	0	84	26	81	191	218
	62	0	0	1	84	26	81	192	254

Election Date – 07/27/2004									
			Ballots Not Counted						
Reason Issued	Cntd	Part Cntd	DIS	NID	NR	PCT	PTY	Total	Total
ID Required	14	0	0	0	0	0	2	2	16
Not on Registry	23	1	0	0	78	17	55	150	174
	37	1	0	0	78	17	57	152	190

Election Date – 08/24/2004									
			Ballots Not Counted						
Reason Issued	Cntd	Part Cntd	DIS	NID	NR	PCT	PTY	Total	Total
ID Required									
Not on Registry	5	0	0	0	1	2	5	8	13
	5	0	0	0	1	2	5	8	13

Cntd = Counted
Part Cntd = Partially Counted
DIS = Wrong District
NID = No Identification
NR = Not Registered
PCT = Wrong Precinct
PTY = Wrong Party

Appendix C: Meeting summaries from Working Committee meetings

Help America Vote Act
Local Election Professionals Working Committee
April 7, 2003

Meeting Summary

The third meeting of the Local Election Professionals Working Committee was held Monday, April 7, 2003, in the offices of the Oklahoma County Election Board. The following committee members were present: **Doug Sanderson**, Oklahoma County Election Board Secretary; **Joy Naifeh**, Creek County Election Board Secretary; **Terri Thomas**, Rogers County Election Board Secretary; **Joyce Thornburgh**, Alfalfa County Election Board Secretary; **Joyce Smith**, Grady County Election Board Secretary; **Paula Roberts**, Cleveland County Election Board Secretary; **Pam Strawn**, Cleveland County Election Board Assistant Secretary; **Connie Parnell**, Cherokee County Election Board Secretary; and **Shelly Boggs**, Tulsa County Election Board Assistant Secretary.

In addition, the following members of the State Election Board staff were present: **Michael Clingman**, Secretary; **Carol Slater**, Assistant Secretary; **Fran Roach**, Support Services Director; **Montie Fisher**, Information Services Director; **Theresa Potthoff**, Election Services Director; **Carol Morris**, Training Coordinator; **Karen Mobly**, Regional Coordinator Supervisor; **Suzanne Cox**, Publications Editor; and **Vada Holstein**, Information Representative.

Voting Device Systems
Montie Fisher and Theresa Potthoff reported on their recent visit to an election systems trade show in Jackson, Mississippi, organized by the Mississippi Secretary of State's office for the benefit of county election officials in that state who are considering the purchase of new, HAVA-compliant voting device and voter registration database systems. Officials from other states also were invited to the event.

Provisional Voting Study Group Report
Since the last meeting, Doug Sanderson organized study groups among the committee members to consider provisional voting requirements and ways in which provisional voting might be implemented in Oklahoma. The group presented the results of their work.

Next Meeting
The next meeting has been set tentatively for Tuesday, May 6, at 9:30 a.m. in the offices of the Oklahoma County Election Board. The meeting adjourned at approximately 3 p m.

Help America Vote Act
Local Election Professionals Working Committee
September 30, 2004

Meeting Summary

The Local Election Professionals Working Committee met at 9:30 a.m. Thursday, September 30, 2004, at the office of the Oklahoma County Election Board. The following members and guests attended: **Joyce Thornburgh**, Alfalfa County Election Board Secretary; **Connie Parnell**, Cherokee County Election Board Secretary; **Paula Roberts**, Cleveland County Election Board Secretary; **Pam Strawn**, Cleveland County Election Board Assistant Secretary; **Joy Naifeh**, Creek County Election Board Secretary; **Joyce Smith**, Grady County Election Board Secretary; **Doug Sanderson**, Oklahoma County Election Board Secretary; **Terri Thomas**, Rogers County Election Board Secretary; **Shelly Boggs**, Tulsa County Election Board Assistant Secretary; **Jason Rousselot**, Wagoner County Election Board Secretary; and **Karen Stark**, Wagoner County Election Board Assistant Secretary.

The following members of the State Election Board staff attended: **Michael Clingman**, Secretary; **Fran Roach**, Director of Support Services; **Montie Fisher**, Director of Information Services; **Theresa Potthoff**, Director of Election Services; **Karen Mobly**, Regional Coordinator Supervisor; **Carol Morris**, Training Coordinator; **Suzanne Cox**, Publications Editor, and **Vada Holstein**, Information Representative.

This meeting was called to discuss the implementation of provisional voting and voter identification requirements to date and to identify any aspects of the procedures that should not be carried forward into the permanent rules that will be adopted early in 2005. Other topics of discussion included the status of certain federal lawsuits, controversy surrounding a national voter registration project by the NAACP, concerns about homeland security as it pertains to the election process, and, briefly, the next step toward HAVA compliance — upgrading the voter registration database and voting equipment before the scheduled federal elections in 2006.

The committee may meet again in December or January to review a draft of the permanent rules and to discuss plans for the database and voting system upgrades.

State Plan for South Dakota
Public Comment Draft Document
As required by Public Law 107-252 Section 253(b)
Help America Vote Act

Chris Nelson
Secretary of State
State Capitol, Suite 204
500 East Capitol
Pierre, SD 57501-5070

Updated December 14, 2004

On October 29, 2002 President George W. Bush signed HR 3295, "Help America Vote Act of 2001," or HAVA. This bill, now Public Law 107-252, was introduced, passed, and signed into law to address the growing concerns of election discrepancies, voter fraud, antiquated voting equipment, and accessibility by those with disabilities. HAVA introduces extensive election reform by introducing uniform and nondiscriminatory election technology and administration requirements, establishing grant programs that provide assistance to States, and improving election technology. Each polling place and county auditors' office in South Dakota will now be equipped with a voter assist terminal. A voter assist terminal is designed to make voting independent and private for those using it.

To address the requirements of HAVA the South Dakota Legislature adopted Senate Bill 13. This bill addresses the needs of HAVA by establishing guidelines for provisional voting, requiring a person to provide their drivers license number or last four digits of their Social Security Number, identifying the voter's state of issuance for their drivers license, creating guidelines for a complaint process to remedy voter grievances, and expanding South Dakota's statewide voter registration system.

A 17-member HAVA task force was formed to design a road map of how South Dakota is going to comply with the federal provisions. The group consists of the Board of Elections, county auditors, Secretary of State representatives, a state senator and representative, advocates for the community of people with disabilities, and a spokesperson from Kids Voting. These individuals have met twice and their recommendations follow in this report.

Where appropriate and necessary the South Dakota Board of Elections will oversee the state plan. South Dakota is committed to providing equal access to the voting experience to all its citizens, including persons with disabilities. Voting information will be provided, where appropriate, in alternative formats including, but not limited to Braille, disk, audio format, or enlarged font.

South Dakota has a very efficient, reliable, and trusted election process. Our implementation of HAVA is designed to enhance an all ready efficient election system. Suggestions from the task force, auditors, and public will help ensure South Dakotans have an effective and steadfast election process.

Help America Vote Act
State Plan for South Dakota

SEC. 254. STATE PLAN.

(a) IN GENERAL- The State plan shall contain a description of each of the following:
(1) How the State will use the requirements payment to meet the requirements of title III, and, if applicable under section 251(a)(2), to carry out other activities to improve the administration of elections.

301 (a)(1)(B)(i) - Establish a voter education program on the effect of casting multiple votes for an office.

The State of South Dakota currently utilizes precinct and central count optical scan ballots and hand-counted paper ballots. It is anticipated when the HAVA changes are fully implemented, South Dakota will use precinct and central count optical scan ballots, hand-counted paper ballots and voter assist terminals. There is a need under this section to provide additional education for those precincts using central count optical scan and hand-counted paper ballots. The plans for this education include:

- Auditors will include instructions on the effect of over-voting in the voter instructions posted in the voting booth.
- The Secretary of State will provide to county auditors, for each polling place, three poster sized directions on the effect of casting multiple votes for an office and other pertinent instructions in 48-point or larger font.
- Auditors will hang poster-sized instructions from the Secretary of State in the polling place in three different locations.
- Sample ballots are currently published in each official newspaper. Request administrative rule of the State Board of Elections to require the publication of voter instructions in each official newspaper as part of the notice of election.
- Include instructions on the effect of over-voting in the voter instructions printed on each ballot.
- The Secretary of State will prepare a booklet of election procedure changes for 2004 and include the above instructions.
- The Secretary of State will provide the booklet of election procedures in accessible formats including, but not limited to18-point font, Braille, disk, and tape.
- Provide, through the Secretary of State, information to statewide organizations and political parties for inclusion in their newsletters and to hand out at conventions. Encourage private entities to participate.
- The Secretary of State will provide information to the public regarding election procedure changes and the effect of over-voting.

The South Dakota Secretary of State office and county auditor offices implemented the above bullet points for the 2004 Primary and General Elections and will continue to do so for all federal elections. The changes were considered effective.

301 (a)(1)(B)(li) - Establish instructions on how to correct ballot errors.

Instructions for correction of ballot errors were rewritten in 2002 and are considered effective. The instructions are included in the voter instructions posted in the polling place and in the voting booth. It is recommended that:

- Auditors will include instructions on how to correct ballot errors in the voter instructions posted in the voting booth.
- The Secretary of State will provide to county auditors for each polling place, three poster sized directions on how to correct ballot errors and other pertinent instructions in 48-point or larger font.
- Auditors will hang poster-sized instructions from the Secretary of State in the polling place in three different locations.
- Currently sample ballots are published in each official newspaper. Request administrative rule of the State Board of Elections to require the publication of voter instructions in each official newspaper as part of the notice of election.
- The Secretary of State will prepare a booklet of election procedure changes for 2004 and include the above instructions.
- The Secretary of State will provide the booklet of election procedures in accessible formats including, but not limited to 18-point font, Braille, disk, and tape.
- Provide, through the Secretary of State, information to statewide organizations and political parties for inclusion in their newsletters and to hand out at conventions. Encourage private entities to participate.
- The Secretary of State will provide information to the public regarding election procedure changes and how to correct ballot errors.
- Ensure instructions are reviewed by a design professional for ease of reading.
- Ensure the instructions can be read or listened to by a voter with a disability.

The South Dakota Secretary of State office and county auditor offices implemented the above bullet points for the 2004 Primary and General Elections and will continue to do so for all federal elections. The changes were considered effective.

301 (a)(3)(B) - Provide one voter assist terminal per polling place.

The task force anticipated there will be several different voter assist terminals certified for sale in South Dakota. It was determined the State should purchase one brand of voter assist terminal to meet the "one voter assist terminal per polling place" requirement. The State would give these voter assist terminals to each county. The advantage of the "one brand" concept includes uniformity for voters, economy of scale in purchasing, and uniformity in training. Counties would be free to purchase any brand of state-certified voter assist terminal for additional units.

Counties should have one unit in each polling place and one unit in the auditor's office for absentee voting. It was decided a ratio will determine how many back-up units a county will receive. These voter assist terminals will be part of the initial purchase under this section.

The voter assist terminals purchased to meet the requirements of this section must meet the disability requirements of HAVA.

The State and counties will share the 5% match required for Title II funds to purchase the required units. Each county will provide a segment of the match money in proportion to the number of registered voters in their county.

In determining which voter assist terminal will be purchased to meet this requirement, members of the disability community will be involved in evaluating the machines.

The task force determined that it would be desirable to have the voter assist terminal contain an audio ballot in the appropriate Native American language.

The state will not require the use of voter assist terminals for non-federal elections but will allow the use of the units in those elections.

It was determined that the purchase of the voter assist terminals to meet the requirements of this section would occur in 2005 or 2006.

Voter education on the new units will be important for county election officials, poll workers and the voters. The Secretary of State will work with county auditors to provide this education.

302 - Provisional voting.

SB13 was passed by the SD Legislature and signed into law on March 5, 2003. Sections one through eight provides for a provisional ballot process which became effective July 1, 2003.

302 (b) - Posting of information at the polling place.

Posting of election instructions is currently required under state law. The instructions are posted in two locations in the polling place and in each voting booth. The text of the instructions is provided in administrative rule of the State Board of Elections. These instructions will be updated to include all of the information required under this section.

At least two sets of instructions, provided by the Secretary of State to the county auditors, printed in 48 point type should be posted.

Instructions will be placed on the Secretary of State's website. They will be made available in an audio format on the web site. These instructions will be available on the

voter assist terminals and will be added to the State Library's tapes for the blind that contain other voter information.

303 (a)(2)(A)(ii)(I) - Felony record check.

SB 13 was passed and signed into law on March 5, 2003. Section 15 provides for a revision in South Dakota's felony notice process which became effective January 1, 2004. The State developed an automated link between the felony records system and the statewide voter file to send notices of felony convictions to the appropriate county auditor. This check is done on new registrations and when convictions occur.

303 (a)(2)(A)(ii)(II) - Death records check.

SB 13 was passed and signed into law on March 5, 2003. Section 15 provides for a revision in South Dakota's death notice process which became effective January 1, 2004. The State developed an automated link between the vital statistics system and the statewide voter file to send deceased notices to the appropriate county auditor. This check is done on new registrations and when deaths occur.

303 (a)(5)(A)(iii) - Verify driver license or verify last four digits of SSN.

SB 13 was passed and signed into law on March 5, 2003. Section 12 provides for verifying driver license numbers and the last four digits of a social security number. This became effective January 1, 2004. The State developed an automated verification link between the South Dakota driver license records system and the statewide voter file. A system was developed to check out-of-state driver license numbers and the last four digits of a social security number. This check is done on all new registrations. A system has been developed to verify the last four digits of the Social Security Numbers. The system implementation is pending due to delays by the Social Security Administration in program development. Following the SSN verification implementation, the out-of-state drivers license check may become obsolete and be replaced by the last four digit SSN check unless an in-state drivers license is used by a person registering to vote.

303 (b)(4) - New voter registration cards.

The South Dakota voter registration form is prescribed in administrative rule of the State Board of Elections. This rule was amended to include the language required by HAVA.

251(b)(2) - Other activities to improve administration of elections.

1. A computerized link between driver license offices, the Secretary of State, and county auditors will be developed to electronically transmit new voter registration data for those who register to vote at the driver license office.

2. If there is Title I or II money, which does not need to be spent to meet the immediate requirements of HAVA, a revolving election equipment replacement fund has been established within the Election Fund to provide an ongoing source of money which counties can access to replace voting machines as needed. The fund will operate as a lease-purchase mechanism to allow counties to fund large election equipment purchases and pay for them over a period of years. Interest accrued from fund activities will stay in the account for counties to access. This will help to ensure counties can continue meeting the requirements of HAVA in the future. Legislation was enacted creating the revolving election equipment replacement fund and providing the state Board of Elections with rule making authority to establish the criteria for accessing the fund.

254 (a)(2) For each element under item (1), determine:

- **How we will distribute the money**
- **How we will monitor distribution of the money**
- **Criteria for eligibility of the money**
- **Method to monitor performance of recipients of the money**

301 (a)(1)(B)(i) - Establish a voter education program on the effect of casting multiple votes for an office.

And

301 (a)(1)(B)(ii) - Establish instructions on how to correct ballot errors.

The cost for new large print polling place instructions was paid for by the Secretary of State. The production of any special instructions in large type fonts or audio and election information booklets was done by the Secretary of State using Title I money. The Secretary of State will monitor the distribution of the money using established state appropriation and accounting mechanisms. The Secretary of State will determine how much of the Title I money is to be used for these publications. The Secretary of State will monitor performance by comparing the items suggested in the State Plan with actual accomplishment.

301 (a)(3)(B) - Provide one voter assist terminal per polling place.

The Secretary of State will use the Title II money to purchase sufficient voter assist terminals to supply one per polling place, one per county auditor's office for absentee voting. A ratio will determine how many back-up machines a county will receive. If there is money which is unspent after meeting the initial requirements of Title III, a revolving election equipment replacement fund is part of the election fund to provide a source for counties to obtain funding for future voting equipment purchases including replacement of the initial voter assist terminals when needed. The Secretary of State will monitor the distribution of the money using established state appropriation and accounting mechanisms. The Secretary of State will determine how much of the Title II money is to be used for this purchase. The Secretary of State will monitor performance by comparing the items set forth in the State Plan with actual accomplishment.

302 - Provisional voting.

It is not anticipated that Title II money will be needed for this requirement.

302 (b) - Posting of information at the polling place.

The cost for new polling place instructions placed in the voting booth was paid for by county government. The production of any special instructions in large type fonts or audio was done by the Secretary of State using Title I money. The Secretary of State will monitor the distribution of the money using established state appropriation and accounting mechanisms. The Secretary of State will determine how much of the Title I money is to be used for these instructions. The Secretary of State will monitor performance by comparing the items set forth in the State Plan with actual accomplishment.

