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3–3–04 Wednesday
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Presidential Documents

Title 3—

The President

Executive Order 13331 of February 27, 2004

National and Community Service Programs

By the authority vested in me as President by the Constitution and the laws of the United States of America, and to strengthen the ability of programs authorized under the national service laws to build and reinforce a culture of service, citizenship, and responsibility throughout our Nation, and to institute reforms to improve accountability and efficiency in the administration of those programs, it is hereby ordered as follows:

Section 1. *Definitions.* For purposes of this order:

(a) "National service laws" means the National and Community Service Act of 1990 (42 U.S.C. 12501 *et seq.*) and the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4950 *et seq.*);

(b) "National and community service programs" means those programs authorized under the national service laws;

(c) "Policies governing programs authorized under the national service laws" refers to all policies, programs, guidelines, and regulations, including official guidance and internal agency procedures and practices, that are issued by the Corporation for National and Community Service (Corporation) and have significant effects on national and community service programs; and

(d) "Professional corps programs" means those programs described in section 122(a)(8) of the National and Community Service Act of 1990 (42 U.S.C. 12572(a)(8)).

Sec. 2. *Fundamental Principles and Policymaking Criteria.* In formulating and implementing policies governing programs authorized under the national service laws, the Corporation shall, to the extent permitted by law, adhere to the following fundamental principles:

(a) National and community service programs should support and encourage greater engagement of Americans in volunteering;

(b) National and community service programs should be more responsive to State and local needs;

(c) National and community service programs should make Federal support more accountable and more effective; and

(d) National and community service programs should expand opportunities for involvement of faith-based and other community organizations.

Sec. 3. *Agency Implementation.* (a) The Chief Executive Officer of the Corporation for National and Community Service (Chief Executive Officer) shall, in coordination with the USA Freedom Corps Council, review and evaluate existing policies governing national and community service programs in order to assess the consistency of such policies with the fundamental principles and policymaking criteria described in section 2 of this order.

(b) The Chief Executive Officer shall ensure that all policies governing national and community service programs issued by the Corporation are consistent with the fundamental principles and policymaking criteria described in section 2 of this order. To that end, the Chief Executive Officer shall, to the extent permitted by law,

(i) amend all such existing policies to ensure that they are consistent with the fundamental principles and policymaking criteria articulated in section 2 of this order; and

(ii) where appropriate, implement new policies that are consistent with and necessary to further the fundamental principles and policy-making criteria set forth in section 2 of this order.

(c) In developing implementation steps, the Chief Executive Officer should address, at a minimum, the following objectives:

(i) National and community service programs should leverage Federal resources to maximize support from the private sector and from State and local governments, with an emphasis on reforms that enhance programmatic flexibility, reduce administrative burdens, and calibrate Federal assistance to the respective needs of recipient organizations;

(ii) National and community service programs should leverage Federal resources to enable the recruitment and effective management of a larger number of volunteers than is currently possible;

(iii) National and community service programs should increase efforts to expand opportunities for, and strengthen the capacity of, faith-based and other community organizations in building and strengthening an infrastructure to support volunteers that meet community needs;

(iv) National and community service programs should adopt performance measures to identify those practices that merit replication and further investment, as well as to ensure accountability;

(v) National and community service programs should, consistent with the principles of Federalism and the constitutional role of the States and Indian tribes, promote innovation, flexibility, and results at all levels of government;

(vi) National and community service programs based in schools should employ tutors who meet required paraprofessional qualifications, and use such practices and methodologies as are required for supplemental educational services;

(vii) National and community service programs should foster a lifetime of citizenship and civic engagement among those who serve;

(viii) National and community service programs should avoid or eliminate practices that displace volunteers who are not supported under the national service laws; and

(ix) Guidelines for the selection of national and community service programs should recognize the importance of professional corps programs in light of the fundamental principles and policymaking criteria set forth in this order.

Sec. 4. *Management Reforms.* (a) The Corporation should implement internal management reforms to strengthen its oversight of national and community service programs through enforcement of performance and compliance standards and other management tools.

(b) Management reforms should include, but should not be limited to, the following:

(i) Institutionalized changes to the budgetary and grant-making processes to ensure that financial commitments remain within available resources;

(ii) Enhanced accounting and management systems that would ensure compliance with fiscal restrictions and provide timely, accurate, and readily available information about enrollment in AmeriCorps and about funding and obligations incurred for all national and community service programs;

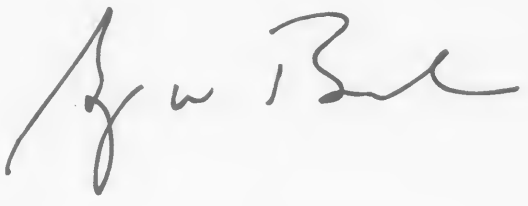
(iii) Assurance by the Chief Executive Officer and the Chief Financial Officer in the Corporation's Management Representation Letter that its financial statements, including the Statement of Budgetary Resources, are accurate and reliable; and

(iv) Management reforms that tie employee performance to fiscal responsibility, attainment of management goals, and professional conduct.

Sec. 5. *Report.* Within 180 days after the date of this order, the Chief Executive Officer shall report to the President, through the Assistant to

the President and Director of the USA Freedom Corps Office, the actions the Corporation proposes to undertake to accomplish the objectives set forth in this order.

Sec. 6. *Judicial Review.* This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its departments, agencies, or other entities, its officers or employees, or any other person.



THE WHITE HOUSE,
February 27, 2004.

[FR Doc. 04–4884
Filed 3–2–04; 8:45 am]
Billing code 3195–01–P

Presidential Documents

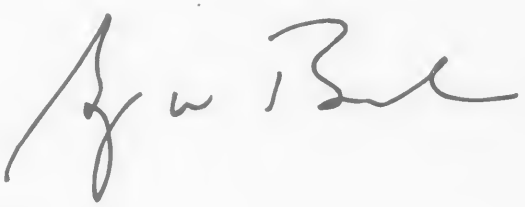
Presidential Determination No. 2004–23 of February 25, 2004

Determination Consistent with the Emergency Supplemental Appropriations Act for Defense and for the Reconstruction of Iraq and Afghanistan, 2004 (Public Law 108–106), to Make Available Assistance for Liberia

Memorandum for the Secretary of State[,] the Secretary of the Treasury[,] the Secretary of Defense[, and] the Administrator, United States Agency for International Development

Consistent with the authority vested in me by the Emergency Supplemental Appropriations Act for Defense and for the Reconstruction of Iraq and Afghanistan, 2004 (Public Law 108–106), under the heading "International Disaster and Famine Assistance," I hereby determine that it is in the national interest of the United States and essential to efforts to reduce international terrorism to furnish $114 million in assistance for Liberia from funds made available under that heading.

The Secretary of State is authorized and directed to report this determination to the Congress and to arrange for its publication in the **Federal Register**.



THE WHITE HOUSE,
Washington, February 25, 2004.

[FR Doc. 04–4854
Filed 3–2–04; 8:45 am]
Billing code 4710–10–P

Presidential Documents

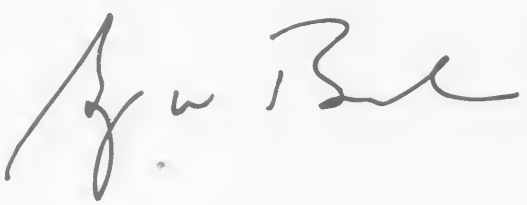
Presidential Determination No. 2004–24 of February 25, 2004

Determination Pursuant to Section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as Amended

Memorandum for the Secretary of State

Pursuant to section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as amended, 22 U.S.C. 2601(c)(1), I hereby determine that it is important to the national interest that up to $20 million be made available from the U.S. Emergency Refugee and Migration Assistance Fund as a contribution to the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) to address unexpected, urgent refugee needs in the West Bank and Gaza.

You are authorized and directed to inform the appropriate committees of the Congress of this determination and the obligation of funds under this authority, and to arrange for the publication of this memorandum in the **Federal Register**.



THE WHITE HOUSE,
Washington, February 25, 2004.

[FR Doc. 04–4855
Filed 3–2–04; 8:45 am]
Billing code 4710–10–P

Rules and Regulations

Federal Register
Vol. 69, No. 42
Wednesday, March 3, 2004

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

RIN 3206–AJ42

Eligibility of Suspended Health Care Providers To Receive Payment of Federal Employees Health Benefits Program Funds; Financial Sanctions of Health Care Providers Participating in the Federal Employees Health Benefits Program

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is amending its regulations regarding administrative sanctions of health care providers participating in the Federal Employees Health Benefits Program (FEHBP). This rule clarifies the circumstances under which payments may be made from FEHBP funds to suspended providers and implements the financial sanctions provisions of section 2 of the Federal Employees Health Care Protection Act of 1998 (Pub. L. 105–266), which authorize OPM to impose civil monetary penalties and financial assessments against health care providers who commit certain types of violations against the FEHBP. In concert with the final regulations on debarment and suspension that were issued on February 3, 2003 (68 FR 5470), the financial sanctions provisions afford OPM a full range of administrative remedies to deter and rectify provider misconduct within FEHBP. The regulatory framework established by this issuance contains appropriate procedural safeguards to assure that the amounts of financial sanctions are determined through a consistent and equitable process, that the Government's financial interests are fully protected, and that financial sanctions are imposed only after an opportunity for an administrative hearing on all facts material to the basis for the sanctions.

EFFECTIVE DATE: March 3, 2004.

FOR FURTHER INFORMATION CONTACT: David Cope, Debarring Official, Office of the Inspector General, Office of Personnel Management, by telephone at 202–606–2851, by fax at 202–606–2153, or by e-mail at *debar@opm.gov*.

SUPPLEMENTARY INFORMATION:

Background

OPM's final regulations on debarment and suspension of health care providers were published in the **Federal Register** on February 3, 2003 (68 FR 5470). Subsequently, during the public comment period for OPM's proposed regulations on financial sanctions of health care providers (see the following section of this preamble titled "Financial Sanctions"), an FEHBP carrier commented to our office that the wording of several sections of the debarment and suspension regulations was ambiguous and potentially subject to misinterpretation in regard to the circumstances under which payments could be made to suspended providers.

The carrier's comments focused on §§ 890.1046 through 890.1050 of the regulations, which speak to certain special situations where payments to debarred providers may be permissible. Section 890.1048, regarding providers who are the sole source of health care services in their communities and section 890.1050, authorizing special exceptions to debarments for individual FEHBP enrollees, both contain specific language prohibiting payments to suspended providers in these circumstances. Sections 890.1046, 890.1047, and 890.1049, addressing services provided in emergency situations, institutional health care providers, and claims filed by enrollees who are unaware that their provider has been sanctioned, respectively, are silent regarding the permissibility of payments to suspended providers in those situations. By not specifically identifying the treatment of suspended providers in these three sections, we intended that they be governed by the overall policy stated in § 890.1030(c), that the effect of a suspension is the same as the effect of a debarment. However, we agree with the carrier's observation that the presence of language in §§ 890.1048 and 890.1050 specifically excluding suspended providers from payment under some "special" circumstances may have inadvertently created confusion among both carriers and providers as to our actual intent in situations where the regulatory wording did not specify the rights of suspended providers. Therefore, to avoid possible misinterpretations, we are revising §§ 890.1046, 890.1047, and 890.1049 by adding appropriate language to indicate that suspended providers are eligible to receive FEHBP payments in the special situations addressed by those sections.

Financial Sanctions

The proposed financial sanctions regulations were issued in a notice of proposed rulemaking in the February 10, 2003, **Federal Register** (68 FR 6649). During the 60-day public comment period, OPM received written comments from an industry association of health insurance plans and oral comments from an FEHBP carrier and from employees. This section of the regulatory preamble addresses all of the comments and explains OPM's rationale for incorporating certain of them in the final rule and declining to implement others.

Rewording of Redundant or Ambiguous Passages

Most commenters observed that some of the wording in the proposed rule was ambiguous or redundant in addressing (1) the factors used to determine the amounts of penalties and assessments and (2) the procedures for contesting or settling proposed financial sanctions. Upon review, we agree that several sections could be reworded to clarify the intended meaning.

In particular, the proposed § 890.1064(b) appeared to be largely duplicated by § 890.1064(c) and (d), and this redundancy might have fostered some uncertainty as to the relationship between the purposes of financial sanctions and the specific factors that may determine the amount of a sanction against a given provider. In fact, the purposes of financial sanctions are to (1) make OPM whole for any monetary losses and damages associated with a provider's violations and (2) deter future violations by the sanctioned provider and other providers. The procedure for determining amounts in specific cases is intended to effectuate those purposes. Therefore, we have consolidated

paragraphs (b), (c), and (d) of § 890.1064 as they appeared in the proposed rule into paragraph (b) as it appears in the final rule, thus eliminating the redundancy and emphasizing the seamless connection between overall regulatory purpose and the amounts of penalties in individual cases. As the result of this consolidation, the proposed paragraph (e) has been redesignated as § 890.1064(c) in the final rule.

Similarly, we have reworded the proposed § 890.1067(c) to clarify that (1) the debarring official may settle or compromise proposed financial sanctions at any stage of the sanctions process prior to issuance of a final decision and (2) such settlements or compromises do not have to be predicated on a provider's filing a contest of the proposed sanctions or making a formal settlement offer.

Several commenters noted that the phrase "intention to contest" in § 890.1068(a) was ambiguous as to the nature of the contact from a provider that would be sufficient to initiate OPM contest procedures. We have rewritten this section in the final rule to make it clear that, in filing a contest, the provider must adhere to the instructions given by the notice of proposed sanctions issued by OPM. If a provider does not file a contest within the timeframe stated in the notice, in a manner that complies with the procedures specified by the notice, OPM may implement the proposed sanctions immediately and without further procedures. However, OPM does not intend to use this provision to deny the opportunity to contest on the grounds of minor "technical" deviations from the instructions in the notice of proposed sanctions. Providers will receive the benefit of any reasonable doubt regarding their adherence to the requirements for filing a contest.

Some commenters also observed that the proposed §§ 890.1070 and 890.1071 were partially redundant and unclear regarding OPM's procedures for conducting and deciding contests. Upon review, we agree that a revision of these sections is warranted. Accordingly, we have consolidated the proposed §§ 890.1070 and 890.1071 into a single § 890.1070 in the final rule. This section sets forth in sequential order the process that the debarring official must apply to deciding contests of proposed financial sanctions and identifies the critical decision points at each stage of this process. To account for the consolidation, we have renumbered proposed §§ 890.1072 and 890.1073 as §§ 890.1071 and 890.1072, respectively, in the final rule.

Impact of Financial Sanctions on FEHBP Carriers

The association of insurance carriers suggested that the scope of the proposed rule be expanded to provide a mechanism for crediting collected amounts of financial sanctions, deposited in the Employees Health Benefits Fund, to reimburse FEHBP plans for any losses and costs they incur as a result of the provider misconduct on which the financial sanctions are based. In support of this suggestion, the association noted that FEHBP plans may expend substantial amounts when investigating provider violations, and that there is no formula for "compensating plans for [such] losses." However, FEHBP carriers are reimbursed from the Employees Health Benefits Fund for allowable costs incurred in administering their responsibilities under their FEHBP contracts. The nature and extent of such reimbursement is addressed within the regulatory framework of the Federal Employees Health Benefits Acquisition Regulations, and is subject to annual negotiation between OPM and the carrier. In contrast, the FEHBP sanctions statute is designed solely as an enforcement measure aimed at untrustworthy health care providers, and offers no basis or authority for regulating costs and/or reimbursement policies. Therefore, we have not accepted the carrier association's suggestions.

Regulatory Flexibility Act

I certify that this proposed regulation will not have a significant economic impact on a substantial number of small entities, because the financial sanctions are limited to the portion of health care providers' activities involving transactions with the Federal Employees Health Benefits Program.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 890

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professions.

Office of Personnel Management.

Kay Coles James,

Director.

■ Accordingly, OPM is amending part 890 of title 5, Code of Federal Regulations as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

■ 1. The authority citation for part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; § 890.803 also issued under 50 U.S.C. 403(p), 22 U.S.C. 4069c and 4069c–1; subpart L also issued under sec. 599c of Pub. L. 101–513, 104 Stat. 2064, as amended; § 890.102 also issued under sections 11202(f), 11232(e), 11246(b) and (c) of Pub. L. 105–33, 111 Stat 251; and section 721 of Pub. L. 105–261, 112 Stat. 2061.

■ 2. In subpart J, § 890.1046 is revised to read as follows:

§ 890.1046 Effect of debarment or suspension on payments for services furnished in emergency situations.

A debarred or suspended health care provider may receive FEHBP funds paid for items or services furnished on an emergency basis if the FEHBP carrier serving the covered individual determines that:

(a) The provider's treatment was essential to the health and safety of the covered individual; and

(b) No other source of equivalent treatment was reasonably available.

■ 3. In subpart J, § 890.1047 is revised to read as follows:

§ 890.1047 Special rules for institutional providers.

(a) *Covered individual admitted before debarment or suspension.* If a covered person is admitted as an inpatient before the effective date of an institutional provider's debarment or suspension, that provider may continue to receive payment of FEHBP funds for inpatient institutional services until the covered person is released or transferred, unless the debarring or suspending official terminates payments under paragraph (b) of this section.

(b) *Health and safety of covered individuals.* If the debarring or suspending official determines that the health and safety of covered persons would be at risk if they remain in a debarred or suspended institution, OPM may terminate FEHBP payments at any time.

(c) *Notice of payment limitations.* If OPM limits any payment under paragraph (b) of this section, it must immediately send written notice of its action to the institutional provider.

(d) *Finality of debarring or suspending official's decision.* The debarring or suspending official's decision to limit or deny payments under paragraph (b) of this section is not subject to administrative review or reconsideration.

■ 4. In subpart J, § 890.1049 is revised to read as follows:

§ 890.1049 Claims for non-emergency items or services furnished by a debarred or suspended provider.

(a) *Covered individual unaware of debarment or suspension.* FEHBP funds may be paid for items or services furnished by a debarred or suspended provider if, at the time the items or services were furnished, the covered individual did not know, and could not reasonably be expected to have known, that the provider was debarred or suspended. This provision is intended solely to protect the interests of FEHBP-covered persons who obtain services from a debarred or suspended provider in good faith and without knowledge that the provider has been sanctioned. It does not authorize debarred or suspended providers to submit claims for payment to FEHBP carriers.

(b) *Notice sent by carrier.* When paying a claim under the authority of paragraph (a) of this section, an FEHBP carrier must send a written notice to the covered individual, stating:

(1) That the provider is debarred or suspended and is prohibited from receiving payment of FEHBP funds for items or services furnished after the effective date of the debarment or suspension;

(2) That claims may not be paid for items or services furnished by the debarred or suspended provider after the covered individual is informed of the debarment or suspension;

(3) That the current claim is being paid as a legally-authorized exception to the effect of the debarment or suspension in order to protect covered individuals who obtain items or services without knowledge of their provider's debarment or suspension;

(4) That FEHBP carriers are required to deny payment of any claim for items or services rendered by a debarred or suspended provider 15 days or longer after the date of the notice described in paragraph (b) of this section, unless the covered individual had no knowledge of the provider's debarment or suspension when the items or services were rendered;

(5) The minimum period remaining in the provider's debarment or suspension; and

(6) That FEHBP funds cannot otherwise be paid to the provider until OPM terminates the debarment or suspension.

■ 5. In subpart J, §§ 890.1060 through 890.1072 are added to read as follows:

Subpart J—Administrative Sanctions Imposed Against Health Care Providers Civil Monetary Penalties and Financial Assessments

Sec.

Civil Monetary Penalties and Financial Assessments

§ 890.1060 Purpose and scope of civil monetary penalties and assessments.

(a) *Civil monetary penalty.* A civil monetary penalty is an amount that OPM may impose on a health care provider who commits one of the violations listed in § 890.1061. Penalties are intended to protect the integrity of FEHBP by deterring repeat violations by the same provider and by reducing the likelihood of future violations by other providers.

(b) *Assessment.* An assessment is an amount that OPM may impose on a provider, calculated by reference to the claims involved in the underlying violations. Assessments are intended to recognize monetary losses, costs, and damages sustained by OPM as the result of a provider's violations.

(c) *Definitions.* In §§ 890.1060 through 890.1072:

Penalty means civil monetary penalty; and

Penalties and assessments may connote the singular or plural forms of either of those terms, and may represent either the conjunctive or disjunctive sense.

(d) *Relationship to debarment and suspension.* In addition to imposing penalties and assessments, OPM may concurrently debar or suspend a provider from participating in the FEHBP on the basis of the same violations.

(e) *Relationship to other penalties provided by law.* The penalties, assessments, debarment, and suspension imposed by OPM are in addition to any other penalties that may be prescribed by law or regulation administered by an agency of the Federal Government or any State.

§ 890.1061 Bases for penalties and assessments.

(a) *Improper claims.* OPM may impose penalties and assessments on a provider if a claim presented by that provider for payment from FEHBP funds meets the criteria set forth in 5 U.S.C. 8902a(d)(1).

(b) *False or misleading statements.* OPM may impose penalties and assessments on a provider who makes a false statement or misrepresentation as set forth in 5 U.S.C. 8902a(d)(2).

(c) *Failing to provide claims-related information.* OPM may impose penalties and assessments on a provider who knowingly fails to provide claims-related information as otherwise required by law.

§ 890.1062 Deciding whether to impose penalties and assessments.

(a) *Authority of debarring official.* The debarring official has discretionary authority to impose penalties and assessments in accordance with 5 U.S.C. 8902a and this subpart.

(b) *Factors to be considered.* In deciding whether to impose penalties and assessments against a provider that has committed one of the violations identified in § 890.1061, OPM must consider:

(1) The number and frequency of the provider's violations;

(2) The period of time over which the violations were committed;

(3) The provider's culpability for the specific conduct underlying the violations;

(4) The nature of any claims involved in the violations and the circumstances under which the claims were presented to FEHBP carriers;

(5) The provider's history of prior offenses or improper conduct, including any actions that could have constituted a basis for a suspension, debarment, penalty, or assessment by any Federal or State agency, whether or not any sanction was actually imposed;

(6) The monetary amount of any damages, losses, and costs, as described in § 890.1064(c), attributable to the provider's violations; and

(7) Such other factors as justice may require.

(c) *Additional factors when penalty or assessment is based on provisions of*

§ 890.1061(b) or (c). In the case of violations involving false or misleading statements or the failure to provide claims-related information, OPM must also consider:

(1) The nature and circumstances of the provider's failure to properly report information; and

(2) The materiality and significance of the false statements or misrepresentations the provider made or caused to be made, or the information that the provider knowingly did not report.

§ 890.1063 Maximum amounts of penalties and assessments.

OPM may impose penalties and assessments in amounts not to exceed those set forth in U.S.C. 8902a(d).

§ 890.1064 Determining the amounts of penalties and assessments to be imposed on a provider.

(a) *Authority of debarring official.* The debarring official has discretionary authority to set the amounts of penalties and assessments in accordance with law and this subpart.

(b) *Factors considered in determining amounts of penalties and assessments.* In determining the amounts of penalties and assessments to impose on a provider, the debarring official must consider:

(1) The Government's interests in being fully compensated for all damages, losses, and costs associated with the provider's violations, including:

(i) Amounts wrongfully paid from FEHBP funds as the result of the provider's violations and interest on those amounts, at rates determined by the Department of the Treasury;

(ii) All costs incurred by OPM in investigating a provider's sanctionable misconduct; and

(iii) All costs incurred in OPM's administrative review of the case, including every phase of the administrative sanctions processes described by this subpart;

(2) The Government's interests in deterring future misconduct by health care providers;

(3) The provider's personal financial situation, or, in the case of an entity, the entity's financial situation;

(4) All of the factors set forth in § 890.1062(b) and (c); and

(5) The presence of aggravating or less serious circumstances, as described in paragraphs (c)(1) through (c)(7) of this section.

(c) *Aggravated and less serious circumstances.* The presence of aggravating circumstances may cause OPM to impose penalties and assessments at a higher level within the authorized range, while less serious violations may warrant sanctions of relatively lower amounts. Paragraphs (c)(1) through (c)(7) of this section provide examples of aggravated and less serious violations. These examples are illustrative only, and are not intended to represent an exhaustive list of all possible types of violations.

(1) The existence of many separate violations, or of violations committed over an extended period of time, constitutes an aggravating circumstance. OPM may consider conduct involving a small number of violations, committed either infrequently or within a brief period of time, to be less serious.

(2) Violations for which a provider had direct knowledge of the material facts (for example, submitting claims that the provider knew to contain false, inaccurate, or misleading information), or for which the provider did not cooperate with OPM's or an FEHBP carrier's investigations, constitute aggravating circumstances. OPM may consider violations where the provider did not have direct knowledge of the material facts, or in which the provider cooperated with post-violation investigative efforts, to be less serious.

(3) Violations resulting in substantial damages, losses, and costs to OPM, the FEHBP, or FEHBP-covered persons constitute aggravating circumstances. Violations producing a small or negligible overall financial impact may be considered to be less serious.

(4) A pattern of conduct reflecting numerous improper claims, high-dollar false claims, or improper claims involving several types of items or services constitutes aggravating circumstances. OPM may consider a small number of improper claims for relatively low dollar amounts to be less serious.

(5) Every violation involving any harm, or the risk of harm, to the health and safety of an FEHBP enrollee, must be considered an aggravating circumstance.

(6) Any prior violation described in § 890.1062(b)(5) constitutes an aggravating circumstance. OPM may consider repeated or multiple prior violations to represent an especially serious form of aggravating circumstances.

(7) OPM may consider other circumstances or actions to be aggravating or less serious within the context of an individual case, as the interests of justice require.

§ 890.1065 Deciding whether to suspend or debar a provider in a case that also involves penalties and assessments.

In a case where both penalties and assessments and debarment are proposed concurrently, OPM must decide the proposed debarment under the same criteria and procedures as if it had been proposed separately from penalties and assessments.

§ 890.1066 Notice of proposed penalties and assessments.

(a) *Written notice.* OPM must inform a provider of proposed penalties and assessments by written notice, sent via certified mail with return receipt requested, to the provider's last known street or post office address. OPM may, at its discretion, use an express service that furnishes a verification of delivery instead of postal mail.

(b) *Statutory limitations period.* OPM must send the notice to the provider within 6 years of the date on which the claim underlying the proposed penalties and assessments was presented to an FEHBP carrier. If the proposed penalties and assessments do not involve a claim presented for payment, OPM must send the notice within 6 years of the date of the actions on which the proposed penalties and assessments are based.

(c) *Contents of the notice.* OPM's notice must contain, at a minimum:

(1) The statement that OPM proposes to impose penalties and/or assessments against the provider;

(2) Identification of the actions, conduct, and claims that comprise the basis for the proposed penalties and assessments;

(3) The amount of the proposed penalties and assessments, and an explanation of how OPM determined those amounts;

(4) The statutory and regulatory bases for the proposed penalties and assessments; and

(5) Instructions for responding to the notice, including specific explanations regarding:

(i) The provider's right to contest the imposition and/or amounts of penalties and assessments before they are formally imposed; and

(ii) OPM's right, if the provider does not contest the proposed penalties and assessments within 30 days of the date he receives the notice, to implement them immediately without further administrative appeal or recourse.

(d) *Proposing debarment in the same notice.* OPM may propose a provider's debarment in the same notice that also proposes penalties and assessments. In this case, the notice must also provide the elements of information required to appear in a notice of proposed debarment under § 890.1006(b).

(e) *Procedures if the notice cannot be delivered.* OPM must apply the provisions of § 890.1006(f) if the notice of proposed penalties and assessments cannot be delivered as originally addressed.

(f) *Sending notice by electronic means.* [Reserved]

§ 890.1067 Provider contests of proposed penalties and assessments.

(a) *Contesting proposed sanctions.* A provider may formally contest the proposed penalties and assessments by sending a written notice to the debarring official within 30 days after receiving the notice described in § 890.1066. The debarring official must apply the administrative procedures set forth in §§ 890.1069 and 890.1070 to decide the contest.

(b) *Contesting debarments and financial sanctions concurrently.* If OPM proposes debarment and penalties and assessments in the same notice, the provider may contest both the debarment and the financial sanctions in the same proceeding. If the provider pursues a combined contest, the requirements set forth in §§ 890.1022 through 890.1024, as well as this section, apply.

(c) *Settling or compromising proposed sanctions.* The debarring official may settle or compromise proposed sanctions at any time before issuing a final decision under § 890.1070.

§ 890.1068 Effect of not contesting proposed penalties and assessments.

(a) *Proposed sanctions may be implemented immediately.* In the absence of a timely response by a provider as required in the notice described in § 890.1066, the debarring official may issue a final decision implementing the proposed financial sanctions immediately, without further procedures.

(b) *Debarring official sends notice after implementing sanctions.* Immediately upon issuing a final decision under paragraph (a), the debarring official must send the provider written notice, via certified return receipt mail or express delivery service, stating:

(1) The amount of penalties and assessments imposed;

(2) The date on which they were imposed; and

(3) The means by which the provider may pay the penalties and assessments.

(c) *No appeal rights.* A provider may not pursue a further administrative or judicial appeal of the debarring official's final decision implementing any sanctions if a timely contest was not filed in response to OPM's notice under § 890.1066.

§ 890.1069 Information the debarring official must consider in deciding a provider's contest of proposed penalties and assessments.

(a) *Documentary material and written arguments.* As part of a provider's contest, the provider must furnish a written statement of reasons why the proposed penalties and assessments should not be imposed and/or why the amounts proposed are excessive.

(b) *Mandatory disclosures.* In addition to any other information submitted during the contest, the provider must inform the debarring official in writing of:

(1) Any existing, proposed, or prior exclusion, debarment, penalty, assessment, or other sanction that was imposed by a Federal, State, or local government agency, including any administrative agreement that purports to affect only a single agency; and

(2) Any current or prior criminal or civil legal proceeding that was based on the same facts as the penalties and assessments proposed by OPM.

(c) *In-person appearance.* A provider may request a personal appearance (in person, by telephone conference, or through a representative) to provide testimony and oral arguments to the debarring official.

§ 890.1070 Deciding contests of proposed penalties and assessments.

(a) *Debarring official reviews entire administrative record.* After the provider submits the information and evidence authorized or required by § 890.1069, the debarring official shall review the entire official record to determine if the contest can be decided without additional administrative proceedings, or if an evidentiary hearing is required to resolve disputed material facts.

(b) *Previously determined facts.* Any facts relating to the basis for the proposed penalties and assessments that were determined in prior due process proceedings are binding on the debarring official in deciding the contest. "Prior due process proceedings" are those set forth in § 890.1025(a)(1) through (4).

(c) *Deciding the contest without further proceedings.* To decide the contest without further administrative proceedings, the debarring official must determine that:

(1) The preponderance of the evidence in the administrative record as a whole demonstrates that the provider committed a sanctionable violation described in § 890.1061; and

(2) The evidentiary record contains no *bona fide* dispute of any fact material to the proposed financial sanction. A "material fact" is a fact essential to determining whether a provider committed a sanctionable violation for which penalties and assessments may be imposed.

(d) *Final decision without further proceedings.* If the debarring official determines that paragraphs (c)(1) and (c)(2) of this section both apply, a final decision may be issued, imposing financial sanctions in amounts not exceeding those proposed in the notice to the provider described in § 890.1066.

(e) *Insufficient evidence.* If the debarring official determines that a preponderance of the evidence does not demonstrate that the provider committed a sanctionable violation described in § 890.1061, the notice of proposed sanctions described in § 890.1066 must be withdrawn.

(f) *Disputed material facts.* If the debarring official determines that the administrative record contains a *bona fide* dispute about any fact material to the proposed sanction, he must refer the case for a fact-finding hearing to resolve the disputed fact or facts. The provisions of § 890.1027(b) and (c), 890.1028, and 890.1029(a) and (b) will govern such a hearing.

(g) *Final decision after fact-finding hearing.* After receiving the report of the fact-finding hearing, the debarring official must apply the provisions of paragraphs (c), (d), and (e) of this section to reach a final decision on the provider's contest.

§ 890.1071 Further appeal rights after final decision to impose penalties and assessments.

If the debarring official's final decision imposes any penalties and assessments, the affected provider may appeal it to the appropriate United States district court under the provisions of 5 U.S.C. 8902a(h)(2).

§ 890.1072 Collecting penalties and assessments.

(a) *Agreed-upon payment schedule.* At the time OPM imposes penalties and assessments, or the amounts are settled or compromised, the provider must be afforded the opportunity to arrange an agreed-upon payment schedule.

(b) *No agreed-upon payment schedule.* In the absence of an agreed-upon payment schedule, OPM must collect penalties and assessments under its regular procedures for resolving debts owed to the Employees Health Benefits Fund.

(c) *Offsets.* As part of its debt collection efforts, OPM may request other Federal agencies to offset the penalties and assessments against amounts that the agencies may owe to

the provider, including Federal income tax refunds.

(d) *Civil lawsuit.* If necessary to obtain payment of penalties and assessments, the United States may file a civil lawsuit as set forth in 5 U.S.C. 8902(i).

(e) *Crediting payments.* OPM must deposit payments of penalties and assessments into the Employees Health Benefits Fund.

[FR Doc. 04–4730 Filed 3–2–04; 8:45 am]

BILLING CODE 6325–52–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1230

[No. LS–03–08]

Pork Promotion, Research, and Consumer Information Order—Decrease in Importer Assessments

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Pursuant to the Pork Promotion, Research, and Consumer Information Act of 1985 (Act) and the Pork Promotion, Research, and Consumer Information Order (Order) issued thereunder, this rule will decrease by five-hundredths to seven-hundredths of a cent per pound the amount of the assessment per pound due on imported pork and pork products to reflect a decrease in the 2002 average price for domestic barrows and gilts. This action will bring the equivalent market value of the live animals from which such imported pork and pork products were derived in line with the market values of domestic porcine animals. In addition, this rule deletes two live porcine animal Harmonized Tariff Schedule (HTS) numbers—0103.91.0000 and 0103.92.0000—and adds five new live porcine animal HTS numbers 0103.91.0010, 0103.91.0020, 0103.91.0030, 0103.92.0010, and 0103.92.0090—to the table in § 1230.110(a) in order to update the HTS numbers used for live porcine animals.