303 (a)(2)(A)(ii)(I) - Felony records check.

The Secretary of State used Title I money to pay for the computer programming necessary to automate the felony records check. The Secretary of State monitored the distribution of the money using established state appropriation and accounting mechanisms. The Secretary of State determined how much of the Title I money was spent for this programming. The Secretary of State monitored performance by ensuring the programming development was completed and thoroughly tested to ensure the felony record check was accurate.

303 (a)(2)(A)(ii)(II) - Death records check.

The Secretary of State used Title I money to pay for the computer programming necessary to automate the death records check. The Secretary of State monitored the distribution of the money using established state appropriation and accounting mechanisms. The Secretary of State determined how much of the Title I money was spent for this programming. The Secretary of State monitored performance by ensuring the programming development was completed and thoroughly tested to ensure the death records check was accurate.

303 (a)(5)(A)(iii) - Verify drivers license or verify last four digits of SSN.

The Secretary of State used Title I money to pay for the computer programming necessary to automate the drivers license and social security number records check. We understand there is a cost for states to access the social security records, so a portion of the funds will be used to pay for that access. We also understand the check of out-of-state drivers licenses will not be able to be automated so a portion of the funds will be used to conduct that check manually. The Secretary of State monitored the distribution of the money using established state appropriation and accounting mechanisms. The Secretary of State determined how much of the Title I money was spent for this programming. The Secretary of State monitored performance by ensuring the programming development was completed and thoroughly tested to ensure the drivers license and social security number check was accurate.

303 (b)(4) - New voter registration cards.

It is not anticipated that Title II money will be needed for this requirement.

251(b)(2) - Other activities to improve administration of elections.

The Secretary of State will use Title I money to pay for the computer programming necessary to automate the movement of voter registration data from drivers license offices to county auditor offices. A portion of the funds may also be needed for hardware upgrades in county auditor offices. The Secretary of State will monitor the distribution of the money using established state appropriation and accounting mechanisms. The Secretary of State will determine how much of the Title I or II money is to be used for this programming and hardware purchase. The Secretary of State will monitor performance by ensuring the programming development is completed and by thoroughly testing the programming to ensure all data transmission is accurate.

254 (a)(3) - To meet the requirements of Title III, how will state provide programs for:
Voter education.

In addition to the education initiatives set forth in the plan, education on the use of voter assist terminals will be crucial. The Secretary of State will work with local county auditors to provide booths at regional and state fairs as well as work with presentations to schools and community clubs. Outreach efforts will be made to statewide groups and will involve persons from the disability community. Information on the new voting systems will be produced.

Election official education and training.

For any of the required Title III changes to be successful, training of county election officials will be critical. Currently the state provides one day of training for county election officials prior to each federal election year. This training was expanded to a second day to cover the new requirements. Regional training may take place, if needed. Training will include the new Title III requirements including voter assist terminal operation and information on how to meet the needs of voters with disabilities.

Poll worker training.

County auditors are responsible for poll worker training. The Secretary of State will provide county auditors with the information they will need to train their poll workers on Title III compliance. Information on how to best meet the needs of voters with a disability will be addressed. This will include providing a PowerPoint presentation or video which can be used for the training. Tribal election officials will be encouraged to attend a poll worker training in their area to learn about the procedures used in conducting federal elections. County auditors are encouraged to work with members of

the disability community to assist in providing training on disability awareness and effective ways to respond to their needs for assistance.

254 (a)(4) - How will the State adopt voting system guidelines and processes for Section 301:

These guidelines and processes are encompassed in state statute and administrative rule of the State Board of Elections. These either have been or will be amended as needed to comply with the requirements of Section 301.

254 (a)(5) - Describe the election fund and the management of that fund:

This fund has been established within South Dakota state government's accounting system. The account is managed by the Secretary of State. Any expenditure from the Election Fund must be approved through the normal state government appropriation process. Expenditures will be included as a budgetary line item in the State's annual budget which is approved by the Legislature and Governor.

All expenditures from the fund will be subject to the normal state government accounting and audit procedures. Interest income generated by the account will be credited to the account.

254 (a)(6) - Budget:

- **Costs for each of the Title III requirements.**
- **How will the requirements payment be used for Title III?**
- **For what else will the requirements payments be used?**

Section	Requirement	Amount Budgeted
301 (a)(1)(B)(i)	Establish a voter education program on the effect of casting multiple votes for an office.	$2,000
301 (a)(1)(B)(ii)	Establish instructions on how to correct ballot errors.	$2,000
301 (a)(3)(B)	Provide one voter assist terminal per polling place, one per auditor's office, and an appropriate ratio of back-up machines to the counties.	$5,000,000
302	Provisional voting.	$0
302 (b)	Posting of information at the polling place.	$1,000
303 (a)(2)(A)(ii)(I)	Felony records check.	$36,000
303 (a)(2)(A)(ii)(II)	Death records check.	$36,000
303 (a)(5)(A)(iii)	Verify driver license or verify last four digits of SSN.	$150,000
303 (b)(4)	New voter registration cards.	$0
251(b)(2)	Other activities to improve administration of elections.	$100,000
254 (a)(5)	Describe the election fund and the management of that fund (county money to meet Title III requirements).	$3,000,000
254 (a)(5)	Describe the election fund and the management of that fund (voting equipment revolving fund).	$3,269,803
Total		$11,596,803

The requirements payments and matching funds will be used for items which are not paid for with Title I funds. Any unspent Title II money will be used for a voting equipment revolving fund to ensure South Dakota can continue to meet the mandates of this Act in future years. The interest accrued from the revolving fund will be kept in the fund and used for the grants to counties and/or entities.

254 (a)(7) - State maintenance of effort plan.

The state has very limited expenditures for election administration. There is no separate budgetary line item for election administration. The estimated state expenditures for FY2000 was $55,024. Most election funding is done by the counties. The current state level funding provides for one staff person in the elections department of the secretary of state's office. Normal support expenses for this person include office space, telephone, postage, travel, computer support and printing. The Secretary of State will continue to operate and fund this department as it always has. There will be no reduction in expenditure of state general funds from fiscal year 2000.

254 (a)(8) – Adopt Performance Goals and Measures for the State and for counties:

301 (a)(1)(B)(i) - Establish a voter education program on the effect of casting multiple votes for an office.

Performance Goal	Eliminate overvotes
Performance Measurement	Those counties which have a capability to produce overvote reports from their voting systems, will produce those reports and file a summary of overvotes per race.
Timetable	2004 and 2006 general elections
How to Measure Performance	Determine the proper instructions were posted in the polling place. Compare percentage of overvotes to votes cast in each of these elections.
Who will Measure	County auditors will report to the Secretary of State.

301 (a)(1)(B)(ii) - Establish instructions on how to correct ballot errors.

Performance Goal	Provide easily accessible instructions in each polling place.
Performance Measurement	Are the instructions posted?
Timetable	2004 and 2006 general elections
How to Measure Performance	Determine the proper instructions were posted in the polling place. Precinct workers report to county auditor on compliance.
Who will Measure	County auditors

Based on the 2004 Primary and General Elections, this goal is determined to be effective.

301 (a)(3)(B) - Provide one voter assist terminal per polling place.

Performance Goal	Provide one disabled accessible voter assist terminal per polling place.
Performance Measurement	Is there a functioning machine in each polling place?
Timetable	2006 primary and general election
How to Measure Performance	Precinct workers report to county auditor on compliance.
Who will Measure	County auditors

302 - Provisional voting.

Performance Goal	1. Provide notice to voters on availability of provisional ballot. 2. Provide provisional ballot materials at each polling place. 3. Train poll workers on provisional ballot requirements. 4. Offer provisional ballots to voters who qualify. 5. Allow all voters who claim to be registered to vote in the precinct, but who can't be confirmed to vote a provisional ballot.
Performance Measurement	Monitor the number of calls to county auditors or Secretary of State reporting a person was not able to vote a provisional ballot.
Timetable	2004 and 2006 general elections
How to Measure Performance	Determine the auditors were trained by the Secretary of State, the poll workers were trained by the auditors, training materials were provided to the auditors, and provisional ballots were printed and available at the polling place.
Who will Measure	County auditors will report to Secretary of State.

Based on the 2004 Primary Election, there was confusion from some poll workers on #4 and #5 of the provisional voting performance goal. Additional training took place and after the 2004 General Election this goal is determined to be effective.

302 (b) - Posting of information at the polling place.

Performance Goal	Provide easily accessible instructions in each polling place including at least three 48-point or larger font poster-sized versions.
Performance Measurement	Are the instructions posted?
Timetable	2004 and 2006 general elections
How to Measure Performance	Determine the Secretary of State provided the auditors three poster-sized directions in 48-point font or larger addressing provisional voting and hours of operation of the polling place. Determine the auditor displayed a sample ballot, directions on overvoting, how to mark a ballot, and how to correct a ballot in each voting booth. Precinct workers report to county auditor on compliance.
Who will Measure	County auditors

Based on the 2004 Primary Election, this goal is determined to be effective.

303 (a)(2)(A)(ii)(I) - Felony record check.

Performance Goal	Every person convicted of a felony and sentenced to the adult state penitentiary system is removed from the voter registration list and is not able to reregister until their entire sentence is completed. Establish a computer system to conduct checks and notify auditors about felony convictions.
Performance Measurement	1. Ensure each new or updated voter registration is checked against the felony conviction file. 2. Ensure all new felony convictions are checked against the statewide voter file. 3. Remove all those who are ineligible from voter file. 4. Secretary of State will double check felony convictions identified by this system to prevent erroneous removal of eligible voters.
Timetable	January 1, 2004
How to Measure Performance	Verify accuracy of the telephone complaint against actual voter and felon records.
Who will Measure	County auditor and Secretary of State

Based on the 2004 Primary and General Elections, this goal is determined to be effective.

303 (a)(2)(A)(ii)(II) - Death records check.

Performance Goal	Every deceased person is removed from the voter registration list and that no deceased person's name is added to the voter registration list. Establish a computer system to conduct checks and notify auditors about deaths.
Performance Measurement	1. Ensure each new or updated voter registration is checked against the vital statistics file. 2. Ensure all new deaths are checked against the statewide voter file. 3. Remove all those who are deceased from voter file. 4. Secretary of State will double check death notices identified by this system to prevent erroneous removal of eligible voters.
Timetable	January 1, 2004
How to Measure Performance	Verify accuracy of the report against actual voter and death records.
Who will Measure	County auditor and Secretary of State

Based on the 2004 Primary and General Elections, this goal is determined to be effective.

303 (a)(5)(A)(iii) - Verify driver license or verify last four digits of SSN.

Performance Goal	Ensure no person is allowed to register to vote without providing an accurate driver license number or last four digits of their social security number.
Performance Measurement	Establish computerized and manual access system for information verification to validate all new registrations.
Timetable	January 1, 2004 for drivers licenses. We will be ready to verify SSN's when the Social Security Administration completes their verification system.
How to Measure Performance	Verify accuracy of the system by comparing actual voter and driver license records.
Who will Measure	Secretary of State

Based on the 2004 Primary and General Elections, the drivers license section of this goal is determined to be effective.

303 (b)(4) - New voter registration cards.

Performance Goal	Provide voter registration forms which comply with HAVA.
Performance Measurement	Check to make sure all official voter registration sites have new forms.
Timetable	July 1, 2003
How to Measure Performance	Telephone and mail verification with sites.
Who will Measure	County auditor and Secretary of State

Based on the 2004 Primary and General Elections, this goal is determined to be effective.

251(b)(2) - Other activities to improve administration of elections.

Performance Goal	Provide daily electronic transmission of new voter registration data from all driver license offices to the appropriate county auditor office. Eliminate missed voter registration deadlines because of registration card transit time.
Performance Measurement	Affirm all voter registrations completed at a driver license office by a registration deadline are added to the official registration list for that election.
Timetable	2005
How to Measure Performance	Affirm all voter registrations completed at a driver license office by a registration deadline are added to the official registration list for that election.
Who will Measure	County auditor and Secretary of State

254 (a)(9) - Describe administrative complaint procedure:

This procedure is provided in sections 16 though 25 of SB 13 which became effective July 1, 2003. Initial complaints will be resolved by the State Board of Elections utilizing an existing administrative complaint process. The alternative dispute process involves judicial appointment of an arbitrator to resolve the complaint.

254 (a)(10) - What Title I funds will be used for:

Title I funds will be used for punch card system buyouts, voter education, statewide voter registration system programming and hardware, training and materials for election personnel, travel for election personnel, state plan development and for a Help America Vote Act coordinator.

Unspent funds will be used for grants and/or to develop a revolving election equipment replacement fund to be used to ensure compliance with state and federal election laws and to improve the election process.

254 (a)(11) - How state will conduct ongoing management of the "state plan" including who will make changes to the plan.

The Secretary of State and State Board of Elections will monitor the activities provided for in the state plan. Any changes to the plan will be done by the State Board of Elections, with input from the HAVA Task Force members, using an open hearing process.

Below is an update version of who may make changes and give input to the state plan:

First	Last Name	Organization Name	City
Chris	Nelson	Secretary of State	Pierre
Kea	Warne	Secretary of State	Pierre
Sue	Roust	Minnehaha County Auditor	Sioux Falls
Julie	Pearson	Pennington County Auditor	Rapid City
Patty	Pearson	Kids Voting	Pierre
Linda Lea	Viken	State Board of Elections	Rapid City
Karen	Layher	Grant County Auditor	Milbank
Gail	Brock	State Board of Elections	Huron
Shelly	Pfaff	Coalition of Citizens With Disabilities	Pierre
Robert	Kean	SD Advocacy Services	Pierre
Julie	Bartling	State Representative	Burke
Michael	LaPointe	State Senator	Mission
Nick	Nemec	SD Democratic Party	Holabird
Richard	Casey	State Board of Elections	Sioux Falls

254 (a)(12) - Not applicable

254 (a)(13) - Description of the task force:

The HAVA state plan task force was appointed by the Secretary of State. Members of the task force include the election officials from our two largest counties, all of the State Board of Elections members, representatives from organizations representing those who are disabled, state

legislators and representatives of the recognized political parties. The original task force members were:

First	Last Name	Organization Name	City
Chris	Nelson	Secretary of State	Pierre
Kea	Warne	Secretary of State	Pierre
Sue	Roust	Minnehaha County Auditor	Sioux Falls
Julie	Pearson	Pennington County Auditor	Rapid City
Patty	Pearson	Kids Voting	Pierre
Linda Lea	Viken	State Board of Elections	Rapid City
Karen	Layher	Grant County Auditor	Milbank
Nelva	Kristofferson	State Board of Elections	Britton
Gail	Brock	State Board of Elections	Huron
Carol	Klumper	Union County Auditor	Elk Point
Beth	Benning	State Board of Elections	Spearfish
Shelly	Pfaff	Coalition of Citizens With Disabilities	Pierre
Robert	Kean	SD Advocacy Services	Pierre
Julie	Bartling	State Representative	Burke
Michael	LaPointe	State Senator	Mission
Nick	Nemec	SD Democratic Party	Holabird

Amended Texas State Plan
Pursuant to the Help America Vote Act of 2002
(HAVA)
January, 2005

Geoffrey S. Connor
Secretary of State
P.O. Box 12060
Austin, Texas 78711-2060
www.sos.state.tx.us
(800) 252-VOTE(8683)

Amended Texas State Plan

1. **How the requirements payments (i.e., Title II funds) will be used to meet the mandates in Title III (new federal requirements)**

Brief Overview of State Elections Structure

The Secretary of State ("SOS") is the chief election officer of the state and is required to maintain uniformity in elections held in the state and to advise and assist local officials who actually conduct elections. The Secretary of State also has authority to adopt administrative rules to gain uniformity in interpretation of state election laws and procedures.

The conduct of elections in Texas is decentralized. The statutory requirements for elections are set out in the Texas Election Code. The county clerk or county election administrator, in those counties that have created the office, is generally the official charged with conducting county elections. County voter registrars maintain the official list of registered voters; the voter registrar is generally either the county tax assessor-collector, or again the election administrator. The county political parties conduct primary elections in Texas, with the county chair as the chief elections official. Early voting in the primary is conducted by the county elections official.

Other elections are conducted by the political subdivision. City elections are held by the city, school district elections by the school, and so on. These political subdivisions often contract with the county to conduct their election or hold joint elections with one another, but they are not required to do so. They utilize the county list of registered voters appropriate for their locality.

The Secretary of State maintains an unofficial state list of registered voters. The Secretary of State's office houses and maintains a state master file of all registered voters. The Secretary of State also maintains the Texas Voter Registration Online System ("TVRS"), which is a voluntary online voter registration system currently used by 164 of 254 counties. For those counties utilizing the TVRS system, the state database reflects their "official" voter file. The master file has approximately 12.1 million active voters and also stores approximately 2.5 million cancelled voters at any given time. The state master file maintains two separate tables defined for either "offline" or "online" counties. An offline county updates the masterfile through a web browser application, on a weekly basis in a pre-specified standard record layout. TVRS counties update in real time with all transactions validated and updated per session. At present, voter registration systems are reviewed by the Secretary of State's office to ensure that they are capable of submitting reports in a standard format as required by the state.

Texas is a state covered under Section 5 of the federal Voting Rights Act, which requires changes in election processes to be submitted to the Voting Section of the U.S. Department of Justice ("DOJ") for review prior to enforcing the change. At the state level, the Secretary of State submits changes in state election procedures. At the local level, each county must submit its changes to DOJ. These include polling place changes, change in the method of election, and adoption of new voting systems, among others.

According to the 2000 decennial census, the voting age population of Texas was 14,965,061. The state had 12,365,235 registered voters for the 2000 general election. In the 2002 November general election, the number of registered voters was 12,563,459.

Turnout in the 2000 November general election for state and county officers was 6,407,637, which constituted 51.8% of the registered voters and 42.8% of the voting age population. Turnout in the 2002 general election for state and county officers was 4,553,979, which constituted 36.2% of registered voters and 30.4% of the voting age population, using the 2000 census numbers.

In November 2000, the breakdown of election systems used by counties was:

Paper Ballot:	90
Optical Scan:	150
Punch Card:	14
Lever Machine:	3
DRE:	4

Attached as Table 2 (page 22) is a list of the county by county breakdown of voting systems. The Secretary of State is the authority charged with certifying voting systems for use in the state.

How the state will meet the Title III requirements is described in Table 1 below. The charts have been updated to reflect the current status and action planned as of January 2005.

Table 1

Voting System Standards HAVA Requirement	Sec. 301 State of Texas Current Status	Action Planned
All voting systems shall permit a voter to verify/review selections before casting the vote.	Meets the requirement. Texas Election Code (TEC) Sections 64.007 and 129.001(b).	No action needed.
Allow voter to change or correct any error on the ballot before casting the vote.	Meets the requirement. TEC Section 64.007.	No action needed.
Prevent or alert voter if he/she overvotes on the ballot.	Partially meets the requirement. DRE systems and precinct count optical scan systems alert the voter of an overvote. Manually counted paper ballots, centrally counted optical scan ballots, and punch card ballots do not alert the voter of overvotes. Current process on mail-in paper absentee ballots would not meet the requirement.	A voter education campaign will be implemented in all centrally counted optical scan and paper ballot precincts no later than January 1, 2006, to educate voters on the effect of an overvote on these systems.

Voting System Standards HAVA Requirement	Sec. 301 State of Texas Current Status	Action Planned
All voting systems must be able to produce a paper audit trail of all votes cast.	Meets the requirement; state law currently requires real time audit of all election activity. TEC Section 122.001(a)	No action needed.
Voting systems must be accessible for individuals with disabilities, including non-visual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for privacy and independence as other voters. This requirement may be met by having at least one DRE or other system equipped for individuals with disabilities at each polling site.	Partially meets the requirement. 13 counties have adopted an accessible DRE voting system. Most counties do not meet this requirement.	Upgrade existing voting systems or purchase new systems. All polling places will be required to be equipped with at least one DRE no later than January 1, 2006 pursuant to House Bill 1549.
Voting systems shall provide alternative language accessibility pursuant to the requirements of Section 203 of the Voting Rights Act of 1965.	All certified voting systems meet this requirement for Spanish language, and one voting system has been certified for the Vietnamese language.	No action needed.
All voting systems shall have error rates (machine errors only) that do not exceed the Federal Election Commission standards.	Meets the requirement. This requirement was added to state law in HB 1549.	No action needed.
A uniform definition of what constitutes a vote for each voting system in use in the state.	Meets this requirement. State law was passed to provide a uniform definition for what constitutes a vote. House Bill 1549 (2003)	No further action required.

Provisional Voting and Voting Information Requirements HAVA Requirement	Sec. 302 State of Texas Current Status	Action Planned
A provisional voter is to be allowed to vote a paper ballot or an electronic ballot upon the completion of an affidavit. The ballot will be sealed in an envelope or electronically stored separately from the regular votes. The provisional ballot is to be transported to the appropriate election officials for determination of eligibility and counted if voter	State law was amended to provide procedures to meet this requirement effective January 1, 2004 pursuant to House Bill 1549. The Secretary of State has adopted administrative rules to provide specific procedures and has adopted forms to assist in the implementation of this new process.	No further action needed.

Provisional Voting and Voting Information Requirements HAVA Requirement	Sec. 302 State of Texas Current Status	Action Planned
is deemed eligible.		
Each voter who casts a provisional vote shall be given written information on how he or she can ascertain whether his or her vote was counted, and if not why.	State has developed administrative rules and has adopted forms to implement this requirement.	No further action needed.
Establish a free access system, such as toll-free phone number or Internet website, allowing provisional voters to ascertain whether their vote was counted, and if not why.	State rules require the provisional voter to be notified via mail whether the voter's ballot was counted, and if the ballot was not counted, the reason why it was not counted.	No further action needed.
Post in each polling place a sample version of the ballot that will be used on election day.	State law passed to make it mandatory to post a sample ballot at each polling location.	No further action needed.
Post information regarding the day of the election and polling hours.	State law passed to require this posting.	No further action needed.
Post general information on state and federal voting rights and the right to a provisional vote if the requirements to vote are met.	State has prescribed language on the voter information poster required to be posted at each polling place beginning January 1, 2004.	No further action needed.
Post general information on federal and state laws prohibiting acts of fraud and misrepresentation.	State has prescribed language on the voter information poster required to be posted at each polling place beginning January 1, 2004.	No further action needed.
Any voter who casts a vote as the result of a federal or state court order extending polling hours, shall do so on a provisional ballot, and it shall be kept separate from other provisional ballots.	State law amended to provide for this occurrence and law became effective January 1, 2004. Precinct election forms were designed to accommodate this occurrence.	No further action needed.

Computerized Statewide Voter Registration System HAVA Requirement	Sec. 303 State of Texas Current Status	Action Planned
State shall implement a uniform, official, centralized, interactive computerized statewide voter registration list.	Does not meet the requirement. Currently, 164 counties use the Secretary of State voter registration program to register and maintain their lists of voters The data is held at the Secretary of State's Office.	State law was amended to require a statewide official list maintained at the Secretary of State's office. The state

Computerized Statewide Voter Registration System HAVA Requirement	Sec. 303 State of Texas Current Status	Action Planned
	State law requires the state to maintain a copy of the list of registered voters, and counties have to update to the state database once a week. The state database is not considered the official list of voters.	completed the procurement process and signed a contract for the development of a complaint statewide system on November 8, 2004. Development of the system is underway.
Perform list maintenance to ensure only qualified voters appear on the list, including felons and deaths of registrants. Ensure that only voters who are not registered or who are not eligible are removed from the computerized list.	State meets this requirement. State receives information from other state agencies regarding deaths and felons and provides this information to county voter registrars on a weekly basis. State meets this requirement. State law prescribes narrow guidelines regarding canceling a voter's registration. Only with a positive name and identification number match can a voter be canceled. The local county voter registrar, not the state, cancels voters. Voter registrars may not cancel based on information provided by a vendor unless that information is verified by the voter registrar by a public record. TEC, Chapter 16 and Section 18.0121.	No action needed. No action needed.
Ensure that voter registration records are accurate and updated regularly.	Does not meet the requirement.	State law was amended to require a statewide official list maintained at the Secretary of State's office. The state completed the procurement process and signed a contract for the development of a complaint statewide system on November 8, 2004. Development of the system is underway.
State to verify applicant's driver's license or social security number prior to approval of applicant.	Does not meet the requirement.	State law was amended to require a statewide official list maintained at the Secretary of State's

Computerized Statewide Voter Registration System HAVA Requirement	Sec. 303 State of Texas Current Status	Action Planned
		office. The state completed the procurement process and signed a contract for the development of a complaint statewide system on November 8, 2004. Development of the system is underway.
State to assign unique identifier if applicant does not have driver's license or social security number.	Does not meet this requirement.	State law was amended to require a statewide official list maintained at the Secretary of State's office. The state completed the procurement process and signed a contract for the development of a complaint statewide system on November 8, 2004. Development of the system is underway.
Require appropriate identification for first time voters if a computerized list has not been implemented.	State law was amended to require identification at time of registration for first time voters registering to vote by mail effective January 1, 2004.	No further action required.
Voter registration application is required to have additional information printed on it.	State has prescribed new form, and has distributed to all counties.	No further action required.

2. How Title II requirement payments will be monitored and distributed for the purpose of meeting the mandates in Title III, including determining the eligibility for receipt of payments and our methods for monitoring the performance of the local entities' continued eligibility.

The SOS has developed an online grant application and management system. This system is essential for the SOS to establish an infrastructure and the necessary controls to effectively manage the HAVA funds and to accurately report the necessary programmatic and financial information to the federal government. Figure 1 (page 15) outlines the currently approved

requirements payments budget for the 2003 fiscal year appropriation and the proposed budget for the 2004 fiscal year appropriation. The following is a description of how the funding has and will be distributed to funding recipients as well as a description of the funding allotments to each county.

Grant Award Process

In September 2004, an award agreement was sent to each Texas county judge. As the chief executive officer of the county, the judge is required to sign the award agreement. To secure the funding, there are three basic steps:

1. The award agreement must be signed and returned to the Office of the Secretary of State.
2. A resolution from the county's governing body (i.e., county commissioners court) must be submitted as well. Required language for the resolution is included in the award agreement.
3. The online forms located on the Texas HAVA online grant system must be satisfactorily completed. The forms require information such as the official county address as well as the county's Employer Identification Number, State Vendor ID (VIN), and 3-digit Mail Code. The State Vendor ID is assigned by the State Comptrollers Office when an entity receives funds from the state and is comprised of the federal ID number plus a few other digits. The mail code determines which account the funds will be direct deposited into or whether a state warrant will be mailed. The county financial officer (i.e., county auditor or treasurer) will have this information. The county is also required to enter a detailed budget for each funding allocation. Guidelines regarding eligible uses for each funding allocation are included in the award agreement as well as the online forms. Grant activities must also be entered into the grant system where applicable.

DEADLINE TO APPLY FOR FUNDING - The FY 2003 funds will be available through August 31, 2006. Because not all counties will develop their funding priorities at the same rate, there are no deadlines currently imposed by the SOS for the counties to complete the online forms. However, all counties are encouraged to submit the signed grant award agreement that was sent to the county judge along with the required resolution from the commissioners court as soon as possible. The SOS may impose deadlines if an excessive amount of time elapses and the county has taken no action to secure the funding.

RESOLUTION - In addition to the parties that typically sign a resolution for the county (e.g., the county judge and the commissioners), the county election official(s) and the county financial officer must also sign the resolution.

GRANT AWARD APPROVAL AND REQUESTING REIMBURSEMENT - After the SOS has received the signed agreement that was sent to the county judge, the required resolution from the commissioners court as outlined in the award agreement, and the online forms have been submitted via this system, the SOS will review the documents and online forms for accuracy and completeness. Upon SOS approval, an email notification will be sent to the county judge, the election official(s), and the financial officer (Note: an email notification will only be sent if the

user provides one when entering his or her contact information). At that time, the county financial officer will have access to submit reimbursement requests via the grant system.

Funding Allocations - Fiscal Year 2003 Appropriation

Accessible Voting System in Each Polling Place

These funds are to be used for reimbursement of county costs incurred as a result of obtaining a HAVA-compliant accessible voting system in each polling location. This requirement may be met by having at least one accessible direct recording electronic voting system ("DRE") or other system equipped for individuals with disabilities at each polling site. The reimbursable amount each county is eligible for is calculated based on the number of precincts (polling places) used during the 2000 federal election multiplied by $3,000.

General HAVA Compliance

These funds may be used by the county for voter education, election worker education, upgrading voting systems to comply with new federal standards – including compatibility with the new statewide voter registration system, and acquiring an accessible voting system in each polling place. Priority will be given to acquiring an accessible voting system is each polling place because of the January 1, 2006 compliance mandate.

The reimbursable amount each county is eligible for is calculated based on the county's voting age population during the 2000 federal election as a percentage of the state's total voting age population and the total budgeted amount for general HAVA compliance. However, each county that would receive less than $5,000 based on the formula will receive $5,000.

Funding Allocations - Fiscal Year 2004 Appropriation

Because the FY 2003 allotment of funding will not cover all of the county costs to purchase an accessible voting system in each polling location, Texas has proposed to increase the Requirements Payments to the counties by 200 percent. By fully funding the costs associated with acquiring at least one accessible voting system for each polling location, counties will be less likely to object to the HAVA mandate. Additionally, the counties may seize the opportunity afforded by the available federal dollars to fully update their outdated voting systems, rather than simply purchasing the HAVA-required minimum of one accessible system per polling location. The SOS will likely amend the current award agreement between the state and the counties or draft a new agreement to accommodate the additional funding.

Grant Regulations and Grant Oversight

The Secretary of State will develop a monitoring plan in 2005. The monitoring function may be outsourced or may be handled internally or a combination of the two may be employed. This grant program falls under the general requirements of the Uniform Grant Management Standards ("UGMS") prescribed by the Texas Office of the Governor. UGMS prescribes a standard set of

financial management procedures and definitions and ensures accountability for expenditure of public funds. UGMS also incorporates the following federal regulations:

- OMB Circular A-87
- OMB Circular A-102
- "Common Rule", Administrative Requirements, 53 FR 8087, March 11, 1988
- OMB Circular A-133

Per the terms and conditions of the award agreement, any funding received by the county, regardless of the purpose, is contingent on each polling place within the county must have a voting system that is SOS-certified as accessible for individuals with disabilities, including non-visual accessibility for the blind and visually-impaired, in a manner that provides the same opportunity for privacy and independence as other voters no later than January 1, 2006.

3. Voter Education, Election Official Education and Training, and Poll Worker Training

a. Voter Education Plan Goal

The state will develop a comprehensive voter education plan to educate voters on certified voting systems and the proper use of those voting systems, with special emphasis on accessibility issues as it relates to the use of voting systems. Components of the education plan will include the statewide voter registration system, and how to vote a provisional ballot. The state has a responsibility to ensure that the voting process and our systems of voting are accurate, secure, and accountable. Our voter outreach efforts will need to be designed to reflect and incorporate the diverse populations of Texas through a well-executed, adaptable program, delivered in an easy-to-use format, and in alternative formats for individuals with disabilities. The mediums for delivery of this voter education program will need to be equally diverse.

b. Educating the Voter

- The state surveyed the 254 counties, compiled a list of best practices, and developed resources to supplement existing training materials for the voter. The Secretary of State will release an RFP in 2005 for the HAVA Education piece that will be consistent with applicable state and federal laws and regulations, including the Texas Government Code and the Texas Building and Procurement Commission. HAVA funding will be used for education as it relates to Title III of HAVA, which includes educating the voter on: 1) How to verify/review selections before casting the vote. 2) How to change or correct any error on the ballot before casting the vote. 3) How to avoid over voting. 4) How individuals with disabilities, including non-visual accessibility for the blind and visually impaired, can access the voting system in a matter that provides the same opportunity for privacy and independence as other voters. 5) How the county's voting system provides alternative language accessibility pursuant to the requirements of Section 203 of the Voting Rights Act of 1965. 6) What constitutes the uniform definition of the voting

system(s) in use in the county? And 7) How to vote a provisional ballot, including written information on how the voter can ascertain whether his or her vote was counted, and if not, why.