EFFECTIVE DATE: April 2, 2004.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Payne, Chief, Marketing Programs Branch, (202) 720–1115.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget (OMB) has waived the review process required by Executive Order 12866 for this action.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect. The Act states that the statute is intended to occupy the field of promotion and consumer education involving pork and pork products and of obtaining funds thereof from pork producers and that the regulation of such activity (other than a regulation or requirement relating to a matter of public health or the provision of State or local funds for such activity) that is in addition to or different from the Act may not be imposed by a State.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 1625 of the Act, a person subject to an order may file a petition with the Secretary stating that such order, a provision of such order or an obligation imposed in connection with such order is not in accordance with the law; and requesting a modification of the order or an exemption from the order. Such person is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in the district in which a person resides or does business has jurisdiction to review the Secretary's determination, if a complaint is filed not later than 20 days after the date such person receives notice of such determination.

Regulatory Flexibility Act

This action also was reviewed under the Regulatory Flexibility Act (RFA) (5 United States Code (U.S.C.) 601 *et seq.*). The effect of the Order upon small entities initially was discussed in the September 5, 1986, issue of the **Federal Register** (51 FR 31898). It was determined at that time that the Order would not have a significant effect upon a substantial number of small entities. Many of the estimated 500 importers may be classified as small entities under the Small Business Administration definition (13 CFR 121.201).

This final rule will decrease the amount of assessments on imported pork and pork products subject to assessment by five-hundredths to seven-hundredths of a cent per pound, or as expressed in cents per kilogram, eleven-hundredths to fifteen-hundredths of a cent per kilogram. This decrease is consistent with the decrease in the annual average price of domestic barrows and gilts for calendar year 2002. The average annual market price decreased from $45.87 in 2001 to $37.09 in 2002, a decrease of about 20 percent. Adjusting the assessments on imported pork and pork products will result in an estimated decrease in assessments of approximately $562,000 over a 12-month period. Assessments collected on imported hogs, pork, and pork products for 2002 were $4,250,578. Accordingly, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

The Act (7 U.S.C. 4801–4819) approved December 23, 1985, authorized the establishment of a national pork promotion, research, and consumer information program. The program was funded by an initial assessment rate of 0.25 percent of the market value of all porcine animals marketed in the United States and on imported porcine animals with an equivalent assessment on pork and pork products. However, that rate was increased to 0.35 percent in 1991 (56 FR 51635), to 0.45 percent effective September 3, 1995 (60 FR 29963), and then decreased to 0.40 percent effective September 30, 2002 (67 FR 58320). The final Order establishing a pork promotion, research, and consumer information program was published in the September 5, 1986, issue of the **Federal Register** (51 FR 31898; as corrected, at 51 FR 36383 and amended at 53 FR 1909, 53 FR 30243, 56 FR 4, 56 FR 51635, 60 FR 29963, 61 FR 29002, 62 FR 26205, 63 FR 45936, 64 FR 44643, 66 FR 67071, and 67 FR 58320) and assessments began on November 1, 1986.

The Order requires importers of porcine animals to pay U.S. Customs Service (USCS), upon importation, the assessment of 0.40 percent of the animal's declared value and importers of pork and pork products to pay USCS, upon importation, the assessment of 0.40 percent of the market value of the live porcine animals from which such pork and pork products were produced. This final rule will decrease the assessments on all imported pork and pork products subject to assessment as published in the **Federal Register** as a final rule September 16, 2002, and effective on September 30, 2002 (67 FR 58320). This decrease is consistent with the decrease in the annual average price of domestic barrows and gilts for calendar year 2002 as calculated by the Department of Agriculture's (Department), AMS, Livestock and Grain Market News (LGMN) Branch. This decrease in assessments will make the equivalent market value of the live porcine animal from which the imported pork and pork products were derived reflect the recent decrease in the market value of domestic porcine

animals, thereby promoting comparability between importer and domestic assessments. This final rule will not change the current assessment rate of 0.40 percent of the market value.

The methodology for determining the per pound amounts for imported pork and pork products was described in the Supplementary Information accompanying the Order and published in the September 5, 1986, **Federal Register** at 51 FR 31901. The weight of imported pork and pork products is converted to a carcass weight equivalent by utilizing conversion factors that are published in the Department's Agricultural Handbook No. 697 "Conversion Factors and Weights and Measures." These conversion factors take into account the removal of bone, weight lost in cooking or other processing, and the nonpork components of pork products. Secondly, the carcass weight equivalent is converted to a live animal equivalent weight by dividing the carcass weight equivalent by 74 percent, which is the average dressing percentage of porcine animals in the United States as recognized by the industry. Thirdly, the equivalent value of the live porcine animals is determined by multiplying the live animal equivalent weight by an annual average market price for barrows and gilts as calculated by LGMN Branch. Finally, the equivalent value is multiplied by the applicable assessment rate of 0.40 percent due on imported pork and pork products. The end result is expressed in an amount per pound for each type of pork or pork product. To determine the amount per kilogram for pork and pork products subject to assessment under the Act and Order, the cent per pound assessments are multiplied by a metric conversion factor 2.2046 and carried to the sixth decimal.

Since 2001, there has been a change in the way LGMN Branch reports hog prices. Due to the implementation of the Livestock Mandatory Price Reporting program, LGMN no longer report hogs on a live basis because most of the industry buys hogs on a carcass basis. Therefore, the annual average market price for barrows and gilts is now derived from the National Daily Direct Hog Price Report (Slaughtered). To convert this figure to a live basis it must be multiplied by 74 percent, the average dressing percentage of porcine animals.

The formula in the preamble for the Order at 51 FR 31901 contemplated that it would be necessary to recalculate the equivalent live animal value of imported pork and pork products to reflect changes in the rate of assessment or changes in the annual average price of domestic barrows and gilts to maintain equity of assessments between domestic and porcine animals and imported pork and pork products.

The average annual market price decreased from $45.87 per hundredweight in 2001 to $37.09 per hundredweight in 2002, a decrease of about 20 percent. This decrease will result in a corresponding decrease in assessments for all HTS numbers listed in the table in § 1230.110(b), 67 FR 58320; September 16, 2002, of an amount equal to five-hundredths to seven-hundredths of a cent per pound, or as expressed in cents per kilogram, eleven-hundredths to fifteen-hundredths of a cent per kilogram. Based on the most recent available Department of Commerce, Bureau of Census, data on the volume of imported pork and pork products imported during 2002, the decrease in assessment amounts will result in an estimated $562,000 decrease in assessments over a 12-month period. The assessment rate for imported live hogs is not affected by the change in the cents per pound assessment rate for imported pork and pork products.

In addition, this rule deletes two live porcine animal Harmonized Tariff Schedule (HTS) numbers—0103.91.0000 and 0103.92.0000—and adds five new live porcine animal HTS numbers 0103.91.0010, 0103.91.0020, 0103.91.0030, 0103.92.0010, and 0103.92.0090—to the table in § 1230.110(a) to reflect current USCS HTS numbers used for live porcine animals.

On December 17, 2003, AMS published in the **Federal Register** (68 FR 70201) a proposed rule which would decrease the per pound assessment on imported pork and pork products consistent with the decrease in the 2002 average price of domestic barrows and gilts to provide comparability between imported and domestic assessments. The proposal was published with a request for comments by January 16, 2004. No comments were received.

List of Subjects in 7 CFR Part 1230

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreement, Meat and meat products, Pork and pork products.

■ For the reasons set forth in the preamble, 7 CFR part 1230 is amended as follows:

PART 1230—PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION

■ 1. The authority citation for 7 CFR part 1230 continues to read as follows:

Authority: 7 U.S.C. 4801–4819.

Subpart B—[Amended]

■ 2. Section 1230.110 is revised to read as follows:

§ 1230.110 Assessments on imported pork and pork products.

(a) The following Harmonized Tariff Schedule (HTS) categories of imported live porcine animals are subject to assessment at the rate specified.

Live porcine animals	Article description	Assessment
0103.10.0000	Purebred breeding animals	0.40 percent Customs Entered Value.
0103.91.00	Other: Weighing less than 50 kg each.	
0103.91.0010	Weighing less than 7 kg each	0.40 percent Customs Entered Value.
0103.91.0020	Weighing 7 kg or more but less than 23 kg each.	0.40 percent Customs Entered Value.
0103.91.0030	Weighing 23 kg or more but less than 50 kg each.	0.40 percent Customs Entered Value.
0103.92.00	Weighing 50 kg or more each.	
0103.92.0010	Imported for immediate slaughter	0.40 percent Customs Entered Value.
0103.92.0090	Other	0.40 percent Customs Entered Value.

(b) The following HTS categories of imported pork and pork products are subject to assessment at the rates specified.

Pork and pork products	Article description	Assessment	
		Cents/lb	Cents/kg
0203	Meat of swine, fresh, chilled, or frozen: Fresh or chilled:		
0203.11.0000	Carcasses and half-carcasses	.20	.440920
0203.12.1010	Processed hams and cuts thereof, with bone in	.20	.440920
0203.12.1020	Processed shoulders and cuts thereof, with bone in	.20	.440920
0203.12.9010	Other hams and cuts thereof, with bone in	.20	.440920
0203.12.9020	Other shoulders and cuts thereof, with bone in	.20	.440920
0203.19.2010	Processed spare ribs	.23	.507058
0203.19.2090	Processed other	.23	.507058
0203.19.4010	Bellies	.20	.440920
0203.19.4090	Other	.20	.440920
0203.21.0000	Frozen carcasses and half-carcasses	.20	.440920
0203.22.1000	Frozen-processed hams, shoulders, and cuts thereof, with bone in	.20	.440920
0203.22.9000	Frozen-other hams, shoulders, and cuts thereof, with bone in	.20	.440920
0203.29.2000	Frozen processed other	.23	.507058
0203.29.4000	Frozen other: Other	.20	.440920
0206	Edible offal of bovine animals, swine, sheep, goats, horses, asses, mules or hinnies, fresh, chilled, or frozen:.		
0206.30.0000	Of swine, fresh or chilled	.20	.440920
0206.41.0000	Of swine, frozen: Livers	.20	.440920
0206.49.0000	Of swine, frozen: Other	.20	.440920
0210	Meat and edible meat offal, salted, in brine, dried or smoked; edible flours and meals of meat or meat offal:.		
0210.11.0010	Meat of swine: Hams and cuts thereof, with bone in	.20	.440920
0210.11.0020	Meat of swine: Shoulders and cuts thereof, with bone in	.20	.440920
0210.12.0020	Meat of swine: Bellies (streaky) and cuts thereof, Bacon	.20	.440920
0210.12.0040	Meat of swine: Bellies (streaky) and cuts thereof, Other	.20	.440920
0210.19.0010	Meat of swine: Canadian style bacon	.23	.507058
0210.19.0090	Meat of Swine: Other	.23	.507058
1601	Sausages and similar products, of meat, meat offal or blood; food preparations based on these products:		
1601.00.2010	Pork canned	.28	.617288
1601.00.2090	Pork other	.28	.617288
1602	Other prepared or preserved meat, meat offal or blood.		
1602.41.2020	Of swine: Boned and cooked and packed in airtight containers holding less than 1 kg	.30	.661380
1602.41.2040	Of swine: Other boned and cooked and packed in airtight containers	.30	.661380
1602.41.9000	Of swine: Other	.20	.440920
1602.42.2020	Of swine: Shoulders and cuts thereof: Boned and cooked and packed in airtight containers holding less than 1 kg.	.30	.661380
1602.42.2040	Of swine: Shoulders and cuts thereof: Other boned and cooked and packed in airtight containers.	.30	.661380
1602.42.4000	Of swine: Other shoulders and cuts thereof	.20	.440920
1602.49.2000	Of swine: Other, including mixtures: Not containing cereals or vegetables: Boned and cooked and packed in air-tight containers.	.28	.617288
1602.49.4000	Of swine: Other, including mixtures: Not containing cereals or vegetables: Other	.23	.507058
1602.49.9000	Of swine: Other, including mixtures: Other	.23	.507058

Dated: February 27, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–4726 Filed 3–2–04; 8:45 am]

BILLING CODE 3410–02–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 741

Technical Amendment to Maximum Borrowing Authority Regulation to Delete a Reference From Amendatory Language; Correction

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule; correction.

SUMMARY: The NCUA published in the **Federal Register** of February 25, 2004, a document revising its rule concerning maximum borrowing authority. There was an inadvertent error in amendatory language. This document corrects the amendatory language.

DATES: Effective on March 3, 2004.

FOR FURTHER INFORMATION CONTACT: Mary F. Rupp, Staff Attorney, Division of Operations, Office of General Counsel, at the above address or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION: The NCUA published a document in the **Federal Register** of February 25, 2004 (69 FR 8545), amending § 741.2. The amendatory language included adding new paragraphs (b), (c) and (d). There is no paragraph (d). This amendment removes the reference to paragraph (d).

By the National Credit Union Administration Board on February 26, 2004.

Becky Baker,

Secretary of the Board.

[FR Doc. 04–4669 Filed 3–2–04; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–37–AD; Amendment 39–13494; AD 2004–05–02]

RIN 2120–AA64

Airworthiness Directives; AeroSpace Technologies of Australia Pty Ltd. Models N22B, N22S, and N24A Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA adopts a new airworthiness directive (AD) for all AeroSpace Technologies of Australia Pty Ltd. (ASTA) Models N22B, N22S, and N24A airplanes. This AD requires you to repetitively inspect wing fittings for fatigue defects, replace or correct defective wing fittings, and replace the stub wing front spar assembly and wing fitting when fatigue life limits are reached. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Australia. We are issuing this AD to detect and correct defects in the wing strut upper end fittings, wing strut lower end fittings, stub wing strut pick up fittings, and the stub wing front spar assembly. These defects could result in failure of the fittings or spar assembly and lead to reduced structural capability or reduced controllability of the airplane.

DATES: This AD becomes effective on April 20, 2004.

As of April 20, 2004, the Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation.

ADDRESSES: You may get the service information identified in this AD from Nomad Operations, Aerospace Support Division, Boeing Australia, PO Box 767, Brisbane, QLD 4000 Australia; telephone 61 7 3306 3366; facsimile 61 7 3306 3111.

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003-CE–37-AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Office hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ron Atmur, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5224; facsimile (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? The Civil Aviation Safety Authority (CASA), which is the airworthiness authority for Australia, recently notified FAA that an unsafe condition may exist on all ASTA Models N22B, N22S, and N24A airplanes. The CASA reports that fatigue tests on the wing strut upper end fitting have shown premature failures and rapid crack growth. Also, fatigue tests on the wing strut lower end fittings, stub wing strut pick up fitting, and stub wing front spar assembly have identified appropriate fatigue lives for the respective parts.

What is the potential impact if FAA took no action? Fatigue loading could result in failure of the wing strut upper end fitting, wing strut lower end fittings, stub wing strut pick up fitting, or stub wing front spar assembly. This failure could lead to reduced structural capability or reduced controllability of the airplane.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all ASTA Models N22B, N22S, and N24A airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on October 24, 2003 (68 FR 60887). The NPRM proposed to require you to repetitively inspect wing fittings for fatigue defects, replace or correct defective wing fittings, and replace the stub wing front spar assembly and wing fitting when fatigue life limits are reached.

Comments

Was the public invited to comment? We provided the public the opportunity to participate in the development of this AD. We received no comments on the proposal or on the determination of the cost to the public.

Conclusion

What is FAA's final determination on this issue? We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial corrections. We have determined that these minor corrections:

—Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

Changes to 14 CFR Part 39—Effect on the AD

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

Costs of Compliance

How many airplanes does this AD impact? We estimate that this AD affects 15 airplanes in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected airplanes?

We estimate the following costs to accomplish the inspection of the wing strut upper end fitting bolt holes:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
12 workhours × $65 per hour = $780	Not applicable	$780	15 × $780 = $11,700.

We estimate the following costs to accomplish the inspection of the stub wing strut pick up fittings:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
16 workhours × $65 per hour = $1,040	Not applicable	$1,040	15 × $1,040 = $15,600.

We estimate the following costs to accomplish any necessary replacements of the wing strut upper end fittings that will be required based on the results of the inspection or on reaching the fatigue life limit. We have no way of determining the number of airplanes that may need the replacement:

Labor cost	Parts cost	Total cost per airplane
10 workhours × $65 per hour = $650	$679	$650 + $679 = $1,329.

We estimate the following costs to accomplish any necessary replacements of the wing strut lower end fittings that will required based on reaching the fatigue life limit. We have no way of determining the number of airplanes that may need the replacement:

Labor cost	Parts cost	Total cost per airplane
12 workhours × $65 per hour = $780	$193	$780 + $193 = $973.

We estimate the following costs to accomplish any necessary replacements of the stub wing strut pick up fittings that will be required based on the results of the inspection or on reaching the fatigue life limit. We have no way of determining the number of airplanes that may need the replacement:

Labor cost	Parts cost	Total cost per airplane
80 workhours × $65 per hour = $5,200	$985	$5,200 + $985 = $6,185.

We estimate the following costs to accomplish any necessary replacements of the stub wing front spar assembly that will be required based on reaching the fatigue life limit. We have no way of determining the number of airplanes that may need the replacement:

Labor cost	Parts cost	Total cost per airplane
370 workhours × $65 per hour = $24,050	$4,820	$24,050 + $4,820 = $28,870.

Regulatory Findings

Will this AD impact various entities? 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.

Will this AD involve a significant rule or regulatory action? 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 the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

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

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include "AD Docket No. 2003–CE–37–AD" in your request.

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 Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. FAA amends § 39.13 by adding a new AD to read as follows:

2004–05–02 Aerospace Technologies of Australia Pty Ltd.: Amendment 39–13494; Docket No. 2003–CE–37–AD.

When Does This AD Become Effective?

(a) This AD becomes effective on April 20, 2004.

What Other ADs Are Affected By This Action?

(b) None.

What Airplanes Are Affected by This AD?

(c) This AD affects Models N22B, N22S, and N24A airplanes, all serial numbers, that are certificated in any category.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Australia. The actions specified in this AD are intended to detect and correct defects in the wing strut upper end fittings, wing strut lower end fittings, stub wing strut pick up fittings, and the stub wing front spar assembly. These defects could result in failure of the fittings or spar assembly and lead to reduced structural capability or reduced controllability of the airplane.

What Must I Do To Address This Problem?

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

Actions	Compliance	Procedures
(1) Inspect the wing strut upper end fitting bolt holes: (i) visually inspect for scoring, ovality, fretting, corrosion, and dimensions; and (ii) inspect, using eddy current inspection, for cracks	For Models N22S and N24A: Initially inspect before 3,600 hours time-in-service (TIS) on the wing strut upper end fitting or within the next 100 hours TIS after April 20, 2004 (the effective date of this AD), whichever occurs later. Repetitively inspect thereafter every 900 hours TIS until 14,400 hours TIS are accumulated on the wing strut upper end fitting. For Model N22B: Initially inspect before 5,400 hours TIS on the wing strut upper end fitting or within the next 100 hours TIS after April 20, 2004 (the effective date of this AD), whichever occurs later. Repetitively inspect thereafter at every 1,200 hours TIS until 14,400 hours TIS are accumulated on the wing strut upper end fitting.	Follow the Accomplishment Instructions in Boeing Australia Aerospace Technologies of Australia Nomad Alert Service Bulletin No. ANMD–57–12, Revision 2, dated May 25, 1999.
(2) Complete corrective actions for defects of the wing strut upper end fittings: (i) If a crack is found or the hole in the strut upper end fitting is damaged and will not clean up, replace the wing strut upper end fittings. (ii) If the hole in the strut is oval or damaged, and the oversize line reamer will not repair it: (A) get a repair scheme from the manufacturer; and (B) follow this repair scheme. (iii) If scoring, fretting, or corrosion is found, or all dimensions are within limits, line ream the hole and replace the bolt	Before further flight after the inspection required in paragraph (e)(1) of this AD, unless already done.	Follow the Accomplishment Instructions in Boeing Australia Aerospace Technologies of Australia Nomad Alert Service Bulletin No. ANMD–57–12, Revision 2, dated May 25, 1999; and any repair scheme obtained from Nomad Operations, Aerospace Support Division, Boeing Australia, PO Box 767, Brisbane, QLD 4000 Australia; telephone 61 7 3306 3366; facsimile 61 7 3306 3111. Obtain approval of this repair scheme through the FAA at the address specified in paragraph (f) of this AD.
(3) Replace the wing strut upper end fittings.	Before further flight when cracks are found by the inspection required in paragraph (e)(1); and upon the accumulation of 14,400 hours TIS on the fitting or within the next 100 hours TIS after April 20, 2004 (the effective date of this AD), whichever occurs later. For Models N22S and N24A: start repetitive inspections of paragraph (e)(1) of this AD when 7,200 hours TIS are accumulated on the wing strut upper end fitting. For Models N22B: start repetitive inspections of paragraph (e)(1) of this AD when 10,800 hours TIS are accumulated on the wing strut upper end fitting.	Follow the Accomplishment Instructions in accumulation Boeing Australia Aerospace Technologies of Australia Nomad Alert Service Bulletin No. ANMD–57–12, Revision 2, dated May 25, 1999.
(4) Replace the wing strut lower end fittings: (i) get a repair scheme from the manufacturer; and (ii) follow this repair scheme	Upon the accumulation of 14,000 hours TIS on the fitting or within the next 100 hours TIS after April 20, 2004 (the effective date of this AD), whichever occurs later.	Follow a repair scheme from Nomad Operations, Aerospace Support Division, Boeing Australia, PO Box 767, Brisbane, QLD 4000 Australia; telephone 61 7 3306 3366; facsimile 61 7 3306 3111. Get approval of this repair scheme through the FAA at the address specified in paragraph (f) of this AD.

Actions	Compliance	Procedures
(5) Inspect the stub wing strut pick up fittings for cracks	Initially inspect upon the accumulation of 5,400 hours TIS on the fitting or within the next 300 hours TIS on the fitting after April 20, 2004 (the effective date of this AD), whichever occurs later. Repetitively inspect thereafter at every 1,800 hours TIS until 18,800 hours TIS are accumulated on the stub wing strut pick up fitting.	Follow the Accomplishment Instructions in Aerospace Technologies of Australia Nomad Service Bulletin No. NMD–53–18, dated February 8, 1996; or Boeing Australia Aerospace Technologies of Australia Nomad Service Bulletin No. NMD–53–18, Revision 1, dated September 3, 2002; and the applicable airplane maintenance manual.
(6) Replace the stub wing strut pick up fittings	Before further flight when cracks are found after the inspection required in paragraph (e)(5) of this AD, unless already done; and upon the accumulation of 18,800 hours TIS or 300 hours TIS after April 20, 2004 (the effective date of this AD), whichever occurs later.	Follow the Accomplishment Instructions in Aerospace Technologies of Australia Nomad Service Bulletin No. NMD–53–18, dated February 8, 1996; or Boeing Australia Aerospace Technologies of Australia Nomad Service Bulletin No. NMD–53–18, Revision 1, dated September 3, 2002; and the applicable airplane maintenance manual.
(7) Replace the stub wing front spar assembly: (i) get a repair scheme from the manufacturer; and (ii) follow this repair scheme	Upon the accumulation of 25,000 hours TIS on the wing strut upper end fitting, wing strut lower end fitting, or stub wing strut pick up fitting, or within the next 100 hours TIS after April 20, 2004 (the effective date of his AD), whichever occurs later.	Follow a repair scheme from Nomad Operations, Aerospace Support Division, Boeing Australia, PO Box 767, Brisbane, QLD 4000 Australia; telephone 61 7 3306 3366; facsimile 61 7 3306 3111. Get approval of this repair scheme through the FAA at the address specified in paragraph (f) of this AD.

May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. For information on any already approved alternative methods of compliance, contact Ron Atmur, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5224; facsimile (562) 627–5210.

Does This AD Incorporate Any Material by Reference?

(g) You must do the actions required by this AD following the instructions in Boeing Australia Aerospace Technologies of Australia Nomad Alert Service Bulletin No. ANMD–57–12, Revision 2, dated May 25, 1999; Aerospace Technologies of Australia Nomad Service Bulletin No. NMD–53–18, dated February 8, 1996; and Boeing Australia Aerospace Technologies of Australia Nomad Service Bulletin No. NMD–53–18, Revision 1, dated September 3, 2002. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may get a copy from Nomad Operations, Aerospace Support Division, Boeing Australia, P.O. Box 767, Brisbane, QLD 4000 Australia; telephone 61 7 3306 3366; facsimile 61 7 3306 3111. You may review copies at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Is There Other Information That Relates to This Subject?

(h) These Australian ADs also address the subject of this AD: AD Number AD/GAF–N22/2, Amendment 3, dated January 28, 2003, and AD Number AD/GAF–N22/70, Amendment 2, dated January 28, 2003.

Issued in Kansas City, Missouri, on February 20, 2004.

Dorenda D. Baker,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–4374 Filed 3–2–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–259–AD; Amendment 39–13501; AD 2004–05–07]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, that currently requires a one-time inspection to detect abrasion damage and installation discrepancies of the wire bundles located below the P37 panel, and corrective action if necessary. For airplanes already subject to the existing AD, this amendment requires inspecting to determine whether the existing location of a certain wire support standoff is adequate, relocating the wire support standoff if necessary, installing protective sleeving over the wire bundles, and installing wire bundle support clamps if necessary. This amendment also expands the applicability of the existing AD to include additional airplanes, and require inspecting the sleeving on certain wire bundles, and accomplishing corrective action if necessary, on those airplanes. The actions specified by this AD are intended to detect and prevent abrasion damage and correct installation discrepancies of the wire bundles located below the P37 panel, which could result in arcing to structure and consequent fire or loss of function of affected systems. This action is intended to address the identified unsafe condition.

DATES: Effective April 7, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 7, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington

98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Elias Natsiopoulos, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6478; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 2001–17–28 R1, amendment 39–12510 (66 FR 58924, November 26, 2001), which is applicable to certain Boeing Model 767 series airplanes, was published in the **Federal Register** on March 3, 2003 (68 FR 9947). For airplanes already subject to the existing AD, the action proposed to require inspecting to determine whether the existing location of a certain wire support standoff is adequate, relocating the wire support standoff if necessary, installing protective sleeving over the wire bundles, and installing wire bundle support clamps if necessary. The action also proposed to expand the applicability of the existing AD to include additional airplanes, and require inspecting the sleeving on certain wire bundles, and accomplishing corrective action if necessary, on those airplanes.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Credit for Actions Accomplished per Previous Service Bulletins

Three commenters request that the FAA give credit for actions accomplished in accordance with Boeing Alert Service Bulletin 767–24A0134 (for Model 767–200 and –300 series airplanes), dated March 15, 2001. They state that Revision 1 of the service bulletin specifies no more work is necessary for airplanes changed in accordance with the original issue of the service bulletin.

We agree. We have determined that completion of all the steps in the Accomplishment Instructions of Boeing Alert Service Bulletin 767–24A0134 (for Model 767–200 and –300 series airplanes) or Boeing Alert Service Bulletin 767–24A0135 (for Model 767–400ER series airplanes), both dated March 15, 2001, as applicable, is acceptable for compliance with the corresponding actions specified for Group 1 airplanes in paragraph (b) of this AD. We have added paragraph (c) to this final rule to give credit for accomplishment of previous service bulletins.

Conclusion

After careful review of the available data, including the comment noted above, we have determined that air safety and the public interest require the adoption of the rule with the change previously described. We have determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Changes to 14 CFR Part 39/Effect on the AD

On July 10, 2002, we issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance (AMOCs). Because we have now included this material in part 39, only the office authorized to approve AMOCs is identified in each individual AD. However, for clarity and consistency in this final rule, we have retained the language of the NPRM regarding that material.

Change to Labor Rate Estimate

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Cost Impact

There are approximately 839 airplanes of the affected design in the worldwide fleet. We estimate that 325 airplanes of U.S. registry will be affected by this AD.

The inspection that is currently required by AD 2001–17–28 R1 takes approximately 2 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $42,250, or $130 per airplane.

For airplanes in both Groups 1 and 2 as listed in the alert service bulletins, the new actions that are required by this new AD will take approximately 2 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. The cost of required parts will be negligible. Based on these figures, the cost impact of the new requirements of this AD on U.S. operators is estimated to be $42,250, or $130 per airplane.

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

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by removing amendment 39–12510 (66 FR 58924, November 26, 2001), and by adding a new airworthiness directive (AD), amendment 39–13501, to read as follows:

2004–05–07 Boeing: Amendment 39–13501. Docket 2001–NM–259–AD. Supersedes AD 2001–17–28 R1, Amendment 39–12510.

Applicability: Model 767 airplanes, certificated in any category, line numbers (L/Ns) 1 through 853 inclusive.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and prevent abrasion damage and correct installation discrepancies of the wire bundles located below the P37 panel, which could result in arcing to structure and consequent fire or loss of function of affected systems, accomplish the following:

Requirements of AD 2001–17–28 R1, Amendment 39–12510

Inspection for Damage and Installation Discrepancies

(a) For airplanes with L/Ns 1 through 815 inclusive: Within 90 days after September 13, 2001 (the effective date of AD 2001–17–28, amendment 39–12419), perform a one-time detailed inspection of the wire bundles located below the P37 panel to detect abrasion damage and wire installation discrepancies (including missing standoffs; missing, chafed, or loose cable clamps; chafed grommets; and wire bundles located beneath an insulation blanket), in accordance with Boeing Alert Service Bulletin 767–24A0134, excluding Evaluation Form, dated March 15, 2001, or Revision 1, excluding Evaluation Form, dated October 18, 2001 (for Model 767–200 and -300 series airplanes); or 767–24A0135, excluding Evaluation Form, dated March 15, 2001, or Revision 1, excluding Evaluation Form, dated October 18, 2001 (for Model 767–400ER series airplanes). If any damage or other discrepancy is found, prior to further flight, perform corrective actions in accordance with the applicable alert service bulletin. After December 11, 2001 (the effective date of AD 2001–17–28 R1, amendment 39–12510), only Revision 1 of the alert service bulletins may be used.

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

New Requirements of this AD

Inspection and Corrective Actions

(b) Within 18 months after the effective date of this AD, do all actions in Work Package 2 of Boeing Alert Service Bulletin 767–24A0134 (for Model 767–200 and –300 series airplanes) or 767–24A0135 (for Model 767–400ER series airplanes), both Revision 1, both excluding Evaluation Form, both dated October 18, 2001, as applicable, in accordance with the Accomplishment Instructions of the applicable alert service bulletin. For Group 1 airplanes, the procedures in Work Package 2 include performing a detailed inspection to determine whether the location of the wire support standoff for wire bundle W298 is adequate and whether a grommet is installed and not damaged (*e.g.*, chafed), installing a new grommet if not already installed or if the existing grommet is damaged, relocating the wire support standoff as applicable, installing protective sleeving over certain wire bundles, and installing wire bundle support clamps. When installing wire bundle support clamps, make sure that wire bundles are installed inboard/above the insulation blankets. For Group 2 airplanes, the procedures in Work Package 2 include performing a detailed inspection of the sleeving on wire bundles W298, W235, and W2130, as applicable, to determine the type of protective sleeving installed and the location of that sleeving, relocating the sleeving or replacing the sleeving with new sleeving as applicable, and installing wire bundle support clamps as applicable. When installing wire bundle support clamps, make sure that wire bundles are installed inboard/above the insulation blankets.

Credit for Actions Accomplished per Previous Service Bulletins

(c) For Group 1 airplanes, the actions accomplished before December 11, 2001, per Boeing Alert Service Bulletin 767–24A0134 (for Model 767–200 and –300 series airplanes), dated March 15, 2001; or Boeing Alert Service Bulletin 767–24A0135 (for Model 767–400ER series airplanes), dated March 15, 2001; as applicable, are acceptable for compliance with the corresponding actions required by paragraph (b) of this AD.

Alternative Methods of Compliance

(d)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 2001–17–28 R1, amendment 39–12510, are approved as alternative methods of compliance with the corresponding requirements of this AD.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

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

Incorporation by Reference

(f) Unless otherwise specified by this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 767–24A0134, Revision 1, dated October 18, 2001 (for Model 767–200 and –300 series airplanes); and Boeing Alert Service Bulletin 767–24A0135, Revision 1, dated October 18, 2001 (for Model 767–400ER series airplanes). This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207, Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(g) This amendment becomes effective on April 7, 2004.

Issued in Renton, Washington, on February 20, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–4562 Filed 3–2–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–32–AD; Amendment 39–13502; AD 2004–05–08]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–31 and DC–9–32 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9–31 and DC–9–32 airplanes, that requires replacement of certain power relays, and subsequent repetitive cleaning, inspecting, repairing, and testing of certain replaced power relays. This action is necessary to prevent internal arcing of the left and right generator power relays, auxiliary power relays, and external power relays, and consequent smoke and/or fire in the cockpit and cabin. This action is intended to address the identified unsafe condition.

DATES: Effective April 7, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 7, 2004.

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

FOR FURTHER INFORMATION CONTACT: Elvin Wheeler, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5344; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–31 and DC–9–32 airplanes was published in the **Federal Register** on October 29, 2003 (68 FR 61637). That action proposed to require replacement of certain power relays, and subsequent repetitive cleaning, inspecting, repairing, and testing of certain replaced power relays.

Comments

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

Conclusion

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

Cost Impact

There are approximately 4 airplanes of the affected design in the worldwide fleet. The FAA estimates that 2 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required inspection, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $260, or $130 per airplane.

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

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2004–05–08 McDonnell Douglas: Amendment 39–13502. Docket 2003–NM–32–AD.

Applicability: Model DC–9–31 airplanes having manufacturer's fuselage numbers 1039 and 1046, and Model DC–9–32 airplanes having manufacturer's fuselage numbers 0268 and 0505; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent internal arcing of the left and right generator power relays, auxiliary power relays, and external power relays, and consequent smoke and/or fire in the cockpit and cabin, accomplish the following:

Inspection

(a) Within 24 months after the effective date of this AD, perform a one-time inspection of the left and right generator power relays, auxiliary power relays, and external power relays, to determine if Sundstrand (Westinghouse) part number (P/N) 914F567–3 or –4 is installed, per Boeing Alert Service Bulletin DC9–24A191, Revision 02, dated January 7, 2003.

Replacement or Modification/Reidentification of Any Generator Power Relay, Auxiliary Power Relay, or External Power Relay, P/N 914F567–3

(b) If any generator power relay, auxiliary power relay, or external power relay, Sundstrand (Westinghouse) P/N 914F567–3, is found installed during the inspection required by paragraph (a) of this AD, within 24 months after the effective date of this AD, do either action specified in paragraph (b)(1) or (b)(2) of this AD per the Accomplishment Instructions of Boeing Alert Service Bulletin DC9–24A191, Revision 02, dated January 7, 2003.

(1) Replace the power relay having Sundstrand (Westinghouse) P/N 914F567–3 with either a serviceable power relay having Sundstrand (Westinghouse) P/N 9008D09 series or 914F567–4.

(2) Modify the power relay, Sundstrand (Westinghouse) P/N 914F567–3, to a –4 configuration.

Maintenance or Replacement of Any Generator Power Relay, Auxiliary Power Relay, or External Power Relay, P/N 914F567–4

(c) If any generator power relay, auxiliary power relay, or external power relay, Sundstrand (Westinghouse) P/N 914F567–4, is found installed during the inspection required by paragraph (a) of this AD, clean, inspect, repair, and test the relay, or replace the power relay with a serviceable power relay having Sundstrand (Westinghouse) P/N 9008D09 series or 914F567–4; per Boeing Alert Service Bulletin DC9–24A191, Revision 02, dated January 7, 2003; at the time specified in paragraph (c)(1) of this AD, except as provided by paragraph (c)(2) of this AD.

(1) Within 7,000 flight hours after installation of the generator power relay, auxiliary power relay, or external power relay, Sundstrand (Westinghouse) P/N 914F567–4, or within 24 months after the effective date of this AD, whichever occurs later.

(2) For airplanes on which the flight hours since installation of any generator power relay, auxiliary power relay, or external power relay, Sundstrand (Westinghouse) P/N 914F567–4, cannot be determined: Within 24 months after the effective date of this AD.

Repetitive Maintenance of Generator Power Relay, Auxiliary Power Relay, or External Power Relay, Sundstrand (Westinghouse) P/N 914F567–4

(d) Before or upon the accumulation of 7,000 flight hours on any generator power relay, auxiliary power relay, or external power relay, Sundstrand (Westinghouse) P/N 914F567–4 since accomplishing the action(s) required by either paragraph (b) or (c) of this AD, as applicable, clean, inspect, repair, and test; per Boeing Alert Service Bulletin DC9–24A191, Revision 02, dated January 7, 2003. Thereafter, repeat these actions at intervals not to exceed the accumulation of 7,000 flight hours on the power relay.

Credit for AD 2002–26–13, Amendment 39–13001

(e) Accomplishment of the actions specified in AD 2002–26–13 is acceptable for compliance with the requirements of this AD.

Alternative Methods of Compliance

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

Incorporation by Reference

(g) The actions shall be done in accordance with Boeing Alert Service Bulletin DC9–24A191, Revision 02, dated January 7, 2003. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(h) This amendment becomes effective on April 7, 2004.

Issued in Renton, Washington, on February 20, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–4561 Filed 3–2–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–07–AD; Amendment 39–13500; AD 2004–05–06]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, and MD–10–30F Airplanes; and Model MD–11 and MD–11F Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, and MD–10–30F airplanes; and Model MD–11 and MD–11F airplanes. This amendment requires replacement of the left and right number one passenger door bolted lower seal-to-retainer and girt bar view window assemblies with new, double-flush riveted assemblies. This action is necessary to prevent the number one passenger door slide from inflating before it has cleared the slide cover, which could result in the slide being unusable during an emergency evacuation and consequent injury to passengers or airplane crewmembers. This action is intended to address the identified unsafe condition.

DATES: Effective April 7, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 7, 2004.

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

FOR FURTHER INFORMATION CONTACT: Ken Sujishi, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5353; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, and MD–10–30F airplanes; and Model MD–11 and MD–11F airplanes was published in the **Federal Register** on September 18, 2003 (68 FR 54682). That action proposed to require replacement of the left and right number one passenger door bolted lower seal-to-retainer and girt bar view window assemblies with new, double-flush riveted assemblies.

Comments

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

Conclusion

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

Cost Impact

There are approximately 350 Model DC–10 airplanes, and approximately 195 Model MD–11 and –11F airplanes of the affected design in the worldwide fleet. The FAA estimates that 263 Model DC–10 airplanes and 81 Model MD–11 and –11F airplanes of U.S. registry would be affected by this AD.

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

TABLE—COST IMPACT—ESTIMATED

Model	Work hours	Labor cost per airplane	Parts cost per airplane	Maximum fleet cost
DC–10 and MD–10 airplane	2	$130	$6,024	$1,618,502
MD–11 and –11F airplanes	1	65	6,024	493,209

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

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2004–05–06 McDonnell Douglas: Amendment 39–13500. Docket 2003–NM–07–AD.

Applicability: Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, and MD–10–30F airplanes, as listed in Boeing Alert Service Bulletin DC10–25A378, dated November 27, 2002; and Model MD–11 and MD–11F airplanes, as listed Boeing Alert Service Bulletin MD11–25A262, Revision 01, dated February 11, 2003; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the number one passenger door slide from inflating before it has cleared the slide cover, which could result in the slide being unusable during an emergency evacuation and consequent injury to passengers or airplane crewmembers, accomplish the following:

Replacement

(a) Within 18 months after the effective date of this AD, replace the left and right number one passenger door bolted lower seal-to-retainer and girt bar view window assemblies with the new, double-flush riveted assemblies, per the Accomplishment Instructions of Boeing Alert Service Bulletin DC10–25A378, dated November 27, 2002 (for Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, and MD–10–30F airplanes), or Boeing Alert Service Bulletin MD11–25A262, Revision 01, dated February 11, 2003 (for Model MD–11 and MD–11F airplanes); as applicable.

Replacements Accomplished Per Previous Issue of Service Bulletin

(b) Replacements accomplished before the effective date of this AD per Boeing Alert Service Bulletin MD11–25A262, dated November 27, 2002, are considered acceptable for compliance with the corresponding action specified in this AD.

Alternative Methods of Compliance

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

Incorporation by Reference

(d) The actions shall be done in accordance with Boeing Alert Service Bulletin DC10–25A378, dated November 27, 2002; or Boeing Alert Service Bulletin MD11–25A262, Revision 01, dated February 11, 2003; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on April 7, 2004.

Issued in Renton, Washington, on February 20, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–4563 Filed 3–2–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–302–AD; Amendment 39–13477; AD 2004–03–33]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2 and B4 Series Airplanes; Model A300 B4–600, A300 B4–600R, and A300 F4–600R Series Airplanes (Collectively Called A300–600); Model A310 Series Airplanes; Model A319, A320, and A321 Series Airplanes; Model A330–301, –321, –322, –341, and –342 Airplanes; and Model A340 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A300 B2 and B4 series airplanes; Model A300 B4–600, A300 B4–600R, and A300 F4–600R series airplanes (collectively called A300–600); Model A310 series airplanes; Model A319, A320, and A321 series airplanes; Model A330–301, –321, –322, –341, and –342 airplanes; and Model A340 series airplanes. This AD requires, among other actions, replacement of certain pitot probes with certain new pitot probes. The actions specified by this AD are intended to prevent loss or fluctuation of indicated airspeed, which could result in misleading information being provided to the flightcrew. This action is intended to address the identified unsafe condition.

DATES: Effective April 7, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 7, 2004.

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

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A300 B2 and B4 series airplanes; Model A300 B4–600, A300 B4–600R, and A300 F4–600R series airplanes (collectively called A300–600); Model A310 series airplanes; Model A319, A320, and A321 series airplanes; Model A330–301, –321, –322, –341, and –342 airplanes; and Model A340 series airplanes; was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on June 12, 2003 (68 FR 35186). That action proposed to require, among other actions, replacement of certain pitot probes with certain new pitot probes.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposed AD

Several commenters concur with the proposed AD.

Request To Refer to Latest Service Information

One commenter requests that the FAA revise the proposed AD to refer to Airbus Service Bulletin A320–34–1127, Revision 01, dated December 4, 2001, instead of the original issue of that service bulletin. (Paragraph (f) of the supplemental NPRM refers to the original issue of Airbus Service Bulletin A320–34–1127, dated April 24, 1997, as the acceptable source of service information for the accomplishment of the actions in that paragraph.) The commenter notes that the Accomplishment Instructions in Revision 01 have not been revised from those in the original issue; thus, either issue of the service bulletin should be acceptable.

We concur with the commenter's request and have revised paragraph (f) of this final rule to refer to Revision 01 of the service bulletin, and to state that replacement of the pitot probes before the effective date of this AD per the original issue of Airbus Service Bulletin A320–34–1127 is acceptable for compliance with that paragraph. Also, we have revised the applicability statement of this final rule to refer to Revision 01 in addition to the original issue of the service bulletin as the service bulletin associated with Airbus Modification 25998.

Also, we have determined that Airbus has issued the following revised service bulletins, and we have revised "Table 1—Applicability" of this AD to refer to all of these revisions:

- Service Bulletin A300–34–6116, Revision 03, dated June 6, 2003. That service bulletin contains procedures that are essentially the same as those in Revision 02 of the service bulletin, dated May 25, 2000, which paragraph (a)(1) of the supplemental NPRM refers to as an acceptable source of service information for accomplishing the actions in that paragraph on Model A300 B4–600, A300 B4–600R, and A300 F4–600R series airplanes. Accordingly, we have revised paragraph (a)(1) of this final rule to refer to Revision 03 of the service bulletin, while giving credit for actions accomplished previously per the original issue of the service bulletin, dated June 19, 1998; Revision 01, dated August 7, 1998, or Revision 02.
- Airbus Service Bulletin A310–34–2137, Revision 03, dated June 6, 2003. That service bulletin contains procedures that are essentially the same as those in Revision 02 of the service bulletin, dated May 25, 2000, which paragraph (a)(1) of the supplemental NPRM refers to as an acceptable source of service information for accomplishing the actions in that paragraph on Model A310 series airplanes. Accordingly, we have revised paragraph (a)(1) of this final rule to refer to Revision 03 of the service bulletin, while giving credit for actions accomplished previously per Revision 02.
- Service Bulletin A300–32–052, Revision 2, dated September 10, 1981. That service bulletin contains procedures that are essentially the same as those in the original issue of that service bulletin, dated November 15, 1976, which paragraph (d) of the supplemental NPRM refers to as an acceptable source of service information for the actions in that paragraph. Accordingly, we have revised paragraph (d) of this final rule to refer to Revision 2 of the service bulletin, while giving credit for actions accomplished previously per the original issue of the service bulletin.
- Airbus Service Bulletin A300–22–031, Revision 1, dated February 9, 1981. That service bulletin contains procedures that are essentially the same as those in the original issue of that service bulletin, dated June 25, 1979, which paragraph (e) of the supplemental NPRM refers to as an acceptable source of service information for the actions in that paragraph. Accordingly, we have revised paragraph (e) of this final rule to

refer to Revision 1 of the service bulletin, while giving credit for actions accomplished previously per the original issue of the service bulletin.

- Service Bulletin A330–34–3038, Revision 01, dated September 14, 2001. That service bulletin contains procedures that are essentially the same as those in the original issue of that service bulletin, dated November 19, 1996, which paragraph (g)(1) of the supplemental NPRM refers to as an acceptable source of service information for the actions in that paragraph. Accordingly, we have revised paragraph (g)(1) of this final rule to refer to Revision 01 of the service bulletin, while giving credit for actions accomplished previously per the original issue of the service bulletin.
- Service Bulletin A330–34–3071, Revision 01, dated May 30, 2001. That service bulletin contains procedures that are essentially the same as those in the original issue of that service bulletin, dated December 11, 1998, which paragraph (g)(2) of the supplemental NPRM refers to as an acceptable source of service information for the actions in that paragraph. Accordingly, we have revised paragraph (g)(2) of this final rule to refer to Revision 01 of the service bulletin, while giving credit for actions accomplished previously per the original issue of the service bulletin.
- Service Bulletin A340–34–4042, Revision 01, dated September 14, 2001. That service bulletin contains procedures that are essentially the same as those in the original issue of that service bulletin, dated November 19, 1996, which paragraph (h)(1) of the supplemental NPRM refers to as an acceptable source of service information for the actions in that paragraph. Accordingly, we have revised paragraph (h)(1) of this final rule to refer to Revision 01 of the service bulletin, while giving credit for actions accomplished previously per the original issue of the service bulletin.
- Service Bulletin A340–34–4079, Revision 06, dated April 1, 2003. That service bulletin contains procedures that are essentially the same as those described in the original issue of the service bulletin, which paragraph (h)(2) of the supplemental NPRM refers to as an appropriate source of service information for the actions required by that paragraph. Accordingly, we have revised paragraph (h)(2) of this final rule to refer to Revision 06 of the service bulletin, while giving credit for actions accomplished previously per the original issue of the service bulletin, dated December 11, 1998; Revision 01, dated May 27, 1999; Revision 02, dated October 6, 1999; Revision 03, dated March 12, 2002; Revision 04, dated June 19, 2002; or Revision 05, dated July 30, 2002.

Request To Revise Paragraph Reference

One commenter requests that paragraph (b) of the supplemental NPRM be revised to state that compliance is required "before or concurrently with the requirements of paragraph (a)(1)." Paragraph (b) of the supplemental NPRM states that compliance is required "before or concurrently with the requirements of paragraph (a)(2)." The commenter correctly notes that paragraph (b) applies to Model A300 B2 and B4 series airplanes, while paragraph (a)(2) refers to Model A300 B4–600R, A310–203, and A310–304 series airplanes. Paragraph (a)(1) applies to Model A300 B2 and B4 series airplanes (among other models).

We concur with the commenter's request. The reference to paragraph (a)(2) in paragraph (b) of the supplemental NPRM was a typographical error. We have corrected this error in paragraph (b) of this final rule.

Request for Credit for Accomplishment of Modification in Production

One commenter requests that we revise the supplemental NPRM to provide credit for accomplishment, during production, of Airbus Modification 2435 in lieu of accomplishment of the actions in Airbus Service Bulletin A300–34–069, Revision 5, dated April 8, 1982, as revised by Airbus A300 Service Bulletin Change Notice 5A, dated February 16, 1987, as would be required by paragraph (b) of the proposed AD. The commenter also requests that we provide credit for accomplishment of earlier revisions of Airbus Service Bulletin A300–34–069.

We partially concur with the commenter's request. We have revised paragraph (b) of this final rule to state that "Accomplishment during production of Airbus Modification 2435 is acceptable for compliance." With regard to providing credit for accomplishment of earlier revisions of Airbus Service Bulletin A300–34–069, we acknowledge that certain earlier revisions of that service bulletin may be acceptable for compliance with corresponding requirements of this AD. However, certain older revisions of service bulletins are unavailable to us; therefore, we are unable to verify whether they are acceptable for compliance. An operator may request approval of an alternative method of compliance with this AD, provided that the operator submits a copy of the revision of the service bulletin for which credit is sought with the request. We have made no further change in this regard.

Explanation of Additional Changes to the Proposed AD

"Table—Applicability" in the proposed AD has been re-identified as "Table 1—Applicability" in this final rule.

Also, we have revised "Table 1—Applicability" to correct the dates for various revisions of Airbus Service Bulletin A320–34–1170, which were listed incorrectly in the supplemental NPRM.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Changes to 14 CFR Part 39/Effect on the AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. However, for clarity and consistency in this final rule, we have retained the language of the supplemental NPRM regarding that material.

Change to Labor Rate Estimate

Since we issued the supplemental NPRM, we have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Cost Impact

We estimate that 559 Model A300 B2 and B4 series airplanes; Model A300 B4–600, A300 B4–600R, and A300 F4–600R series airplanes (collectively called A300–600); Model A310 series airplanes; Model A319, A320, and A321 series airplanes; and Model A330–301, –321, –322, –341, and –342 series airplanes; of U.S. registry will be

affected by this AD. "Table—Cost Figures" shows the estimated cost figures for certain airplanes affected by this AD. The average labor rate is $65 per work hour.

TABLE—ESTIMATED COST FIGURES

Model	U.S.-registered airplanes	Work hours	Parts cost	Total cost
A300 B2 and A300 B4	24	Between 3 and 631.	Between $120 and $56,669 per airplane (depending on airplane configuration).	Between $7,560 and $2,344,416; or $315 and $97,684 per airplane (depending on airplane configuration)
A300 B4–600, A300 B4–600R, and A300 F4–600R (collectively called A300–600).	83	3	$5,700	$489,285, or $5,895 per airplane
A310	46	3	$5,700 or $5,856 (depending on airplane configuration).	Between $271,170 and $278,346; or $5,895 and $6,051 per airplane (depending on airplane configuration)
A319, A320, and A321	397	3	$6,000	$2,459,415, or $6,195 per airplane
A330–301, –321, –322, –341, and –342.	9	3	$6,000 or $11,100 (depending on airplane configuration).	Between $55,755 and $101,655; or $6,195 and $11,295 per airplane (depending on airplane configuration)

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

Currently, there are no Airbus Model A340 series airplanes on the U.S. Register. However, should an affected airplane be imported and placed on the U.S. Register in the future, it will require approximately 3 work hours to accomplish the required actions, at an average labor rate of $65 per work hour. The cost of required parts would be $6,000 or $11,100 (depending on airplane configuration). Based on these figures, the cost impact of this AD on a subject Model A340 series airplane would be $6,195 or $11,295 per airplane (depending on airplane configuration).

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2004–03–33 Airbus: Amendment 39–13477. Docket 2001–NM–302–AD.

Applicability: The series airplanes, certificated in any category, listed in Table 1—Applicability.

TABLE 1.— APPLICABILITY

Model and Series—	Excluding Airplanes Modified per—	Excluding Airplanes Equipped With—
A300 B2 and A300 B4.	Airbus Modification 12236 in service (reference Airbus Service Bulletin A300–34–0166, dated March 30, 2001, in service).	None.

TABLE 1.— APPLICABILITY—Continued

Model and Series—	Excluding Airplanes Modified per—	Excluding Airplanes Equipped With—
A300 B4–600, A300 B4–600R, and A300 F4–600R (collectively called A300–600).	Airbus Modification 11858 in production (reference Airbus Service Bulletin A300 –34–6116, dated June 19, 1998; Revision 01, dated August 7, 1998; Revision 02, dated May 25, 2000; or Revision 03, dated June 6, 2003; in service); or Airbus Modification 12223 in service (reference Airbus Service Bulletin A300–34–6141, dated December 3, 2001; or Revision 01, dated February 20, 2002); and on which concurrent incorporation of Airbus repair procedures to enlarge the holes for the pitot probes was accomplished; in service;. or Airbus Modification 12223 in service (reference Airbus Service Bulletin A300–34–6141, Revision 02, dated April 30, 2002; or Revision 03, dated August 27, 2002; in service).	None.
A310	Airbus Modification 11858 in production (reference Airbus Service Bulletin A310–34–2137, dated June 19, 1998; Revision 01, dated August 7, 1998; Revision 02, dated May 25, 2000; or Revision 03, dated June 06, 2003; in service); or Airbus Modification 12223 in service (reference Airbus Service Bulletin A310–34–2154, dated January 13, 2000; Revision 01, dated April 19, 2000; Revision 02, dated November 05, 2001; or Revision 03, dated January 25, 2002); and on which concurrent incorporation of Airbus repair procedures to enlarge the holes for the pitot probes were accomplished; in service;. or Airbus Modification 12223 in service (reference Airbus Service Bulletin A310–34–2154, Revision 04, dated April 30, 2002; Revision 05, dated July 9, 2002; Revision 06, dated August 6, 2002; or Revision 07, dated October 8, 2002; in service).	None.
A319, A320, and A321.	Airbus Modification 25998 in production (reference Airbus Service Bulletin A320–34–1127, dated April 24, 1997; or Revision 01, dated December 4, 2001; in service).	Rosemount (formerly BF Goodrich or New Rosemount) pitot probes part number 0851HL per Airbus Modification 25578 (reference Airbus Service Bulletin A320–34–1170, dated December 18, 1998; Revision 01, dated May 14, 1999; Revision 02, dated December 7, 1999; Revision 03, dated February 17, 2000; Revision 04, dated May 24, 2000; or Revision 05, dated September 11, 2000).
A330–301, –321, –322, –341, and –342.	Airbus Modification 44836 in production (reference Airbus Service Bulletin A330–34–3038, dated November 19, 1996; or Revision 01, dated September 14, 2001; in service); or Airbus Modification 45638 in production (reference Airbus Service Bulletin A330–34–3071, dated December 11, 1998; or Revision 01, dated May 30, 2001; in service).	None.
A340–211, –212, –213, –311, –312, and –313.	Airbus Modification 44836 in production (reference Airbus Service Bulletin A340–34–4042, dated November 19, 1996; or Revision 01, dated September 14, 2001; in service); or Airbus Modification 45638 in production (reference Airbus Service Bulletin A340–34–4079, dated December 11, 1998; Revision 01, dated May 27, 1999; Revision 02, dated October 6, 1999; Revision 03, dated March 12, 2002; Revision 04, dated June 19, 2002; Revision 05, dated July 30, 2002; or Revision 06, dated April 1, 2003; in service).	None.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (i) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss or fluctuation of indicated airspeed, which could result in misleading information being provided to the flightcrew, accomplish the following:

For Model A300 B2 and A300 B4 Series Airplanes; Model A300 B4–600, A300 B4–600R, and A300 F4–600R (Collectively Called A300–600) Series Airplanes; and Model A310 Series Airplanes: Replacement of Pitot Probes With New Pitot Probes

(a) Within 30 months after the effective date of this AD, do the action specified in paragraph (a)(1) or (a)(2) of this AD, as applicable.

(1) For Model A300 B2 and A300 B4 series airplanes; Model A300 B4–600, A300 B4–600R, and A300 F4–600R (collectively called

A300–600) series airplanes; and Model A310 series airplanes: Replace the Thales (formerly Sextant) pitot probes from the forward fuselage panel between FR6 and FR7 with new Rosemount (formerly BF Goodrich) pitot probes (including O-rings, gaskets, and nuts), per Airbus Service Bulletin A300–34–0166, dated March 30, 2001 (for Model A300 B2 and B4 series airplanes); Airbus Service Bulletin A300–34–6116, Revision 03, dated June 6, 2003 (for Model A300 B4–600, A300 B4–600R, and A300 F4–600R series airplanes); or Airbus Service Bulletin A310–34–2137, Revision 03, dated June 6, 2003 (for Model A310 series airplanes); as applicable. For Model A300 B4–600, A300 B4–600R, and A300 F4–600R series airplanes, actions accomplished before the effective date of this AD per Airbus Service Bulletin A300–34–6116, dated June 19, 1998; Revision 01, dated August 7, 1998; or Revision 02, dated May 25, 2000; are acceptable for compliance with the corresponding action required by this paragraph. For Model A310 series airplanes: Actions accomplished before the effective date of this AD per Airbus Service Bulletin A310–34–2137, Revision 02, dated May 25, 2000, are acceptable for compliance with the corresponding action required by this paragraph.

(2) For Model A300 B4–600R, A310–203, and A310–304 series airplanes: Replace the Thales (formerly Sextant) pitot probes from the forward fuselage panel between FR6 and FR7 with Thales or Sextant pitot probes (including O-rings, gaskets, and nuts) per Airbus Service Bulletin A300–34–6141, Revision 03, dated August 27, 2002 (for Model A300 B4–600R series airplanes); or Airbus Service Bulletin A310–34–2154, Revision 07, dated October 8, 2002 (for Model A310 series airplanes); as applicable.

For Model A300 B2 and A300 B4 Series Airplanes: Before or Concurrent Requirements

(b) For Model A300 B2 and A300 B4 series airplanes: Before or concurrently with the requirements of paragraphs (a)(1) of this AD, as applicable, replace the Captain's, First Officer's, and standby Badin Crouzet pitot probes in zones 121 and 122 between STA881/FR6 and STA904FR7 with new Badin Crouzet pitot probes (including replacement of O-rings, gaskets, and nuts with new parts; and modification of electrical wiring and equipment of electrical wiring); per Airbus Service Bulletin A300–34–069, Revision 5, dated April 8, 1982, as revised by Airbus A300 Service Bulletin Change Notice 5A, dated February 16, 1987. Accomplishment during production of Airbus Modification 2435 is acceptable for compliance with this paragraph.

(c) For Model A300 B2 and A300 B4 series airplanes, manufacturer's serial numbers 002, 004 through 028 inclusive, 030 through 051 inclusive: Before or concurrently with the requirements of paragraph (b) of this AD, modify the relay box of the automatic ground depression systems by doing all the actions specified in the Accomplishment Instructions of Airbus Service Bulletin A300–21–053, Revision 2, dated January 3, 1980; per the service bulletin.

(d) For Model A300 B2 and A300 B4 series airplanes, manufacturer's serial numbers 002, 005 through 007 inclusive, 009 through 014 inclusive, 016, and 017: Before or concurrently with the requirements of paragraph (c) of this AD, do the actions specified in paragraphs (d)(1) and (d)(2) of this AD per the Accomplishment Instructions of Airbus Service Bulletin A300–32–052, Revision 2, dated September 10, 1981. Actions accomplished before the effective date of this AD per Airbus Service Bulletin A300–32–052, dated November 15, 1976, are acceptable for compliance with the corresponding actions required by this paragraph.

(1) Clean, restore paint coats, and apply mystik tape 7355 to shock strut (barrel) of the main landing gear.

(2) Replace the lower arm link with a new, reidentified lower arm lock link.

(e) For Model A300 B2 and A300 B4 series airplanes, manufacturer's serial numbers 005 through 007 inclusive, 009 through 012 inclusive: Before or concurrently with the requirements of paragraph (b) of this AD, modify the electronic racks, electrical wiring, and cable routing by accomplishing all the actions specified in the Accomplishment Instructions of Airbus Service Bulletin A300–22–031, Revision 1, dated February 9, 1981, per the service bulletin. Modifications accomplished before the effective date of this AD per the original issue of Airbus Service Bulletin A300–22–031, dated June 25, 1979, are acceptable for compliance with this paragraph.

For Model A319, A320, and A321 Series Airplanes: Replacement of Thales Pitot Probes

(f) For Model A319, A320, and A321 series airplanes: Within 24 months after the effective date of this AD: Replace the Thales (formerly Sextant) pitot probes in zones 125, 9DA2, and 122 with new Thales pitot probes, per the Accomplishment Instructions of Airbus Service Bulletin A320–34–1127, Revision 01, dated December 4, 2001. Replacements accomplished before the effective date of this AD per the original issue of Airbus Service Bulletin A320–34–1127, dated April 24, 1997, are acceptable for compliance with this paragraph.

For Model A330–301, –321, –322, –341, and –342 Series Airplanes: Replacement of Rosemount Pitot Probes

(g) Within 30 months after the effective date of this AD, do the action specified in paragraph (g)(1) or (g)(2) of this AD, as applicable.

(1) For Model A330–301, –321, –322, –341, and –342 series airplanes: Replace the Rosemount pitot probes in zones 121 and 122 with new Rosemount (formerly BF Goodrich) pitot probes, per the Accomplishment Instructions of Airbus Service Bulletin A330–34–3038, Revision 01, dated September 14, 2001. Replacements accomplished before the effective date of this AD per Airbus Service Bulletin A330–34–3038, dated November 19, 1996, are acceptable for compliance with the corresponding action required by this paragraph.

(2) For Model A330–301 series airplanes: Replace the Rosemount pitot probes in zones 121 and 122 with new Thales (formerly Sextant) pitot probes, per Airbus Service Bulletin A330–34–3071, Revision 01, dated May 30, 2001. Replacements accomplished before the effective date of this AD per the Accomplishment Instructions of Airbus Service Bulletin A330–34–3071, dated December 11, 1998, are acceptable for compliance with the corresponding action required by this paragraph.

For Model A340–211, –212, –213, –311, –312, and –313 Series Airplanes: Replace the Rosemount Pitot Probes

(h) Within 30 months after the effective date of this AD, do the actions specified in paragraph (h)(1) or (h)(2) of this AD, as applicable.

(1) For Model A340–211, –212, –213, –311, –312, and –313 series airplanes: Replace the Rosemount pitot probes in zones 121 and 122 with new Rosemount (formerly BF Goodrich) pitot probes, per the Accomplishment Instructions of Airbus Service Bulletin A340–34–4042, Revision 01, dated September 14, 2001. Replacements accomplished before the effective date of this AD per Airbus Service Bulletin A340–34–4042, dated November 19, 1996, are acceptable for compliance with the corresponding action required by this paragraph.

(2) For Model A340–211, –212, and –311 series airplanes: Replace the Rosemount pitot probes in zones 121 and 122 with new Thales (formerly Sextant) pitot probes, per the Accomplishment Instructions of Airbus Service Bulletin A340–34–4079, Revision 06, dated April 1, 2003. This replacement must be done before or concurrently with the requirements of paragraph (h)(1) of this AD. Replacements accomplished before the effective date of this AD per Airbus Service Bulletin A340–34–4079, dated December 11, 1998; Revision 01, dated May 27, 1999; Revision 02, dated October 6, 1999; Revision 03, dated March 12, 2002; Revision 04, dated June 19, 2002; or Revision 05, dated July 30, 2002; are acceptable for compliance with the corresponding action required by this paragraph.

Alternative Methods of Compliance

(i) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Note 3: The subject of this AD is addressed in French airworthiness directives 2001–

362(B), dated August 8, 2001; and 2001–265(B) R2, dated November 13, 2002.

Incorporation by Reference

(k) Unless otherwise specified in this AD, the actions shall be done in accordance with the applicable service bulletin listed in Table 2 of this AD. Table 2 of this AD follows:

TABLE 2.—SERVICE BULLETINS INCORPORATED BY REFERENCE

Airbus Service Bulletin	Revision	Date
A300–21–053	2	January 3, 1980.
A300–22–031	1	February 9, 1981.
A300–32–052	2	September 10, 1981.
A300–34–069, as revised by Airbus A300 Service Bulletin Change Notice 5A (dated February 16, 1987).	5	April 8, 1982.
A300–34–0166	Original	March 30, 2001.
A300–34–6116	03	June 6, 2003.
A300–34–6141	03	August 27, 2002.
A310–34–2137	03	June 6, 2003.
A310–34–2154	07	October 8, 2002.
A320–34–1127	01	December 4, 2001.
A330–34–3038	01	September 14, 2001.
A330–34–3071	01	May 30, 2001.
A340–34–4042	01	September 14, 2001.
A340–34–4079	06	April 1, 2003.

Airbus Service Bulletin A300–34–069, Revision 5, contains the following effective pages:

Page Number	Revision level shown on page	Date shown on page
1, 7, 8, 61, 62	5	April 8, 1982.
2	4	October 1, 1981.
3–6, 9–13, 16–21, 26–39, 41–48, 57–60, 63–66, 71, 72	Original	April 12, 1979.
14, 15, 22, 40, 49–52, 75, 76	3	March 23, 1981.
23, 24, 53–56, 67–70, 73, 74, 77–80	1	March 14, 1980.
25	2	April 10, 1980.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(l) This amendment becomes effective on April 7, 2004.

Issued in Renton, Washington, on February 4, 2004.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–4513 Filed 3–2–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–170–AD; Amendment 39–13503; AD 2004–05–09]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas airplane models, that requires a one-time inspection for chafing of wiring in the left-hand tunnel area of the forward cargo compartment, repair if necessary, and coiling and stowing of excess wiring. This action is necessary to prevent wire chafing and subsequent shorting to structure in the forward cargo compartment, which could result in smoke or fire in the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective April 7, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 7, 2004.

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

FOR FURTHER INFORMATION CONTACT: Elvin Wheeler, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft

Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5344; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas airplane models was published in the **Federal Register** on July 29, 2003 (68 FR 44491). That action proposed to require a one-time inspection for chafing of wiring in the left-hand tunnel area of the forward cargo compartment, repair if necessary, and coiling and stowing of excess wiring.

Comments

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

Conclusion

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

Cost Impact

There are approximately 1,116 airplanes of the affected design in the worldwide fleet. The FAA estimates that 655 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the required actions, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $127,725, or $195 per airplane.

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

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2004–05–09 McDonnell Douglas: Amendment 39–13503. Docket 2000–NM–170–AD.

Applicability: Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 airplanes; certificated in any category; as listed in McDonnell Douglas Alert Service Bulletin MD80–24A158, Revision 01, dated February 23, 2000.

Compliance: Required as indicated, unless accomplished previously.

To prevent wire chafing and subsequent shorting to structure in the forward cargo compartment, which could result in smoke or fire in the airplane, accomplish the following:

Inspection and Follow-On Actions

(a) Within 1 year after the effective date of this AD, perform a one-time general visual inspection for chafing of wiring in the left-hand tunnel area of the forward cargo compartment between Y = 237.000 and Y = 256.000, per the Accomplishment Instructions of McDonnell Douglas Alert Service Bulletin MD80–24A158, Revision 01, dated February 23, 2000. Then, do paragraphs (a)(1) and (a)(2) of this AD, as applicable.

(1) If any chafing is found, before further flight, repair per the service bulletin.

(2) Before further flight, coil and stow excess wiring per the service bulletin.

Note 1: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Inspections Accomplished per Previous Issue of Service Bulletin

(b) Actions accomplished before the effective date of this AD per McDonnell Douglas Service Bulletin MD80–24–158, dated October 27, 1995, are considered acceptable for compliance with the corresponding action specified in this AD.

Alternative Methods of Compliance

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

Incorporation by Reference

(d) Unless otherwise specified in this AD, the actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin MD80–24A158, Revision 01, dated February 23, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on April 7, 2004.

Issued in Renton, Washington, on February 20, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–4560 Filed 3–2–04; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 304

Rules and Regulations Under the Hobby Protection Act

AGENCY: Federal Trade Commission.

ACTION: Confirmation of rule.

SUMMARY: The Federal Trade Commission ("FTC" or "Commission") has completed its regulatory review of the Rules and Regulations Issued Under the Hobby Protection Act ("rule"). The rule regulates the marking of imitation political and numismatic items. Pursuant to its regulatory review, the Commission concludes that the rule continues to be valuable both to consumers and businesses.