Although HAVA funds were not spent on education prior to the 2004 elections we, at the state level:

- Revised all of our brochures, including Services Available to Voters with Special Needs, Texas Voting, Early Voting in Texas, and Volunteer Deputy Registrar Guide. Those brochures are on our web site and also available in hard copy.
- The following brochures have been developed, and are available via our web: Young Texas Voters; When Your Home is Your Polling Place; and Conducting a Successful Voter Registration Campaign.
- The following new items/brochures were developed and disseminated statewide to election officials and upon request to voters: What Every Texan Needs to Know About Elections in Texas (targeting First Time Voters); Voter Rights Poster and Overvote/Undervote Poster.
- We developed and disseminated the Project V.O.T.E. (Voters of Tomorrow through Education) Student Mock Election Curriculum for teachers regarding the conduct of a mock election, for Texas students, kindergarten through 12th grades. Over a half million students participated in the 2004 Texas Student mock election.
- A PowerPoint Presentation was developed titled "Voter Education-A General Overview." This presentation was/is designed for civic groups, charitable and non-profit organizations for conducting voter registration drives.
- The Secretary of State appointed a virtual voter education advisory committee composed of voter advocacy groups and other interested stakeholders to advise the Secretary of State on HAVA-related voter education materials and programs.

c. Election Officials Education and Training

- The state developed a comprehensive training component for Election Officials that included videos; pamphlets; updated handbooks; and an election-based training module prior to January 2004. The new training program and educational resources explain all the components of HAVA, including: overvote and undervote; provisional voting; DRE's; voters rights; the administrative hearing process; new voting system requirements; statewide voter registration system requirements; methods of poll worker training; accessibility for people with disabilities; and alternative language requirements.
- The state will look into the possibility of developing an outreach program working with the Department of Public Safety (DPS) to provide resources and materials to improve the voter registration process no later than July 2006.

- The state will continue to work proactively with election officials to assist and advise in the recruitment of college and university students as poll workers.
- The state will investigate the possible creation of an on-line training module for election officials, with a possible certification component no later than January 2006.

d. Training of Poll Workers

- The State has developed and disseminated statewide a new curriculum for Election Judges and Clerks, complete with a training video for preparing the polling place, qualifying voters, closing the polling place and discussing new law and HAVA. The curriculum for Election Judges and Clerks also has a testing component. We were successful in training over 49,000 poll workers before our 2004 Primary Elections.
- Regional schools for the training of election judges and clerks for the 2004 Election were conducted prior to the Primary and General Elections. Secretary of State staff traveled the state, educating election officials about Texas law, HAVA, and in some locations, we partnered with the Coalition of Texans with Disabilities, who presented a unit on voters with disabilities and educating election officials on the rights of disabled voters.

4. How the state will adopt voting system guidelines consistent with Sec. 301 (Sec. 254, a, 4).

Voting System Standards

The state of Texas' voting systems standards contained at Section 122.001 of the Texas Election Code are already in substantial compliance with the requirements set out in Section 301(a)(1) of HAVA. Pursuant to an administrative rule adopted by the Secretary of State, Rule 81.61, before any voting system may be certified for use in a Texas election, the voting system must meet the voluntary voting systems standards promulgated by the Federal Election Commission. Texas Administrative Code § 81.61 (Tex. Sec. of State).

Overvote and Opportunity to Correct Ballot

All systems used in Texas allow a voter to change his or her vote. In a paper or optical scan ballot system, a voter may receive up to two replacement ballots if he or she makes an error marking the original ballot. Texas currently posts voting instructions that inform the voter of his or her right to replace a spoiled ballot.

Precinct-level optical scan voting systems inform the voter of an overvote in a particular race and give the voter an opportunity to correct the ballot. Texas Administrative Code § 81.52 (Tex. Sec. of State). Direct Recording Electronic voting systems ("DRE's") currently certified for use in Texas and mechanical lever machines do not allow for overvoting. In those entities using hand-counted paper ballot, central count optical scan, mechanical lever machines or punch card voting systems, the voter is not informed when he or she overvotes in a race. However, language will be added to voter instructions to inform voters of the

definition and consequences of an overvote, and Texas will establish a voter education program to explain the effect of overvoting. Punch card and lever voting systems will be phased out of use. The Texas Legislature passed legislation this year to prohibit their use after January 1, 2006.

All of the systems used in Texas allow voters to view their choices before they cast their ballot. DRE voting systems are already required under current state law to present voters with a summary screen of the entire ballot to allow voters to review and change their choices prior to the final cast of the ballot.

Manual Audit

Electronic voting systems are required under state law to provide records from which the operation of the voting system may be audited. In addition, the Secretary of State has adopted an administrative rule, Section 81.61, which requires a real time audit log that records all significant election events and records the date and time of each event. Also, due to the fundamental inability of lever machines to produce a manual audit of its records, Texas has recently passed a law that prohibits the use of these systems in elections after January 1, 2006.

Accessibility

Under HAVA, the voting system must be accessible to individuals with disabilities in a manner that provides the same opportunity for access and participation as for other voters. HAVA provides that this requirement may be met by placing a DRE or other accessible voting unit in each polling place.

Texas law currently requires voting systems acquired on or after September 1, 1999 to comply with Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. Section 794) and its subsequent amendments and Title II of the federal Americans with Disabilities Act (42 U.S.C. Section 12131 et seq.) and its subsequent amendments; and to provide a practical and effective means for voters with physical disabilities to cast a secret ballot. Detailed guidelines as to what constitutes an accessible voting system have been adopted by administrative rule which is enclosed. In all the remaining polling places throughout the state which use voting systems that do not meet the accessibility guidelines, counties will purchase at least 1 DRE per polling place in order to satisfy the requirements.

The state legislation implementing HAVA repeals the current voting system accessibility law and replaces it with language which tracks the federal law for accessibility. Until the Election Assistance Commission issues HAVA-compliant accessibility standards, Texas will continue to evaluate accessibility based on the state rule and FEC accessibility standards.

Language Accessibility

Because Texas is a state covered by Section 1973aa-1a and Section 1973b(f)(4) of the federal Voting Rights Act, voting systems are already required to provide alternative language

accessibility to the ballot. Statewide, Spanish has been required since 1975 and ballots have been required to be in English and Spanish since that time. As a result of the 2000 census, in some areas of the state, Vietnamese, Kickapoo, and Pueblo languages are required. Review of whether a voting system provides alternative languages is already an element of voting system certification in Texas.

Error rates

HAVA requires that the counting error rate of voting systems must comply with the standards' established under the Federal Election Commission. Secretary of State Administrative Rule 81.61 requires that before a voting system may be certified for use in Texas, the voting system must meet the voluntary voting system standards promulgated by the Federal Election Commission. In addition, the state legislation adopted to implement HAVA amends the Texas Election Code to require that all voting systems comply with the error rate standards adopted by the Federal Election Commission.

Definition of "Vote"

Current state law contains a detailed definition of a punch card vote. Texas has recently passed legislation that fully defines what constitutes a vote cast under hand-counted paper ballot, optical scan, and lever machine systems. See Exhibit D.

5. How the Election Fund will be established and managed (Sec. 254, a, 5).

The Texas Legislature created an "Election Improvement Fund" as a dedicated account in the general revenue fund and consists of federal funds designated for election improvement, matching funds from the state or a political subdivision, and depository interest earned on the assets of the fund. The state has appropriated funds to satisfy the five percent match requirement of Section 253 of HAVA in House Bill 1549, 78th Regular Session, 2003. The fund will be managed according to the Uniform Grant Management Standards prescribed by the Texas Office of the Governor and the terms and conditions of the federal grant award(s). The SOS has also hired a grant manager as well as an accountant to oversee and administer the grant program.

6. The state's proposed budget for activities under this part, based on the state's best estimates of the costs of such activities and the amount of funds to be made available.

The budget below is based on the state's best estimate. The SOS anticipates some adjustments will be necessary; however, the Secretary of State will reconvene the HAVA Advisory Committee for advice on how to reallocate the funds if the change is substantive. It should be noted that the "free access system for provisional voters has been adjusted to $0 because the state is already in compliance with that requirement.

Figure 1

	FY03 Approp.		FY04 Approp.
Title I Federal Award	$23,476,116		$0
	Estimated Amount	Actual Budget	Proposed Budget
Punch Card and Lever Replacement	$6,269,521	$6,269,521	N/A
Preliminary Planning For Statewide Voter Registration System	$500,000	$465,836	N/A
State Plan Administration	$ 2 – 4 million	$3,726,690	N/A
Voter Education	$ 2 – 3 million	$2,795,017	N/A
Election Official and Poll Worker Training	$ 2 – 3 million	$2,795,017	N/A
County Compatibility with New Statewide Voter Registration System	$ 6 million	$5,590,035	N/A
County Education Fund	$1 – 2 million	$1,834,000	N/A
Total	$ 19.77 – 24.77 million	$23,476,116	N/A
Title II Federal Award	$57,504,778		$103,187,171
Required State Match	$3,028,567		$5,430,904
Total Available	$60,531,345		$108,618,075
	Estimated Amount	Actual Budget	Proposed Budget
SOS Admin (State Plan Administration)	N/A	N/A	$5,000,000
Free Access System for Provisional Voters	$ 1 million	$0	$0
Statewide Voter Registration System	$ 10 – 15 million	$14,773,345	$5,000,000
Accessible Voting System In Every Polling Place	$ 25.5 million	$25,758,000	$91,618,075
Grant Funding to Counties for HAVA (Title III) Compliance	$ 20 million	$20,000,000	
County Compatibility with New Statewide Voter Registration System	N/A	N/A	$5,000,000
Voter Education, Election Official and Poll Worker Training	N/A	N/A	$2,000,000
Total	$ 56.5 – 61.5 million	$60,531,345	$108,618,075

7. Statement that the state will, in using the requirements payments, provide for maintaining the funding for activities funded by the payments at a level not less than the fiscal year ending before November 2000 (Sec. 254, a, 7).

The Secretary of State has determined that the activities funded by the requirements payments as outlined in this state plan will not reduce the level of expenditures maintained by the state for the fiscal year ending prior to November 2000. Additionally, since the initial state plan was filed, the SOS has determined that the requirements payments activities as outlined in this plan have never been funded by the state to the counties prior to the fiscal year ending before November 2000. Consequently, the counties need not certify they are in compliance with the maintenance of effort requirement as originally proposed as it is not applicable.

8. How the state will adopt performance goals and measures to determine success in carrying out the plan (Sec. 254, a, 8).

The Secretary of State and county election officials are responsible for ensuring the success in meeting each performance goal. Each county's voter registration and elections office also have a substantial responsibility in meeting performance goals in that the counties will monitor performance measures and will report to the state on a regular basis.

The performance goals include:

ELIMINATION OF PUNCH CARD VOTING AND LEVER EQUIPMENT

a. Timetable: January 1, 2006
b. Criteria: Replacement of punch card voting equipment and lever machines in 17 counties that used voting equipment in 2000.

c. How criteria is measured: Assess 17 counties after January 1, 2006 to determine if any punch card or lever machines are being used in federal elections.
d. The county election officials are responsible for meeting this measure with the advice and assistance of the Secretary of State.

VOTING SYSTEM STANDARDS

a. VOTING SYSTEMS
   (1) Timetable: January 1, 2006
   (2) Criteria: All voting precincts in the state will have a voting system that provides voters an opportunity to check for and correct ballot errors in a private and independent manner, notifies the voter of any overvotes cast and the effect of casting an overvote, allows the voter to correct the overvote before the ballot is cast, has a manual audit capacity, and an error rate that does not exceed the existing rate established by the FEC or Office of Election Administration. For the precincts that do not have such a system in place, an extensive voter education program will be developed and used in each county. A program will be developed for each type of voting system and paper ballot to educate the voter on what constitutes a legal vote for each type of voting machine and how to correctly cast a ballot for each type of voting system.
   (3) How the criteria is judged: Assess all counties to ensure 100% participation in using voting systems that meet the HAVA requirements or using the education program developed by the Secretary of State.
   (4) The county election officials are responsible for meeting this measure with the advice and assistance of the Secretary of State.

b. ACCESSIBLILITY FOR INDIVIDUALS WITH DISABILITIES
   (1) Timetable: January 1, 2006
   (2) Criteria: Provide at least one direct recording voting device in each polling place in the state that will allow voters with disabilities the opportunity to cast a ballot without assistance.
   (3) How criteria is judged: Assess each county to ensure 100% of the polling places have implemented a direct recording voting device that allows voters with disabilities the opportunity to cast a ballot without assistance.
   (4) The county election officials are responsible for meeting this measure with the advice and assistance of the Secretary of State.

c. ALTERNATE LANGUAGE ACCESSIBILITY
   (1) Timetable: Currently
   (2) Criteria: Provide alternative language accessibility pursuant to the federal Voting Rights Act.

(3) How criteria are judged: Texas has provided alternative language for all voting systems, voting materials and forms used in the polling place since 1975. Before a voting system is certified by the Secretary of State, the voting system must demonstrate alternate language accessibility.

(4) The county election officials are responsible for meeting this measure with the advice and assistance of the Secretary of State.

PROVISIONAL VOTING

a. PROVISIONAL BALLOTS PROVIDED

(1) Timetable: January 1, 2004

(2) Criteria: Provide provisional ballots to ensure no individual is turned away at the polls.

(3) How criteria is judged: Assess all counties to ensure the new procedures for provisional voting are in place and that all election workers have been trained on the new procedures.

(4) The county election officials are responsible for meeting this measure with the advice and assistance of the Secretary of State.

b. FREE ACCESS SYSTEM

(1) Timetable: January 1, 2004

(2) Criteria: Implement a free access system in each county so that the voters can determine if their provisional ballot was counted.

(3) How criteria is judged: Success of meeting this performance goal is based on the establishment of a free access system in each county so that voters can determine if their provisional ballot was counted.

(4) The county election officials are responsible for meeting this measure with the advice and assistance of the Secretary of State.

c. INFORMATIONAL VOTING POSTER

(1) Timetable: January 1, 2004

(2) Criteria: Voter information must be posted at each polling place, to include: sample ballots; dates and hours of voting; instructions for voters registering by mail and for first time voters; voter rights (including the right to vote a provisional ballot); and legal notice prohibiting voter fraud and misrepresentation.

(3) How criteria is judged: Survey all counties to ensure that the voting poster is included with election supplies and that all election workers have been instructed to post such information in the polling place.

(4) The Secretary of State will prescribe and distribute informational posters to all counties prior to January 1, 2004. The county election officials are responsible for ensuring the poster is properly posted in each precinct.

STATEWIDE VOTER REGISTRATION SYSTEM

a. COMPUTERIZED STATEWIDE VOTER LIST

(1) Timetable: January 1, 2006

(2) Criteria: Implementation of a single, uniform, official, centralized, interactive, computerized statewide voter registration list that is defined, maintained, and administered at the state level.

(3) How criteria is judged: Success of meeting this performance goal is based on the implementation of a statewide voter registration system that meets the requirements of HAVA.

(4) The Secretary of State in conjunction with the county election officials is responsible for meeting this measure.

b. NEW VOTER REGISTRATION APPLICATION

(1) Timetable: January 1, 2004

(2) Criteria: Prescribe, print and distribute new voter registration applications that meet the requirements of HAVA.

(3) How criteria is judged: The Secretary of State will prescribe, print and distribute a new voter registration application to all counties prior to January 1, 2004.

(4) The Secretary of State in conjunction with the county election officials is responsible for meeting this measure.

The Secretary of State will collect specific data to identify the successes of each county as it relates to the implementation of the Help America Vote Act of 2002 (HAVA). The Secretary of State will compile the data in report(s) for tracking purposes and to share with interested parties such as the EAC. The report will include an indication of whether each county met the performance goals. If the Election Assistance Commission or any other federal agency should prescribe such a report or survey, the state will use the federal form in lieu of the state form.

9. Description of state based administrative complaint procedures (Sec. 254, a, 9):

The Secretary of State has adopted an administrative complaint procedure through its rulemaking authority. Complaints are limited to those arising from violations of Title III of HAVA. As required under Section 402(2) of HAVA, complaints shall be required to be in writing, signed by the complainant, and notarized. The Secretary of State will have authority to consolidate complaints for efficiency and to resolve any complaints through an informal process, if warranted.

Review of the complaint will be held pursuant to the right of notice, hearing, and adjudication as set out in the administrative rule.

10. A description of how payments for punch card replacement and early out money affects the activities under the plan, including the amount of funds available (Sec. 254, a, 10).

Punch card and lever voting system replacement award agreements were sent to all eligible counties in April 2004. The Title I funds will be distributed, administered, and monitored using the same standards as the requirements payments that are distributed to the counties.

11. Description of how the state will conduct ongoing management of the plan (Sec. 254, a, 11):

The Secretary of State has hired a HAVA grant manager, a HAVA grant accountant, a project manager to oversee the development and implementation of the HAVA-compliant statewide voter registration system, and will hire monitoring staff or outsource that function. All procurement with HAVA funds will be consistent with applicable state and federal laws and regulations, including the Texas Government Code and the Texas Building and Procurement Commission. All sub-awarded grants will include an award agreement with the terms and conditions governing the use of the funds and will adopt by reference the State of Texas Uniform Grant Management Standards, OMB Circular A-87, OMB Circular A-102, "Common Rule", Administrative Requirements, 53 FR 8087, March 11, 1988, and OMB Circular A-133.