DATES: This action is effective as of March 3, 2004.

FOR FURTHER INFORMATION CONTACT: Janice Podoll Frankle, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580; (202) 326–3022.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Commission has determined, as part of its oversight responsibilities, to review its rules and guides periodically to seek information about their costs and benefits and their regulatory and economic impact. The information obtained assists the Commission in identifying rules and guides that warrant modification or rescission.

II. Background

On November 29, 1973, Congress passed the Hobby Protection Act ("Act"), 15 U.S.C. 2101–06. The Act requires manufacturers and importers of "imitation political items" [1] to mark "plainly and permanently" such items with the "calendar year" such items were manufactured. *Id.* at 2101(a). The Act also requires manufacturers and importers of "imitation numismatic items" [2] to mark "plainly and permanently" such items with the word "copy." *Id.* at 2101(b). The Act further directs the Commission to promulgate regulations for determining the "manner and form" that imitation political items and imitation numismatic items are to be permanently marked with the calendar year of manufacture or the word "copy." *Id.* at 2101(c) .

Pursuant to the Act, in 1975 the Commission issued rules and regulations under the Hobby Protection Act, 16 CFR part 304. The rule tracks the definitions of terms used in the Act and implements the Act's "plain and permanent" marking requirements by establishing the sizes and dimensions of the letters and numerals to be used, the location of the marking on the item, and how to mark incusable and nonincusable items.[3] In 1988, the rule was amended to provide additional guidance on the minimum size of letters for the word "copy" as a proportion of the diameter of coin reproductions.[4] 53 FR 38942 (October 4, 1988).

On March 3, 2003, the Commission published a **Federal Register** notice ("FRN") seeking comment on the rule as part of the Commission's ongoing project to review periodically its rules and guides to determine their current effectiveness and impact (68 FR 9856). This FRN sought comment on the costs and benefits of the rule, what changes in the rule would increase its benefits to purchasers and how those changes would affect compliance costs, and whether technological or marketplace changes have affected the rule.

The comments submitted in response to the FRN generally expressed continuing support for the rule, indicating that it has created a level playing field among competitors. The vast majority of comments proposed that the Commission expand the rule to address problems involving the selling (passing off) as originals of reproductions of antiques and collectibles not covered by the Act and rule.[5] The Commission, however, does not have authority under the Act to amend the rule as requested. In addition, existing laws and informational material disseminated by various collecting clubs address many of the concerns raised by these comments.

III. Regulatory Review Comments

The Commission received 350 comments in response to its FRN.[6] Approximately 248 comments were letters and e-mails from individual collectors who advocated expanding the rule's coverage to all antiques and collectibles. The vast majority of these were form letters from individual collectors. Of the remainder, eight were from national trade associations and collector groups,[7] three were from hobby publications,[8] and the remaining were from dealers,[9] State and local trade associations and local chapters of national groups,[10] and antique appraisers.[11]

The Commission discusses the comments in two sections. In section A, the Commission analyzes the comments relating to political and numismatic products. ("covered products"). In section B, the Commission discusses the comments on expanding the Act and rule to cover all antiques and collectibles.

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[1] An imitation political item is "an item which purports to be, but in fact is not, an original political item, or which is a reproduction, copy, or counterfeit of an original political item." 15 U.S.C. 2106(2). The Act defines original political items as being any political button, poster, literature, sticker or any advertisement produced for use in any political cause. *Id.* at 2106(1). The political items dealers sell include presidential, local election, and cause-type buttons, pins, posters, tie clasps, cuff links, mugs, photos, inauguration invitations, marshal's badges, medals, ribbons and the like.

[2] An imitation numismatic item is "an item which purports to be, but in fact is not, an original numismatic item or which is a reproduction, copy, or counterfeit of an original numismatic item." 15 U.S.C. 2106(4). The Act defines original numismatic items to include coins, tokens, paper money, and commemorative medals that have been part of a coinage or issue used in exchange or used to commemorate a person or event. *Id.* at 2106(3).

[3] Incusable items are those that can be impressed with a stamp.

[4] Prior to the amendment, if a coin were too small to comply with the minimum letter size requirements, the manufacturer or importer individually had to request from the Commission a variance from those requirements. Because imitation miniature coins were becoming more common, the Commission determined that it was in the public interest to allow the placing of the word "copy" on miniature imitation coins in sizes that could be reduced proportionately with the size of the item.

[5] Although the comments overwhelmingly supported expansion of the Act and rule, they did not specifically respond to all of the questions posed in the March 2003 FRN.

[6] The comments are cited in this notice by the name of the commenter. All rule review comments are on the public record and are available for public inspection in the Consumer Response Center, Room 130, Federal Trade Commission, 6th and Pennsylvania Ave., NW., Washington, DC, from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

[7] National Association of Collectors and Association of Collecting Clubs (NAC); Wagner and Griswold Society; Custard Glass Collectors Society; Toy Train Collectors Association; Hamm's Club, Inc.; Casino Chips and Gaming Tokens Collectors Club; National Association of Milk Bottle Collectors; and National Insulator Association.

[8] Antique & Collectors Reproduction News; Coin World; and Kettle 'n Cookware.

[9] *E.g.*, Americana Resources, Inc.

[10] Antique Dealers Association of Berks County, Inc.; The Questers; Michigan Hunting & Fishing License Collectors Club; American Political Items Collectors, National Capital Chapter; and Apple Valley Bottle Collectors.

[11] *E.g.*, Donald Hoffman.

A. Comments Relating to Covered Products

1. Support for the Rule

As previously discussed, the Act and rule's scope are limited to imitation political and numismatic items. The comments uniformly stated that there is a continuing need for the rule and that it has been successful in protecting consumers from the passing off of reproductions of the covered items.[12] In explaining the continuing need for the Act and rule, one commenter stated that the coin collecting hobby is currently experiencing a renaissance, due in large part to the 50 state quarters program that the U.S. Mint launched in 1999.[13] A dealer in political memorabilia on the Internet stated that most collectors of political items feel comfortable for one reason—the Hobby Protection Act.[14]

2. Proposed Amendments Regarding Covered Products

a. Require Replicas To Be Marked "Copy" Regardless of the Metal Content

One commenter stated that some manufacturers "skirt" the rule by adding a hallmark or varying the metal so as to claim that the item is not an "exact" replica.[15] The commenter asserted that the consuming public may not be able to discern the immediate difference in metal content in a coin that is in every other respect an exact duplicate of the rare coin. According to the commenter, this problem is exacerbated when the coin is sold in the secondary market, where it is often perceived and sold as a genuine coin. The commenter suggested requiring any replica that duplicates the genuine design elements, legends and denomination markings to be marked "copy" regardless of the replica's metal content.[16]

The Commission believes the Act's and rule's definitions of "imitation numismatic item" cover an imitation coin that contains a different metal content from the original item where the imitation item "*purports to be,* but in fact is *not,* an original." 15 U.S.C. 2106(4); 16 CFR 304.1(d) (emphasis added). Accordingly, such imitation coins should be marked "copy" and this notice should alert those who are not so marking their coins in the mistaken belief that the Act and rule do not apply of their compliance obligation. Moreover, even though the Act and rule address only the marking, and not the marketing, of imitation numismatic or political items, misrepresenting a copy as an original in advertising or marketing constitutes a "deceptive act or practice" under section 5 of the FTC Act, 15 U.S.C. 45.[17]

b. Require the Word "Copy" To Be Incused on Both Sides of Replicas of U.S. Coins

The rule currently requires that the word "copy" be marked on either side of the coin, 16 CFR 304.6(b)(2). Coin World suggested that the word "copy" be incused on both sides of the coin because unscrupulous sellers may take advantage of the fact that manufacturers may have inconspicuously woven the word "copy" into the original design elements of one side of the coin. This may be a particular problem for coins minted prior to 1836.[18] The Commission has concluded that a requirement that "copy" be marked on both sides of an imitation coin is not warranted. With exhibited coins, the potential buyer would normally have the chance to fully view and handle the coin, so the "copy" marking would be seen prior to purchase. Furthermore, as discussed above, if the seller misrepresents a copy as an original in advertising or marketing, such practice would be deceptive in violation of section 5 of the FTC Act, 15 U.S.C. 45.

B. Comments Relating to Expanding Coverage of the Act and Rule to Reproductions of All Antiques and Collectibles

The vast majority of the 350 comments submitted in response to the Commission's FRN advocated that the Act or rule be expanded to cover antiques and collectibles. In summary, these comments state that reproductions of many types of antiques and collectibles are being passed off as originals, causing harm to collectors and dealers. Many comments also assert that because of improvements in technology, even knowledgeable persons have difficulty distinguishing reproductions from the originals.

Collectors of a wide variety of items proposed expanding the rule. Such commenters included collectors of the following items: Victorian paper weights,[19] casino chips and gambling tokens,[20] custard glass,[21] American Pattern Glass,[22] thimbles,[23] antique fishing lures,[24] glass and porcelain electrical insulation devices related to the communications and power industries,[25] milk bottles and other dairy memorabilia,[26] antique fruit jars,[27] toy trains and related material,[28] and 19th Century homemade dolls.

1. The Source and Scope of the Passing Off Problem

The comments suggested that many categories of collectibles are subject to being passed off, and provided explanations for the problem. One commenter stated that since the passage of the Act in 1973 there has been a dramatic increase of reproductions in all areas of the antiques and collectibles market. Dealers and collectors alike have been fooled by reproductions they have purchased, believing them to be genuine antiques. The commenter stated that this deception translates into financial losses and builds a sense of mistrust in the antiques market.[29] Numerous commenters stated that because of improvements in manufacturing technology, the quality of reproductions has vastly improved to the point where reproductions are virtually indistinguishable from the originals.[30] One commenter pointed out

[12] *E.g.,* NAC; American Political Items Collectors (APIC). Larry Klug, APIC executive director, write, "I can say, without pause, that the Hobby Protection Act has made a major difference in this collecting area over the past nearly 30 years—not only by identifying those items which are reproduced by having the date and word 'copy' on them, but also in stifling the actual reproduction of items in the first place."

[13] According to Coin World, the U.S. Mint has reported that more than 139 million U.S. adults are collecting coins today, as compared with approximately 2 million just prior to 1999.

[14] Larry Krug, Americana Resources, Inc.

[15] Coin World.

[16] *Id.*

[17] *See FTC* v. *Hang-Ups Art Enters.,* 1997–1 Trade Cas. (CCH) ¶ 71,709 (C.D. Cal. January 30, 1996) (FTC alleged that defendants violated FTC Act section 5 by falsely representing that the art prints were the work of the named artists or that they were authorized by the artist; order prohibits defendants, in connection with marketing any artworks, from falsely representing that any artwork displaying an original signature or edition size designation is the work of a particular artist); FTC v. Magui Publishers, Inc., 1991–1 Trade Cas. (CCH) ¶ 69,425 (C.D. Cal. March 28, 1991) (FTC alleged that defendants violated FTC Act section 5 by misrepresenting that Salvador Dali had a role in the creation and production of the artwork, when, in fact, Dali was physically incapable of participating in the production of print editions of his work).

[18] Coin World. According to Coin World, they have seen the most abuses in copies of large cents coins minted prior to 1836.

[19] William C. Price.

[20] *E.g.,* Alex Cilento. Several commenters stated that they believed that the Act and rule should be amended to specifically include casino chips and tokens in the definition of imitation numismatic items. The commenters stated that such a modification would deter those who might consider counterfeiting casino chips and tokens.

[21] *E.g.,* Sarah I. Coulon.

[22] *E.g.,* Patricia Riemann.

[23] Kathy John.

[24] Franklin T. Lanham.

[25] *E.g.,* Tom Katonak, National Insulator Association.

[26] *E.g.,* James D. Weidenhammer.

[27] Tom and Denna Caniff.

[28] Ronald S. Morris, Train Collectors Association.

[29] Joy Harrington.

[30] *E.g.,* Bob and Janice Baltzell d/b/a Classic Treasure; Douglas N. Smith; and Sarah Campbell Drury, Candidate Member, American Society of

that some items are even being made from the original molds.[31]

Another commenter stated that since the 1998 review of the Act, there has been a tremendous increase in the number of reproductions, imported mainly from the Far East, with forged, fake, or misleading backstamps or other markings and only a paper label indicating the country of origin. The commenter pointed out that the paper labels are routinely removed and the items are then sold in flea markets, antique malls and on the Internet, and are represented as antiques.[32] Similarly, another commenter stated that American import companies contract with foreign factories, most often in China, to make reproductions of vintage American art pottery and art glass with replicas of the original American company marks. The commenter stated that the only indication that the product is a reproduction and/or of foreign origin is a tiny paper sticker that states, "Made in China." The commenter pointed out that the stickers virtually never make it to the retail market.[33]

Several commenters stated that Internet trading makes it impossible to examine an item before purchasing it.[34] One dealer, who has been selling on the Internet for nearly eight years, stated that he is finding an increasing number of customers who are fearful of purchasing reproductions, particularly those who previously have had bad experiences with their Internet purchases.[35] Several commenters stated that Internet sales spread the "fakes" quickly, before dealers and the public can be warned in trade publications.[36] Another commenter reported that the Internet has increased the number of collectors; thus, there has been an increase in buyers who are less informed about reproductions.[37]

Although the comments do not present information sufficient to quantify or determine the amount of economic and other harm caused, they suggest several possible adverse effects of the passing off problem. For example, the comments suggest that individual buyers may pay considerably more than a product is worth, that owners of original antiques or collectibles that are heavily reproduced may lose the value of their investment, and that the uncertainty regarding the genuineness of antiques and collectibles may dissuade persons from purchasing originals or from becoming collectors, which also adversely affects businesses that deal in originals.

2. Proposals To Expand Coverage of the Rule to Non-Covered Products

Most commenters recommended that the Commission require that antique reproductions be clearly and permanently marked "copy."[38] One commenter stated that permanently marking items as "copy" would eliminate the problem of confusion between the actual antique and the reproduction. That commenter stated that adding "copy" to the product would require only a small adjustment during the manufacturing process.[39] Another commenter argued that the only reason not to permanently mark items as reproductions is if the intent is to co-mingle them with the antiques in order to "fool the public."[40]

The commenters varied in their approaches to the types of additional information that they proposed be disclosed on the items, including requiring manufacturers to mark new items with: the date of manufacture;[41] the manufacturer's name;[42] and/or the place of manufacture.[43] One commenter's solution to temporary paper country-of-origin labels was to embed the country-of-origin and the date permanently into the underside of the product.[44] One dealer suggested that manufacturers who reissue old patterns in exact form and color should be required to use a permanent mark that would identify the date of manufacture.[45]

For several reasons, the Commission does not propose to adopt the changes requested by the commenters. First, the Act does not provide the Commission with the legal authority to expand the rule's coverage to all antiques and collectibles. The plain language of the Act encompasses only numismatic and political items and directs the Commission to promulgate rules regarding the marking of these covered products only. 15 U.S.C. 2101. For this reason, the Commission cannot amend the rule to include products not specified in the Act.

Second, the Commission believes that existing Federal and State laws provide remedies for some issues the comments raise. For example, the majority of comments cited imported reproductions as the most significant source of passed off goods. Current U.S. laws and regulations already require country-of-origin markings for goods imported into the United States. Specifically, country-of-origin marking for imports falls under the jurisdiction of the U.S. Bureau of Customs and Border Protection ("CBP"), U.S. Department of Homeland Security, which enforces the Tariff Act of 1930. 19 U.S.C. 1304. U.S. customs laws require each imported article produced abroad to be marked legibly, indelibly, and permanently in a conspicuous place to indicate the country of origin. The Tariff Act also allows the container of an imported good to bear the origin marking rather than the good itself, as long as the good reaches the ultimate purchaser in the container. Under the Tariff Act, a permanent marking is a marking that will remain on the article or container until it reaches the ultimate purchaser, although the marking may be removed by the ultimate purchaser and need not be of a permanence to remain affixed once in his or her possession.[46] This marking may not be removed prior to delivery to the ultimate purchaser, however, and anyone who removes this marking prior to such delivery could be subject to prosecution and criminal penalties.

The Commission staff has brought the foreign origin marking concerns raised in this proceeding to the CBP's attention because its regulations govern several of the problems discussed in the comments. For example, numerous commenters stated that certain country-of-origin labels are being deliberately removed before reaching the "ultimate purchaser." The CBP urges persons with information regarding the violative removal of required country-of-origin markings to write to: Commercial Enforcement Branch, Office of Field Operations, U.S. Bureau of Customs and Border Protection, 1300 Pennsylvania Ave., NW., Washington, DC 20229, or to call CBP's toll free Commercial Fraud Hotline, 1–800-BE-ALERT. The CBP staff suggest consumers provide them with as much of the following

Appraisers. These commenters asserted that while they consider themselves "experts" in certain categories of antiques and collectibles, it is impossible to keep up with the latest reproductions. They stated that some reproductions are well made and appear to be almost exact duplicates of original items.

[31] Bob and Janice Baltzell d/b/a Classic Treasure.

[32] Mary Bitting Page, Granny's Attic.

[33] Marcus Page.

[34] *E.g.*, Michael B. Young.

[35] Larry Krug, Americana Resources, Inc.

[36] Antique Dealers Association of Berks County, Inc.

[37] NAC.

[38] *E.g.*, Samuel Clark.

[39] *Id.*

[40] Luan B. Watkins.

[41] *E.g.*, Mary Biting Page; Wagner and Griswold Society; Penny Reed.

[42] *E.g.*, LeAnne Milliser; Virginia H. Cori.

[43] *E.g.*, Vivian Riegelman.

[44] Richard Dudley. The commenter stated that this can be done by simply modifying the mold with an inset.

[45] LeAnne Milliser, Golden Age Treasures.

[46] *But see* 19 CFR 1343(c)(2), which requires that imported Native American-style jewelry be indelibly marked with the country of origin by cutting, die-sinking, engraving, stamping, or some other permanent method.

information as possible: The port to which the questionable merchandise was shipped; the importers' names and/or the repurchasers' names; the kind of merchandise at issue; and any information regarding the alleged deliberate removal of the paper country-of-origin label.

Further, intentionally passing off reproductions as antiques can be prosecuted as criminal fraud or as civil fraud in a lawsuit by a buyer.[47] Additionally, the Lanham Act provides injured persons with a private right of action against certain false or misleading representations regarding goods or false designation of origin, *e.g.*, reproductions being passed off as original items. 15 U.S.C. 1125. Further, a pattern or practice of significant affirmative misrepresentations or failure to disclose material information relating to reproductions passed off as originals may violate the FTC Act.[48]

In addition to the deliberate removal of country-of-origin labels, many commenters suggested that the lack of truly permanent country-of-origin labels on reproductions can result in these reproductions inadvertently being passed off as originals in the secondary market. This could be addressed, at least in part, through greater enforcement of labeling requirements to the initial seller and through educational remedies.

The record indicates that there are many non-legal resources available to educate consumers about antiques and collectibles and thus reduce consumers' susceptibility to the practice of passing off. For example, several newsletters and hobby newspapers regularly warn and advise buyers of antiques and collectibles about reproductions of specific items and classes of items.[49] The comments also indicate that there are collector clubs for many categories of collectibles that provide members with similar information.[50] The Commission staff will continue to explore whether there is a role for the Commission in these efforts to increase consumer awareness.

[47] Section 2–721 of the Uniform Commercial Code provides civil remedies for material misrepresentation and fraud in sales transactions.

[48] Section 5 of the FTC Act prohibits deceptive acts or practices in commerce. 15 U.S.C. 45. A deceptive act or practice is one that is likely to mislead consumers acting reasonably under the circumstances. As a matter of policy, however, the Commission does not generally intervene in individual disputes. For the most part, the instances of passing off described in the comments reflect specific individual transactions, rather than a patter or practice of passing off. Where the Commission obtains evidence of such a pattern or practice, however, it may take action.

[49] *E.g.*, Antiques & Collectors Reproduction News, published by Mr. Mark Chervenka of Desmoines, Iowa.

[50] *E.g.*, NAC. This commenter noted that many collecting clubs have educational programs, such as newsletters, Web sites, seminars or workshops at club conventions, about reproductions.

IV. Conclusion

The comments uniformly favor retention of the rule and state that there is a continuing need for the rule with regard to currently covered products, *i.e.*, imitation numismatic and political items; that the rule benefits consumers and the industry; that the rule does not impose substantial economic burdens; and that the benefits of the rule outweigh the minimal costs it imposes.

Although many comments recommended that the rule be expanded to cover all antiques and collectibles, the Commission does not have the authority under the Act to expand the rule in this manner. Furthermore, there are a variety of legal and non-legal resources that address many of the issues raised by the commenters favoring expansion of the rule's coverage. Accordingly, the Commission has determined to retain the current Rule and is terminating this review.

List of Subjects in 16 CFR Part 304

Hobbies, Labeling, Trade practices.

Authority: The Federal Trade Commission Act, 15 U.S.C. 41–58.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 04–4768 Filed 3–2–04; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Penicillin G Potassium in Drinking Water

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Vétoquinol N.–A., Inc. The ANADA provides for the use of penicillin G in the drinking water of turkeys for the treatment of erysipelas caused by *Erysipelothrix rhusiopathiae.*

DATES: This rule is effective March 3, 2004.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–104), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–8549, e-mail: *lluther@cvm.fda.gov.*

SUPPLEMENTARY INFORMATION: Vétoquinol N.–A., Inc., 2000 chemin Georges, Lavaltrie (PQ), Canada J0K 1H0, filed ANADA 200–307 that provides for use of Penicillin G Potassium, USP, in the drinking water of turkeys for the treatment of erysipelas caused by *Erysipelothrix rhusiopathiae.* Vétoquinol N.–A., Inc.'s Penicillin G Potassium, USP, is approved as a generic copy of Fort Dodge Animal Health's Penicillin G Potassium, USP, approved under NADA 55–060. The ANADA is approved as of January 29, 2004, and the regulations are amended in 21 CFR 520.1696b to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 520

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. Section 520.1696b is amended by revising paragraph (b) to read as follows:

§ 520.1696b Penicillin G potassium in drinking water.

* * * * *

(b) *Sponsors.* See Nos. 046573, 053501, 059130, 059320, and 061623 in § 510.600(c) of this chapter.

* * * * *

Dated: February 23, 2004.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 04–4653 Filed 3–2–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Diclazuril

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Alpharma Inc. The NADA provides for the use of approved, single-ingredient Type A medicated articles containing diclazuril and roxarsone to formulate two-way combination drug Type C medicated feeds for broiler chickens.

DATES: This rule is effective March 3, 2004.

FOR FURTHER INFORMATION CONTACT: Charles J. Andres, Center for Veterinary Medicine (HFV–128), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–1600, e-mail: *candres@cvm.fda.gov.*

SUPPLEMENTARY INFORMATION: Alpharma Inc., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024, filed NADA 141–223 for use of CLINACOX (diclazuril) and 3-NITRO (roxarsone) Type A medicated articles to formulate two-way combination drug Type C medicated feeds for broiler chickens. The NADA is approved as of January 27, 2004, and the regulations are amended in 21 CFR 558.198 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

■ 2. Section 558.198 is amended in the table in paragraph (d)(1) by redesignating paragraphs (d)(1)(vi) and (d)(1)(vii) as paragraphs (d)(1)(vii) and (d)(1)(viii), respectively, and by adding new paragraph (d)(1)(vi) to read as follows:

§ 558.198 Diclazuril.

* * * * *

(d) * * *

(1) * * *

Diclazuril grams/ton	Combination grams/ton	Indications for use	Limitations	Sponsor
*	*	*	*	*
(vi) 0.91(1 ppm)	Roxarsone 22.7 to 45.4	Broiler chickens: As in item (i) of this table; for increased rate of weight gain, improved feed efficiency, and improved pigmentation.	Feed continuously as the sole ration throughout growing period. Use as sole source of organic arsenic; drug overdose or lack of water may result in leg weakness. Not for use in hens producing eggs for human consumption. Withdraw 5 days before slaughter. Roxarsone provided by No. 046573 in § 510.600(c) of this chapter.	046573
*	*	*	*	*

* * * * *

Dated: February 23, 2004.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 04–4654 Filed 3–2–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD01–03–097]

RIN 1625–AA00

Safety Zone; Paerdegat Basin, Belt Parkway Bridge Emergency Repairs, Brooklyn, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone 50 yards upstream and downstream of the Belt Parkway Bridge within Paerdegat Basin to aid completion of the Belt Parkway Bridge emergency repairs in Brooklyn, NY. This action is necessary to protect the maritime public from the hazards posed by the emergency repair efforts. The safety zone prohibits immediate entry into this portion of the Paerdegat Basin during the intermittent closure enforcement period.

DATES: This rule is effective from 8 a.m. on February 23, 2004 through 8 p.m. on March 26, 2004.

ADDRESSES: Documents indicated in this preamble are available in the docket are part of docket CGD01–03–097 and are available for inspection or copying at Waterways Oversight Branch, Coast Guard Activities New York, 212 Coast Guard Drive, room 203, Staten Island, NY 10305 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander W. Morton, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4191.

SUPPLEMENTARY INFORMATION:

Regulatory Information

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this rule. Good cause exists for not publishing an NPRM and for making this regulation effective in less than 30 days after **Federal Register** publication. It has come to the attention of the Coast Guard that vessels cannot safely pass the barge that is to conduct fendering repairs on the Belt Parkway Bridge. Repairs on the bridge fendering are scheduled to begin by February 2, 2004. Therefore, in order to ensure safe passage of vessels through the Belt Parkway Bridge, this regulation needs to be effective less than 30 days after publication in the **Federal Register**.

The Belt Parkway Bridge repairs were determined necessary as a result of a recent bridge allision. Waterway closures in the vicinity of and beneath the bridge are needed because repair equipment and construction materials will be in the vicinity of the bridge. Delaying this work for sufficient time to conduct a public notice rulemaking and advanced publication would be contrary to the public interest for safety purposes.

Background and Purpose

This rule is necessary to ensure the continued safe navigation under and through the Belt Parkway Bridge during fender repair operations. While repair operations are underway, a working barge will dramatically limit the ability of vessels to transit the waterway. However, the working barge will move on demand given one-hour notice by way of VHF CH 13.

The Captain of the Port anticipates minimal negative impact on vessel traffic due to this emergency repair work given the above schedule and ability to pass with notice.

Discussion of Rule

This rule establishes a safety zone on all waters of Paerdegat Basin 50-yards upstream and downstream of the Belt Parkway Bridge. The safety zone is in effect between 8 a.m. on February 23, 2004 through March 26, 2004 at 8 p.m. At all times, mariners can safely transit into, and out of, Paerdegat Basin, through the Belt Parkway Bridge, when a minimum of one-hour advance notice is given to the onscene vessel operator on VHF CH 13 between 7 a.m. and 3:30 p.m. Monday through Friday. The area will be opened for vessel transits after the stated working hours and on weekends. Public notifications will be made prior to the effective period via the Local Notice to Mariners, Marine Information and electronic mail Broadcasts, and on the Internet at *http://www.harborops.com.*

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

This finding is based on the following: Mariners utilizing Paerdegat Basin were notified of this closure and the one-hour delay of passage. Mariners held no objection based on the fact that they can safely transit into, and out of, Paerdegat Basin when a minimum of one-hour advance notice is given to the onscene vessel operator between 7 a.m. and 3:30 p.m. Monday through Friday during the brief repair period. Also, the area will be opened for vessel transits after working hours and on weekends. The local maritime community and public will be notified in advance of any work with regard to the closures by way the Local Notice to Mariners, marine information and electronic mail broadcasts; and on the internet at *http://www.harborops.com.*

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the affected waterway during the time this zone is enforced.

This safety zone will not have a significant economic impact on a substantial number of small entities for reasons enumerated under the "Regulatory Evaluation" section.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this temporary rule so that we can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Commander W. Morton, Waterways

Oversight Branch, Coast Guard Activities New York at (718) 354–4191.

Small business may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

The Coast Guard analyzed this rule under Executive Order 13132, Federalism, and has determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule would not impose an unfunded mandate.

Taking of Private Property

This rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

The Coast Guard analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not pose an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

The Coast Guard analyzed this rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under figure 2–1, (34)(g), of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. From 8 a.m. on February 23, 2004, through 8 p.m. on March 26, 2004, add temporary § 165.T01–097 to read as follows:

§ 165.T01–097 Safety Zone: Paerdegat Basin, Belt Parkway Bridge Repairs, Brooklyn, NY.

(a) *Location.* The following area is a safety zone: All waters of Paerdegat Basin 50-yards upstream and downstream of the Belt Parkway Bridge, Brooklyn, NY.

(b) *Effective Period.* This section is effective between 8 a.m. on February 23, 2004 and 8 p.m. on March 26, 2004.

(c) *Regulations.* (1) The general regulations in 33 CFR 165.23 apply.

(2) At all times, mariners can safely transit into, and out of, Paerdegat Basin when a minimum of one-hour advance notice is given to the onscene vessel operator between 7 a.m. and 3:30 p.m. Monday through Friday. The onscene vessel operator may be reach by way of VHF CH 13. The area will be opened for vessel transits after the working hours of 7 a.m. and 3:30 p.m. and on weekends.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port or the designated on-scene patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U. S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: February 23, 2004.

C.E. Bone,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 04–4648 Filed 3–2–04; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[FRL–7629–6; LA–66–1–7598a]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Louisiana; Plan for Controlling Emissions From Existing Commercial and Industrial Solid Waste Incinerators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking a direct final action to approve the sections 111(d)/129 State Plan submitted by the Louisiana Department of Environmental Quality (LDEQ) on February 18, 2003. The State Plan establishes emission limits, monitoring, operating, and recordkeeping requirements for commercial and industrial solid waste

incinerator (CISWI) units for which construction commenced on or before November 30, 1999.

DATES: This direct final rule is effective on May 3, 2004, without further notice, unless EPA receives adverse comment by April 2, 2004. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Comments may be submitted electronically, by mail, by facsimile, or through hand delivery/courier by following the detailed instructions provided under the "Public Participation" heading in the Supplemental Information section of this document.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth W. Boyce, Air Planning Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2833, at (214) 665–7259 or *boyce.kenneth@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we," "us," or "our" are used we mean the EPA.

Table of Contents

I. What Action Is EPA Taking Today?

The Environmental Protection Agency (EPA) is approving the sections 111(d)/129 State Plan submitted by the Louisiana Department of Environmental Quality (LDEQ) on February 18, 2003. The State Plan establishes emission limits, monitoring, operating, and recordkeeping requirements for commercial and industrial solid waste incinerator (CISWI) units for which construction commenced on or before November 30, 1999. This State Plan implements and enforces provisions at least as protective as the Federal Emission Guidelines (EGs) applicable to existing CISWIs. The State Plan becomes federally enforceable upon EPA's approval.

II. Background

Section 111(d) of the Clean Air Act (CAA) requires that "designated" pollutants, regulated under standards of performance for new stationary sources by section 111(b) of the CAA, must also be controlled at existing sources in the same source category to a level stipulated in an emission guideline (EG) document. Section 129 of the CAA specifically addresses solid waste combustion and emissions controls based on what is commonly referred to as "maximum achievable control technology" (MACT). Section 129 requires EPA to promulgate a MACT based emission guidelines document for CISWI units, and then requires states to develop plans that implement the EG requirements.

The CISWI EG under 40 CFR part 60, subpart DDDD, establishes emission and operating requirements under the authority of the sections 111(d) and 129 of the CAA. States must also include in their State Plans other elements, such as inventories, legal authority, and public participation documentation, to demonstrate their ability to enforce the State Plans. These requirements must be incorporated into a State plan that is "at least as protective" as the EG, and is federally enforceable upon approval by EPA. The procedures for adoption and submittal of State plans are codified in 40 CFR part 60, subpart B.

III. Why Does EPA Want To Regulate Air Emissions From CISWIs?

When burned, commercial and industrial solid wastes emit various air pollutants, including hydrochloric acid, dioxin/furan, toxic metals (lead, cadmium, and mercury) and particulate matter. Mercury is highly hazardous and is of particular concern because it persists in the environment and bioaccumulates through the food web. Serious developmental and adult effects in humans, primarily damage to the nervous system, have been associated with exposures to mercury. Harmful effects in wildlife have also been reported; these include nervous system damage and behavioral and reproductive deficits. Human and wildlife exposure to mercury occur mainly through eating of fish. When inhaled, mercury vapor attacks also the lung tissue and is a cumulative poison. Short-term exposure to mercury in certain forms can cause hallucinations and impair consciousness. Long-term exposure to mercury in certain forms can affect the central nervous system and cause kidney damage.

Exposure to particulate matter can aggravate existing respiratory and cardiovascular disease and increase risk of premature death. Hydrochloric acid is a clear colorless gas. Chronic exposure to hydrochloric acid has been reported to cause gastritis, chronic bronchitis, dermatitis, and photosensitization. Acute exposure to high levels of chlorine in humans may result in chest pain, vomiting, toxic pneumonitis, pulmonary edema, and death. At lower levels, chlorine is a potent irritant to the eyes, the upper respiratory tract, and lungs.

Exposure to dioxin and furan can cause skin disorders, cancer, and reproductive effects such as endometriosis. These pollutants can also affect the immune system.

IV. When Did EPA First Publish These Requirements?

The EPA proposed the EGs in the **Federal Register** on November 30, 1999. 64 FR 67092. On December 1, 2000, EPA finalized the EGs. 65 FR 75338. The EGs are also found at 40 CFR part 60, subpart DDDD.

V. Why Does EPA Need To Approve State Plans?

EGs are not federally enforceable. Section 129(b)(2) of the CAA requires States to submit State Plans to EPA for approval. Each State must show that its State Plan will carry out and enforce the EGs. State Plans must be at least as protective as the EGs, and they become federally enforceable upon EPA's approval. The procedures for adopting and submitting State Plans are in 40 CFR part 60, subpart B.

VI. What Did the State Submit as Part of Its State Plan?

The State of Louisiana submitted its sections 111(d)/129 State Plan to EPA for approval on February 18, 2003. The State adopted the EG requirements of 40 CFR part 60, subpart DDDD by incorporation by reference (IBR) into the Louisiana Administrative Code (LAC 33:III.3003.B.6) on October 20, 2002. The State Plan also included a demonstration of the State's legal authority to carry out the plan, inventory of sources and emissions, evidence of a public hearing on the State Plan, and provisions for submission of progress reports to EPA.

VII. Why Is EPA Approving Louisiana's State Plan?

EPA has evaluated the CISWI State Plan submitted by Louisiana for consistency with the Act, EPA guidelines and policy. EPA has determined that Louisiana's State Plan meets all requirements and therefore, EPA is approving Louisiana's Plan to implement and enforce the EGs as it applies to existing CISWIs.

EPA's approval of Louisiana's State Plan is based on our findings that:

(1) LDEQ provided adequate public notice of public hearings for the proposed rulemaking that allows Louisiana to carry out and enforce provisions that are at least as protective as the EGs for CISWIs; and

(2) LDEQ demonstrated legal authority to: adopt emission standards and compliance schedules applicable to the designated facilities; enforce applicable laws, regulations, standards and compliance schedules; seek injunctive relief; obtain information necessary to determine compliance; require recordkeeping; conduct inspections and tests; require the use of monitors; require emission reports of owners and operators; and make emission data publicly available.

A detailed discussion of EPA's evaluation of the State Plan is included in the technical support document (TSD) located in the public rulemaking file for this action and available from the EPA contact listed in the Public Participation section of this document.

VIII. Who Must Comply With the Requirements?

All CISWIs that commenced construction on or before November 30, 1999, must comply with these requirements.

IX. Are Any Sources Exempt From the Requirements?

The following incinerator source categories are exempt from the Federal requirements for CISWIs:

(1) Pathological waste incineration units;

(2) Agricultural waste incineration units;

(3) Municipal waste combustion units;

(4) Hospital/medical/infectious waste incineration units;

(5) Small power production facilities;

(6) Cogeneration facilities;

(7) Hazardous waste combustion units;

(8) Materials recovery units;

(9) Air curtain incinerators;

(10) Cyclonic barrel burners;

(11) Rack, part, and drum reclamation units;

(12) Cement kilns;

(13) Sewage sludge incinerators;

(14) Chemical recovery units; and

(15) Laboratory analysis units.

Please refer to 40 CFR 60.2555 for specific definitions of these incinerator source categories, and any recordkeeping or other requirements that still may need to be met.

X. By What Date Must CISWIs in Louisiana Achieve Compliance?

If a CISWI cannot achieve compliance within one year of the effective date of EPA approval of the State Plan, the operator must agree to meet certain increments of progress until it achieves compliance. Section VI of the State Plan details the increments of progress for the affected CISWI. All existing CISWI units in the State of Louisiana must comply with these requirements by December 1, 2005.

XI. What Happens if a CISWI Does Not/Cannot Meet the Requirements by the Final Compliance Date?

Any existing CISWI that fails to meet the requirements by December 1, 2005, must shut down. The unit will not be allowed to start up until the owner/operator installs the controls necessary to meet the requirements on the date the unit restarts operation.

XII. Final Action

EPA is publishing this approval action without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the State Plan should relevant adverse comments be filed. If EPA receives no significant, material, and adverse comments by April 2, 2004, this action will be effective on May 3, 2004.

If EPA receives significant, material, and adverse comments by the above date, the Agency will withdraw this action before the effective date by publishing a subsequent document in the **Federal Register.** EPA will address all public comments received in a subsequent final rule based on the parallel proposed rule published in today's **Federal Register.** EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

XIII. Public Participation

A. What Is the Public Rulemaking File?

EPA is committed to ensuring public access to the information that is used to inform the Agency's decisions regarding the environment and human health and to ensuring that the public has an opportunity to participate in the Agency's decision process. The official public rulemaking file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. The public rulemaking file does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute, although such information is a part of the administrative record for this action. The public rulemaking file is the collection of materials that is available for public viewing at the Regional Office. The administrative record is the collection of material used to inform the Agency's decision on this rulemaking action.

B. How Can I Get Copies of This Document and Other Related Information?

1. An official public rulemaking file available for inspection at the Regional Office. The Regional Office has established an official public rulemaking file for this action under NM–40–2–7445a. The public rulemaking file is available for viewing at the Air Planning Section, U.S. Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. EPA requests that, if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section two working days in advance to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4 p.m. excluding Federal holidays.

2. Copies of the State submittal. Copies of the State submittal is also available for public inspection during official business hours, by appointment at the Louisiana Department of Environmental Quality, Air Quality Division, 7290 Bluebonnet Boulevard, Baton Rouge, Louisiana 70810.

3. Electronic access. You may access this **Federal Register** document electronically through the Regulation.gov Web site located at *http://www.regulations.gov* where you can find, review, and submit comments on Federal rules that are open for comment and have been published in the **Federal Register.**

The E Government Act of 2002 states that "to the extent practicable" agencies shall accept electronic comments and establish electronic dockets. Also, President Bush's management plan for government includes a government-

wide electronic rulemaking system. The first phase of the eRulemaking initiative was the development of a Federal portal that displays all **Federal Register** notices and proposed rules open for comment. The URL for this site is *http://www.regulations.gov*. The site also provides the public with the ability to submit electronic comments that then can be transferred to the Agency responsible for the rule.

EPA's policy is to make all comments it receives, whether submitted electronically or on paper, available for public viewing at the Regional Office as EPA receives them and without change. However, those portions of a comment that contain properly identified and claimed CBI or other information whose disclosure is restricted by statute will be excluded from the public rulemaking file. The entire comment, including publicly restricted information, will be included in the administrative record for this action.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in section I.D, below. Do not use e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment, and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the public rulemaking file, and may be made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *E-mail.* Comments may be sent by electronic mail (e-mail) to *boyce.kenneth@epa.gov*, Attention "Public comment on proposed rulemaking LA–66–1–7598." In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

ii. *Regulations.gov.* As an alternative to email, you may submit comments electronically to EPA by using the Federal Web-based portal that displays all **Federal Register** notices and proposed rules open for comment. To use this method, access the Regulations.gov Web site at *http://www.regulations.gov*, then select "Environmental Protection Agency" at the top of the page and click on the "Go" button. The list of current EPA actions available for comment will be displayed. Select the appropriate action and please follow the online instructions for submitting comments. Unlike EPA's email system, the Regulations.gov Web site is an "anonymous" system, which means EPA will not know your identity, e-mail address, or other contact information, unless you provide it in the text of your comment.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in section I.C.2, directly below. These electronic submissions will be accepted in WordPerfect, Word, or ASCII file format. You should avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Kenneth Boyce, Air Planning Section (6PD–L), Multimedia Planning and Permitting Division, U.S. Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. Please include the text "Public comment on proposed rulemaking LA–66– 1–7598" in the subject line of the first page of your comments.

3. *By hand delivery or courier.* Deliver your written comments or comments on a disk or CD ROM to: Kenneth Boyce, Air Planning Section (6PD–L), Multimedia Planning and Permitting Division, U.S. Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, Attention "Public comment on proposed rulemaking LA–66– 1–7598". Such deliveries are only accepted during official hours of business, which are Monday through Friday, 8:30 a.m. to 4 p.m., excluding Federal holidays.

D. How Should I Submit CBI to the Agency?

For comments submitted to the Agency by mail or hand delivery, in either paper or electronic format, you may assert a business confidentiality claim covering confidential business information (CBI) included in your comment by clearly marking any part or all of the information as CBI at the time the comment is submitted to EPA. CBI should be submitted separately, if possible, to facilitate handling by EPA. Submit one complete version of the comment that includes the properly labeled CBI for EPA's official docket and one copy that does not contain the CBI to be included in the public docket. If you submit CBI on a disk or CD ROM, mark the on the outside of the disk or the CD ROM that it contains CBI and then identify the CBI within the disk or CD ROM. Also submit a non-CBI version if possible. Information which is properly labeled as CBI and submitted by mail or hand deliver will be disclosed only in accordance with procedures set forth in 40 CFR part 2. For comments submitted by EPA's e-mail system or through Regulations.gov, no CBI claim may be asserted. Do not submit CBI to Regulations.gov or via EPA's e-mail system. Any claim of CBI will be waived for comments received through Regulations.gov or EPA's e-mail system. For further advice on submitting CBI to the Agency, contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

E. Privacy Notice

It is important to note that the comments you provide to EPA will be publicly disclosed in a rulemaking docket or on the internet. The comments are made available for public viewing as EPA receives them and without change. Any personal information you choose to include in your comment will be included in the docket. However, EPA will exclude from the public docket any information labeled confidential business information (CBI), copyrighted material or other information restricted from disclosure by statute.

Comments submitted via Regulations.gov will not collect any

personal information, e-mail addresses, or contact information unless they are included in the body of the comment. Comments submitted via Regulations.gov will be submitted anonymously unless you include personal information in the body of the comment. Please be advised that EPA cannot contact you for any necessary clarification if technical difficulties arise unless your contact information is included in the body of comments submitted through Regulations.gov. However, EPA's e-mail system is not an anonymous system. Email addresses are automatically captured by EPA's e-mail system and included as part of your comment that is placed in the public rulemaking docket.

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

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

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

XIV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing State plan submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a State plan submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a State plan submission, to use VCS in place of a State plan submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 3, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Aluminum, Fertilizers, Fluoride, Intergovernmental relations, Paper and paper products industry, Phosphate, Reporting and recordkeeping requirements, Sulfur oxides, Sulfuric acid plants, Waste treatment and disposal.

Dated: February 13, 2004.

Richard E. Greene,

Regional Administrator, Region 6.

■ 40 CFR part 62 is amended as follows:

PART 62—[AMENDED]

■ 1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart T—Louisiana

■ 2. Section 62.4620 is amended by adding paragraphs (b)(6)and (c)(7) to read as follows:

§ 62.4620 Identification of plan.

* * * * *

(b) * * *

(6) Control of air emissions from existing commercial and industrial solid waste incineration units, submitted by the Louisiana Department of Environmental Quality on February 18, 2003 (LAC 33:III.3003.B.6).

* * * * *

(c) * * *

(7) Commercial and industrial solid waste incineration units.

■ 3. Subpart T is amended by adding a new undesignated center heading and a new §§ 62.4670 and 62.4671 to read as follows: Existing Commercial and Industrial Solid Waste Incineration Units

§ 62.4670 Identification of sources.

The plan applies to the following existing commercial and industrial solid waste incineration units:

(a) BASF Corporation, Geismar, Louisiana.

(b) DSM Copolymer, Baton Rouge, Louisiana.

(c) LA Skid & Pallet Co., Baton Rouge, Louisiana.

(d) Shell Chemicals, Norco, Louisiana.

§ 62.4671 Effective date.

The effective date of this portion of the State's plan applicable to existing commercial and industrial solid waste incineration units is May 3, 2004.

[FR Doc. 04–4622 Filed 3–2–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0403; FRL–7343–9]

Yeast Extract Hydrolysate from Saccharomyces cerevisiae; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of the biochemical pesticide Yeast Extract Hydrolysate from *Saccharomyces cerevisiae* on all food commodities when applied/used for the management of plant diseases. Morse Enterprises, Limited, Inc. submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act (FQPA) of 1996, requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of Yeast Extract Hydrolysate from *Saccharomyces cerevisiae*.

DATES: This regulation is effective March 3, 2004. Objections and requests for hearings, identified by docket ID number OPP–2003–0403, must be received on or before May 3, 2004.

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

FOR FURTHER INFORMATION CONTACT: Diana M. Horne, Biopesticides and Pollution Prevention Division (7511C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8367; e-mail address: *horne.diana@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

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

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0403. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone numberis (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at *http://ecfr.gpoaccess.gov/ cgi/t/text/text-idx?sid=694b82a50366afdfc121f3c76cc00405&c=ecfr&tpl=/ecfrbrowse/ Title40/40cfrv21_02.tpl*, a beta site currently under development.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa. gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

II. Background and Statutory Findings

In the **Federal Register** of August 6, 2003 (68 FR 46613) (FRL–7316–8), EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a(e), as amended by FQPA (Public Law 104–170), announcing the filing of a pesticide tolerance petition (2E6383) by Morse Enterprises, Limited, Inc., Brickell East Floor Ten, 151 South East 15 Road, Miami, Florida. This notice included a summary of the petition prepared by the petitioner Morse Enterprises. One commenter requested information on the identity and mechanism of action of the active ingredient, which is provided and/or addressed in this rule.

The petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of Yeast Extract Hydrolysate from *Saccharomyces cerevisiae*.

III. Risk Assessment

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

exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section of the FFDCA (b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishinga tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...." Additionally, section 408(b)(2)(D) of the FFDCA requires that the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

IV. Toxicological Profile

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness, and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

An acute oral study was conducted with the end use product KeyPlex 350 at the limit value of 5 g/kg, a single high dose required by the Agency's testing guidelines to determine whether any adverse effects are noted at this extremely elevated exposure level. No deaths or adverse effects occurred during this test, placing this product in Toxicity Category IV (the least toxic) via the oral route of exposure. A primary dermal irritation study has shown KeyPlex 350 to be very slightly irritating to non-irritating, placing the product in Toxicity Category IV (again, the least toxic) for skin irritation. An eye irritation study indicated that the product is slightly irritating to rabbit eyes, placing the product in Toxicity Category III for primary eye irritation. There have been no reported incidents of hypersensitivity to Yeast Extract Hydrolysate from *Saccharomyces cerevisiae* in individuals exposed during the manufacture or use of this product, which has been used as a plant micronutrient product for over 20 years. Nevertheless, to comply with the Agency's requirements under FIFRA section 6(a)(2), any incident of hypersensitivity associated with the use of this pesticide must be reported to the Agency.

All other acute and subchronic toxicity studies were waived based upon all or some combination of the following rationales: First, no effects were observed in an acute oral study on the end use product, KeyPlex 350 containing 0.063% Yeast Extract Hydrolysate from *Saccharomyces cerevisiae*, at the limit value of 5 g/kg. Yeast Extract Hydrolysate from *Saccharomyces cerevisiae* is made from Brewer's (Baker's) yeast extract, which is the water soluble portion of autolyzed yeast (*Saccharomyces cerevisiae*), and contains protein, peptides, free amino acids, vitamins, minerals and trace elements. Brewer's yeast extract is already widely used as a flavor enhancer for soups, soy sauce, sausage, fruits, etc., and is also used as a nutritional supplement, since it is rich in B-vitamins. Brewer's yeast extracts are used in hundreds of food products at levels up to 2.0%, as consumed, which is approximately 32 times higher than levels of Yeast Extract Hydrolysate from *Saccharomyces cerevisiae* found in the end use product (0.063%). Third, Brewer's yeast extract is affirmed as "generally recognized as safe", or GRAS (21 CFR 184.1983), which means that it may be applied to food as a direct additive. Fourth, all inerts used in the end use product KeyPlex 350 are either already exempted from the requirement of a tolerance under 40 CFR 180.1001 (c) or (d), or common fertilizer ingredients cleared by FDA as direct food additives (GRAS). Fifth, KeyPlex 350 containing 0.063% Yeast Extract Hydrolysate from *Saccharomyces cerevisiae* has been sold as a plant micronutrient product for over 20 years, with no adverse effects ever reported. Sixth, label directions allow a minuscule amount (a maximum of 7.1 milliliters) of Yeast Extract Hydrolysate from *Saccharomyces cerevisiae* to be applied per acre per year, and the literature indicates that the components of yeast hydrolysate degrade rapidly in the environment. Finally, Yeast Extract Hydrolysate from *Saccharomyces cerevisiae* has a non-toxic mode of action by eliciting a systemic acquired resistance response in plants, and has no direct antimicrobial effect on plant disease organisms.

V. Aggregate Exposures

In examining aggregate exposure, section 408 of the FFDCA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

A. Dietary Exposure

Yeast Extract Hydrolysate from *Saccharomyces cerevisiae* is already cleared for use in food products at concentrations greater than that found in the end use product KeyPlex 350. Additional dietary exposure to Yeast Extract Hydrolysate from *Saccharomyces cerevisiae* resulting from labeled uses is unlikely to occur because of extremely low use rates and rapid degradation in the field. Further, the lack of demonstrable toxicity in acute studies and the long history of safe use as a component of food products support the establishment of an exemption from the requirement of a tolerance for Yeast Extract Hydrolysate from *Saccharomyces cerevisiae*.

1. *Food.* The use of KeyPlex 350 is not expected to result in any increase in dietary exposure to Yeast Extract Hydrolysate from *Saccharomyces cerevisiae* against the background of Brewer's yeast extract normally consumed in the diet. Yeast Extract Hydrolysate from *Saccharomyces cerevisiae* is made by hydrolyzing Brewer's yeast extract, which is the water soluble portion of autolyzed yeast (*Saccharomyces cerevisiae*) and contains protein, peptides, free amino acids, vitamins, minerals and trace elements. Brewer's yeast extract is classified as Generally Recognized as Safe (GRAS) under 21 CFR 184.1983 and is used as a flavor enhancer for soups, soy sauce, sausage, fruits, and other food products at concentrations in the range of 0.1%–2.0%, as consumed, which is significantly higher than the levels found in the end use product KeyPlex 350 (0.063%). Brewer's yeast is also used as a human nutritional supplement since it is rich in B-vitamins. Further, all inerts in the formulation of KeyPlex 350 are either already exempted from the requirement of a tolerance under 40 CFR 180.1001 (c) or (d), or common fertilizer ingredients cleared by FDA as direct food additives (GRAS). Finally, when used according to label directions, an extremely small amount (a total of 7.1 milliliters) of Yeast Extract Hydrolysate from *Saccharomyces cerevisiae* may be applied per acre per year, and the literature indicates that the components

of yeast hydrolysate are rapidly degraded in the environment.

2. *Drinking water exposure.* Brewer's yeast extract, the starting material for the manufacture of Yeast Extract Hydrolysate from *Saccharomyces cerevisiae*, is classified as GRAS under 21 CFR 184.1983. Further, the other ingredients used in the production of Yeast Extract Hydrolysate from *Saccharomyces cerevisiae* are either already exempted from the requirement of a tolerance under 40 CFR 180.1001 (c) or (d), or common fertilizer ingredients cleared by FDA as direct food additives (GRAS). The concentration of Yeast Extract Hydrolysate from *Saccharomyces cerevisiae* allowable in food products is significantly higher than that found in the end use product KeyPlex 350. Finally, because KeyPlex 350 is applied at extremely low rates and rapidly degrades in the environment, it poses no concern as a drinking water contaminant.

B. Other Non-Occupational Exposure

With the sole exception of turf uses, the label use sites are commercial agricultural and horticultural, as opposed to domestic settings. In addition, KeyPlex 350 is applied at extremely low rates and rapidly degrades after application. As a result, the approved uses of KeyPlex 350 for field crops and commercial application to turf and ornamentals will not likely result in exposures in residences, schools or day care institutions to Yeast Extract Hydrolysate from *Saccharomyces cerevisiae*. Thus non-occupational exposure to the general population is expected to be minimal to non-existent.

1. *Dermal exposure.* KeyPlex 350 is classified as a Toxicity Category IV product, the least toxic category,with regard to dermal irritation. This combined with the lack of toxicity via the oral route, suggests that risks due to dermal exposure are of no concern.

2. *Inhalation exposure.* KeyPlex 350 is classified as a Toxicity Category IV product, the least toxic category, via the oral route, and will not likely pose any risk via inhalation.

VI. Cumulative Effects

Section 408(b)(2)(D)(v) of the FFDCA requires the Agency to consider the cumulative effect of exposure to Yeast Extract Hydrolysate from *Saccharomyces cerevisiae* and to other substances that have a common mode of toxicity. These considerations include the possible cumulative effects of such residues on infants and children. Because of the lack of toxicity, lack of information indicating that any toxic effects, if they existed, would be cumulative with any other compounds, extremely low use rates, and common occurrence in hundreds of food products, the Agency does not expect any cumulative or incremental effects from exposure to residues of this product when used as directed on the label.

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

Key Plex 350 has an oral LD_{50} greater than 5 g/kg, placing the product in Toxicity Category IV, the least toxic category. Further, Brewer's yeast extract, from which Yeast Extract Hydrolysate from *Saccharomyces cerevisiae* is derived, is a common component of hundreds of food products and is used as a human nutritional supplement because of its high B-vitamin content. Therefore, EPA concludes that there is a reasonable certainty that no harm to the United States population in general, and to infants and children, specifically, will result from aggregate exposure to residues of Yeast Extract Hydrolysate from *Saccharomyces cerevisiae*. This includes all anticipated dietary exposures and all other exposures for which there is reliable information. Accordingly, exempting Yeast Extract Hydrolysate from *Saccharomyces cerevisiae* from the requirement of a tolerance is considered safe and pose no risk. FFDCA section 408(b)(2)(C) provides that EPA shall apply an additional ten-fold margin of exposure (safety) for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database unless EPA determines that a different margin of exposure (safety) will be safe for infants and children. Margins of exposure (safety) are often referred to as uncertainty (safety) factors. Here, based on all the available information and for all the reasons already set forth above in this final rule, the Agency finds that there are no threshold effects of concern to infants, children, and adults when Yeast Extract Hydrolysate from *Saccharomyces cerevisiae* is used as labeled, and that the provision requiring an additional margin of safety is not necessary to protect infants and children. As a result, EPA has not used a margin of exposure (safety) approach to assess the safety of Yeast Extract Hydrolysate from *Saccharomyces cerevisiae*.

VIII. Other Considerations

A. Endocrine Disruptors

EPA is required under the FFDCA as amended by FQPA to develop a screening program to determine whether certain substances (including all pesticide active and other ingredients) "may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or other such endocrine effects as the Administrator may designate." Following the recommendations of its Endocrine Disruptor Screening and Testing Advisory Committee (EDSTAC), EPA determined that there is no scientific basis for including, as part of the program, the androgen and thyroid hormone systems in addition to the estrogen hormone system. EPA also adopted EDSTAC's recommendation that the program include evaluations of potential effects in wildlife. For pesticide chemicals, EPA will use FIFRA and, to the extent that effects in wildlife may help determine whether a substance may have an effect in humans, FFDCA authority to require wildlife evaluations. As the science develops and resources allow, screening of additional hormone systems may be added to the Endocrine Disruptor Screening Program (EDSP). When the appropriate screening and/or testing protocols being considered under the Agency's EDSP have been developed, Yeast Extract Hydrolysate from *Saccharomyces cerevisiae* may be subjected to additional screening and/or testing to better characterize effects related to endocrine disruption. Based on available data, no endocrine system-related effects have been identified with consumption of Yeast Extract Hydrolysate from *Saccharomyces cerevisiae*. To date, there is no evidence to suggest that Yeast Extract Hydrolysate from *Saccharomyces cerevisiae* affects the immune system, functions in a manner similar to any known hormone, or that it acts as an endocrine disruptor.

B. Analytical Method(s)

The Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation for the reasons enumerated in this preamble, including Yeast Extract Hydrolysate from *Saccharomyces cerevisiae's* lack of toxicity. Accordingly, the Agency has concluded that an analytical method is not needed for enforcement purposes for Yeast Extract Hydrolysate from *Saccharomyces cerevisiae* residues.

C. Codex Maximum Residue Level

There is currently no CODEX Maximum Residue Limit set for food use of this active ingredient.

IX. Objections and Hearing Requests

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

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2003–0403 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before May 3, 2004.

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

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Rm.104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

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

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

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

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit IX.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by docket ID number OPP–2003–0403, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

X. Statutory and Executive Order Reviews

This final rule establishes an exemption from the tolerance requirement under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since

tolerances and exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and foodretailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of theFFDCA. For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policiesthat have tribal implications." "Policies that have tribal implications" is defined in the Executive order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

XI. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: February 18, 2004.

James Jones,

Director, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.1246 is added to subpart D to read as follows:

§ 180.1246 Yeast Extract Hydrolysate from Saccharomyces cerevisiae: exemption from the requirement of a tolerance.

This regulation establishes an exemption from the requirement of a tolerance for residues of the biochemical pesticide Yeast Extract Hydrolysate from *Saccharomyces cerevisiae* on all food commodities when applied/used for the management of plant diseases.

[FR Doc. 04–4706 Filed 3–2–04; 8:45am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2004–0003; FRL–7344–1]

Gellan Gum; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of gellan gum when used as an inert ingredient in a pesticide product. CP Kelco submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act (FQPA) of 1996, requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of gellan gum.

DATES: This regulation is effective March 3, 2004. Objections and requests for hearings, identified by docket ID number OPP–2004–0003, must be received on or before May 3, 2004.

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

FOR FURTHER INFORMATION CONTACT: James Parker, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–0371; e-mail address: *parker.james@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

- Crop production (NAICS code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS code 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of

entities not listed in this unit could also be affected, The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2004–0003. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?sid =baa35b6058a65d5fafe66e7269d4d215&c=ecfr&tpl= =/ecfrbrowse/Title40/40cfrv21_02.tpl*, a beta site currently under development.

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

II. Background and Statutory Findings

In the **Federal Register** of July 16, 2003 (68 FR 42026) (FRL–7317–4), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, as amended by FQPA (Public Law 104–170), announcing the filing of a pesticide tolerance petition (PP 3E6567) by CP Kelco, 8355 Aero Dr., San Diego, CA 92123–1718. This notice included a summary of the petition prepared by CP Kelco. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of gellan gum (CAS No. 71010–52–1).

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

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Human Health Assessment

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability, and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by gellan gum are discussed in this unit. The information submitted in support of this petition included the review and evaluation of 14 toxicity studies performed using gellan gum by the Joint Expert Committee on Food Additives (JECFA) which is an international expert scientific committee that is administered jointly by the Food and Agriculture Organization of the United Nations (FAO) and the World Health Organization (WHO). Gellan gum is also approved as a food additive in 21 CFR 172.665.

Gellan gum is produced through the fermentation of Pseudomonas elodea (a non-pathogenic bacteria). Gellan gum is a water-soluble polysaccharide that is composed of repeating units, which are called monosaccharides. These four units are one molecule of rhamnose (a sugar found in various plants), one molecule of glucuronic acid (an oxidized glucose molecule), and two molecules of glucose (a component of sucrose, which is common sugar). Gellan gum has a molecular weight greater than 70,000 with 95% above 500,000.

According to the CP Kelco website (*http://www.cpkelco.com*) gellan gum would typically be used in icings and frostings, jams and jellies, jellied candies such as gummy bears, and various fruit and bakery fillings. As the name indicates, when dissolved in water, gellan gum acts as a thickening or gelling agent, and can produce textures in the final product that vary from hard, non-elastic, brittle gels to fluid gels.

A. WHO/JECFA Evaluation

In 1990, gellan gum was evaluated by the JECFA. As part of their evaluation, they reviewed studies related to the absorption, distribution, and excretion of gellan gum (in rats). They also reviewed the following types of toxicological studies: Acute toxicity (in rats), short-term studies (in rats and monkeys), long-term/carcinogenicity (in mice, rats, and dogs), reproductive (in rats), and teratology (developmental) studies (in pregnant rats). The results of these reviews were discussed in the petitioner's July 16, 2003, Notice of Filing. The petitioner accurately and adequately stated the reviews performed by JECFA; therefore, the Agency has not reprinted them in their entirety in this final rule.

Selected summary information includes the following:

- Gellan gum was shown to be poorly absorbed and did not cause any deaths in rats which received a single large

dose (5 gram (g) per kilogram (kg) of body weight) in the diet or by gavage.

- Short-term (90-day) exposure of rats to gellan gum at levels up to 60 g/kg in the diet did not cause any adverse effects.
- In a 28-day study in prepubertal monkeys, no overt signs of toxicity were observed at the highest-dose level of 3 g/kg of body weight per day.
- In reproduction and teratogenicity studies in rats in which gellan gum was given at dose levels up to 50 g/kg in the diet, there was no evidence of interference with the reproductive process, and no embryotoxic or developmental effects were observed.
- Gellan gum was also shown to be non-genotoxic in a battery of standard short-term tests.
- In a study in dogs, which were treated for 1 year at dose levels up to 60 g/kg in the diet, there were no adverse effects that could be attributed to chronic exposure to gellan gum.
- In long-term carcinogenicity studies, gellan gum did not induce any adverse effects in mice or rats at the highest-dose levels of 30 g/kg and 50 g/kg in the diet, respectively.

The Agency notes that the dose levels used in these animal studies were in g/kg body weight not milligrams (mg)/kg as in most of the studies reviewed and evaluated by the Agency.

There was also a limited study on tolerance to gellan gum in humans. Results indicated that oral doses of up to 200 mg/kg of body weight administered over a 23-day period did not elicit any adverse reactions, although faecal bulking effects were observed in most humans.

In its conclusions, the JECFA Committee indicated that the potential laxative effect (at high intakes of gellan gum) should be taken into account when used as a food additive. The JECFA Committee also allocated an ADI (average daily intake) of "not specified" to gellan gum, which means that a specific limit on the average daily intake of gellan gum was not needed.

B. FDA Evaluation

Gellan gum is approved by the Food and Drug Administration (FDA) as a direct food additive when added to foods as a stabilizer or thickener according to good manufacturing practices when used according to the following conditions (21 CFR 172.665):

- The additive is a high molecular weight polysaccharide gum produced from Pseudomonas elodea by a pure culture fermentation process and purified by recovery with isopropyl alcohol.
- The strain of Pseudomonas elodea is non-pathogenic and non-toxic in man and animals.
- The additive is produced by a process that renders it free of viable cells of Pseudomonas elodea.

C. Conclusions

The evaluations performed by WHO and FDA indicate a substance of lower toxicity. The only concern that has been indicated for gellan gum as indicated by the JECFA Committee was a possible laxative effect which occurs only at high intakes of gellan gum. This laxative effect likely occurs as a result the body's limited ability to absorb gellan gum.

IV. Aggregate Exposures

In examining aggregate exposure, section 408 of FFDCA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

EPA establishes exemptions from the requirement of a tolerance only in those cases where the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

A. Dietary Exposure

1. *Food.* Gellan gum has been safely used as a food additive for over 10 years in various food formulations. Foods which can commonly contain gellan gum include frostings, gelatins, puddings, fillings, jams, milk products, fruit juices, and soft candy. CP Kelco supplied to the Agency, the direct use levels (expressed as percent) of gellan gum in a variety of food formulations. The typical amount of gellan gum used as a food additive does not exceed 0.5% of the processed food.

Given the use of gellan gum as a thickening or jelling agent, there is a "built in" limitation as to the amount needed. Too much gellan gum would over-thicken, making the pudding or jam too stiff for the intended use. According to information provided by CP Kelco, the maximum percent of gellan gum in a food formulation to achieve the desired thickening or jelling effect would be less than 2%.

Gellan gum has a molecular weight which is greater than 70,000 with 95% above 500,000. Such large substances are not easily absorbed, as demonstrated by the rat metabolism study which indicated poor absorption. The constituents of gellan gum are naturally occurring materials (sugar monosaccharides) that, in fact, are found in living organisms.

Gellan gum is approved for use as a direct food additive by FDA. To the best of the Agency's knowledge gellan gum has been used for over 10 years as a stabilizer and thickener—as a gelling agent in foods without any reported incidence. The Agency estimated an annual U.S. population exposure for gellan gum using the annual production information provided by CP Kelco (100,000 kg) and a U.S. population estimate of approximately 290,809,777 as of July 1, 2003, from the U.S. census website (*http://eire.census.gov/popest/data/national/popbriefing.php*). The Agency estimated annual exposure of gellan gum to the U.S. population is approximately 0.94 mg/person/day.

Equation used to calculate exposure provided below:

100,000 (kg/year) / (290,809,777 (people) x 365 (days/year)) = 0.94

100,000,000,000 (mg/year) / 106,145,568,605 (people/day/year) = 0.94 mg/person/day

The amount of gellan gum that could occur in food as a result of its use as an inert ingredient in a pesticide product should not significantly increase the amount of gellan gum in the food supply above those amounts currently permitted by FDA. Furthermore, it is unlikely that the manner which gellan gum is used in pesticide formulations will differ significantly from it's use as a direct food additive due to "built in" limitations based on the desired thickening or gelling effect.

2. *Drinking water exposure.* Gellan gum is composed of repeating monosaccharides. When mixed with water, gellan gum acts as a thickener, thus producing a viscous solution. Eventually, the material will degrade to the constituent monosaccharides: Two glucose molecules, one glucuronic molecule, and one rhamnose molecule. The rate at which this occurs will

depend on the size of the "bead" that forms when dissolved in water. While physical/chemical degradation processes (such as hydrolysis) would occur, it is more likely that gellan gum would be degraded via microbial degradation. Due to the lower toxicity of the degradates, the naturally occurring sugars, there are no concerns for exposure to gellan gum in drinking water.

B. Other Non-occupational Exposure

The Agency believes that the potential for the use of gellan gum in and around the home exists.

1. *Dermal exposure.* Based on the high molecular weight of gellan gum, it is not likely to be absorbed through the skin.

2. *Inhalation exposure.* Based on the fact that gellan gum is a polysaccharide which would degrade into naturally occurring sugars, it is not likely to cause any adverse effects when inhaled. The resulting molecules are normally found in living organisms (including humans) and would be metabolized normally.

V. Cumulative Effects

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

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

VI. Additional Safety Factor for the Protection of Infants and Children

Section 408 of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA concludes that a different margin of safety will be safe for infants and children. The JEFCA committee has evaluated reproductive and teratogenicity (developmental) toxicity studies in rats in which gellan gum was given at dose levels up to 50 g/kg in the diet and found no indication of increased susceptibility. Based on the WHO/JECFA evaluation of gellan gum, EPA has not used a safety factor analysis to assess the risk of gellan gum. For the same reasons the additional tenfold safety factor is unnecessary.

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

The JECFA Committee reviewed and evaluated 14 toxicity studies and as a result of their review and evaluation, JECFA determined an ADI (Acceptable Daily Intake) of "not specified." The only concern was for the potential laxative effect at high intakes. FDA has also approved the use of gellan gum as a direct food additive when used as a stabilizer and thickening agent (21 CFR 172.665).

Based on the available information which includes an Agency estimated-daily exposure of 0.94 mg/kg/day, toxicity studies conducted in g/kg body weight rather than mg/kg body weight (with few to no effects), evaluations by both FDA and WHO/JEFCA, and the high molecular weight of gellan gum, the EPA finds that exempting gellan gum (CAS No. 71010–52–1) from the requirement of a tolerance will be safe.