If material changes to the state plan are necessary, the Secretary of State will propose the change in the Texas Administrative Register. In addition, the Secretary of State intends to continue working with the HAVA Advisory Committee as the plan is implemented. The State Plan provides a general framework of HAVA implementation in Texas, but the Secretary of State will continue, as needed, to adopt administrative rules to define specific procedures for provisional voting and other HAVA-related issues as well as modify and design forms as the implementation of HAVA continues to evolve. As rules are proposed and as new voter forms are drafted, the Secretary of State will distribute the drafts to the HAVA Advisory Committee for comments and suggestions.

12. Description of how the plan reflects changes from the state plan for the previous fiscal year.

Each section has been updated accordingly and reflects the current state plan.

13. A description of the committee that participated in the development of the plan (Sec. 254, a, 13).

An advisory committee was appointed by the Secretary of State to help develop the State Plan. We enlisted professional associations, voter advocacy groups and other relevant associations, and requested that each association appoint a representative to serve on the advisory committee. The Committee conducted public meetings on the following dates: April 3, 2003, May 1, 2003, June 27, 2003, February 20, 2004, and November 12, 2004. Minutes of all Committee meetings are posted on the Secretary of State website at http://www.sos.state.tx.us/elections/hava/index.shtml. The Preliminary Texas State Plan was

posted on the web on July 25, 2003 and also published in the Texas Register on August 1, 2003. Public comment was accepted through September 2, 2003.

The proposed amended budget was posted on the Secretary of State agency website on November 5, 2004 and was discussed at the November 12, 2004 meeting of the HAVA Advisory Committee. In addition, notice of the proposed amended budget was published in the Texas Register on November 5, 2004.

Advisory Committee Members:

Teresa Aguirre
Texas Association of Counties

Phil Barrett
Texas Department of Information Resources

Paul Bettencourt
Harris County Tax Assessor-Collector

Paulette Burke
Texas County & District Clerks Association
Rockwall County Clerk

Brett Carr
Senate State Affairs

The Honorable Mary Denny
Texas State Representative
Chair, House Elections Committee

Judge Robert Eckels
County Judges and Commissioners Association

Frank Elder
Assistant Chief
Texas Department of Public Safety

Claude Foster
ACLU of Texas, Inc.

Barbara Hankins
Texas League of Women Voters

David Hanna
Texas Legislative Council

Beverly Kaufman
Harris County Clerk

Bob Lydia
President
NAACP

Molly Beth Malcolm
Chairwoman
Texas Democratic Party

Germaine Martinez
Program Specialist
Texas Department of Public Safety

The Honorable Jane Nelson
Texas State Senator

Jodi Park
Coalition of Texans with Disabilities

Nina Perales
MALDEF

Sharon Rowe
President Texas Association of Elections Administrators
Collin County Elections Administrator

Rudy Sandoval
Chief of Staff
LULAC

Michael Scholfield
Assistant General Counsel
Governor's Policy
Office of the Governor

Jonas Schwartz
Program Services Manager
Advocacy, Inc.

Bruce Sherbet
Dallas County Elections Administrator

Sandra Vice
State Auditor's Office

Bea Westbrook
President
Texas Association of Tax Assessor-Collectors
Newton County Tax Assessor Collector

Chad Wilbanks
Texas Republican Party

Don Willett
Deputy Attorney General, General Counsel
Office of the Texas Attorney General

FUNDING ALLOCATIONS TO TEXAS COUNTIES

Table 2

COUNTY	VOTING SYSTEM	PRECINCTS	VOTING AGE POP.	FY03 Approp.			FY04 Approp.
				County Education Fund	Accessible Voting System	General HAVA Compl. w/ $5,000 Minimum	200% FY03 Accessibility and Gen. HAVA Comp. Funding
ANDERSON	Optical Scan	25	43,678	$7,000	$75,000.00	$58,022	$266,341
ANDREWS	Paper	5	8,903	$7,000	$15,000.00	$11,827	$53,714
ANGELINA	Optical Scan	40	57,974	$7,000	$120,000.00	$77,013	$394,466
ARANSAS	Optical Scan	7	17,151	$7,000	$21,000.00	$22,784	$87,665
ARCHER	Optical Scan	14	6,358	$7,000	$42,000.00	$8,446	$101,005
ARMSTRONG	Paper	9	1,589	$7,000	$27,000.00	$5,000	$64,071
ATASCOSA	Optical Scan	25	26,373	$7,000	$75,000.00	$35,034	$220,314
AUSTIN	Optical Scan	19	17,215	$7,000	$57,000.00	$22,869	$159,915
BAILEY	Paper	8	4,597	$7,000	$24,000.00	$6,107	$60,281
BANDERA	Optical Scan	12	13,292	$7,000	$36,000.00	$17,657	$107,434
BASTROP	Optical Scan	22	41,589	$7,000	$66,000.00	$55,247	$242,765
BAYLOR	Paper	6	3,135	$7,000	$18,000.00	$5,000	$46,051
BEE	Optical Scan	18	24,794	$7,000	$54,000.00	$32,937	$174,067
BELL	AVM	43	169,236	$9,000	$129,000.00	$224,815	$708,419
BEXAR	Optical Scan	626	996,458	$11,000	$1,878,000.00	$1,323,705	$6,410,551
BLANCO	Paper	9	6,368	$7,000	$27,000.00	$8,459	$70,998
BORDEN	Paper	8	550	$7,000	$24,000.00	$5,000	$58,065
BOSQUE	Optical Scan	18	13,003	$7,000	$54,000.00	$17,273	$142,706
BOWIE	Optical Scan	37	67,135	$7,000	$111,000.00	$89,183	$400,812
BRAZORIA	Punch Card	68	172,664	$9,000	$204,000.00	$229,369	$867,704
BRAZOS	Punch Card	109	119,680	$9,000	$327,000.00	$158,984	$973,052
BREWSTER	Paper	8	6,902	$7,000	$24,000.00	$9,169	$66,411
BRISCOE	Paper	7	1,305	$7,000	$21,000.00	$5,000	$52,058
BROOKS	Optical Scan	10	5,459	$7,000	$30,000.00	$7,252	$74,587
BROWN	Optical Scan	18	27,943	$7,000	$54,000.00	$37,120	$182,443
BURLESON	Optical Scan	16	12,047	$7,000	$48,000.00	$16,003	$128,149
BURNET	Optical Scan	24	25,779	$7,000	$72,000.00	$34,245	$212,727
CALDWELL	Optical Scan	20	23,068	$7,000	$60,000.00	$30,644	$181,490
CALHOUN	Optical Scan	30	14,767	$7,000	$90,000.00	$19,617	$219,478
CALLAHAN	Optical Scan	8	9,527	$7,000	$24,000.00	$12,656	$73,393
CAMERON	Optical Scan	84	221,932	$9,000	$252,000.00	$294,817	$1,094,853
CAMP	Paper	13	8,447	$7,000	$39,000.00	$11,221	$100,554
CARSON	Paper	10	4,700	$7,000	$30,000.00	$6,244	$72,568

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FUNDING ALLOCATIONS TO TEXAS COUNTIES

COUNTY	VOTING SYSTEM	PRECINCTS	VOTING AGE POP.	FY03 Approp.			FY04 Approp.
				County Education Fund	Accessible Voting System	General HAVA Compl. w/ $5,000 Minimum	200% FY03 Accessibility and Gen. HAVA Comp. Funding
CASS	Optical Scan	26	22,869	$7,000	$78,000.00	$30,379	$217,001
CASTRO	Paper	9	5,541	$7,000	$27,000.00	$7,361	$68,798
CHAMBERS	Punch Card	14	18,507	$7,000	$42,000.00	$24,585	$133,318
CHEROKEE	Optical Scan	29	34,383	$7,000	$87,000.00	$45,675	$265,645
CHILDRESS	Paper	5	5,989	$7,000	$15,000.00	$7,956	$45,963
CLAY	Paper	17	8,271	$7,000	$51,000.00	$10,987	$124,113
COCHRAN	Paper	8	2,554	$7,000	$24,000.00	$5,000	$58,065
COKE	Paper	8	2,922	$7,000	$24,000.00	$5,000	$58,065
COLEMAN	Paper	15	7,053	$7,000	$45,000.00	$9,369	$108,860
COLLIN	Punch Card	127	350,368	$9,000	$381,000.00	$465,432	$1,694,753
COLLINGSWORTH	Paper	8	2,360	$7,000	$24,000.00	$5,000	$58,065
COLORADO	Optical Scan	19	15,171	$7,000	$57,000.00	$20,153	$154,479
COMAL	Optical Scan	31	58,107	$7,000	$93,000.00	$77,190	$340,759
COMANCHE	Paper	17	10,475	$7,000	$51,000.00	$13,915	$129,975
CONCHO	Paper	9	3,328	$7,000	$27,000.00	$5,000	$64,071
COOKE	Optical Scan	26	26,421	$7,000	$78,000.00	$35,098	$226,448
CORYELL	Optical Scan	21	55,305	$7,000	$63,000.00	$73,468	$273,240
COTTLE	Paper	6	1,448	$7,000	$18,000.00	$5,000	$46,051
CRANE	Paper	5	2,722	$7,000	$15,000.00	$5,000	$40,045
CROCKETT	Optical Scan	5	2,914	$7,000	$15,000.00	$5,000	$40,045
CROSBY	Paper	11	4,898	$7,000	$33,000.00	$6,507	$75,101
CULBERSON	Paper	7	2,018	$7,000	$21,000.00	$5,000	$52,058
DALLAM	Paper	10	4,244	$7,000	$30,000.00	$5,638	$71,355
DALLAS	Optical Scan/DRE	791	1,599,868	$11,000	$2,373,000.00	$2,125,280	$9,006,595
DAWSON	Paper	12	11,148	$7,000	$36,000.00	$14,809	$101,732
DEAF SMITH	Optical Scan	9	12,380	$7,000	$27,000.00	$16,446	$86,988
DELTA	Paper	11	3,964	$7,000	$33,000.00	$5,266	$76,617
DENTON	Optical Scan	126	312,866	$9,000	$378,000.00	$415,614	$1,588,999
DEWITT	Paper	17	15,253	$7,000	$51,000.00	$20,262	$142,683
DICKENS	Paper	7	2,250	$7,000	$21,000.00	$5,000	$52,058
DIMMIT	Optical Scan	8	6,847	$7,000	$24,000.00	$9,096	$66,265
DONLEY	Paper	10	2,972	$7,000	$30,000.00	$5,000	$70,078
DUVAL	Optical Scan	12	9,252	$7,000	$36,000.00	$12,290	$96,689
EASTLAND	Optical Scan	10	14,050	$7,000	$30,000.00	$18,664	$97,437

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FUNDING ALLOCATIONS TO TEXAS COUNTIES

COUNTY	VOTING SYSTEM	PRECINCTS	VOTING AGE POP.	FY03 Approp.			FY04 Approp.
				County Education Fund	Accessible Voting System	General HAVA Compl. w/ $5,000 Minimum	200% FY03 Accessibility and Gen. HAVA Comp. Funding
ECTOR	Punch Card	42	84,303	$7,000	$126,000.00	$111,989	$476,509
EDWARDS	Paper	6	1,546	$7,000	$18,000.00	$5,000	$46,051
ELLIS	Optical Scan	60	77,716	$7,000	$180,000.00	$103,239	$567,109
EL PASO	Punch Card/DRE	156	462,199	$9,000	$468,000.00	$613,990	$2,166,393
ERATH	Optical Scan	27	24,889	$7,000	$81,000.00	$33,063	$228,380
FALLS	Paper	13	13,440	$7,000	$39,000.00	$17,854	$113,834
FANNIN	Optical Scan	20	23,992	$7,000	$60,000.00	$31,871	$183,947
FAYETTE	Optical Scan	28	16,747	$7,000	$84,000.00	$22,247	$212,731
FISHER	Paper	11	3,304	$7,000	$33,000.00	$5,000	$76,085
FLOYD	Paper	12	5,332	$7,000	$36,000.00	$7,083	$86,262
FOARD	Paper	5	1,203	$7,000	$15,000.00	$5,000	$40,045
FORT BEND	Optical Scan	104	240,980	$9,000	$312,000.00	$320,120	$1,265,650
FRANKLIN	Paper	10	7,159	$7,000	$30,000.00	$9,510	$79,108
FREESTONE	Optical Scan	16	13,645	$7,000	$48,000.00	$18,126	$132,400
FRIO	Optical Scan	11	11,592	$7,000	$33,000.00	$15,399	$96,906
GAINES	Optical Scan	9	9,402	$7,000	$27,000.00	$12,490	$79,068
GALVESTON	Optical Scan	77	183,289	$9,000	$231,000.00	$243,483	$950,024
GARZA	Paper	10	3,506	$7,000	$30,000.00	$5,000	$70,078
GILLESPIE	Optical Scan	16	16,327	$7,000	$48,000.00	$21,689	$139,533
GLASSCOCK	Paper	5	935	$7,000	$15,000.00	$5,000	$40,045
GOLIAD	Optical Scan	11	5,135	$7,000	$33,000.00	$6,821	$79,732
GONZALES	Optical Scan	16	13,421	$7,000	$48,000.00	$17,829	$131,804
GRAY	Optical Scan	15	17,282	$7,000	$45,000.00	$22,958	$136,067
GRAYSON	Optical Scan	54	82,620	$7,000	$162,000.00	$109,753	$544,113
GREGG	Optical Scan	23	81,588	$7,000	$69,000.00	$108,382	$355,160
GRIMES	Optical Scan	21	17,715	$7,000	$63,000.00	$23,533	$173,259
GUADALUPE	Optical Scan/DRE	83	63,693	$7,000	$249,000.00	$84,610	$667,965
HALE	Paper	19	25,532	$7,000	$57,000.00	$33,917	$182,037
HALL	Paper	8	2,753	$7,000	$24,000.00	$5,000	$58,065
HAMILTON	Optical Scan	15	6,270	$7,000	$45,000.00	$8,329	$106,777
HANSFORD	Paper	9	3,795	$7,000	$27,000.00	$5,041	$64,154
HARDEMAN	Paper	6	3,526	$7,000	$18,000.00	$5,000	$46,051
HARDIN	Optical Scan	18	34,715	$7,000	$54,000.00	$46,116	$200,455
HARRIS	Punch Card	935	2,416,022	$11,000	$2,805,000.00	$3,209,467	$12,042,351

FUNDING ALLOCATIONS TO TEXAS COUNTIES

COUNTY	VOTING SYSTEM	PRECINCTS	VOTING AGE POP.	FY03 Approp.			FY04 Approp.
				County Education Fund	Accessible Voting System	General HAVA Compl. w/ $5,000 Minimum	200% FY03 Accessibility and Gen. HAVA Comp. Funding
HARRISON	Optical Scan	29	45,441	$7,000	$87,000.00	$60,364	$295,057
HARTLEY	Paper	7	4,385	$7,000	$21,000.00	$5,825	$53,710
HASKELL	Paper	11	4,646	$7,000	$33,000.00	$6,172	$78,431
HAYS	Punch Card	35	73,683	$7,000	$105,000.00	$97,881	$406,215
HEMPHILL	Paper	9	2,412	$7,000	$27,000.00	$5,000	$64,071
HENDERSON	Optical Scan	31	55,426	$7,000	$93,000.00	$73,628	$333,629
HIDALGO	Optical Scan	95	368,461	$9,000	$285,000.00	$489,467	$1,550,662
HILL	Optical Scan	28	23,961	$7,000	$84,000.00	$31,830	$231,918
HOCKLEY	Optical Scan	16	16,098	$7,000	$48,000.00	$21,385	$138,924
HOOD	Vetronic II	16	31,407	$7,000	$48,000.00	$41,721	$179,643
HOPKINS	Optical Scan	22	23,605	$7,000	$66,000.00	$31,357	$194,931
HOUSTON	Optical Scan	22	17,807	$7,000	$66,000.00	$23,655	$179,510
HOWARD	Punch Card	21	25,488	$7,000	$63,000.00	$33,859	$193,933
HUDSPETH	Paper	12	2,203	$7,000	$36,000.00	$5,000	$82,091
HUNT	Optical Scan	36	56,268	$7,000	$108,000.00	$74,747	$365,902
HUTCHINSON	Optical Scan	15	17,310	$7,000	$45,000.00	$22,995	$136,141
IRION	Paper	6	1,298	$7,000	$18,000.00	$5,000	$46,051
JACK	Paper	11	6,712	$7,000	$33,000.00	$8,916	$83,926
JACKSON	Paper	13	10,448	$7,000	$39,000.00	$13,879	$105,876
JASPER	Optical Scan	20	26,165	$7,000	$60,000.00	$34,758	$189,727
JEFF DAVIS	Paper	6	1,668	$7,000	$18,000.00	$5,000	$46,051
JEFFERSON	Punch Card	106	186,727	$9,000	$318,000.00	$248,050	$1,133,363
JIM HOGG	Optical Scan	5	3,613	$7,000	$15,000.00	$5,000	$40,045
JIM WELLS	Optical Scan	22	26,975	$7,000	$66,000.00	$35,834	$203,895
JOHNSON	Optical Scan	35	90,294	$7,000	$105,000.00	$119,947	$450,397
JONES	Optical Scan	16	16,111	$7,000	$48,000.00	$21,402	$138,959
KARNES	Optical Scan	22	12,081	$7,000	$66,000.00	$16,049	$164,280
KAUFMAN	Optical Scan	35	50,486	$7,000	$105,000.00	$67,066	$344,516
KENDALL	Optical Scan	12	17,277	$7,000	$36,000.00	$22,951	$118,033
KENEDY	Optical Scan	7	293	$7,000	$21,000.00	$5,000	$52,058
KENT	Paper	7	682	$7,000	$21,000.00	$5,000	$52,058
KERR	Optical Scan	17	33,760	$7,000	$51,000.00	$44,847	$191,908
KIMBLE	Paper	8	3,412	$7,000	$24,000.00	$5,000	$58,065
KING	Paper	5	236	$7,000	$15,000.00	$5,000	$40,045