VIII. Other Considerations

A. Endocrine Disruptors

FQPA requires EPA to develop a screening program to determine whether certain substances, including all pesticide chemicals (both inert and active ingredients), "may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect. . ." EPA has been working with interested stakeholders to develop a screening and testing program, as well as a priority-setting scheme. As the Agency proceeds with implementation of this program, further testing of products containing gellan gum for endocrine effects may be required.

B. Analytical Method(s)

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

C. Existing Tolerances

There are no existing tolerances or tolerance exemptions for gellan gum.

D. International Tolerances

Gellan gum is used as a food additive in many countries. The Agency is not aware of any country requiring a tolerance for gellan gum nor have any CODEX Maximum Residue Levels (MRL's) been established for any food crops at this time.

E. List 4A (Minimal Risk) Classification

The Agency established 40 CFR 180.950 (see the rationale in the proposed rule published January 15, 2002 (67 FR 1925) (FRL–6807–8)) to collect the tolerance exemptions for those substances classified as List 4A, i.e., minimal risk substances. As part of evaluating an inert ingredient and establishing the tolerance exemption, the Agency determines the chemical's list classification. The results of the review and evaluation performed by WHO/JECFA as well as FDA's approval of gellan gum as a direct food additive, indicate a substance of lower toxicity. Therefore, gellan gum (CAS No. 71010–52–1) is to be classified as a List 4A inert ingredient.

IX. Conclusion

Based on the information in the official public docket, summarized in this preamble, EPA concludes that there is a reasonable certainty of no harm from aggregate exposure to residues of gellan gum (CAS No. 71010–52–1). Accordingly, EPA finds that exempting gellan gum from the requirement of a tolerance will be safe.

X. Objections and Hearing Requests

Under section 408(g) of FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of FFDCA provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of FFDCA, as was

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

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2004–0003 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before May 4, 2004.

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

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Rm.104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

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

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

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

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit X.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by docket ID number OPP–2004–0003, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

XI. Statutory and Executive Order Reviews

This final rule establishes an exemption from the tolerance requirement under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the

development of regulatory policies that have federalism implications." "Policies that have federalism implications " is defined in the Executive order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.""Policies that have tribal implications" is defined in the Executive order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

XII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: February 17, 2004.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. In § 180.950, the table in paragraph (e) is amended by adding alphabetically the following entry to read as follows:

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

* * * * *

(e) * * *

Chemical	CAS No.
* * *	* *
Gellan gum	71010–52–1
* * *	* *

[FR Doc. 04–4707 Filed 3–2–04; 8:45 am]

BILLING CODE 6560–50–S

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1817

RIN 2700–AC94

Performance Period Limitations

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: This final rule amends the NASA FAR Supplement (NFS) by clarifying that the five-year limitation on contracts applies to all procurement award instruments including agreements, orders under a Federal Supply Schedule, or other indefinite delivery/indefinite quantity contracts awarded by other agencies. The current NFS language has been interpreted to exclude certain types of award instruments, such as basic ordering agreements or blanket purchase agreements, from the five-year limitation. This change will ensure consistent application of the five-year performance period limitation and the waiver process for all award instruments.

EFFECTIVE DATE: March 3, 2004.

FOR FURTHER INFORMATION CONTACT: Eugene Johnson, NASA, Office of Procurement, Program Operations Division (Code HS), Washington, DC 20546; (202) 358–4703; e-mail: *eugene.johnson-1@nasa.gov*.

SUPPLEMENTARY INFORMATION:

A. Background

The NFS at 1817.204(e)(i) currently states that the five-year limitation (basic plus option periods) applies to all NASA contracts regardless of type. This has been interpreted to mean that the limitation does not apply to agreements such as basic ordering agreements and blanket purchase agreements. This interpretation is not consistent with the intent of the limitation and does not support NASA's efforts to maximize opportunities for competition. This final rule clarifies that the limitation is applicable to all award instruments. This change to the NFS is being issued as a final rule since it does not have a significant effect beyond the internal operating procedures of NASA. Comments may be submitted to the above address.

B. Regulatory Flexibility Act

This final rule does not constitute a significant revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comment is not required. However, NASA will consider comments from small entities concerning the affected NFS Part 1817 in accordance with 5 U.S.C. 610.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes do not impose recordkeeping or information collection requirements which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 1817

Government procurement.

Tom Luedtke,

Assistant Administrator for Procurement.

■ Accordingly, 48 CFR Part 1817 is amended as follows:

■ 1. The authority citation for 48 CFR Part 1817 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1817—SPECIAL CONTRACTING METHODS

■ 2. Revise section 1817.204 to read as follows:

1817.204 Contracts.

(e)(i) The 5-year limitation (basic plus option periods) applies to all NASA contracts regardless of type and other procurement award instruments. This includes agreements (*e.g.* basic ordering agreements, blanket purchase agreements), interagency acquisitions, and orders placed under agreements or awarded under a Federal Supply Schedule or other indefinite delivery/indefinite quantity contracts awarded by other agencies.

(ii) When the performance period exceeds 5 years (exclusive of options), the program/project office and the contracting officer shall review the requirement at the mid-point of the performance period to ensure that the products or services continue to fulfill NASA's mission needs and that the procurement award instrument continues to provide the best means of satisfying the requirement.

(iii) Requests for deviations from the 5-year limitation policy shall be sent to the Assistant Administrator for Procurement (Code HS) and shall include justification for exceeding five years. The justification shall discuss planned future assessment of continued performance either prior to exercise of options or at the mid-term of a basic contract with no options. Evidence shall also be included showing that the extended years can be reasonably priced.

[FR Doc. 04–4760 Filed 3–2–04; 8:45 am]
BILLING CODE 7501–01–U

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 541

[Docket No. NHTSA–04–17071]

RIN 2127–AJ28

Federal Motor Vehicle Theft Prevention Standard; Final Listing of Model Year 2005 High-Theft Vehicle Lines

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: This final rule announces NHTSA's determination for model year (MY) 2005 high-theft vehicle lines that are subject to the parts-marking requirements of the Federal motor vehicle theft prevention standard, and high-theft MY 2005 lines that are exempted from the parts-marking requirements because the vehicles are equipped with antitheft devices determined to meet certain statutory criteria pursuant to the statute relating to motor vehicle theft prevention.

EFFECTIVE DATE: The amendment made by this final rule is effective March 3, 2004.

FOR FURTHER INFORMATION CONTACT: Ms. Rosalind Proctor, Consumer Standards Division, Office of International Policy, Fuel Economy and Consumer Programs, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Ms. Proctor's telephone number is (202) 366–0846. Her fax number is (202) 493–2290.

SUPPLEMENTARY INFORMATION: The Anti Car Theft Act of 1992, Pub. L. 102–519, amended the law relating to the partsmarking of major component parts on designated high-theft vehicle lines and other motor vehicles. The Anti Car Theft Act amended the definition of "passenger motor vehicle" in 49 U.S.C. 33101(10) to include a "multipurpose passenger vehicle or light duty truck when that vehicle or truck is rated at not more than 6,000 pounds gross vehicle weight." Since "passenger motor vehicle" was previously defined to include passenger cars only, the effect of the Anti Car Theft Act is that certain multipurpose passenger vehicle (MPV) and light-duty truck (LDT) lines may be determined to be high-theft vehicles subject to the Federal motor vehicle theft prevention standard (49 CFR part 541).

The purpose of the theft prevention standard is to reduce the incidence of motor vehicle theft by facilitating the tracing and recovery of parts from stolen vehicles. The standard seeks to facilitate such tracing by requiring that vehicle identification numbers (VINs), VIN derivative numbers, or other symbols be placed on major component vehicle parts. The theft prevention standard requires motor vehicle manufacturers to inscribe or affix VINs onto covered original equipment major component parts, and to inscribe or affix a symbol identifying the manufacturer and a common symbol identifying the replacement component parts for those original equipment parts, on all vehicle lines selected as high-theft.

The Anti Car Theft Act also amended 49 U.S.C. 33103 to require NHTSA to promulgate a parts-marking standard applicable to major parts installed by manufacturers of "passenger motor vehicles (other than light duty trucks) in not more than one-half of the lines not designated under 49 U.S.C. 33104 as high-theft lines." NHTSA lists each of the selected lines not designated under 49 U.S.C. 33104 as high-theft lines in Appendix B to part 541. Since § 33103 did not specify marking of replacement parts for below-median lines, the agency does not require marking of replacement parts for these lines. NHTSA published a final rule amending 49 CFR part 541 to include the definitions of MPV and LDT, and major component parts. [See 59 FR 64164, December 13, 1994].

49 U.S.C. 33104(a)(3) specifies that NHTSA shall select high-theft vehicle lines, with the agreement of the manufacturer, if possible. Section 33104(d) provides that once a line has been designated as likely high-theft, it remains subject to the theft prevention standard unless that line is exempted under § 33106. Section 33106 provides that a manufacturer may petition to have a high-theft line exempted from the requirements of § 33104, if the line is equipped with an antitheft device as standard equipment. The exemption is granted if NHTSA determines that the antitheft device is likely to be as effective as compliance with the theft prevention standard in reducing and deterring motor vehicle thefts.

The agency annually publishes the names of the lines which were previously listed as high-theft, and the lines which are being listed for the first time and will be subject to the theft prevention standard beginning in a given model year in Appendix A to part 541. It also identifies in Appendix A–I to part 541 those lines that are exempted from the theft prevention standard for a given model year under § 33104. Additionally, this listing identifies those lines (except light-duty trucks) in Appendix B to part 541 that have theft rates below the 1990/1991 median theft rate but are subject to the requirements of this standard under § 33103.

On July 2, 2003, the final listing of high-theft lines for the MY 2004 vehicle lines was published in the **Federal Register** (68 FR 39471). The final listing identified two vehicle lines, the Toyota Scion xA and Scion xB that were listed for the first time and became subject to the theft prevention standard beginning with the 2004 model year.

For MY 2005, there were no new vehicle lines identified as likely to be high-theft lines, in accordance with the procedures published in 49 CFR part 542.

The vehicle lines listed as being subject to the parts-marking standard have previously been designated as high-theft lines in accordance with the procedures set forth in 49 CFR Part 542.

Under these procedures, manufacturers evaluate new vehicle lines to conclude whether those new lines are likely to be high theft. The manufacturer submits these evaluations and conclusions to the agency, which makes an independent evaluation; and, on a preliminary basis, determines whether the new line should be subject to the parts-marking requirements. NHTSA informs the manufacturer in writing of its evaluations and determinations, together with the factual information considered by the agency in making them. The manufacturer may request the agency to reconsider the preliminary determinations. Within 60 days of the receipt of these requests, the agency makes its final determination. NHTSA informs the manufacturer by letter of these determinations and its response to the request for reconsideration. If there is no request for reconsideration, the agency's determination becomes final 45 days after sending the letter with the preliminary determination. Each of the new lines on the high-theft list has been the subject of a final determination under either 49 U.S.C. 33103 or 33104.

The list of lines that have been exempted by the agency from the parts-marking requirements of Part 541 includes a high-theft line newly exempted in full beginning with MY 2005. The vehicle line newly exempted in full is the DaimlerChrysler Corporation's (DaimlerChrysler) Town and Country MPV. The agency granted DaimlerChrysler's petition for an exemption of its Town and Country MPV from the parts-marking requirements of the Federal Motor Vehicle Theft Prevention Standard beginning with the 2005 model year (68 FR 46676, August 6, 2003). Subsequent to publishing the 2004 final rule, the agency granted BMW of North America, Inc.'s petition for an exemption of its Carline 6 from the parts-marking requirements beginning with the 2004 model year (68 FR 69127, December 11, 2003). Accordingly, the listing has been amended to reflect that two lines previously designated as high-theft lines have been deleted from Appendix A and added to Appendix A-I. The vehicle lines listed as being exempt from the standard have previously been exempted in accordance with the procedures of 49 CFR Part 543 and 49 U.S.C. 33106.

Similarly, the low-theft lines listed as being subject to the parts-marking standard have previously been designated in accordance with the procedures set forth in 49 U.S.C. 33103.

Therefore, NHTSA finds for good cause that notice and opportunity for comment on these listings are unnecessary. Further, public comment on the listing of selections and exemptions is not contemplated by 49 U.S.C. Chapter 331.

For the same reasons, since this revised listing only informs the public of previous agency actions and does not impose additional obligations on any party, NHTSA finds for good cause that the amendment made by this notice should be effective as soon as it is published in the **Federal Register**.

Regulatory Impacts

1. Costs and Other Impacts

NHTSA has analyzed this rule and determined that it is not "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. The agency has also considered this notice under Executive Order 12866. As already noted, the selections in this final rule have previously been made in accordance with the provisions of 49 U.S.C. 33104, and the manufacturers of the selected lines have already been informed that those lines are subject to the requirements of 49 CFR Part 541 for MY 2005. Further, this listing does not actually exempt lines from the requirements of 49 CFR Part 541; it only informs the general public of all such previously granted exemptions. Since the only purpose of this final listing is to inform the public of actions for MY 2005 that the agency has already taken, a full regulatory evaluation has not been prepared.

2. Regulatory Flexibility Act

The agency has also considered the effects of this listing under the Regulatory Flexibility Act. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. As noted above, the effect of this final rule is simply to inform the public of those lines that are already subject to the requirements of 49 CFR Part 541 for MY 2005. The agency believes that the listing of this information will not have any economic impact on small entities.

3. Environmental Impacts

In accordance with the National Environmental Policy Act of 1969, the agency has considered the environmental impacts of this rule, and determined that it will not have any significant impact on the quality of the human environment.

4. Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this final rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

5. Civil Justice Reform

This final rule does not have a retroactive effect. In accordance with section 33118 when the Theft Prevention Standard is in effect, a State or political subdivision of a State may not have a different motor vehicle theft prevention standard for a motor vehicle or major replacement part. 49 U.S.C. 33117 provides that judicial review of this rule may be obtained pursuant to 49 U.S.C. 32909. Section 32909 does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 541

Administrative practice and procedure, Labeling, Motor vehicles, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, 49 CFR Part 541 is amended as follows:

PART 541—[AMENDED]

■ 1. The authority citation for Part 541 continues to read as follows:

Authority: 49 U.S.C. 33102–33104 and 33106; delegation of authority at 49 CFR 1.50.

■ 2. In Part 541, Appendices A and AI are revised. Appendices A and AI are revised to read as follows:

Appendix A to Part 541—Lines Subject to the Requirements of This Standard

Manufacturer	Subject lines
ALFA ROMEO	Milano 161
	164
BMW	Z3
	Z8

Manufacturer	Subject lines
CONSULIER	Consulier GTP
DAEWOO	Korando
	Musso (MPV)
	Nubira (2000–2002)
DAIMLERCHRYSLER	Chrysler Cirrus
	Chrysler Fifth Avenue/Newport
	Chrysler Laser
	Chrysler LeBaron/Town & Country
	Chrysler LeBaron GTS
	Chrysler's TC
	Chrysler New Yorker Fifth Avenue
	Chrysler Sebring
	Dodge 600
	Dodge Aries
	Dodge Avenger
	Dodge Colt
	Dodge Daytona
	Dodge Diplomat
	Dodge Lancer
	Dodge Neon
	Dodge Shadow
	Dodge Stratus
	Dodge Stealth
	Eagle Summit
	Eagle Talon
	Jeep Cherokee (MPV)
	Jeep Liberty (MPV)
	Jeep Wrangler (MPV)
	Plymouth Caravelle
	Plymouth Colt
	Plymouth Laser
	Plymouth Gran Fury
	Plymouth Neon
	Plymouth Reliant
	Plymouth Sundance
	Plymouth Breeze
FERRARI	Mondial 8
	328
FORD	Ford Aspire
	Ford Escort
	Ford Probe
	Ford Thunderbird
	Lincoln Continental
	Lincoln Mark
	Mercury Capri
	Mercury Cougar
	Merkur Scorpio
	Merkur XR4Ti
GENERAL MOTORS	Buick Electra
	Buick Reatta
	Buick Skylark
	Chevrolet Nova
	Chevrolet Blazer (MPV)
	Chevrolet Prizm
	Chevrolet S–10 Pickup
	Geo Storm
	Chevrolet Tracker (MPV)
	GMC Jimmy (MPV)
	GMC Sonoma Pickup
	Oldsmobile Achieva (1997–1998)
	Oldsmobile Bravada
	Oldsmobile Cutlass
	Oldsmobile Cutlass Supreme (1988–1997)
	Oldsmobile Intrigue
	Pontiac Fiero
	Saturn Sports Coupe (1991–2002)
HONDA	Accord
	CRV (MPV)
	Odyssey (MPV)
	Passport
	Pilot (MPV)
	Prelude
	S2000
	Acura Integra

Manufacturer	Subject lines
	Acura MDX (MPV)
	Acura RSX
HYUNDAI	Accent
	Sonata
	Tiburon
ISUZU	Amigo
	Impulse
	Rodeo
	Rodeo Sport
	Stylus
	Trooper/Trooper II
	VehiCross (MPV)
JAGUAR	XJ
KIA MOTORS	Optima
	Rio
	Sephia (1998–2002)
	Spectra
LOTUS	Elan
MASERATI	Biturbo
	Quattroporte
	228
MAZDA	626 (1987–2002)
	MX–3
	MX–5 Miata
	MX–6
MERCEDES-BENZ	190 D
	190 E
	260E (1987–1989)
	300 SE (1988–1991)
	300 TD (1987)
	300 SDL (1987)
	300 SEL
	350 SDL (1990–1991)
	420 SEL (1987–1991)
	560 SEL (1987–1991)
	560 SEC (1987–1991)
	560 SL
MITSUBISHI	Cordia
	Eclipse
	Lancer
	Mirage
	Montero (MPV)
	Montero Sport (MPV)
	Tredia
	3000GT
NISSAN	240SX
	Sentra/200SX
	Xterra
PEUGEOT	405
PORSCHE	924S
SUBARU	XT
	SVX
	Baja
	Forester
	Legacy Outback (1995–2004)
SUZUKI	Aerio
	X90 (MPV)
	Sidekick (1997–1998)
	Vitara/Grand Vitara (MPV)
TOYOTA	Toyota 4-Runner (MPV)
	Toyota Avalon
	Toyota Camry
	Toyota Celica
	Toyota Corolla/Corolla Sport
	Toyota Echo
	Toyota Highlander (MPV)
	Toyota Matrix (MPV)
	Toyota MR2
	Toyota MR2 Spyder
	Toyota Prius
	Toyota RAV4 (MPV)
	Toyota Sienna (MPV)
	Toyota Tercel
	Lexus IS300

Manufacturer	Subject lines
	Lexus LX470 (MPV)
	Lexus RX300 (MPV)
	Scion xA
	Scion xB
VOLKSWAGEN	Audi Quattro
	Volkswagen Scirocco

Appendix A—I High-Theft Lines With Antitheft Devices Which Are Exempted From the Parts-Marking Requirements of This Standard Pursuant to 49 CFR Part 543

Manufacturer	Subject lines
AUSTIN ROVER	Sterling
BMW	MINI
	X5
	Z4
	3 Car Line
	5 Car Line
	6 Car Line [1]
	7 Car Line
	8 Car Line
DAIMLERCHRYSLER	Jeep Grand Cherokee
	Chrysler Conquest
	Chrysler Imperial
	Chrysler Town and Country MPV [2]
FORD	Lincoln Town Car
	Mustang
	Mercury Sable (2001–2004)
	Mercury Grand Marquis
	Taurus (2000–2004)
GENERAL MOTORS	Buick LeSabre
	Buick Park Avenue
	Buick Regal/Century
	Buick Riviera
	Cadillac Allante
	Cadillac Deville
	Cadillac Seville
	Chevrolet Cavalier
	Chevrolet Classic [3]
	Chevrolet Corvette
	Chevrolet Impala/Monte Carlo
	Chevrolet Lumina/Monte Carlo (1996–1999)
	Chevrolet Malibu (2001–2003)
	Chevrolet Venture
	Oldsmobile Alero
	Oldsmobile Aurora
	Oldsmobile Toronado
	Pontiac Bonneville
	Pontiac Grand Am
	Pontiac Grand Prix
	Pontiac Sunfire
HONDA	Acura CL
	Acura Legend (1991–1996)
	Acura NSX
	Acura RL
	Acura SLX
	Acura TL
	Acura Vigor (1992–1995)
ISUZU	Axiom
	Impulse (1987–1991)
JAGUAR	XK
MAZDA	6
	929
	RX–7
	Millenia
MERCEDES-BENZ	124 Car Line (the models within this line are):
	260E
	300D
	300E
	300CE
	300TE
	400E
	500E
	129 Car Line (1993–2002)—the models within this line are:

Manufacturer	Subject lines
	300SL
	500SL
	600SL
	SL320
	SL500
	SL600
	202 Car Line (the models within this line are):
	C220
	C230
	C280
	C36
	C43
MITSUBISHI	Galant
	Starion
	Diamante
NISSAN	Nissan Altima
	Nissan Maxima
	Nissan Pathfinder
	Nissan 300ZX
	Infiniti G35
	Infiniti I30
	Infiniti J30
	Infiniti M30
	Infiniti M45
	Infiniti QX4
	Infiniti Q45
PORSCHE	911
	928
	968
	986 Boxster
SAAB	9–3
	900 (1994–1998)
	9000 (1989–1998)
TOYOTA	Toyota Supra
	Toyota Cressida
	Lexus ES
	Lexus GS
	Lexus LS
	Lexus SC
VOLKSWAGEN	Audi 5000S
	Audi 100/A6
	Audi 200/S4/S6
	Audi Allroad Quattro (MPV)
	Audi Cabriolet
	Volkswagen Cabrio
	Volkswagen Corrado
	Volkswagen Golf/GTI
	Volkswagen Jetta/Jetta III
	Volkswagen Passat

[1] Line exempted in full beginning with MY 2004.
[2] Line exempted in full beginning with MY 2005.
[3] The Chevrolet Malibu (produced from MY 1997–2003) was renamed the Chevrolet Classic beginning with MY 2004.

Issued on: February 24, 2004.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 04–4772 Filed 3–2–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 001005281–0369–02; I.D. 022604B]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Trip Limit Reduction

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

ACTION: Inseason action; trip limit reduction.

SUMMARY: NMFS reduces the commercial trip limit of Atlantic group Spanish mackerel in or from the exclusive economic zone (EEZ) in the southern zone to 1,500 lb (680 kg) per day. This trip limit reduction is necessary to maximize the socioeconomic benefits of the quota.

DATES: Effective 6 a.m., local time, March 1, 2004, through March 31, 2004, unless changed by further notification in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Mark Godcharles, telephone: 727–570–5305, fax: 727–570–5583, e-mail: Mark.Godcharles@noaa.gov.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act by regulations at 50 CFR part 622.

Based on the Councils' recommended total allowable catch and the allocation ratios in the FMP, on August 2, 2000, (65 FR 41015, July 3, 2000) NMFS implemented a commercial quota of 3.87 million lb (1.76 million kg) for the Atlantic migratory group of Spanish mackerel. For the southern zone, NMFS specified an adjusted quota of 3.62 million lb (1.64 million kg) calculated to allow continued harvest at a set rate for the remainder of the fishing year in accordance with 50 CFR 622.44(b)(2). In accordance with 50 CFR 622.44(b)(1)(ii)(C), after 75 percent of the adjusted quota of Atlantic group Spanish mackerel from the southern zone is taken until 100 percent of the adjusted quota is taken, Spanish mackerel in or from the EEZ in the southern zone may be possessed on board or landed from a permitted vessel in amounts not exceeding 1,500 lb (680 kg) per day. The southern zone for Atlantic migratory group Spanish mackerel extends from 30°42′45.6″ N. lat., which is a line directly east from the Georgia/Florida boundary, to 25°20.4′ N. lat., which is a line directly east from the Miami-Dade/Monroe County, FL, boundary.

NMFS has determined that 75 percent of the adjusted quota for Atlantic group Spanish mackerel from the southern zone has been taken. Accordingly, the 1,500 lb (680 kg) per day commercial trip limit applies to Spanish mackerel in or from the EEZ in the southern zone effective 6 a.m., local time, March 1, 2004, through March 31, 2004, unless changed by further notification in the **Federal Register**.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(3)(B), as such prior notice and opportunity for public comment is unnecessary and contrary to the public interest. Such procedures would be unnecessary because the rule itself already has been subject to notice and comment, and all that remains is to notify the public of the trip limit reduction. Allowing prior notice and opportunity for public comment is contrary to the public interest because of the need to immediately implement this action in order to protect the fishery since the capacity of the fishing fleet allows for rapid harvest of the quota. Prior notice and opportunity for public comment will require time and would potentially result in a harvest well in excess of the established quota.

For the aforementioned reasons, the AA also finds good cause to waive the 30–day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

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

Dated: February 26, 2004.

Bruce C. Morehead,

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

[FR Doc. 04–4678 Filed 2–27–04; 11:39 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No.040130031–4070–02; I.D. 012704D]

RIN 0648–AR92

Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Emergency Rule to Maintain an Area Access Program for the Atlantic Sea Scallop Fishery in Hudson Canyon

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

ACTION: Final emergency rule.

SUMMARY: This emergency rule implements, as of March 1, 2004, an area access program for the Hudson Canyon Area. The area access program continues the controlled access program that has been implemented through Frameworks 14 and 15 to the Atlantic Sea Scallop Fishery Management Plan (FMP) with modifications similar to the measures proposed in Amendment 10 to the FMP. The measures in this emergency action will be in place for 180 days and may be extended, pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This action is necessary to avoid localized overfishing of sea scallops in the Hudson Canyon Area, and will help ensure that fishing mortality rates are more consistent with the status of the scallop resource while not exceeding the target thresholds established in the FMP.

DATES: Effective February 27, 2004, through August 30, 2004. This rule will be implemented March 1, 2004, through August 30, 2004.

ADDRESSES: Copies of the Environmental Assessment (EA) and the Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA) and any other documents supporting this action are available from the Regional Office at the address specified here, and are accessible via the Internet at *http://www.nero.nmfs.gov/ro/doc/nero.html.*

FOR FURTHER INFORMATION CONTACT: Peter W. Christopher, Fishery Policy Analyst, 978–281–9288, fax 978–281–9135, e-mail *peter.christopher@noaa.gov.*

SUPPLEMENTARY INFORMATION: The regulations for the sea scallop fishery for the 2003 fishing year (March 1, 2003 - February 29, 2004) include, among other measures, an area access program to govern the fishery within the Hudson Canyon Sea Scallop Access Area (Hudson Canyon Area). Details about the development of this program were provided in the proposed rule for this action, and are not repeated here. The program establishes an overall total allowable catch (TAC) for the area, limits the number of trips that can be taken into the area, establishes a scallop trip limit, and establishes a minimum number of days-at-sea (DAS) that will be deducted for each access trip from the vessel's DAS allocation. The New England Fishery Management Council (Council) adopted Amendment 10 to the FMP in September 2003, and submitted it for review by the Secretary of Commerce (Secretary) on December 19, 2003. Among the measures proposed in Amendment 10 is a continuation of an area access program for the Hudson Canyon Area, with some revisions to the program. Amendment 10 has been made available to the public for comment through March 15, 2004, with the Notice

of Availability published on January 16, 2004 (69 FR 2561).

The Council's December 2003 submission of Amendment 10 means that it will not be possible to implement the action, if approved, by the start of the fishing year on March 1, 2004. Thus, the existing Hudson Canyon area access program will expire at the end of the fishing year (February 29, 2004) and, on March 1, 2004, the Hudson Canyon Area will open to fishing without an area access program. Absent another regulatory action, the DAS allocations currently specified in the FMP will go into effect for limited access scallop vessels on March 1, 2004: 34, 14, and 3 DAS for full-time, part-time, and occasional vessels, respectively. Amendment 10 would, if approved, allocate an additional eight, three, and one DAS for use by full-time, part-time, and occasional vessels, respectively, in areas other than those under area management. Amendment 10 would also, if approved, specifically allocate 48, 12, and 12 DAS for use by full-time, part-time, and occasional vessels, respectively, within the Hudson Canyon Area, under an area access program.

Without this emergency action, the fishing that occurs in the Hudson Canyon Area between March 1 and the implementation of Amendment 10 (if approved) would inflict fishing mortality on the resource in addition to that proposed for the Hudson Canyon Access Area in Amendment 10. The additive impacts of this fishing could result in localized overfishing in the Hudson Canyon Area. Should Amendment 10 be disapproved, this final emergency action will allow controlled harvests from the Hudson Canyon Area, consistent with the status of the Hudson Canyon Area resource as analyzed in Amendment 10. This action will allow the resource within the Hudson Canyon Area to be harvested at appropriate levels, and will allow limited access vessels to fish at a level nearer to the mortality objectives for the stock.

Without continued controls on scallop fishing in the Hudson Canyon Area, NMFS is concerned about the impact of fishing on the scallop resource in this area, even with the reduced allocation of DAS. The area was initially closed to protect concentrations of juvenile scallops, which have since grown to harvestable size. For the past 3 fishing years, fishing has been allowed, but with controls. Amendment 10 proposes to maintain controls on effort and catch that would prevent the areas from being overfished. A lapse in controls may result in high fishing effort and mortality, which may be detrimental to the health of the scallop resource in the area. In fact, the reduced DAS allocations that will otherwise take effect on March 1, 2004, may serve as an incentive for some vessels to fish within the Hudson Canyon Area rather than elsewhere, and fishing effort could concentrate in the area. Controls within the area over the past few years have maintained catch rates that may be higher than those in other areas. In addition, the Hudson Canyon Area is a relatively short distance from ports in the Mid-Atlantic, and vessel owners may choose to fish in the Hudson Canyon Area to minimize the DAS used to cover steaming time to more distant fishing areas.

This emergency action under section 305(c) of the Magnuson-Stevens Act is justified under and consistent with NOAA emergency rule guidelines published at 62 FR 44421 (August 21, 1997). These guidelines provide that a Magnuson-Stevens Act emergency action is justified in extremely urgent or special circumstances where substantial harm to or disruption of the resource, fishery or community will be caused in the time it would take to follow standard rulemaking procedures. It was not reasonably foreseeable that Amendment 10 would not be implemented by March 1, 2004, at the time when it was in development, otherwise, NMFS would have initiated another type of action, such as a Secretarial amendment or framework adjustment. Therefore, the only procedure available to the agency for implementing these measures is a section 305(c) emergency action. As discussed above, failure to implement this emergency action will result in serious conservation and economic problems for the fishery. NMFS published a proposed emergency rule on February 4, 2004 (69 FR 5307) and requested public comment. Comments and responses are addressed in this final rule.

Final Action

The final measures for the emergency action are summarized below:

Continuation of the existing notification and enrollment requirements of the current Hudson Canyon Controlled Access Area program, including twice hourly vessel monitoring system (VMS) polling;

Continuation of the existing observer program established for the current Hudson Canyon Controlled Access Area program;

Continuation of the existing VMS catch reporting requirements;

Continuation of the existing requirement for vessels taking a controlled area access trip to utilize twine top mesh with a minimum size of 10 inches (25.4 cm) to reduce finfish bycatch, primarily of flatfish;

An additional allocation of 48 DAS for full-time limited access scallop vessels to conduct four trips within the Hudson Canyon Area only;

An additional allocation of 12 DAS for part-time and occasional limited access vessels to conduct one trip within the Hudson Canyon area only;

Allocation of DAS in trip-length blocks of 12 days, with each vessel making an Access Area trip to be charged 12 DAS for each trip, regardless of actual trip length;

Establishment of a trip possession limit for limited access vessels fishing under DAS of 18,000 lb (8,165 kg) (consistent with a 1,500–lb (680–kg) per day catch rate);

Establishment of a 400 lb (181–kg) possession limit for General category vessels fishing in the Hudson Canyon Area (this measure will make the possession limit for these vessels consistent with the existing possession limit in open fishing areas).

Comments and Responses

Four sets of comments were submitted in response to the proposed rule for the emergency action from the Council, the Fishery Survival Fund (FSF) and two members of the public.

Comment 1: One individual urged NMFS to keep the Hudson Canyon Area closed and immediately establish other marine sanctuary areas so that fish stocks do not continue to be decimated.

Response: NMFS considered closing the Hudson Canyon Access Area as an alternative to the emergency action. However, closure of this area was deemed to be unwarranted given the analyses for this action and in Amendment 10 that indicate that controlled harvest of the area should be maintained for an additional 2 years, beginning in 2004. Moreover, it would be inappropriate to establish marine sanctuaries in an emergency action given the narrow scope of such an action.

Comment 2: One individual commented that quotas are already too high, even in this alleged emergency. The emergency rule should cut all such quotas by 50 percent and 10 percent every year thereafter.

Response: NMFS assumes that the commenter is referring to DAS allocations. NMFS disagrees with the comment. The scallop resource condition actually warrants a higher level of harvest than would occur without any action. The DAS schedule in the current regulations would achieve

a fishing mortality level well below the target prescribed for the scallop fishery.

Comment 3: One individual commented that NMFS should establish email communication for comments on NMFS actions.

Response: NMFS now requires that all actions soliciting public comment include email addresses for electronic commenting (E-comments).

Comment 4: The Council is concerned that vessels will charge into the Hudson Canyon Area to fish all four trips using 3.5–inch (8.9–cm) rings, particularly in areas where small scallops occur. Amendment 10 proposes to require vessels fishing the Hudson Canyon Area to use gear with larger rings and to protect small scallops in the southwest corner of the Hudson Canyon Area by including this portion of the area as part of a closed area. The Council states that the allocation of four trips in Amendment 10 was calculated to produce optimum yield with 4–inch (10.2–cm) rings, and that an allocation as high as four trips may not be appropriate if vessels using 3.5–inch (8.9–cm) rings utilize the majority of the four trip allocation. The Council therefore recommends that the emergency action allocate no more than one Hudson Canyon Area trip per limited access vessel.

Response: The comment implies that Amendment 10 will definitely be implemented prior to expiration of the emergency action. However, NMFS has not determined that Amendment 10 will be approved, and allocating only one trip would be overly restrictive if Amendment 10 is not approved. While 4–inch (10.2–cm) rings may provide for long-term benefits according to the analyses included in Amendment 10, NMFS does not expect these benefits to come to light in this action which is limited in duration. Therefore, given the impracticability of establishing a new gear requirement in the limited timeframe of this emergency action, NMFS has determined that maintaining the 3.5–inch (8.9–cm) ring size requirement is appropriate for this limited action.