FUNDING ALLOCATIONS TO TEXAS COUNTIES

COUNTY	VOTING SYSTEM	PRECINCTS	VOTING AGE POP.	FY03 Approp.			FY04 Approp.
				County Education Fund	Accessible Voting System	General HAVA Compl. w/ $5,000 Minimum	200% FY03 Accessibility and Gen. HAVA Comp. Funding
KINNEY	Paper	5	2,511	$7,000	$15,000.00	$5,000	$40,045
KLEBERG	Optical Scan	31	22,949	$7,000	$93,000.00	$30,486	$247,247
KNOX	Paper	11	3,073	$7,000	$33,000.00	$5,000	$76,085
LAMAR	Optical Scan	33	35,831	$7,000	$99,000.00	$47,598	$293,524
LAMB	Paper	13	10,353	$7,000	$39,000.00	$13,753	$105,624
LAMPASAS	Optical Scan	10	12,864	$7,000	$30,000.00	$17,089	$94,282
LASALLE	Optical Scan	7	4,143	$7,000	$21,000.00	$5,504	$53,066
LAVACA	Optical Scan	20	14,562	$7,000	$60,000.00	$19,344	$158,866
LEE	Paper	13	11,148	$7,000	$39,000.00	$14,809	$107,738
LEON	Optical Scan	15	11,610	$7,000	$45,000.00	$15,423	$120,980
LIBERTY	Optical Scan	30	50,777	$7,000	$90,000.00	$67,453	$315,257
LIMESTONE	Optical Scan	21	16,451	$7,000	$63,000.00	$21,854	$169,897
LIPSCOMB	Paper	10	2,214	$7,000	$30,000.00	$5,000	$70,078
LIVE OAK	Paper	15	9,570	$7,000	$45,000.00	$12,713	$115,555
LLANO	Optical Scan	13	14,333	$7,000	$39,000.00	$19,040	$116,210
LOVING	Paper	5	54	$7,000	$15,000.00	$5,000	$40,045
LUBBOCK	Optical Scan	94	180,367	$9,000	$282,000.00	$239,601	$1,044,366
LYNN	Paper	15	4,506	$7,000	$45,000.00	$5,986	$102,085
MADISON	Optical Scan	9	10,207	$7,000	$27,000.00	$13,559	$81,209
MARION	Paper	16	8,496	$7,000	$48,000.00	$11,286	$118,705
MARTIN	Paper	10	3,136	$7,000	$30,000.00	$5,000	$70,078
MASON	Optical Scan	9	2,902	$7,000	$27,000.00	$5,000	$64,071
MATAGORDA	Optical Scan	19	26,575	$7,000	$57,000.00	$35,302	$184,811
MAVERICK	Optical Scan	15	29,838	$7,000	$45,000.00	$39,637	$169,463
MCCULLOCH	Paper	11	6,019	$7,000	$33,000.00	$7,996	$82,083
MCLENNAN	Optical Scan	98	156,687	$9,000	$294,000.00	$208,145	$1,005,409
MCMULLEN	Paper	6	652	$7,000	$18,000.00	$5,000	$46,051
MEDINA	Optical Scan	24	27,925	$7,000	$72,000.00	$37,096	$218,435
MENARD	Paper	7	1,788	$7,000	$21,000.00	$5,000	$52,058
MIDLAND	Optical Scan	54	80,975	$7,000	$162,000.00	$107,568	$539,737
MILAM	Optical Scan	22	17,582	$7,000	$66,000.00	$23,356	$178,912
MILLS	Paper	11	3,835	$7,000	$33,000.00	$5,094	$76,274
MITCHELL	Paper	7	7,777	$7,000	$21,000.00	$10,331	$82,732
MONTAGUE	Optical Scan	15	14,528	$7,000	$45,000.00	$19,299	$128,742

FUNDING ALLOCATIONS TO TEXAS COUNTIES

COUNTY	VOTING SYSTEM	PRECINCTS	VOTING AGE POP.	FY03 Approp.			FY04 Approp.
				County Education Fund	Accessible Voting System	General HAVA Compl. w/ $5,000 Minimum	200% FY03 Accessibility and Gen. HAVA Comp. Funding
MONTGOMERY	Optical Scan	73	207,036	$9,000	$219,000.00	$275,029	$989,159
MOORE	Optical Scan	9	13,368	$7,000	$27,000.00	$17,758	$89,616
MORRIS	Optical Scan	11	9,759	$7,000	$33,000.00	$12,964	$92,030
MOTLEY	Paper	7	1,084	$7,000	$21,000.00	$5,000	$52,058
NACOGDOCHES	Optical Scan	29	44,995	$7,000	$87,000.00	$59,772	$293,871
NAVARRO	Optical Scan	35	32,830	$7,000	$105,000.00	$43,612	$297,555
NEWTON	Optical Scan	22	11,127	$7,000	$66,000.00	$14,781	$161,743
NOLAN	Optical Scan	10	11,521	$7,000	$30,000.00	$15,305	$90,710
NUECES	Optical Scan	123	224,528	$9,000	$369,000.00	$298,265	$1,336,019
OCHILTREE	Paper	5	6,254	$7,000	$15,000.00	$8,308	$46,668
OLDHAM	Paper	8	1,420	$7,000	$24,000.00	$5,000	$58,065
ORANGE	Optical Scan	30	61,783	$7,000	$90,000.00	$82,073	$344,530
PALO PINTO	Optical Scan	20	20,004	$7,000	$60,000.00	$26,574	$173,340
PANOLA	Optical Scan	22	17,015	$7,000	$66,000.00	$22,603	$177,403
PARKER	Optical Scan	34	64,139	$7,000	$102,000.00	$85,203	$374,823
PARMER	Optical Scan	10	6,721	$7,000	$30,000.00	$8,928	$77,943
PECOS	Optical Scan	10	12,160	$7,000	$30,000.00	$16,153	$92,410
POLK	Optical Scan	21	31,698	$7,000	$63,000.00	$42,108	$210,450
POTTER	Optical Scan	32	81,747	$7,000	$96,000.00	$108,594	$409,643
PRESIDIO	Paper	8	4,915	$7,000	$24,000.00	$6,529	$61,126
RAINS	Paper	8	6,968	$7,000	$24,000.00	$9,256	$66,587
RANDALL	Optical Scan	32	77,100	$7,000	$96,000.00	$102,420	$397,283
REAGAN	Paper	7	2,189	$7,000	$21,000.00	$5,000	$52,058
REAL	Paper	7	2,333	$7,000	$21,000.00	$5,000	$52,058
RED RIVER	Paper	26	10,900	$7,000	$78,000.00	$14,480	$185,166
REEVES	Punch Card	13	9,214	$7,000	$39,000.00	$12,240	$102,594
REFUGIO	Optical Scan	11	5,784	$7,000	$33,000.00	$7,684	$81,458
ROBERTS	Paper	6	665	$7,000	$18,000.00	$5,000	$46,051
ROBERTSON	Optical Scan	17	11,485	$7,000	$51,000.00	$15,257	$132,661
ROCKWALL	Optical Scan	14	30,127	$7,000	$42,000.00	$40,021	$164,225
RUNNELS	Paper	10	8,398	$7,000	$30,000.00	$11,156	$82,404
RUSK	Optical Scan	38	35,581	$7,000	$114,000.00	$47,266	$322,892
SABINE	Optical Scan	11	8,258	$7,000	$33,000.00	$10,970	$88,038
SAN AUGUSTINE	Optical Scan	12	6,822	$7,000	$36,000.00	$9,062	$90,225

FUNDING ALLOCATIONS TO TEXAS COUNTIES

COUNTY	VOTING SYSTEM	PRECINCTS	VOTING AGE POP.	FY03 Approp.			FY04 Approp.
				County Education Fund	Accessible Voting System	General HAVA Compl. w/ $5,000 Minimum	200% FY03 Accessibility and Gen. HAVA Comp. Funding
SAN JACINTO	Optical Scan	12	16,647	$7,000	$36,000.00	$22,114	$116,358
SAN PATRICIO	Optical Scan	34	46,260	$7,000	$102,000.00	$61,452	$327,269
SAN SABA	Optical Scan	8	4,460	$7,000	$24,000.00	$5,925	$59,916
SCHLEICHER	Paper	5	2,115	$7,000	$15,000.00	$5,000	$40,045
SCURRY	Optical Scan	12	12,245	$7,000	$36,000.00	$16,266	$104,649
SHACKELFORD	Paper	8	2,421	$7,000	$24,000.00	$5,000	$58,065
SHELBY	Optical Scan	15	18,518	$7,000	$45,000.00	$24,599	$139,354
SHERMAN	Paper	8	2,186	$7,000	$24,000.00	$5,000	$58,065
SMITH	Punch Card	72	128,208	$9,000	$216,000.00	$170,313	$773,487
SOMERVELL	Paper	7	4,874	$7,000	$21,000.00	$6,475	$55,011
STARR	Optical Scan	11	33,555	$7,000	$33,000.00	$44,575	$155,323
STEPHENS	Optical Scan	11	7,313	$7,000	$33,000.00	$9,715	$85,525
STERLING	Paper	5	993	$7,000	$15,000.00	$5,000	$40,045
STONEWALL	Paper	10	1,307	$7,000	$30,000.00	$5,000	$70,078
SUTTON	Paper	6	2,904	$7,000	$18,000.00	$5,000	$46,051
SWISHER	Paper	11	6,040	$7,000	$33,000.00	$8,024	$82,139
TARRANT	Optical Scan	535	1,039,747	$11,000	$1,605,000.00	$1,381,210	$5,979,082
TAYLOR	Punch Card	39	92,895	$7,000	$117,000.00	$123,403	$481,342
TERRELL	Paper	5	794	$7,000	$15,000.00	$5,000	$40,045
TERRY	Optical Scan	9	9,143	$7,000	$27,000.00	$12,146	$78,379
THROCKMORTON	Paper	6	1,384	$7,000	$18,000.00	$5,000	$46,051
TITUS	Optical Scan	20	19,600	$7,000	$60,000.00	$26,037	$172,266
TOM GREEN	Optical Scan	60	76,879	$7,000	$180,000.00	$102,127	$564,883
TRAVIS	Optical Scan	230	619,336	$11,000	$690,000.00	$822,732	$3,028,838
TRINITY	Optical Scan	20	10,625	$7,000	$60,000.00	$14,114	$148,394
TYLER	Optical Scan	18	16,034	$7,000	$54,000.00	$21,300	$150,767
UPSHUR	Optical Scan	21	25,771	$7,000	$63,000.00	$34,234	$194,686
UPTON	DRE	7	2,406	$7,000	$21,000.00	$5,000	$52,058
UVALDE	Optical Scan	16	17,795	$7,000	$48,000.00	$23,639	$143,438
VAL VERDE	Optical Scan	21	30,474	$7,000	$63,000.00	$40,482	$207,195
VAN ZANDT	Optical Scan	29	35,841	$7,000	$87,000.00	$47,612	$269,523
VICTORIA	AVM	36	59,586	$7,000	$108,000.00	$79,155	$374,727
WALKER	Optical Scan	19	50,642	$7,000	$57,000.00	$67,273	$248,824
WALLER	Optical Scan	20	24,277	$7,000	$60,000.00	$32,250	$184,705

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FUNDING ALLOCATIONS TO TEXAS COUNTIES

COUNTY	VOTING SYSTEM	PRECINCTS	VOTING AGE POP.	FY03 Approp.			FY04 Approp.
				County Education Fund	Accessible Voting System	General HAVA Compl. w/ $5,000 Minimum	200% FY03 Accessibility and Gen. HAVA Comp. Funding
WARD	Optical Scan	9	7,573	$7,000	$27,000.00	$10,060	$74,203
WASHINGTON	Optical Scan	22	22,868	$7,000	$66,000.00	$30,378	$192,971
WEBB	Optical Scan	42	123,255	$9,000	$126,000.00	$163,733	$580,113
WHARTON	Optical Scan	23	29,351	$7,000	$69,000.00	$38,990	$216,221
WHEELER	Paper	11	3,969	$7,000	$33,000.00	$5,272	$76,630
WICHITA	Punch Card	53	98,544	$7,000	$159,000.00	$130,907	$580,460
WILBARGER	Paper	13	10,582	$7,000	$39,000.00	$14,057	$106,233
WILLACY	Optical Scan	13	13,730	$7,000	$39,000.00	$18,239	$114,606
WILLIAMSON	Optical Scan	85	175,065	$9,000	$255,000.00	$232,558	$976,204
WILSON	Optical Scan	17	22,956	$7,000	$51,000.00	$30,495	$163,172
WINKLER	Optical Scan	6	5,033	$7,000	$18,000.00	$6,686	$49,427
WISE	Optical Scan	23	34,990	$7,000	$69,000.00	$46,481	$231,220
WOOD	Optical Scan	12	28,725	$7,000	$36,000.00	$38,159	$148,483
YOAKUM	Optical Scan	7	4,972	$7,000	$21,000.00	$6,605	$55,271
YOUNG	Paper	13	13,458	$7,000	$39,000.00	$17,878	$113,882
ZAPATA	Optical Scan	8	8,157	$7,000	$24,000.00	$10,836	$69,749
ZAVALA	Optical Scan	7	7,644	$7,000	$21,000.00	$10,154	$62,378
		8,586	14,965,061	$1,834,000	$25,758,000	$20,000,000	$91,618,074

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Chart D-Definitions of "Vote"	
Punch Card	Current law-Section 127.130(d) of the Texas Election Code: (d) Subject to Subsection (e), in any manual count conducted under this code, a vote on a ballot on which a voter indicates a vote by punching a hole in the ballot may not be counted unless: (1) at least two corners of the chad are detached; (2) light is visible through the hole; (3) an indentation on the chad from the stylus or other object is present and indicates a clearly ascertainable intent of the voter to vote; or (4) the chad reflects by other means a clearly ascertainable intent of the voter to vote. (c) Subsection (d) does not supersede any clearly ascertainable intent of the voter.
Optical Scan, Direct Recording Electronic, and Paper Ballot Systems	Effective January 1, 2004, Section 65.009(d) of the Texas Election Code will provide: The intent of the voter in marking a ballot may be determined by: (1) a distinguishing mark adjacent to the name of a candidate or political party or a voting choice associated with a proposition; (2) an oval, box, or similar marking clearly drawn around the name of a candidate or political party or a voting choice associated with a proposition; (3) a line drawn through: (A) the names of all candidates in a manner that indicates a preference for the candidates not marked if the names of the candidates not marked do not exceed the number of persons that may be elected to that office; (B) the name of each political party except one in a manner that clearly indicates a preference for the political party not marked; or (C) a voting choice associated with a proposition in a manner that clearly indicates a preference for the other voting choice associated with the proposition; or (4) any other evidence that clearly indicates the intent of the voter in choosing a candidate or political party or deciding on a proposition.

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Federal Register

Friday,
March 11, 2005

Part IV

Office of Management and Budget

North American Industry Classification System—Update for 2007; Notice

OFFICE OF MANAGEMENT AND BUDGET

North American Industry Classification System—Update for 2007

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice of solicitation of comments on the Economic Classification Policy Committee's recommendations for the 2007 revision of the North American Industry Classification System.