Comment 5: The Council is concerned about opening the Hudson Canyon Area to access by vessels using general category permits or limited access vessels fishing under general category rules. The Council states that the intent of Amendment 10 was to allow access by general category vessels in the future when new controlled access areas are reopened, and to allow for them to land 400 lb (181.44 kg) of scallops. However, the comment notes that the Council intended to develop additional management measures including mandatory vessel monitoring systems, mandatory observers on selected trips, and a 2–percent TAC set-aside to cap the number of general category trips into reopened areas. The comment states that, because none of these measures are available for Hudson Canyon Area access, the Council did not intend to allow general category access. The Council, therefore, recommends that the emergency action continue the existing 100–lb (45.36–kg) scallop possession limit for vessels fishing under general category rules within the Hudson Canyon Access Area.

Response: Based on historical information of general category activity in the fishery, there is no evidence that the impacts of fishing activity by general category vessels operating with a 400 lb (181.44 kg) possession limit will jeopardize the scallop resource within the Hudson Canyon Access Area in the context of this temporary, limited action. Moreover, allowing a 400–lb (181.44–kg) possession limit for general category vessels and limited access vessels fishing outside of the DAS program will reduce the enforceability concerns associated with having different possession limits for general category vessels fishing inside and outside of the Hudson Canyon Access Area. NMFS's review of the Amendment 10 document does not clearly support the Council intent described in their comment above. NMFS urges the Council to provide more details about the record supporting this comment so the intent can be properly reflected in any final action on Amendment 10, if approved.

Comment 6: The Council commented that, although the Amendment 10 analysis shows substantial abundance of small scallops in the Elephant Trunk area, the Council agrees that the benefits derived from closing the area on March 1, 2004, until implementation of Amendment 10, if approved, are reduced with a 34 DAS allocation for full-time vessels. If Amendment 10 is delayed more than anticipated, or higher DAS allocations are available, however, the Council recommends reconsideration of the decision to let the Elephant Trunk area remain open.

Response: NMFS agrees that, if Amendment 10 is approved, the benefits of a short-term closure of the Elephant Trunk may be negligible. NMFS did not consider closure of the area as an alternative because conducting the necessary analysis may have delayed the action beyond March 1, 2004, and defeating the benefits of proceeding with an emergency action.

Comment 7: One individual commented that the closure of the Hudson Canyon Access Area is based on Amendment 7 to the FMP, which established the closure. The commenter stated that Amendment 7 is not based on science and ignored relevant science and environmental conditions.

Response: NMFS disagrees. While Amendment 7 originally established the 3–year closure of the Hudson Canyon Area, this emergency action will continue a controlled access program for the Hudson Canyon Access Area based on several years of controlled harvest strategies. The management actions that established area access all were based on the best available scientific information.

Comment 8: The FSF commented in support of the emergency action but requested that NMFS consider a provision or policy to address trips terminated early due to unforseen circumstances (i.e., the broken trip provision). The FSF also urged NMFS to consider a closure of the Elephant Trunk area to scallop fishing to protect the large concentration of small scallops in the area.

Response: Because of the limited scope of this action, it is not possible to address the broken trip issue at this time. NMFS could not consider the broken trip provision that is proposed in Amendment 10 because the provision would require a collection of information that has not been approved by the Office of Management and Budget (OMB). As in prior years, NMFS will consider broken trips on a case by case basis. If Amendment 10 is approved, all relevant implementation issues associated with the broken trip provision would be considered.

NMFS did not consider closure of the Elephant Trunk for the reasons explained in the response to Comment 6.

Changes From the Proposed Rule

The regulatory text in § 648.14, paragraphs (30) and (31) has been changed to clarify the prohibition relative to scallop possession limits.

Classification

A formal section 7 consultation under the Endangered Species Act was initiated for the Atlantic sea scallop fishery on November 21, 2003, and subsequently included consideration of the measures included in this emergency action. In a biological opinion dated February 23, 2004, the Regional Administrator determined that fishing activities conducted under the emergency rule are not likely to jeopardize the continued existence of any endangered or threatened species or

result in the destruction or adverse modification of critical habitat.

As explained in greater detail elsewhere in the preamble to this final rule, the Assistant Administrator for Fisheries, NOAA, finds that the need to implement these measures in a timely manner to avoid excessive localized fishing mortality in the Hudson Canyon Access Area, constitutes good cause under the authority contained in 5 U.S.C. 553(d)(3), to waive the 30–day delay in effective date. Without the emergency rule, the Hudson Canyon Area will open to fishing without an area access program on March 1, 2004. This area was initially closed to protect concentrations of juvenile scallops, which have since grown to harvestable size. However, for the past 3 years, fishing in this area has been allowed, but with controls. A lapse in controls may result in high fishing effort and mortality, which may be detrimental to the health of the scallop resource in the area. This emergency rule should prevent a derby style fishery from occurrring in the Hudson Canyon Area.

This action is authorized by 50 CFR part 648 and has been determined to be not significant for purposes of Executive Order 12866.

Included in this final rule is the Final Regulatory Flexibility Analysis (FRFA) prepared pursuant to 5 U.S.C. 604(a). The FRFA incorporates the discussion that follows, the comments and responses to the proposed rule, and the IRFA and other analyses completed in support of this action. A copy of the IRFA is available from the Regional Administrator (see **ADDRESSES**).

Final Regulatory Flexibility Analysis

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 the proposed rule and is not repeated here.

Summary of Significant Issues Raised in Public Comments

Four sets of comments were submitted on the proposed rule, but none contained comments on the economic impacts of this rule.

Description and Estimate of Number of Small Entities to Which the Rule Will Apply

The measures implemented by this emergency action could impact any commercial vessel issued a Federal sea scallop vessel permit. All of these vessels are considered small business entities for purposes of the FRFA because they all grossed less than $3.5 million according to the dealer reports for the 2001 and 2002 fishing years. Therefore, the analysis of impacts on vessels in the environmental assessment and other supporting documents for this action are relevant to this FRFA. There are two main components of the scallop fleet: Vessels eligible to participate in the limited access sector of the fleet and vessels that participate in the open access General Category sector of the fleet. Limited access vessels are issued permits to fish for scallops on a Full-time, Part-time or Occasional basis. In 2001, there were 252 Full-time permits, 38 Part-time permits, and 20 Occasional permits. In 2002, there were 270 Full-time permits, 31 part time permits, and 19 Occasional permits. Because the fishing year ends on the last day of February of each year, 2003 vessel permit information was incomplete at the time the Amendment 10 analysis was completed. Much of the economic impacts analysis is based on the 2001 and 2002 fishing years; 2001 and 2002 were the last 2 years with complete permit information. According to the most recent vessel permit records for 2003, there were 278 Full-time limited access vessels, 32 Part-time limited access vessels, and 16 Occasional vessels. In addition, there were 2,293, 2,493, and 2,257 vessels issued permits to fish in the General Category in 2001, 2002, and 2003, respectively. Annual scallop revenue for the limited access sector averaged from $615,000 to $665,600 for Full-time vessels, $194,790 to $209,750 for Part-time vessels, and $14,400 to $42,500 for Occasional vessels during the 2001 and 2002 fishing years. Total revenues per vessel, including revenues from species other than scallops, exceeded these amounts, but were less than $3.5 million per vessel.

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.

Minimizing Significant Economic Impacts on Small Entities

The alternatives to the final action are the no action alternative and closure of the Hudson Canyon Access Area to scallop fishing. Neither the no-action nor the closure alternative would minimize the economic impacts on small entities. Under both non-preferred alternatives, lower overall DAS allocations would similarly constrain landings and revenues. For both the no-action and the closure alternatives, DAS allocations of 34, 14, and 3 DAS for full-time, part-time, and occasional vessels would reduce annual revenues to approximately $110 million from $158 million, compared to the final action. For the no-action alternative, the harvest of larger, more valuable scallops from the Hudson Canyon Access Area would not offset the revenue losses because lower overall DAS allocations would constrain landings.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule, or group of related rules, for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide will be sent to all holders of permits issued for the Atlantic sea scallop fishery. In addition, copies of this final rule and guide (i.e., permit holder letter) are available from the Regional Administrator (see **ADDRESSES**) and may be found at the following web site: *http://www.nmfs.gov/ro/doc/nero.html.*

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: February 26, 2004.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service

■ For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.14, paragraphs (h)(30), (h)(31), and (i)(8) are revised to read as follows:

§ 648.14 Prohibitions.

* * * * *

(h) * * *

(30) Possess or land per trip more than 400 lb (181.44 kg) of scallop meats or 50 bu (17.62 hl) of in-shell scallops as specified in § 648.52(e) in or from the areas described in § 648.57 when not declared into the Sea Scallop Area Access Program, unless the vessel's

fishing gear is unavailable for immediate use as defined in § 648.23(b), or, there is a compelling safety reason to be in such areas without all such gear being unavailable for immediate use. Possess more than 400 lb. (181.44 kg) of scallop meats or 50 bu (17.62 hl) of in-shell scallops when fishing outside the scallop DAS program.

(31) Fail to stow gear in accordance with § 648.23(b), unless there is a compelling safety reason, while a vessel is outside of a Sea Scallop Access Area on a Sea Scallop Access Area trip.

(i)* * *

(8) Possess, retain, or land per trip no more than 400 lb (181.44 kg) of scallop meats or 50 bu (17.62 hl) of in-shell scallops in or from the areas described in § 648.57.

* * * * *

§ 648.52 [Amended]

■ 3. In § 648.52, paragraph (e) is removed.

■ 4. Section 648.53 is revised to read as follows:

§ 648.53 DAS allocations.

(a) *Assignment to DAS categories.* Subject to the vessel permit application requirements specified in § 648.4, for each fishing year, each vessel issued a limited access scallop permit shall be assigned to the DAS category (full-time, part-time, or Occasional) it was assigned to in the preceding year, except as provided under the small dredge program specified in § 648.51(e).

(b) *Open area DAS allocations.* (1) Total DAS to be used in all areas other than those specified in § 648.57 will be specified through the framework process as specified in § 648.55.

(2) Each vessel qualifying for one of the three DAS categories specified in the table in this paragraph (b)(2) (Full-time, Part-time, or Occasional) shall be allocated, for each fishing year, the maximum number of DAS it may participate in the limited access scallop fishery, according to its category. A vessel whose owner/operator has declared it out of the scallop fishery, pursuant to the provisions of § 648.10, or that has used up its allocated DAS, may leave port without being assessed a DAS, as long as it does not possess or land more than 400 lb (181.4 kg) of shucked or 50 bu (17.62 hl) of in-shell scallops and complies with all other requirements of this part. The annual DAS allocations for each category of vessel for the fishing years indicated, after deducting DAS for observer and research DAS set-asides, are as follows:

	2003	2004	2005	2006	2007	2008
DAS Category						
Full-time	120	34	35	38	36	60
Part-time	48	14	14	15	17	24
Occasional	10	3	3	3	4	5

(c) *Sea Scallop Access Area DAS allocations.* Vessels fishing in a Sea Scallop Access Area specified in § 648.57, under the Sea Scallop Area Access Program specified in § 648.58, are allocated additional DAS to fish only within each Sea Scallop Access Area, as specified in § 648.58(a)(3).

(d) *Adjustments in annual DAS allocations.* Adjustments or changes in annual DAS allocations, if required to meet fishing mortality reduction goals, may be made following a reappraisal and analysis under the framework provisions specified in § 648.55.

(e) *End-of-year carry-over.* With the exception of vessels that held a Confirmation of Permit History as described in § 648.4(a)(1)(i)(J) for the entire fishing year preceding the carry-over year, limited access vessels that have unused DAS on the last day of February of any year may carry over a maximum of 10 DAS into the next year. DAS carried over into the next fishing year may not be used in the Hudson Canyon Access Area. DAS sanctioned vessels will be credited with unused DAS based on their DAS allocation minus total DAS sanctioned.

(f) *Accrual of DAS.* Unless participating in the Area Access Program described in § 648.58, DAS shall accrue to the nearest minute.

(g) *Good Samaritan credit.* Limited access vessels fishing under the DAS program and that spend time at sea assisting in a USCG search and rescue operation or assisting the USCG in towing a disabled vessel, and that can document the occurrence through the USCG, will not accrue DAS for the time documented.

■ 5. In § 648.57, paragraph (b) is removed and paragraph (a) introductory text is revised to read as follows:

§ 648.57 Closed and regulated areas.

(a) *Hudson Canyon Sea Scallop Access Area.* From March 1, 2004, through August 30, 2004, except as provided in § 648.58, no vessel may fish for scallops in or possess or land scallops from the area known as the Hudson Canyon Sea Scallop Access Area, and no vessel may possess scallops in the Hudson Canyon Sea Scallop Access Area, unless such vessel is only transiting the area with all fishing gear unavailable for immediate use as defined in § 648.23(b), or there is a compelling safety reason to be in such areas without all such gear being unavailable for immediate use. The Hudson Canyon Sea Scallop Access Area (copies of a chart depicting this area are available from the Regional Administrator upon request) is defined by straight lines connecting the following points in the order stated:

* * * * *

■ 6. Section 648.58 is revised to read as follows:

§ 648.58 Sea Scallop Area Access Program requirements.

(a) From March 1, 2004, through August 30, 2004, vessels issued a limited access scallop permit may fish in the Sea Scallop Access Areas specified in § 648.57 when fishing under a scallop DAS, provided the vessel complies with the requirements specified in paragraphs (a)(1) through (a)(9) and (b) through (e) of this section. Unless otherwise restricted under this part, vessels issued General Category scallop permits may fish in the Sea Scallop Access Areas specified in § 648.57, subject to the possession limit specified in § 648.52(b).

(1) *VMS.* The vessel must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10, and paragraph (e) of this section.

(2) *Declaration.* (i) Prior to the 25th day of the month preceding the month in which fishing is to take place, the vessel must submit a monthly report through the VMS e-mail messaging system of its intention to fish in any Sea Scallop Access Area, along with the following information: Vessel name and permit number, owner and operator's name, owner and operator's phone numbers, and number of trips anticipated for each Sea Scallop Access Area in which it intends to fish. The Regional Administrator may waive a portion of this notification period for

trips into the Sea Scallop Access Areas if it is determined that there is insufficient time to provide such notification prior to an access opening. Notification of this waiver of a portion of the notification period shall be provided to the vessel through a permit holder letter issued by the Regional Administrator.

(ii) In addition to the information described in paragraph (a)(2)(i) of this section, and for the purpose of selecting vessels for observer deployment, a vessel shall provide notice to NMFS of the time, port of departure, and specific Sea Scallop Access Area to be fished, at least 5 working days prior to the beginning of any trip into the Sea Scallop Access Area.

(iii) To fish in a Sea Scallop Access Area, the vessel owner or operator shall declare a Sea Scallop Access Area trip through the VMS less than 1 hour prior to the vessel leaving port, in accordance with instructions to be provided by the Regional Administrator.

(3) *Number of trips.* Except as provided in paragraph (c) of this section, a vessel is limited to the following number of trips and automatic DAS deduction into the Hudson Canyon Sea Scallop Access Area specified in § 648.57:

(i) *Full-time vessels.* A Full-time vessel is restricted to a total of 4 trips, equaling an automatic deduction of 12 days per trip for a total of 48 DAS, into the Hudson Canyon Access Area.

(ii) *Part-time vessels.* A Part-time vessel is restricted to a total of 1 trip, equaling an automatic deduction of 12 days per trip for a total of 12 DAS, into the Hudson Canyon Access Area.

(iii) *Occasional scallop vessels.* An Occasional vessel is restricted to a total of 1 trip, equaling an automatic deduction of 12 days per trip for a total of 12 DAS, into the Hudson Canyon Access Area.

(4) *Area fished.* While on a Sea Scallop Access Area trip, a vessel may not fish for, possess, or land scallops from outside the Hudson Canyon Access Area during that trip and must not enter or exit the Hudson Canyon Access Area fished more than once per trip.

(5) *Possession and landing limits.* After declaring a trip into the Hudson Canyon Access Area, a vessel owner or operator may fish for, possess, and land up to 18,000 lb (9,525 kg) of scallop meats per trip. No vessel fishing in the Hudson Canyon Access Area may possess or land, more than 50 bu (17.62 hl) of in-shell scallops shoreward of the VMS demarcation line.

(6) *Gear restrictions.* The vessel must fish with or possess scallop dredge or trawl gear only in accordance with the restrictions specified in § 648.51(a) and (b), except that the mesh size of a net, net material, or any other material on the top of a scallop dredge in use by or in possession of the vessel shall not be smaller than 10.0 inches (25.40 cm) square or diamond mesh.

(7) *Transiting.* While outside a Sea Scallop Access Area on a Sea Scallop Access Area trip, the vessel must have all fishing gear stowed and unavailable for immediate use as specified in § 648.23(b), unless there is a compelling safety reason.

(8) *Off-loading restrictions.* The vessel may not off-load its catch from a Sea Scallop Access Area trip at more than one location per trip.

(9) *Reporting.* The owner or operator must submit reports through the VMS, in accordance with instructions to be provided by the Regional Administrator, for each day fished when declared in the Sea Scallop Area Access Program, including trips accompanied by a NMFS-approved observer. The reports must be submitted in 24–hour intervals, for each day beginning at 0000 hours and ending at 2400 hours. The reports must be submitted by 0900 hours of the following day and must include the following information: Total pounds/kilograms of scallop meats kept, total number of tows and the Fishing Vessel Trip Report log page number.

(b) *Accrual of DAS.* For each Hudson Canyon Access Area trip, a vessel on a Hudson Canyon Access Area trip shall have 12 DAS deducted from its access area DAS allocation specified in paragraph (a)(3) of this section, regardless of the actual number of DAS used during the trip.

(c) *Increase of possession limit to defray costs of observers*—(1) *Observer set-aside limits by area.* The observer set-aside for the Hudson Canyon Access Area is 187,900 lb (85.2 mt).

(2) *Defraying the costs of observers.* The Regional Administrator may increase the sea scallop possession limit specified in paragraph (a)(5) of this section to defray costs of at-sea observers deployed on area access trips subject to the limits specified in paragraph (c)(1) of this section. Owners of limited access scallop vessels will be notified of the increase in the possession limit through a permit holder letter issued by the Regional Administrator. If the observer set-aside is fully utilized prior to the end of the fishing year, the Regional Administrator will notify owners of limited access vessels that, effective on a specified date, the possession limit will be decreased to the level specified in paragraph (a)(5) of this section. Vessel owners shall be responsible for paying the cost of the observer, regardless of whether the vessel lands or sells sea scallops on that trip, and regardless of the availability of set-aside for an increased possession limit.

(d) *VMS polling.* For the duration of the Sea Scallop Area Access Program, as described under this section, all sea scallop limited access vessels equipped with a VMS unit shall be polled at least twice per hour, regardless of whether the vessel is enrolled in the Sea Scallop Area Access Program. Vessel owners shall be responsible for paying the costs for the polling.

[FR Doc. 04–4677 Filed 2–27–04; 11:39 am]
BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 69, No. 42
Wednesday, March 3, 2004

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 02–057–1]

RIN 0579–AB74

Karnal Bunt; Revision of Regulations for Importing Wheat

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend our regulations regarding the importation of wheat from regions affected with Karnal bunt. Our proposed amendments would, among other things, list such regions, as well as articles that would be regulated for Karnal bunt; increase the flexibility of the regulations so that they could provide more readily for the recognition of areas where Karnal bunt is not known to occur within regions where Karnal bunt is known to be present; describe conditions, including requirements for phytosanitary certificates, under which wheat and related articles from regions affected with Karnal bunt could be imported into the United States; and specify cleaning and/or disinfection requirements for imported farm machinery and other equipment used to handle or store Karnal bunt-positive seed or host crops. The proposed changes would make our regulations regarding the importation of wheat and related articles from regions affected with Karnal bunt substantively equivalent to our domestic Karnal bunt regulations and would bring the former into compliance with international agreements to which the United States is a party.

DATES: We will consider all comments that we receive on or before May 3, 2004.

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

- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 02–057–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–057–1.
- E-mail: Address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02–057–1" on the subject line.
- Agency Web Site: Go to *http://www.aphis.usda.gov/ppd/rad/cominst.html* for a form you can use to submit an e-mail comment through the APHIS Web site.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov* and follow the instructions for locating this docket and submitting comments.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: You may view APHIS documents published in the **Federal Register** and related information, including the names of groups and individuals who have commented on APHIS dockets, on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Ms. Jeanne Van Dersal, Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–6799.

SUPPLEMENTARY INFORMATION:

Background

Karnal bunt is a fungal disease of wheat (*Triticum aestivum*), durum wheat (*Triticum durum*), and triticale (*Triticum aestivum* X *Secale cereale*), a hybrid of wheat and rye. Karnal bunt is caused by the smut fungus *Tilletia indica* (Mitra) Mundkur and is spread by spores, primarily through the movement of infected seed. Karnal bunt is found in Afghanistan, India, Iraq, Pakistan, and portions of Mexico and the United States.

To ensure the retention of U.S. export markets, the Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture (USDA) has regulations in place to prevent the further spread of Karnal bunt within the United States and the further introduction of Karnal bunt into uninfested areas of the United States, *i.e.*, we regulate both the importation and interstate movement of wheat and related articles from areas where Karnal bunt is known to occur. Our domestic Karnal bunt regulations are contained in Subpart-Karnal Bunt (7 CFR 301.89–1 through 301.89–16). Our Karnal bunt-related import regulations are contained in Subpart-Wheat Diseases (7 CFR 319.59 through 7 CFR 319.59–2).

As now written, our domestic and import regulations concerning Karnal bunt are inconsistent in that, with certain exceptions, we prohibit the importation of wheat and related articles from some regions because of Karnal bunt but allow similar wheat and related articles to move domestically. As a member of the World Trade Organization and the International Plant Protection Convention (IPPC), the United States has agreed not to impose more stringent requirements on imports than it imposes on the movement of similar articles domestically.

Therefore, we are proposing to amend our import regulations pertaining to Karnal bunt so that they will be substantively equivalent to our domestic Karnal bunt regulations. Our proposed amendments would, among other things, add several new definitions; list articles that would be regulated for Karnal bunt; list regions affected with Karnal bunt; increase the flexibility of the regulations so that they could provide more readily for the recognition of areas where Karnal bunt is not known to occur within regions where Karnal bunt is known to be present; describe conditions, including requirements for phytosanitary certificates, under which wheat and related articles from areas affected with Karnal bunt areas could be imported into the United States; and specify cleaning and/or disinfection requirements for imported farm machinery, conveyances, mechanized harvesting equipment, and seed

conditioning equipment that have been used to handle or store Karnal bunt-positive seed or host crops. These proposed changes would make our Karnal bunt-related import regulations substantively equivalent to our domestic Karnal bunt regulations and would bring the former into compliance with international agreements to which the United States is a party.

On February 23, 2004, we published in the **Federal Register** (69 FR 8091–8097, Docket No. 02–056–2) a final rule that amended our domestic Karnal bunt regulations in order to improve their clarity, transparency, and effectiveness. The changes we are proposing to the import regulations in this document parallel our changes to the domestic regulations as much as possible.

Currently, the regulations in §§ 319.59 through 319.59–2 prohibit the importation of wheat and related articles from certain areas in order to prevent the introduction of flag smut and Karnal bunt to the United States. We are proposing to amend the Karnal bunt-related provisions in these regulations to allow the importation into the United States of wheat and other regulated articles from regions affected with Karnal bunt under certain conditions.

To ensure greater clarity and readability, we would also reorder the regulations and separate some of the new provisions pertaining to Karnal bunt from the existing flag smut provisions, which would remain essentially unchanged. The existing § 319.59 would be removed, and its prohibition on the importation of various articles due to flag smut and its provisions pertaining to disposal of articles refused importation would be moved to other sections. Our proposed § 319.59–1 would, like the existing section, contain a list of definitions. Current § 319.59–2 includes provisions related to both flag smut and Karnal bunt under the heading *Prohibited articles*. Our proposed § 319.59–2 would also include some general provisions applicable to both of these wheat diseases, such as a prohibition on the importation of wheat plants, exceptions to the regulations for certain imported articles, and the requirements found in the current § 319.59(b) for disposal of articles refused importation. Under our proposal, however, most of the requirements in current § 319.59–2 relating to flag smut would be contained in a new § 319.59–3, and the new Karnal bunt regulations would be contained in a new § 319.59–4.

These proposed changes would not have any substantive effect on the import prohibitions related to flag smut in the current regulations. On February 7, 2003, however, APHIS published an advance notice of proposed rulemaking (ANPR) in the **Federal Register** (68 FR 6362–6363, Docket No. 02–058–1) concerning possible changes to the flag smut regulations. A recent pest risk assessment indicated that U.S. wheat would not appear to be at risk from foreign strains of flag smut if we were to remove the current import prohibitions. We are currently reviewing public comments received in response to the ANPR and considering whether to proceed with rulemaking on flag smut.

Definitions

We are proposing to add several new definitions to § 319.59–1 that would match the definitions in our domestic Karnal bunt regulations. Specifically, we would add definitions for *grain, hay, host crops, plant, seed,* and *straw*. All of these proposed definitions relate to articles that we would regulate for Karnal bunt under proposed § 319.59–4. Including definitions of these articles could aid users in understanding and conforming to the regulations. We would define *grain* as wheat, durum wheat, and triticale used for consumption or processing. We would define *hay* as consisting of host crops cut and dried for the feeding of livestock. The definition would also note that when the hay is cut after reaching the dough stage, it may contain mature kernels of the host crop. We propose to define *host crops* as consisting of plants or plant parts, including grain, seed, or hay, of wheat, durum wheat, and triticale. We are proposing to define *plant* as any plant (including any plant part) for or capable of propagation, including a tree, a tissue culture, a plantlet culture, pollen, a shrub, a vine, a cutting, a graft, a scion, a bud, a bulb, a root, and a seed. This is the same definition provided in the Plant Protection Act (7 U.S.C. 7701 *et seq.*) and one that has been incorporated into the domestic regulations. We propose to define *seed* as wheat, durum wheat, and triticale used for propagation. *Straw* would be defined as the vegetative material left after the harvest of host crops. The proposed definition would also refer to the common uses of straw as animal feed, bedding, mulch, or erosion control.

We are proposing to remove the definition of *disease,* which we view as potentially confusing to users of the regulations. Currently, it is defined to include its common meaning and any disease agent which incites a disease. Instead, we employ the term throughout this proposed rule in the sense in which it is commonly understood. We would also remove the definition of *prohibited article*. The regulations in § 319.59–3(a) would list those articles that are prohibited articles, so it would not be necessary to define the term.

For consistency with our other regulations in title 7, we are also proposing to replace the existing definitions of *Deputy Administrator* and *Plant Protection and Quarantine* with definitions for *Administrator* and *Animal and Plant Health Inspection Service (APHIS),* respectively, update the definitions of *inspector* and *United States,* and eliminate the definitions of *person* and *Secretary*.

General Import Prohibitions; Exceptions

We are proposing to add a new § 319.59–2 that would contain some general provisions that would apply to both flag smut and Karnal bunt. Proposed paragraph (a) would prohibit the importation of wheat (*Triticum* spp.) plants into the United States from any country other than Canada, except as provided in proposed paragraph (b) or under the conditions set forth in proposed § 319.59–4(a)(2), which is discussed below. The importation of wheat plants from specified regions is currently prohibited under the regulations. Our proposed § 319.59–2(a) would note, however, that the prohibition on the importation of wheat plants would not include seed. Proposed paragraph (b), which would be almost identical to the current § 319.59–2(c) except for a few slight modifications in language that would reflect the changed status of Karnal bunt and the revised format of the regulations, would provide conditions under which the USDA could import, for scientific or experimental purposes, those articles for which importation would otherwise be prohibited due to flag smut or restricted due to Karnal bunt. Finally, we would remove current § 319.59(b), which provides for the removal, safeguarding, and/or destruction of articles refused importation into the United States under the flag smut and Karnal bunt regulations. These safeguarding provisions are spelled out in the Plant Protection Act, so we do not believe it is necessary to reproduce them in the regulations.

Flag Smut

The regulations that pertain specifically to flag smut, which are found in current § 319.59–2(a), would be moved to a new § 319.59–3. Proposed § 319.59–3(a) would contain the same flag smut-related prohibitions on

imports of seeds, plants, straw, chaff, and milling products as does the current § 319.52–2(a). The list of countries from which imports are prohibited due to flag smut would remain unchanged but would be moved to proposed § 319.59–3(b).

Karnal Bunt

We would remove current § 319.59–2(b), which enumerates, among other things, Karnal bunt-related import prohibitions on wheat and related articles from certain areas, as well as the boundaries of areas in Mexico designated as free of Karnal bunt. These provisions would no longer apply under this proposed rulemaking.

Replacing these existing regulations would be a new § 319.59–4, which would set out requirements for the importation of wheat and related articles from areas in which Karnal bunt is present. This new section would include lists of regulated articles and regions where Karnal bunt is present and descriptions of requirements for handling, inspection, phytosanitary certificates, and treatments of regulated articles imported from regions where Karnal bunt is present.

Proposed paragraph (a) would list articles subject to restrictions because they could present a risk of spreading Karnal bunt if imported into the United States. This list would largely parallel the list of regulated articles in § 301.89–2 of the domestic Karnal bunt regulations, but would omit certain items, such as grain elevators, that would not be imported into the United States. The list would include the following articles:

- Conveyances, including trucks, railroad cars, and other containers used to move host crops produced in a Karnal bunt-affected region that test positive for Karnal bunt through the presence of bunted kernels;
- Plants or plant parts, including grain, seed, straw, or hay of all varieties of wheat, durum wheat, and triticale that are produced in a Karnal bunt-affected region, except for straw/stalks/seed heads for decorative purposes that have been processed or manufactured prior to movement and are intended for use indoors;
- The Karnal bunt pathogen, *Tilletia indica* (Mitra) Mundkur;
- Mechanized harvesting equipment that has been used in the production of wheat, durum wheat, or triticale that has tested positive for Karnal bunt through the presence of bunted kernels; and
- Seed conditioning equipment and storage/handling equipment that has been used in the production of wheat, durum wheat, or triticale seed found to contain the spores of *Tilletia indica*.

Proposed paragraph (b) would list regions where Karnal bunt is present. The list would include the same five countries-Afghanistan, India, Iraq, Mexico, and Pakistan-named in the current § 319.59–2. We would make one substantive change, however. The boundaries of areas in Mexico where Karnal bunt is not known to occur, which are described in the current § 319.59–2(b), would no longer be applicable. Instead, our proposed § 319.59–4(b)(2) would indicate that the Administrator may authorize importation of wheat under § 319.59–4(c) whenever he or she determines that the wheat is being imported from an area that meets the requirements of the IPPC's International Standard for Phytosanitary Measures (ISPM) No. 4, "Requirements for the establishment of pest free areas." ISPM No. 4 is incorporated by reference in our regulations in 7 CFR part 300. ISPM No. 4 is available by writing to USDA, APHIS, PPQ, Phytosanitary Issues Management, 4700 River Road Unit 140, Riverdale, MD 20737–1236, or on the Internet at *http://www.aphis.usda.gov/ppq/pim/standards/*.

The IPPC, of which the United States is a member, establishes standards to achieve international harmonization of phytosanitary measures. ISPM No. 4 requires that for an area to be considered as free of a particular plant pest, it must have a system to establish freedom, phytosanitary measures to maintain freedom, and a system for the verification of the maintenance of freedom.

We would publish a notice in the **Federal Register** and maintain on an APHIS website a list of the specific areas that are approved in accordance with ISPM No. 4 as areas in which Karnal bunt is not known to occur, in order to provide the public with current, valid information. Areas listed on the website would be subject to audit by APHIS to verify that they continue to merit such listing. Overall, our proposed § 319.59–4(b)(2) would make our regulations more flexible by allowing us, more expeditiously, to recognize areas where Karnal bunt is not known to exist within regions where Karnal bunt is known to be present.

Proposed paragraph (c) contains requirements for the handling and inspection of the wheat and related articles listed in proposed paragraph (a)(2) when those articles are imported into the United States from the regions listed in proposed paragraph (b)(1) and for the phytosanitary certificates that would have to accompany such articles. To be eligible for importation into the United States, regulated articles would have to have originated in an area that has been determined by APHIS to be an area in which Karnal bunt is not known to occur, either at the area level or at the field level. Area-level freedom would be based on the Administrator's determination, in accordance with the previously described provisions of proposed § 319.59–4(b), that the area in which the articles originated meets the ISPM No. 4 standards for the establishment of pest free areas. Field-level freedom would be based on the articles having been tested and found to be free of Karnal bunt. We would also require that the articles not be commingled prior to arrival at a U.S. port of entry with articles originating in areas where Karnal bunt is known to occur. These proposed restrictions are necessary to prevent contaminated articles from entering the United States.

Upon entry into the United States, the articles would have to be made available for examination by an inspector and remain at the port until released, or authorized further movement pending release, by an inspector. In order to enable APHIS to verify that the articles are being imported in compliance with the regulations, the articles would also have to be accompanied by a phytosanitary certificate issued by the national plant protection organization of the region of origin that includes the following additional declaration: "These articles originated in areas where Karnal bunt is not known to occur, as attested to either by survey results or by testing for bunted kernels or spores." When necessary, APHIS could use approved testing procedures to verify the accuracy of such a declaration.

Proposed paragraph (d) contains treatment requirements for regulated articles other than those listed in proposed paragraph (a)(2) when those articles are being imported from regulated areas into the United States. In accordance with the treatments prescribed in our domestic regulations, this paragraph would contain requirements for conveyances and mechanized harvesting equipment; grain storage and handling equipment; and seed conditioning equipment.

Proposed paragraph (d)(1) lists regulated articles that must be cleaned prior to entry into the United States by removing any soil and plant debris that may be present. The cleaning requirement would apply to the following articles: All conveyances and mechanized harvesting equipment used for storing and handling wheat, durum wheat, or triticale that tested positive for Karnal bunt based on bunted kernels; all

grain storage and handling equipment used to store or handle seed that has tested spore-positive or grain that has tested bunted-kernel positive and that will be used again to store or handle seed in the future; and all seed-conditioning equipment used to store or handle seed that has tested spore positive and that will be used again to store or handle seed in the future.