SUMMARY: Under Title 44 U.S.C. 3504(e), the Office of Management and Budget (OMB) seeks public comment on the advisability of adopting the proposed North American Industry Classification System (NAICS) updates for 2007. NAICS is a system for classifying establishments (individual business locations) by type of economic activity. Mexico's Instituto Nacional de Estadística, Geografía e Informática (INEGI), Statistics Canada, and the United States Office of Management and Budget, through its Economic Classification Policy Committee (ECPC), collaborated on NAICS to make the industry statistics produced by the three countries comparable. OMB's Economic Classification Policy Committee recommends an update of the industry classification system to clarify existing industry definitions and content, recognize new and emerging industries, and correct errors and omissions.

This notice: (1) Summarizes the background for the proposed revisions to NAICS 2002 in Part I, (2) contains a summary of public comments in Part II, (3) details multiple requests and major changes in the proposed structure agreed to by the three countries in Part III, and (4) provides a comprehensive listing of proposed changes for national industries and their links to NAICS 2002 industries in Part IV.

OMB published a notification of intention to revise portions of NAICS in a December 27, 2002, **Federal Register** notice (67 FR 79500–79506). That notice solicited comments on the advisability of revising maximum possible public input, OMB seeks comment on the advisability of revising the NAICS 2002 structure for 2007 to account for new and emerging industries and solicited comments on the advisability of making changes to improve international comparability, and other changes identified as necessary during the initial implementation of NAICS 2002. The deadline for submitting comments was March 28, 2003.

After considering all proposals from the public, consulting with U.S. data users and industry groups, and undertaking extensive discussions with Statistics Canada and Mexico's INEGI, the ECPC in collaboration with INEGI and Statistics Canada developed recommendations for revisions to NAICS that would apply to all three North American countries. These revisions focus on improving the description of current industries, identifying new and emerging industries, and recommending changes to industry content based on research and implementation experience. There are no changes specifically recommended to increase international comparability.

The ECPC recommends that NAICS United States 2007 incorporate changes as shown in Parts III and IV of this notice.

Following an extensive process of development and discussions by the ECPC, with maximum possible public input, OMB seeks comment on the advisability of revising NAICS to incorporate the changes published in this notice. The modified NAICS would be employed in relevant data collections by all U.S. statistical agencies beginning with the reference year 2007. Statistics Canada and INEGI are recommending acceptance of the proposed revisions of the NAICS system for industry classification in the statistical programs of their national systems and are seeking comments in their respective countries. Representatives of the three countries will hold further discussions to consider public comments that they receive.

DATES: To ensure consideration of comments on the adoption and implementation of the NAICS revisions detailed in this notice, comments must be in writing. Please submit comments as soon as possible, but no later than June 9, 2005. Please be aware of delays in mail processing at Federal facilities due to heightened security. Respondents are encouraged to send both a hard copy and a second copy via fax or e-mail. This proposed revision to NAICS would become effective in the U.S. for publication of establishment data that refer to periods beginning on or after January 1, 2007.

ADDRESSES: Please send correspondence about the adoption and implementation of proposed NAICS revisions as shown in this **Federal Register** notice to: Katherine K. Wallman, Chief Statistician, Office of Management and Budget, 10201 New Executive Office Building, Washington, DC 20503, telephone number: (202) 395–3093, fax number: (202) 395–7245. Please send E-mail comments to *naics@omb.eop.gov* with subject NAICS07. OMB will include in the official record all comments received via facsimile or via e-mail, at this address with this subject, by the date specified above.

Please address inquiries about the content of industries or requests for electronic copies of the tables to: John Murphy, Chair, Economic Classification Policy Committee, Bureau of the Census, Room 2641–3, Washington, DC 20233, telephone number: (301) 763–5172, fax number: (301) 457–1343, e-mail: *John.Burns.Murphy@census.gov.*

Electronic Availability and Comments: This document is available on the Internet from the Census Bureau Internet site via WWW browser. To obtain this document via WWW browser, connect to *http://www.census.gov/naics.* This WWW page also contains links to previous NAICS **Federal Register** notices and related documents.

FOR FURTHER INFORMATION CONTACT: Paul Bugg, 10201 New Executive Office Building., Washington, DC 20503, e-mail address: *pbugg@omb eop.gov,* telephone number: (202) 395–3095, fax number: (202) 395–7245.

SUPPLEMENTARY INFORMATION:

Part I: Background of NAICS

NAICS is a system for classifying establishments (individual business locations) by type of economic activity. Its purposes are: (1) To facilitate the collection, tabulation, presentation, and analysis of data relating to establishments, and (2) to promote uniformity and comparability in the presentation and analysis of statistical data describing the North American economy. NAICS is used by Federal statistical agencies that collect or publish data by industry. It is also widely used by State agencies, trade associations, private businesses, and other organizations.

Mexico's Instituto Nacional de Estadística, Geografía e Informática, Statistics Canada, and the United States Office of Management and Budget, through its Economic Classification Policy Committee, collaborated on NAICS to make the industry statistics produced by the three countries comparable. NAICS is the first industry classification system developed in accordance with a single principle of aggregation, the principle that producing units that use similar production processes should be grouped together in the classification.

NAICS also reflects in a much more explicit way the enormous changes in technology and in the growth and

diversification of services that have marked recent decades. Industry statistics presented using NAICS are comparable, to a limited extent, with statistics compiled according to the latest revision of the United Nations' International Standard Industrial Classification (ISIC, Revision 3.1).

For the three countries, NAICS provides a consistent framework for the collection, tabulation, presentation, and analysis of industry statistics used by government policy analysts, by academics and researchers, by the business community, and by the public. However, because of different national economic and institutional structures as well as limited resources and time for constructing NAICS, its structure was not made entirely comparable at the individual industry level across all three countries. For some sectors and subsectors, the statistical agencies of the three countries agreed to harmonize NAICS based on sectoral boundaries rather than on a detailed industry structure. NAICS comparability is limited to the sector level for wholesale trade, retail trade, and public administration.

The four principles of NAICS are:

(1) NAICS is erected on a production-oriented conceptual framework. This means that producing units that use the same or similar production processes are grouped together in NAICS.

(2) NAICS gives special attention to developing production-oriented classifications for (a) new and emerging industries, (b) service industries in general, and (c) industries engaged in the production of advanced technologies.

(3) Time series continuity is maintained to the extent possible.

(4) The system strives for compatibility with the two-digit level of the International Standard Industrial Classification of All Economic Activities (ISIC Rev. 3) of the United Nations.

The ECPC is committed to maintaining the principles of NAICS during revisions. The December 27, 2002, solicitation for public comment on questions related to a potential revision of NAICS in 2007 was directly tied to the application of the four NAICS principles.

NAICS uses a hierarchical structure to classify establishments from the broadest level to the most detailed level using the following format:

Sector	2-digit	Sectors represent the highest level of aggregation. There are 20 sectors in NAICS representing broad levels of aggregation.
Subsector	3-digit	Subsectors represent the next, more detailed level of aggregation in NAICS. There are 100 subsectors in NAICS.
Industry Group	4-digit	Industry groups are more detailed than subsectors. There are 317 Industry groups in NAICS.
NAICS Industry	5-digit	NAICS industries are the level that, in most cases, represents the lowest level of three country comparability. There are 725 five-digit industries in NAICS.
National Industry	6-digit	National industries are the most detailed level of NAICS. These industries represent the national level detail necessary for economic statistics in an industry classification. There are 1179 U.S. industries in NAICS United States, 2002.

Part II: Summary of Public Comments Regarding Priorities for Changes to NAICS in 2007

In response to the December 27, 2002, **Federal Register** notice, the ECPC received a total of 68 comments. Each submission was assigned a unique docket number. These 68 comments addressed the advisability of making changes based on the principles of NAICS and/or included comments proposing changes to the structure of NAICS 2002.

The ECPC received nine comments that addressed the issue of priorities for a potential revision of NAICS in 2007 based on the four principles. The ECPC recognized that the application of one principle, such as international comparability, could be at the expense of another principle, such as time series comparability. The ECPC sought public comment on the relative priority of each principle or a ranking of priorities for the principles. The response to the **Federal Register** notice was insufficient to reliably gauge the general public's position on the priorities for a 2007 revision of NAICS. In the small number of comments received, the same items were listed as high priorities for some respondents and low priorities for others.

The ECPC recommends and has applied the following general guidance when considering changes to NAICS in 2007:

(1) Because of the cost of change and disruption of statistical data that has already resulted from the ongoing implementation of NAICS, the ECPC will limit the scope of the changes for 2007 and recommend only essential changes to the system;

(2) The ECPC will recommend new and emerging industries identified through public comment that are supported by the guiding principles of NAICS;

(3) The ECPC will approach improvements in international comparability using a better concordance approach rather than making structural changes to NAICS to improve comparability; and

(4) The ECPC will make changes to account for errors and omissions as well as recommending narrative improvements to clarify the content of existing industries.

The ECPC also relied on the policy direction of the Office of Management and Budget and the positions of the ECPC member agencies (Bureau of Economic Analysis, Bureau of Labor Statistics, and Bureau of the Census) when evaluating specific proposals for changes to NAICS in 2007. The ECPC reviewed each individual proposal within the existing framework of the principles of NAICS. Additional considerations that resulted in recommendations for or against change included issues of relevance, size, and time series continuity.

The ECPC received 60 comments that requested specific changes to NAICS industries for 2007. Twenty-two of those comments requested industries for biotechnology, three requested changes to the definition of optometrists, and three requested a new industry for design/build in the construction sector of NAICS. The balance of the comments addressed single issues, such as requests for new industries or clarifications for activities including wedding videography, rope and cordage manufacturing, simulation, e-learning, denturists, rental and leasing of recreational vehicles, physical therapy, travel goods wholesaling, and similar requests.

The ECPC received a number of comments that suggested changes to NAICS that were not accepted. Each of these suggestions was carefully considered. Some suggestions were modified by the ECPC to better meet the objectives of NAICS. Other suggestions proposed products (rather than industries); these will be considered in the North American Product Classification System (NAPCS), a new product classification system currently under development. Still other

suggestions for change could not be justified on a production basis, or could not be implemented in statistical programs, for various reasons, and thus were not accepted.

When a proposal was not accepted, it was usually because: (a) The resulting industry would have been too small in the U.S.; (b) the specialization ratio of the resulting industry, a measure of the degree to which establishments in the industry are similar to one another and different from establishments in other industries, was too low; or (c) the proposal did not meet the production-oriented criterion for forming an industry in NAICS.

Part III: Recommendations on Specific Requests for Change

The ECPC received 22 separate responses requesting the creation of new industries for medical biotechnology products, food and agricultural biotechnology products, and industrial biotechnology products. The proposals were assigned docket numbers: 07–0013, 07–0014, 07–0015, 07–0016, 07–0018, 07–0019, 07–0020, 07–0022, 07–0023, 07–0024, 07–0025, 07–0026, 07–0027, 07–0028, 07–0029, 07–0030, 07–0031, 07–0036, 07–0037, 07–0041, 07–0044, and 07–0049. The proposals did not contain information regarding the size of the potential industries, importance of the industries in Canada or Mexico, or any information regarding the separate production function justification for creating the new industries. In order to evaluate the proposals, the ECPC consulted with an industry trade association to clarify the requests for new industries.

The ECPC clarified the requests as proposals to create industries for establishments that use biotechnology inputs, use biotechnology processes, or produce biotechnology outputs. The practical impact of these proposals would be to group a number of establishments that are currently classified in the Agriculture, Forestry, Fishing, and Hunting; Manufacturing; and Professional, Scientific and Technical Services sectors of NAICS.

The ECPC used the principles of NAICS to evaluate these requests. The ECPC recommends against creating the three industries requested based on the mixture of production processes that would be involved. These activities are currently classified throughout the NAICS system. For example, growing genetically-modified crops is in farming, production of biotech enzymes is in the chemicals subsector of NAICS, and manufacturing foods from biotech inputs is classified in food manufacturing. The ECPC considered the production processes and similarities to other production processes already separately identified in NAICS. Growing a genetically-modified crop may require a different production function from growing a more traditional version of the crop because of decreased need for pesticides or other inputs. Nevertheless, the production process is still closer to other agriculture production processes than it is to manufacturing production processes or professional service production processes. A similar rationale applies to food manufacturing production processes, pharmaceutical manufacturing production processes, and industrial manufacturing production processes.

The ECPC recognized the importance of biotechnology as an emerging technology that should be accounted for in NAICS. While recommending against the proposals received in response to the **Federal Register** notice, the ECPC does recommend creation of a new six-digit national industry for Biotechnology Research and Development. This industry will contain units that are using biotechnology processes to develop general knowledge, new products, and processes using biotechnology. The new biotechnology research and development industry is in conformance with the principles of NAICS because: (1) The new industry will group similar establishments using biotechnology processes in experimental research and development; (2) the new industry addresses a new and emerging activity resulting in the production of advanced technologies, and (3) the new industry is expected to be comparable with a biotechnology research and development industry proposed in the ongoing revision of the International Standard Industrial Classification of All Economic Activities of the United Nations. In order to minimize time series disruptions, the new industry for Biotechnology Research and Development can be added to the revised industry for research and development in the physical, engineering, and life sciences to create a continuous time series for NAICS United States 2002 industry 541710, Research and Development in the Physical, Engineering, and Life Sciences.

The ECPC also reviewed the results of a biotechnology use survey conducted by the Department of Commerce and reviewed preliminary survey results regarding biotechnology research and development from the 2002 Economic Census. Both sources indicate that the proposed industry will be supportable in collection and publication. The ECPC recommends that public commenters on this issue work with statistical data collection programs in order to ensure that adequate biotechnology product detail is included in future data collection efforts.

Three public comments requested changes to the definition of optometrist used in the NAICS United States 2002 manual. These proposals were assigned docket numbers 07–0001, 07–0004, and 07–0035. The ECPC reviewed the proposals and information from the American Optometric Association and is recommending changes to the definition that would more accurately describe the industry but would not change the content of the industry in NAICS 2007.

Three public comments requested a new industry for design/build firms. These proposals were assigned docket numbers 07–0052, 07–0053, and 07–0054. Similar proposals were received in both 1997 and 2002. The ECPC remains opposed to using project delivery methods to define industries in the construction sector. The concept of using project delivery methods was exhaustively reviewed with Canada and Mexico during the 2002 revision of the construction sector. During the 2007 revision process, the ECPC met on several occasions with those who requested this new industry and discussed the criteria for industries in NAICS, providing background on the use of products in Census Bureau programs and the development of the North American Product Classification System currently underway. The ECPC recommends that interested parties work with statistical data collection programs in order to ensure that more exhaustive survey items for the design/build delivery method are included in future data collection efforts.

The ECPC also reviewed the structure of the telecommunications industries in NAICS 2002 in light of continuing change in the industry. The ECPC is recommending changes in the subsectors for Telecommunications (517); Internet Service Providers, Web Search Portals, and Data Processing Services (518); and Other Information Services (519).

Infrastructure operators increasingly provide a bundle of voice, data, and video services. Traditional telephone companies are providing broadband Internet access and video services, along with telephone service. Traditional television cable companies are also providing broadband Internet access services and telephone services. While there is considerable interest in tracking changes in these industries over time, it

is becoming increasingly difficult to distinguish between a cable company and a telephone company. The convergence of technologies is expected to continue.

The proposal for telecommunications creates three groupings based on the infrastructure operated to provide a variety of audio, video, data, and telephony services. The three primary infrastructure types are wired, wireless, and satellite. In addition, there is a fourth industry group that includes some support activities and resellers who directly buy and resell time on networks (*e.g.*, dial around long distance resellers, mobile virtual network operators) to provide their services. This fourth group would also include units providing services over a connection provided by others (*e.g.*, pure voice over Internet protocol (VoIP) providers).

The wired telecommunications carriers would include units that build and operate their own wired networks, as well as those that lease access to lines and then provide services to customers using those facilities. This categorization is to acknowledge that the infrastructure used to provide services can be leased or purchased. The services provided would include telephony, data, and video services, as well as any future services provided using the infrastructure. The grouping would exclude units who are pure resellers—units that buy a block of minutes and resell them without providing any additional service; these units would be included in the "all other telecommunications" grouping. Wired telecommunications carriers would also include those that use a fixed wireless "connection" for the last mile. By exception, satellite television providers will be included in this industry.

The wireless telecommunications carriers would include the units that have spectrum licenses and provide telephony, Internet access, or video services using that spectrum. Wireless telecommunications carriers would not include pure resellers. Mobile virtual network operators (MVNO) providing mobile telephony or other services will be defined as resellers and excluded from this industry. MVNO's do not have infrastructure or spectrum licenses; rather they resell the services of wireless telecommunication carriers.

The satellite telecommunications industry will remain defined as units primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.

The fourth grouping of other telecommunications services would include the current content of NAICS 51791, Other Telecommunications, and the pure resellers in separate national industries. Resellers will be classified in NAICS 517911, Telecommunications Resellers, and other telecommunications services will be classified in NAICS 517919, All Other Telecommunications. This industry will include pure VoIP providers (providing VoIP to customers who already have a broadband connection), as well as dial-up Internet service providers (providing access to the Internet through a customer-initiated connection to the telecom system).

Web search portals would be combined with Internet publishing and broadcasting. These types of units were identified separately in NAICS 2002, because they are different from either publishers or broadcasters. The definition of Internet publishing and broadcasting is limited to exclusively publishing and broadcasting on the Internet and the ECPC continues to support the classification of Internet publishers and broadcasters separate from the traditional publishing and broadcasting industries. These establishments will be placed in 519, Other Information Services, as a five-digit NAICS class.

This proposal to restructure the telecommunications industries in NAICS reduces or eliminates industry distinctions based on the product being offered in the telecommunications section of NAICS. The anticipated growth of VoIP, the continued expansion of broadband Internet access, the development of bundles of services provided over available infrastructures, and a desire for a robust structure that will remain relevant, all affected the development of this proposal. It is difficult to predict what the telecommunications industries will look like in the future. This production function approach, based on the infrastructure used rather than the current regulatory constraints or product distinctions, should withstand industry changes better than the current product-oriented structure.

The downside to this proposal is that separate data for cable distribution and telephone service providers will not be available at the industry level. The ECPC understands that this will result in a loss of data. The application of new technologies, such as Internet telephony, is expected to further blur existing lines. The industry classification will not be updated again until 2012. The ECPC has concluded that the existing industry structure will not be viable in the years ahead and therefore recommends that these changes be made now. The ECPC particularly encourages comments supporting or opposing this recommendation. Although separate national industries are expected to cause problems based on regulatory actions in the future, industries for wired telecommunications carriers and for cable and other program distribution could be reinstated at the six-digit level. This would not affect continuity at the five-digit level if separate collection becomes impossible.

A tabular summary of changes to the Information Sector is included in Part IV.

The balance of the comments represented single requests for specific changes. While these requests and the associated ECPC recommendations are not listed in this notice unless a structure or industry content change was recommended, a summary of the decision for each docket received is available on the World Wide Web at *http://www.census.gov/naics.*

The ECPC is recommending several NAICS industry title changes to more clearly describe the existing content of industries. These title changes do not change the content of industries but rather refine how they are described. Part IV below presents the ECPC recommendations for revisions to NAICS United States for 2007.

NAICS Sector 21, Mining, will be changed to "Mining, Quarrying, and Oil and Gas Extraction.".

NAICS 23821, Electrical Contractors, will be changed to "Electrical Contractors and Other Wiring Installation Contractors."

NAICS 238210, Electrical Contractors, will be changed to "Electrical Contractors and Other Wiring Installation Contractors."

NAICS 316999, All Other Leather Good Manufacturing. will be changed to "All Other Leather Good and Allied Product Manufacturing."

NAICS 322221, Coated and Laminated Packaging Paper and Plastics Film Manufacturing, will be changed to "Coated and Laminated Packaging Paper Manufacturing."

NAICS 322223, Plastics, Foil, and Coated Paper Bag Manufacturing, will be changed to "Coated Paper Bag and Pouch Manufacturing."

NAICS 326111, Plastics Bag Manufacturing, will be changed to "Plastics Bag and Pouch Manufacturing."

NAICS 441221, Motorcycle Dealers, will be changed to "Motorcycle, ATV, and Personal Watercraft Dealers."

NAICS 492110, Couriers, will be changed to "Couriers and Express Delivery Services."

NAICS 541612, Human Resources and Executive Search Consulting Services, will be changed to "Human Resources Consulting Services."

NAICS Industry Group 5418, Advertising and Related Services, will be changed to "Advertising, Public Relations, and Related Services."

NAICS 56131, Employment Placement Agencies, will be changed to "Employment Placement Agencies and Executive Search Services."

NAICS 722212, Cafeterias, will be changed to "Cafeterias, Grill Buffets, and Buffets."

Time Series Continuity

The standard approach to preserving time series continuity after classification revisions is to create linkages where the series break. This is accomplished by producing the data series using both the old and new classifications for a given period of transition. With the dual classifications of data, analysts can assess the full impact of the revision. Data producers then may measure the reallocation of the data at aggregate industry levels and develop a concordance between the old and new series for that given point in time. The concordance creates a crosswalk between the old and new classification systems. Statistical agencies in the U.S. are planning links between the 2002 NAICS and 2007 NAICS (with U.S. national detail).

Part IV: Tabular Recommendations for Changes to NAICS United States Effective for 2007

Table 1 presents the proposed NAICS 2007 industries defined by their NAICS United States 2002 content. Table 2 lists, in NAICS United States 2002 order, the disposition of all industries recommended for change and their resulting relationship to NAICS United States 2007 proposed industries.

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Table 1 - NAICS United States 2007 Matched to NAICS United States 2002

2007 NAICS Code	2007 NAICS and U.S. Description	Status Code	2002 NAICS Code	2002 NAICS Description
111211	Potato Farming	R	111211	Potato Farming
			*111219	Other Vegetable (except Potato) and Melon Farming - *sweet potato and yam farming*
111219	Other Vegetable (except Potato) and Melon Farming	R	*111219	Other Vegetable (except Potato) and Melon Farming - *except sweet potato and yam farming*
111998	All Other Miscellaneous Crop Farming	R	*111998	All Other Miscellaneous Crop Farming - *except algae, seaweed, and other plant aquaculture*
112519	Other Aquaculture	R	112519	Other Animal Aquaculture
			*111998	All Other Miscellaneous Crop Farming - *algae, seaweed, and other plant aquaculture*
314999	All Other Miscellaneous Textile Product Mills	R	314999	All Other Miscellaneous Textile Product Mills
			*315211	Men's and Boys' Cut and Sew Apparel Contractors - *embroidery contractors*
			*315212	Women's, Girls' and Infants' Cut and Sew Apparel Contractors - *embroidery contractors*
315211	Men's and Boys' Cut and Sew Apparel Contractors	R	*315211	Men's and Boys' Cut and Sew Apparel Contractors - *except embroidery contractors*
315212	Women's, Girls' and Infants' Cut and Sew Apparel Contractors	R	*315212	Women's, Girls' and Infants' Cut and Sew Apparel Contractors - *except embroidery contractors*
326199	All Other Plastics Product Manufacturing	R	*326199	All Other Plastics Product Manufacturing - *except inflatable plastics boats*
326291	Rubber Product Manufacturing for Mechanical Use	R	*326291	Rubber Product Manufacturing for Mechanical Use - *except rubber tubing for mechanical use*
326299	All Other Rubber Product Manufacturing	R	*326299	All Other Rubber Product Manufacturing - *except inflatable rubber boats*
			*326291	Rubber Product Manufacturing for Mechanical Use - *rubber tubing for mechanical use*
333298	All Other Industrial Machinery Manufacturing	R	333298	All Other Industrial Machinery Manufacturing
			*339111	Laboratory Apparatus and Furniture Manufacturing - *laboratory distilling equipment*
333415	Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing	R	333415	Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing
			*339111	Laboratory Apparatus and Furniture Manufacturing - *laboratory freezers*
333994	Industrial Process Furnace and Oven Manufacturing	R	333994	Industrial Process Furnace and Oven Manufacturing
			*339111	Laboratory Apparatus and Furniture Manufacturing - *laboratory furnaces and ovens*

* - part of 2002 industry; R - NAICS 2002 industry code reused with different content; N - new NAICS industry for 2007; E - existing industry with no changes

Table 1 - NAICS United States 2007 Matched to NAICS United States 2002

2007 NAICS Code	2007 NAICS and U.S. Description	Status Code	2002 NAICS Code	2002 NAICS Description
333997	Scale and Balance Manufacturing	R	333997	Scale and Balance (except Laboratory) Manufacturing
			*339111	Laboratory Apparatus and Furniture Manufacturing - *laboratory scales and balances*
333999	All Other Miscellaneous General Purpose Machinery Manufacturing	R	333999	All Other Miscellaneous General Purpose Machinery Manufacturing
			*339111	Laboratory Apparatus and Furniture Manufacturing - *laboratory centrifuges*
334220	Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing	R	*334220	Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing - *except communications signal testing and evaluation equipment*
334515	Instrument Manufacturing for Measuring and Testing Electricity and Electrical Signals	R	334515	Instrument Manufacturing for Measuring and Testing Electricity and Electrical Signals
			*334220	Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing - *communications signal testing and evaluation equipment*
336612	Boat Building	R	336612	Boat Building
			*326199	All Other Plastics Product Manufacturing - *inflatable plastics boats*
			*326299	All Other Rubber Product Manufacturing - *inflatable rubber boats*
337127	Institutional Furniture Manufacturing	R	337127	Institutional Furniture Manufacturing
			*339111	Laboratory Apparatus and Furniture Manufacturing - *laboratory furniture (e.g., stools, tables, benches)*
339113	Surgical Appliance and Supplies Manufacturing	R	339113	Surgical Appliance and Supplies Manufacturing
			*339111	Laboratory Apparatus and Furniture Manufacturing - *except laboratory furniture, scales, balances, furnaces, ovens, centrifuges, distilling equipment, and freezers*
517	Telecommunications			
5171	Wired Telecommunications Carriers			
51711	Wired Telecommunications Carriers			
517110	Wired Telecommunications Carriers	R	517110	Wired Telecommunications Carriers
			517510	Cable and Other Program Distribution
			*518111	Internet Service Providers - *broadband Internet service providers (e.g., cable, DSL)*
5172	Wireless Telecommunications Carriers (except Satellite)			
51721	Wireless Telecommunications Carriers (except Satellite)			
517210	Wireless Telecommunications Carriers (except Satellite)	N	517211	Paging
			517212	Cellular and Other Wireless Telecommunications
5174	Satellite Telecommunications			
51741	Satellite Telecommunications			
517410	Satellite Telecommunications	E	517410	Satellite Telecommunications

* part of 2002 industry, R - NAICS 2002 industry code reused with different content, N - new NAICS industry for 2007, E - existing industry with no changes

Table 1 - NAICS United States 2007 Matched to NAICS United States 2002

2007 NAICS Code	2007 NAICS and U.S. Description	Status Code	2002 NAICS Code	2002 NAICS Description
5179	Other Telecommunications			
51791	Other Telecommunications			
517911	Telecommunications Resellers	E	517310	Telecommunications Resellers
517919	All Other Telecommunications	N	517910	Other Telecommunications
			*518111	Internet Service Providers -*ISPs providing services via client-supplied telecommunications connections*
518	Data Processing, Hosting, and Related Services			
5182	Data Processing, Hosting, and Related Services			
51821	Data Processing, Hosting, and Related Services			
518210	Data Processing, Hosting, and Related Services	E	518210	Data Processing, Hosting, and Related Services
519	Other Information Services			
5191	Other Information Services			
51911	News Syndicates			
519110	News Syndicates	E	519110	News Syndicates
51912	Libraries and Archives			
519120	Libraries and Archives	E	519120	Libraries and Archives
51913	Internet Publishing and Broadcasting and Web Search Portals			
519130	Internet Publishing and Broadcasting and Web Search Portals	N	516110	Internet Publishing and Broadcasting
			518112	Web Search Portals
51919	All Other Information Services			
519190	All Other Information Services	E	519190	All Other Information Services
541612	Human Resources Consulting Services	R	*541612	Human Resources and Executive Search Consulting Services - *except executive search consulting services*
541711	Research and Development in Biotechnology	N	*541710	Research and Development in the Physical, Engineering, and Life Sciences -*biotechnology research and development*
541712	Research and Development in the Physical, Engineering, and Life Sciences (except Biotechnology)	N	*541710	Research and Development in the Physical, Engineering, and Life Sciences -*except biotechnology research and development*
561311	Employment Placement Agencies	N	561310	Employment Placement Agencies
561312	Executive Search Services	N	*541612	Human Resources and Executive Search Consulting Services - *executive search consulting services*

* - part of 2002 industry, R - NAICS 2002 industry code reused with different content, N - new NAICS industry for 2007, E - existing industry with no changes

Table 2 - NAICS United States 2002 Matched to NAICS United States 2007

2002 NAICS Code	2002 NAICS and U.S. Description	Status Code	2007 NAICS Code	2007 NAICS description
111219	Other Vegetable (except Potato) and Melon Farming			
	sweet potato and yam farming	pt.	111211	Potato Farming
	except sweet potato and yam farming		111219	Other Vegetable (except Potato) and Melon Farming
111998	All Other Miscellaneous Crop Farming			
	except algae, seaweed, and other plant aquaculture		111998	All Other Miscellaneous Crop Farming
	algae, seaweed, and other plant aquaculture	pt.	112519	Other Aquaculture
315211	Men's and Boys' Cut and Sew Apparel Contractors			
	embroidery contractors	pt.	314999	All Other Miscellaneous Textile Product Mills
	except embroidery contractors		315211	Men's and Boys' Cut and Sew Apparel Contractors
315212	Women's, Girls', and Infants' Cut and Sew Apparel Contractors			
	embroidery contractors	pt.	314999	All Other Miscellaneous Textile Product Mills
	except embroidery contractors		315212	Women's, Girls', and Infants' Cut and Sew Apparel Contractors
326199	All Other Plastics Product Manufacturing			
	except inflatable plastics boats		326199	All Other Plastics Product Manufacturing
	inflatable plastics boats	pt.	336612	Boat Building
326291	Rubber Product Manufacturing for Mechanical Use			
	except rubber tubing for mechanical use		326291	Rubber Product Manufacturing for Mechanical Use
	rubber tubing for mechanical use	pt.	326299	All Other Rubber Product Manufacturing
326299	All Other Rubber Product Manufacturing			
	except inflatable rubber boats	pt.	326299	All Other Rubber Product Manufacturing
	inflatable rubber boats	pt.	336612	Boat Building
334220	Radio and Television Broadcasting and Wireless - Communications Equipment Manufacturing			
	except communications signal testing and evaluation equipment		334220	Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing
	communications signal testing and evaluation equipment	pt.	334515	Instrument Manufacturing for Measuring and Testing Electricity and Electrical Signals
339111	Laboratory Apparatus and Furniture Manufacturing			
	laboratory distilling equipment	pt.	333298	All Other Industrial Machinery Manufacturing
	laboratory freezers	pt.	333415	Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing
	laboratory furnaces and ovens	pt.	333994	Industrial Process Furnace and Oven Manufacturing
	laboratory scales and balances	pt.	333997	Scale and Balance Manufacturing
	laboratory centrifuges	pt.	333999	All Other Miscellaneous General Purpose Machinery Manufacturing
	laboratory furniture (e.g., stools, tables, benches)	pt.	337127	Institutional Furniture Manufacturing
	except laboratory distilling equipment, freezers, furnaces, ovens, scales, balances, centrifuges, and furniture	pt.	339113	Surgical Appliance and Supplies Manufacturing

pt - part of NAICS United States 2007 industry

Table 2 - NAICS United States 2002 Matched to NAICS United States 2007

2002 NAICS Code	2002 NAICS and U.S. Description	Status Code	2007 NAICS Code	2007 NAICS description
516110	Internet Publishing and Broadcasting	pt.	519130	Internet Publishing and Broadcasting and Web Search Portals
517110	Wired Telecommunications Carriers	pt.	517110	Wired Telecommunications Carriers
517211	Paging	pt.	517210	Wireless Telecommunications Carriers (except Satellite)
517212	Cellular and Other Wireless Telecommunications	pt.	517210	Wireless Telecommunications Carriers (except Satellite)
517310	Telecommunications Resellers		517911	Telecommunications Resellers
517510	Cable and Other Program Distribution	pt.	517110	Wired Telecommunications Carriers
517910	Other Telecommunications	pt.	517919	All Other Telecommunications
518111	Internet Service Providers			
	Broadband *Internet service providers (e.g., cable, DSL)*	pt	517110	Wired Telecommunications Carriers
	Internet service providers providing services via client-supplied telecommunications connection	pt	517919	All Other Telecommunications
518112	Web Search Portals	pt	519130	Internet Publishing and Broadcasting and Web Search Portals
541612	Human Resources and Executive Search Consulting Services			
	except executive search consulting services		541612	Human Resources Consulting Services
	executive search consulting services		561312	Executive Search Services
541710	Research and Development in the Physical, Engineering, and Life Sciences			
	biotechnology research and development		541711	Research and Development in Biotechnology
	except biotechnology research and development		541712	Research and Development in the Physical, Engineering, and Life Sciences (except Biotechnology)

pt. - part of NAICS United States 2007 industry

John D. Graham,
Administrator, Office of Information and Regulatory Affairs.
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108th Congress

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