Proposed paragraph (d)(2) states that the conveyances and mechanized harvesting equipment referred to in paragraph (d)(1)(i) and the grain storage and handling equipment referred to in paragraph (d)(1)(ii) would require disinfection in addition to cleaning prior to importation if an inspector or a plant protection official of the country of origin determines that disinfection is necessary to prevent the spread of Karnal bunt. Because cleaning alone may suffice to remove bunted kernels from such articles or equipment, disinfection may not be required in all cases. Additionally, proposed paragraph (d)(2) states that disinfection is required for all seed conditioning equipment covered under paragraph (d)(1)(iii) prior to entry into the United States. Our requirements for seed conditioning equipment would be more stringent than those for the other articles listed in paragraph (d)(1) because disinfection is thought to be necessary to deactivate spores.

Proposed paragraph (d)(3) specifies three possible treatment options—application of a sodium hypochlorite and water solution, steam, or a hot water and detergent solution—that may be employed on articles required to undergo disinfection under paragraph (d)(2), unless a particular treatment is designated by an inspector or by a plant protection official of the country of origin. The bleach treatment requires wetting all surfaces to the point of runoff with a 1.5 percent sodium hypochlorite solution and letting stand for 15 minutes, then thoroughly washing down all surfaces after 15 minutes to minimize corrosion. The 1.5 percent sodium hypochlorite solution is equivalent in strength to that approved for domestic use by the Environmental Protection Agency. The steam and hot water and detergent treatments are identical to those in our domestic regulations. Steam must be applied to all surfaces until the point of runoff, and so that a critical temperature of 170 °F is reached at the point of contact. The hot water and detergent solution must be applied under pressure of at least 30 pounds per square inch at a minimum temperature of 170 °F.

By making our import regulations consistent with our domestic regulations, this proposed rule would bring our import regulations into compliance with international agreements to which the United States is a party while continuing to prevent the introduction of Karnal bunt into the United States.

Executive Order 12866 and Regulatory Flexibility Act

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

For this rule, we have prepared an economic analysis. The economic analysis provides a cost-benefit analysis as required by Executive Order 12866, as well as an analysis of the potential economic effects of this proposed rule on small entities, as required under 5 U.S.C. 603. The economic analysis is summarized below. Copies of the full analysis are available by writing or calling the person listed under **FOR FURTHER INFORMATION CONTACT**.

This proposed rule would amend the import regulations pertaining to Karnal bunt to make them substantively equivalent to the domestic Karnal bunt regulations and would help the United States meet its obligations under international agreements to which it is a party.

The economic analysis investigates the potential economic effects in the United States that may result from the removal of Karnal bunt-related restrictions on wheat imports. It is anticipated that any additional wheat imports that do occur as a result of this rule would be from Mexico. Other countries affected with Karnal bunt which may be eligible to import wheat to the United States under the proposed regulations may still be precluded for a number of reasons, including the presence of other wheat pests.

Mexican wheat exports since 1995 have been almost exclusively durum wheat. It is therefore expected that additional imports from any new Karnal-bunt-free areas in Mexico would also be durum wheat. For the period 1998–2001, the annual average durum production in the United States was 3 million metric tons (MT). About 13 percent of the U.S. durum wheat supply is composed of imports, approximately 2 percent of which was from the Karnal-bunt-free area of the Mexicali Valley in Mexico.

Two scenarios for U.S. wheat importation from Mexico are considered, assuming no displacement of other imports. The first scenario analyzes the impact of additional Mexican durum wheat exports to the United States of an amount equal to 1 percent of total wheat production in newly recognized free areas (about 7,000 MT). This reflects the fact that about 1 percent of the wheat production in the Mexicali Valley, which is already eligible to be shipped to the United States, is indeed exported to the United States. The second scenario analyzes the impact of additional Mexican durum wheat exports to the United States of an amount equal to 12 percent of total wheat production in the five Mexican States (about 87,000 MT). For the period 1998–2001, Mexican wheat exports to the world represented on average approximately 11.6 percent of total Mexican wheat production annually.

There are reasons to believe that new imports would be limited and that the first scenario more closely approximates the amount of Mexican wheat that may eventually enter the U.S. market. Under this scenario, the new imports are estimated to be an addition of 7,280 MT, which approximates the 1 percent share of Mexican wheat production from the Mexicali Valley that was exported to the United States between 1998 and 2001.[1] Despite the fact that the U.S. market has been open to imports of wheat from one of Mexico's largest producing areas (the Mexicali Valley) since 1998, Mexican wheat exports directed to the United States between 1998 and 2001 has averaged less than 5 percent of all Mexican wheat exports.

Another reason to believe that the quantity of new wheat imports from Mexico that may occur as a result of the proposed changes would be small is due to the fact that Mexico's population consumes far more wheat than the country produces, as evident in its status as a net importer. Given that the five States that would likely qualify as Karnal-bunt-free under the proposed regulations are located closer to Mexican population centers in the central and southern part of Mexico, it is anticipated that most shipments of wheat from these areas would remain in the local vicinity rather than shipped to the United States.

The entry of additional durum wheat from Mexico into U.S. markets would induce producer losses for U.S. producers of durum wheat and consumer gains. Under the most likely scenario of new wheat imports of 7,280

[1] The composition of wheat production and exports is known for Mexico as a whole, but not for individual Mexican States. For the purpose of this analysis, it is assumed that the potential new exports from the five States follow the pattern of exports and production from the KB-free areas of the Mexicali Valley.

MT, and assuming a demand elasticity of −0.35 and a supply elasticity of 0.34, prices of durum wheat could potentially decrease by about 0.3 percent. Producers would potentially lose about $1.11 million while consumers potentially gain $1.12 million. The net benefit in this scenario would be about $10,000. Under the less likely scenario of a new import quantity of 87,000 MT, durum wheat prices could decline by 4 percent. Consumer gains of $13.54 million would just offset producer losses of $13.35 million, resulting in a net benefit of $186,000. In both cases, consumer benefits would be slightly higher than producer losses, which would lead to a net positive impact on the overall economy. To put the producer surplus reductions in perspective, the average annual value of durum wheat production in the United States for 1998–2001 was $326.3 million. Thus, while the economic effects of increased wheat imports from Mexico would be on domestic producers of durum wheat, those effects are expected to be small relative to the value of the industry. It should also be noted that the actual loss to domestic producers is likely to be smaller than the magnitudes estimated, as the analysis does not consider the displacement of other imports.

The Small Business Administration (SBA) has established guidelines for determining which establishments are to be considered small under the Regulatory Flexibility Act. According to the standard established by the SBA for agricultural producers, a producer with less than $0.75 million in annual sales is considered a small entity. Of the 241,334 U.S. wheat farms in 1997, at least 92 percent were considered small.[2] The number of durum wheat producers is not known. It is likely that durum producers affected by the proposed changes would be considered small entities. However, according to the economic analysis, increased Mexican wheat imports from Mexico would likely have a small adverse impact on domestic producers.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 02–057–1. Please send a copy of your comments to: (1) Docket No. 02–057–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

This proposed rule would require that certain regulated articles imported from Karnal bunt-free areas within regions regulated for Karnal bunt be accompanied by a phytosanitary certificate that would have to be completed by an official of the national plant protection organization of the region of origin. The phytosanitary certificate would have to include the following additional declaration: "These articles originated in areas where Karnal bunt is not known to occur, as attested to either by survey results or by testing for bunted kernels or spores."

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

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

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

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

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.084 hours per response.

Respondents: Foreign national plant protection organization officials.

Estimated annual number of respondents: 500.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 500.

Estimated total annual burden on respondents: 42 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

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

Government Paperwork Elimination Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this proposed rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects in 7 CFR Part 319

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

Accordingly, we propose to amend 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 would continue to read as follows:

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

2. Subpart—Wheat Diseases (§§ 319.59 through 319.59–2) would be revised to read as follows:

[2] 1997 Census of Agriculture, USDA-NASS. Breakdown shows 2.4 percent of wheat farms with sales in excess of $1 million, and 5.2 percent with sales between $0.5 and $0.999 million.

Subpart—Wheat Diseases

§ 319.59–1 Definitions.

Administrator. The Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture, or any employee of the United States Department of Agriculture delegated to act in his or her stead.

Animal and Plant Health Inspection Service (APHIS). The Animal and Plant Health Inspection Service of the U.S. Department of Agriculture.

Foreign strains of flag smut. Plant diseases caused by foreign strains of highly infective fungi, *Urocystis agropyri* (Preuss) Schroet., which attack wheat and substantially reduce its yield, and which are new to, or not widely prevalent or distributed within and throughout, the United States.

From. An article is considered to be "from" any country or locality in which it was grown.

Grain. Wheat (*Triticum aestivum*), durum wheat (*Triticum durum*), and triticale (*Triticum aestivum* X *Secale cereale*) used for consumption or processing.

Hay. Host crops cut and dried for feeding to livestock. Hay cut after reaching the dough stage may contain mature kernels of the host crop.

Host crops. Plants or plant parts, including grain, seed, or hay, of wheat (*Triticum aestivum*), durum wheat (*Triticum durum*), and triticale (*Triticum aestivum* X *Secale cereale*).

Inspector. Any individual authorized by the Administrator to enforce this subpart.

Karnal bunt. A plant disease caused by the fungus Tilletia indica (Mitra) Mundkur.

Plant. Any plant (including any plant part) for or capable of propagation, including a tree, a tissue culture, a plantlet culture, pollen, a shrub, a vine, a cutting, a graft, a scion, a bud, a bulb, a root, and a seed.

Seed. Wheat (*Triticum aestivum*), durum wheat (*Triticum durum*), and triticale (*Triticum aestivum* X *Secale cereale*) used for propagation.

Spp. (species). All species, clones, cultivars, strains, varieties, and hybrids, of a genus.

Straw. The vegetative material left after the harvest of host crops. Straw is generally used as animal feed or bedding, as mulch, or for erosion control.

United States. The States, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Virgin Islands of the United States, or any other territory or possession of the United States.

§ 319.59–2 General import prohibitions; exceptions.

(a) Except as provided in paragraph (b) of this section and in § 319.59–4(a)(2), importation of *Triticum* spp. plants into the United States from any country except Canada is prohibited. This prohibition does not include seed.

(b) *Triticum spp.* plants, articles prohibited because of flag smut in § 319.59–3(a), and articles regulated for Karnal bunt in § 319.59–4(a) may be imported by the U.S. Department of Agriculture for experimental or scientific purposes if:

(1) Imported at the Plant Germplasm Quarantine Center, Building 320, Beltsville Agricultural Center East, Beltsville, MD 20705, or at any port of entry with an asterisk listed in § 319.37–14(b) of this part;

(2) Imported pursuant to a departmental permit issued for such article and kept on file at the Plant Germplasm Quarantine Center;

(3) Imported under conditions of treatment, processing, growing, shipment, or disposal specified on the departmental permit and found by the Administrator to be adequate to prevent the introduction into the United States of tree, plant, or fruit diseases (including foreign strains of flag smut), injurious insects, and other plant pests, and

(4) Imported with a departmental tag or label securely attached to the outside of the container containing the article or securely attached to the article itself if not in a container, and with such tag or label bearing a departmental permit number corresponding to the number of the departmental permit issued for such article.

§ 319.59–3 Flag smut.

The articles listed in paragraph (a) of this section from the countries and localities listed in paragraph (b) of this section are prohibited articles because of foreign strains of flag smut and are prohibited from being imported or offered for entry into the United States except as provided in § 319.59–2(b).

(a)(1) The following articles of *Triticum* spp. (wheat) or of *Aegilops* spp. (barb goatgrass, goatgrass): Seeds, plants, and straw (other than straw, with or without heads, which has been processed or manufactured for use indoors, such as for decorative purposes or for use in toys); chaff; and products of the milling process (*i.e.*, bran, shorts, thistle sharps, and pollards) other than flour.

(2) Seeds of *melilotus indica* (annual yellow sweetclover) and seeds of any other field crops that have been separated from wheat during the screening process.

(b) Afghanistan, Algeria, Armenia, Australia, Azerbaijan, Bangladesh, Belarus, Bulgaria, Chile, China, Cyprus, Egypt, Estonia, Falkland Islands, Georgia, Greece, Guatemala, Hungary, India, Iran, Iraq, Israel, Italy, Japan, Kazakstan, Kyrgyzstan, Latvia, Libya, Lithuania, Moldova, Morocco, Nepal, North Korea, Oman, Pakistan, Portugal, Romania, Russia, Spain, Tajikistan, Tanzania, Tunisia, Turkey, Turkmenistan, South Africa, South Korea, Ukraine, Uzbekistan, and Venezuela.

§ 319.59–4 Karnal bunt.

(a) *Regulated articles.* The following are regulated articles for Karnal bunt:

(1) Conveyances, including trucks, railroad cars, and other containers used to move host crops from a region listed in paragraph (b) of this section that test positive for Karnal bunt through the presence of bunted kernels;

(2) Plants or plant parts, including grain, seed, straw, or hay, of all varieties of wheat (*Triticum aestivum*), durum wheat (*Triticum durum*), and triticale (*Triticum aestivum* X *Secale cereale*) from a region listed in paragraph (b) of this section, except for straw/stalks/seed heads for decorative purposes that have been processed or manufactured prior to movement and are intended for use indoors;

(3) *Tilletia indica* (Mitra) Mundkur;

(4) Mechanized harvesting equipment that has been used in the production of wheat, durum wheat, or triticale that has tested positive for Karnal bunt through the presence of bunted kernels; and

(5) Seed conditioning equipment and storage/handling equipment that has been used in the production of wheat, durum wheat, or triticale seed found to contain the spores of *Tilletia indica.*

(b)(1) Karnal bunt is known to occur in the following regions: Afghanistan, India, Iraq, Mexico, and Pakistan.

(2) The Administrator may recognize an area within a region listed in paragraph (b)(1) of this section as an area free of Karnal bunt whenever he or she determines that the area meets the requirements of the International Standard for Phytosanitary Measures (ISPM) No. 4, "Requirements for the establishment of pest free areas." The international standard was established

by the International Plant Protection Convention of the United Nations' Food and Agriculture Organization and is incorporated by reference in § 300.5 of this chapter. APHIS will publish a notice in the **Federal Register** and maintain on an APHIS Web site a list of the specific areas that are approved as areas in which Karnal bunt is not known to occur in order to provide the public with current, valid information. Areas listed as being free from Karnal bunt are subject to audit by APHIS to verify that they continue to merit such listing.

(c) *Handling, inspection and phytosanitary certificates.* Any articles described in paragraph (a)(2) of this section that are from a region listed in paragraph (b)(1) of this section may be imported into the United States subject to the following conditions:

(1) The articles must be from an area that has been recognized, in accordance with paragraph (b) of this section, to be an area free of Karnal bunt, or the articles have been tested and found to be free of Karnal bunt;

(2) The articles have not been commingled prior to arrival at a U.S. port of entry with articles from areas where Karnal bunt is known to occur;

(3) The articles offered for entry must be made available to an inspector for examination and remain at the port until released, or authorized further movement pending release, by an inspector; and

(4) The articles must be accompanied by a phytosanitary certificate issued by the national plant protection organization of the region of origin that includes the following additional declaration: "These articles originated in an area where Karnal bunt is not known to occur, as attested to either by survey results or by testing for bunted kernels or spores."

(d) *Treatments.* (1) Prior to entry into the United States, the following articles must be cleaned by removing any soil and plant debris that may be present.

(i) All conveyances and mechanized harvesting equipment used for storing and handling wheat, durum wheat, or triticale that tested positive for Karnal bunt based on bunted kernels.

(ii) All grain storage and handling equipment used to store or handle seed that has tested spore positive or grain that has tested bunted-kernel positive.

(iii) All seed-conditioning equipment used to store or handle seed that has tested spore-positive.

(2) Articles listed in paragraphs (d)(1)(i) and (d)(1)(ii) of this section will require disinfection in addition to cleaning prior to entry into the United States if an inspector or an official of the plant protection organization of the country of origin determines that disinfection is necessary to prevent the spread of Karnal bunt. Disinfection is required for all seed conditioning equipment covered under paragraph (d)(1)(iii) prior to entry into the United States.

(3) Items that require disinfection prior to entry into the United States must be disinfected by one of the methods specified in paragraphs (d)(3)(i) through (d)(3)(iii) of this section, unless a particular treatment is designated by an inspector or by an official of the plant protection organization of the country of origin:

(i) Wetting all surfaces to the point of runoff with a 1.5 percent sodium hypochlorite solution and letting stand for 15 minutes, then thoroughly washing down all surfaces after 15 minutes to minimize corrosion;

(ii) Applying steam to all surfaces until the point of runoff, and so that a temperature of 170 °F is reached at the point of contact; or

(iii) Cleaning with a solution of hot water and detergent, applied under pressure of at least 30 pounds per square inch, at a minimum temperature of 170 °F.

Done in Washington, DC, this 27th day of February 2004.

Bill Hawks,

Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 04–4723 Filed 3–2–04; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 314

[Docket No. 2004N–0087]

Generic Drug Issues; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Request for comments.

SUMMARY: The Food and Drug Administration (FDA) is requesting public comments on whether additional regulatory actions should be taken concerning the approval of abbreviated new drug applications (ANDAs). The agency is asking for comments because of recent statutory changes. The agency is not proposing any regulatory changes in this notice. The purpose of this notice is to identify a number of issues that the agency would like interested persons to address and to give interested persons an opportunity to submit comments on possible actions.

DATES: Submit written or electronic comments by May 3, 2004.

ADDRESSES: Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 200857. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.*

FOR FURTHER INFORMATION CONTACT: Elaine Tseng, Office of Regulatory Policy (HFD–7), Food and Drug Administration, 5515 Security Lane, Rockville, MD 20852, 301–594–2041.

SUPPLEMENTARY INFORMATION:

I. Background

On December 8, 2003, President Bush signed into law the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Public Law 108–173). Title XI of MMA made changes to section 505(a), (b), and (j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 505(a), (b), and (j). In particular, Title XI of MMA made changes to the approval procedures for ANDAs.

FDA is considering what additional regulatory steps, if any, are warranted in light of the statutory changes. The specific portions of the statute for which FDA seeks comment are Title XI of MMA's provisions concerning the 30-month stay of effectiveness period, 180-day exclusivity, and bioavailability and bioequivalence. FDA seeks comments identifying issues contained in the relevant portions of Title XI of MMA, along with any suggestions for how to resolve those issues. FDA will consider these comments in assessing what regulatory actions might be appropriate.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written of electronic comment regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets at the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 27, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–4775 Filed 3–1–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

[TX–051–FOR]

Texas Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; extension of public comment period on proposed amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are announcing an extension to the public comment period for a previously proposed amendment to the Texas regulatory program (Texas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Texas proposed revisions to and additions of regulations regarding coal combustion by-products and coal combustion products. Texas intends to revise its program to clarify how the disposal of coal combustion by-products and the use of coal combustion products are regulated at coal mine sites in Texas. We announced receipt of the proposed amendment in the February 3, 2004, **Federal Register** (69 FR 5102). The comment period was originally scheduled to close on March 4, 2004, and is now being extended to March 19, 2004.

This document gives the times and locations that the Texas program and proposed amendment to that program are available for your inspection and provides an extended comment period during which you may submit written comments on the amendment.

DATES: We will accept written comments until 4 p.m., c.s.t., March 19, 2004.

ADDRESSES: You should e-mail, mail, or hand deliver written comments to Michael C. Wolfrom, Director, Tulsa Field Office at the address listed below.

You may review copies of the Texas program, the amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting our Tulsa Field Office.

Michael C. Wolfrom, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135–6547. Telephone: (918) 581–6430; Internet address: *mwolfrom@osmre.gov.*

Surface Mining and Reclamation Division, Railroad Commission of Texas, 1701 North Congress Avenue, Capitol Station, P.O. Box 12967, Austin, Texas 78711–2967. Telephone (512) 463–6900.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Director, Tulsa Field Office. Telephone: (918) 581–6430. Internet address: *mwolfrom@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Texas Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act . . .; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Texas program effective February 16, 1980. You can find background information on the Texas program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Texas program in the February 27, 1980, **Federal Register** (45 FR 12998). You can also find later actions concerning the Texas program and program amendments at 30 CFR 943.10, 943.15 and 943.16.

II. Description of the Proposed Amendment

By letter dated December 9, 2003 (Administrative Record No. TX–656), Texas sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Texas sent the amendment at its own initiative.

We announced receipt of the proposed amendment in the February 3, 2004, **Federal Register** (69 FR 5102) and invited public comment on its adequacy. The public comment period was scheduled to end on March 4, 2004. In response to a request from one party, we are extending the public comment period for the proposed rule to March 19, 2004.

III. Public Comment Procedures

We are extending the comment period on the proposed Texas program amendment to provide the public an opportunity to consider the adequacy of the proposed amendment. Under the provisions of 30 CFR 732.17(h), we are seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Texas program.

Written Comments

Send your written or electronic comments to us at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (*see* DATES). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Tulsa Field Office may not be logged in.

Electronic Comments

Please submit Internet comments as an ASCII or Word file avoiding the use of special characters and any form of encryption. Please also include "Attn: TX–051–FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Tulsa Field Office at (918) 581–6430.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

IV. Procedural Determinations

Executive Order 12630—Takings

The revisions made at the initiative of the State do not have Federal

counterparts and have been reviewed and a determination made that they do not have takings implications. This determination is based on the fact that the provisions have no substantive effect on the regulated industry.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. This determination is based on the fact that the Texas program does not regulate coal exploration and surface coal mining and reclamation operations on Indian lands. Therefore, the Texas program has no effect on federally-recognized Indian tribes.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that the provisions in this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This determination is based upon the fact that the provisions are not expected to have a substantive effect on the regulated industry.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State provisions are not expected to have a substantive effect on the regulated industry.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State provisions are not expected to have a substantive effect on the regulated industry.

List of Subjects in 30 CFR Part 943

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 20, 2004.

Ervin J. Barchenger,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 04–4636 Filed 3–2–04; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–04–024]

RIN 1625–AA08

Special Local Regulations for Marine Events; Norfolk Harbor, Elizabeth River, Norfolk and Portsmouth, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend the special local regulations established for marine events held annually in the Norfolk Harbor, Elizabeth River, between Norfolk and Portsmouth, Virginia by changing the date on which the regulations are in effect for the marine event "Cock Island Race". This action is intended to restrict vessel traffic in portions of the Elizabeth River during the start of the Cock Island Race. This action is necessary to provide for the safety of life on navigable waters during the event.

DATES: Comments and related material must reach the Coast Guard on or before May 3, 2004.

ADDRESSES: You may mail comments and related material to Commander (oax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, hand-deliver them to Room 119 at the same address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays, or fax them to (757) 398–6203. The Auxiliary and Recreational Boating Safety Branch, Fifth Coast Guard District, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the above address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: S. L. Phillips, Project Manager, Auxiliary and Recreational Boating Safety Branch, at (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD05–04–024), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the address listed under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The regulations at 33 CFR 100.501 are effective annually for the duration of each marine event listed in Table 1 of Section 100.501. Table 1 lists the effective date for the Cock Island Race as the third Saturday in July. For the past several years the event has been held on the third Saturday in June. The sponsor intends to hold this event annually on the third Saturday in June.

Discussion of Proposed Rule

The Coast Guard proposes to amend the regulations at 33 CFR 100.501 by changing the date on which the regulations are in effect for the Cock Island Race from annually on the third Saturday in July to annually on the third Saturday in June. This proposed change is needed to control vessel traffic during the event to enhance the safety of participants, spectators and transiting vessels.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3 (f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6 (a) (3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. The effect of this proposed action merely changes the date on which the existing regulations would be in effect and would not impose any new restrictions on vessel traffic.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605 (b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the Elizabeth River during the event.

This proposed rule would not have a significant economic impact on a substantial number of small entities for the following reasons. This proposed rule would merely change the date on which the existing regulations would be in effect and would not impose any new restrictions on vessel traffic.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this proposed rule would economically affect it.

Assistance for Small Entities

Under section 213 (a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the address listed under **ADDRESSES**.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under

Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction, from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine parade permit are specifically excluded from further analysis and documentation under that section.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; Department of Homeland Security Delegation No. 0170.1.

2. Amend § 100.501 by revising Table 1 to read as follows:

§ 100.501 Norfolk Harbor, Elizabeth River, Norfolk and Portsmouth, VA.

* * * * *

Table 1 of § 100.501

Harborfest
Sponsor: Norfolk Harborfest, Inc.
Date: First Friday, Saturday, and Sunday in June
Great American Picnic
Sponsor: Festevents, Inc.
Date: July 4
Cock Island Race
Sponsor: Ports Events, Inc.
Date: Third Saturday in June
Rendezvous at Zero Mile Marker
Sponsor: Ports Events, Inc.
Date: Third Saturday in August
U.S. Navy Fleet Week Celebration
Sponsor: U.S. Navy
Date: Second Friday in October
Holidays in the City
Sponsor: Festevents, Inc.
Date: Fourth Saturday in November
New Years Eve Fireworks Display
Sponsor: Festevents, Inc.
Date: December 31

Dated: February 9, 2004.

Sally Brice-O'Hara,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 04–4647 Filed 3–2–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Subparts 1, 2, 10 and 11

[Docket No.: 2002–C–005]

RIN 0651–AB55

Changes to Representation of Others Before The United States Patent and Trademark Office

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of extension of comment period.

SUMMARY: The United States Patent and Trademark Office (Office or USPTO) is extending the public comment period on proposed rules 1.4(d)(2), 1.8(a)(2)(iii)(A), 1.21(a)(6) through (a)(9), 1.21(a)(11), 1.21(a)(12), 2.11, 2.17, 2.24, 2.33, 2.61, 11.2(b)(4) through 11.2(b)(7), 11.3(b) and (c), 11.5(b), 11.8(d), 11.9(c) (last two sentences), 11.9(d), 11.10(c) (second sentence), 11.10(d) (second sentence), 11.10(e) (second sentence), 11.11(b) through (f), 11.12 through 11.62, and 11.100 through 11.900, as well as the definitions in proposed rule 11.1 of terms that are used only in rules in Subparts B, C and D, USPTO Rules of Professional Conduct, published in the **Federal Register** on December 12, 2003 (68 FR 69442). This extension applies to all portions of Subparts C and D of the proposed rules, and those portions of Subparts A and B not relating to enrollment of new patent practitioners. This extension will allow additional time following publication on December 12, 2003, for public comment regarding the Office's proposals for annual fees, mandatory continuing education, and processes for handling investigations and disciplinary proceedings.

DATES: You must submit your comments by Friday, June 11, 2004. The Office may not necessarily consider or include in the Administrative Record for the proposed rule comments that the Office receives after the close of this extended comment period or comments delivered to an address other than those listed below.

ADDRESSES: Comments should be sent by electronic mail over the Internet addressed to: *ethicsrules.comments@uspto.gov*. Comments may also be submitted by mail addressed to: Mail Stop OED-Ethics Rules, United States Patent and Trademark Office, PO Box 1450, Alexandria, Virginia 22313–1450 or by facsimile to (703) 306–4134, marked to the attention of Harry I. Moatz. Although comments may be submitted by mail or facsimile, the Office prefers

to receive comments via the Internet. If comments are submitted by mail, the Office would prefer that the comments be submitted on a DOS formatted 3½-inch disk accompanied by a paper copy. The comments will be available for public inspection at the Office of Enrollment and Discipline, located in Room 1103, Crystal Plaza 6, 2221 South Clark Street, Arlington, Virginia, and will be available through anonymous file transfer protocol (ftp) via the Internet (address: *http://www.uspto.gov).* Since comments will be made available for public inspection, information that is not desired to be made public should not be included in the comments.

FOR FURTHER INFORMATION CONTACT: Harry I. Moatz ((703) 305–9145), Director of Enrollment and Discipline (OED Director), directly by phone, or by facsimile to (703) 305–4136, marked to the attention of Mr. Moatz, or by mail addressed to: Mail Stop OED–Ethics Rules, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, Virginia 22313–1450.

SUPPLEMENTARY INFORMATION: The USPTO published the proposed rules on December 12, 2003 (68 FR 69442) and provided a 60-day comment period that ended on February 10, 2004. An earlier notice extended the time period to comment on the proposed rules with respect to Subpart D by sixty days to April 12, 2004. 69 FR 4269 (Jan. 29, 2004). A number of parties have suggested that time be extended to submit comments. More than two weeks have now passed since the original period for comments. Responding to suggestions by some parties who have submitted comments, we are expanding the scope of that extension of time to encompass not only Subpart D, but also proposed rules 1.4(d)(2), 1.8(a)(2)(iii)(A), 1.21(a)(6) through (a)(9), 1.21(a)(11), 1.21(a)(12), 2.11, 2.17, 2.24, 2.33, 2.61, 11.2(b)(4) through 11.2(b)(7), 11.3(b) and (c), 11.5(b), 11.8(d), 11.9(c) (last two sentences), 11.9(d), 11.10(c) (second sentence), 11.10(d) (second sentence), 11.10(e) (second sentence), 11.11(b) through (f), 11.12 through 11.62, and 11.100 through 11.900, as well as certain definitions in proposed rule 11.1 of terms that are used only in rules in Subparts B, C and D. Inasmuch as a response to the requested extension of time has been delayed, an additional 120 days will be given to file comments. Comments will be received by the Office on the specified proposals until June 11, 2004, to allow the public additional time to provide us with comments. The extension provides a total of nearly six months to submit comments on the specified proposed rules.

The proposed rules are a comprehensive effort by the Office to address an annual fee, mandatory continuing education, and "improve the Office's processes for handling applications for registration, petitions, investigations, and disciplinary proceedings * * *" 68 Fed. Reg. at 69442. The Office requested comments on the proposed rules and processes. In response, the Office received a reply by one set of stakeholders that the time be extended to reply to the proposed rules in Subpart D. The Office has now also received requests from individuals, law firms, professional organizations, and others requesting an extension of time to consider and respond to the proposed rules. The requests indicate that they regard proposals in Subparts A, B and C to be sufficiently related to the Rules of Professional Conduct found in Subpart D such that additional time is needed to properly and adequately address the proposal.

In response to those requests, we are extending the time for response until June 11, 2004, with the exception of those rules necessary for administration of the registration examination for patent practitioners, including those definitions that are used in those rules. Rules specific to the enrollment process are severable from the remaining proposals. The Office has received extensive comments on them and has decided to proceed to final rule making based upon those comments in order not to delay the enrollment of individuals as newly qualified registered patent practitioners. No parties should be prejudiced by the additional time accorded for comment on the remaining proposed rules.

The extended comment period provides the public an opportunity to address proposed rules 1.4(d)(2), 1.8(a)(2)(iii)(A), 1.21(a)(6) through (a)(9), 1.21(a)(11), 1.21(a)(12), 2.11, 2.17, 2.24, 2.33, 2.61, 11.2(b)(4) through 11.2(b)(7), 11.3(b) and (c), 11.5(b), 11.8(d), 11.9(c) (last two sentences), 11.9(d), 11.10(c) (second sentence), 11.10(d) (second sentence), 11.10(e) (second sentence), 11.11(b) through (f), 11.12 through 11.62, and 11.100 through 11.900, as well as the definition of terms in proposed rule 11.1 that are used only in rules in Subparts B, C and D. Time is not being extended to comment upon the provisions in proposed rules 1.1, 1.21(a)(1) through (a)(5), 1.21(a)(10), 1.31, 1.33(c), 1.455(a), 11.2(a) through 11.2(b)(3), 11.2(c) through 11.2(e), 11.3(a) and (d), 11.4 through 11.5(a), 11.6 through 11.8(c), 11.9(a) through 11.9(c) (first sentence), 11.10(a) through 11.10(c) (first sentence), 11.10(d) (first sentence), 11.10(e) (first and third sentences), and 11.11(a), as well as the definitions in proposed rule 11.1 of terms used in those rules.

Dated: February 26, 2004.

Jon W. Dudas,

Acting Under Secretary of Commerce for Intellectual Property and Acting Director of the United States Patent and Trademark Office.

[FR Doc. 04–4652 Filed 3–2–04; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[FRL–7629–7; LA–66–1–7598b]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Louisiana; Plan for Controlling Emissions From Existing Commercial and Industrial Solid Waste Incinerators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing a direct final approval of the sections 111(d)/129 State Plan submitted by the Louisiana Department of Environmental Quality (LDEQ) on February 18, 2003. The State Plan establishes emission limits, monitoring, operating, and recordkeeping requirements for commercial and industrial solid waste incinerator (CISWI) units for which construction commenced on or before November 30, 1999.

DATES: Written comments must be received by April 2, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, by facsimile, or through hand delivery/courier by following the detailed instructions provided under the "Public Participation" heading in the Supplemental Information section of direct final rule located in the "Rules and Regulations" section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth W. Boyce, Air Planning Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2833, at (214) 665–7259 or *boyce.kenneth@epa.gov.*

SUPPLEMENTARY INFORMATION: In the "Rules and Regulations" section of this **Federal Register**, EPA is approving

Louisiana's Sections 111(d)/129 State Plan as a direct final rule without prior proposal because EPA views this as a noncontroversial submittal and anticipates no adverse comment. The EPA has explained its reasons for this approval in the preamble to the direct final rule. If EPA receives no relevant adverse comment, EPA will not take further action on this proposed rule. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule located in the "Rules and Regulations" section of this **Federal Register**.

Dated: February 13, 2004.

Richard E. Greene,

Regional Administrator, Region 6.

[FR Doc. 04–4623 Filed 3–2–04; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7629–3]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent for partial deletion of the West Virginia Ordnance Works Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region III announces its intent to delete five areas of the West Virginia Ordnance Works (WVOW) National Priorities List (NPL) site from the NPL and requests public comment on this action. The areas are the Operable Unit 10 (OU–10) South Acids Area, Cooling Tower Area, and Toluene Storage Areas; the Expanded Site Investigation 1 (ESI–1) Magazine Area; the ESI–4 Red Water Outfall Sewer; the ESI–6 Motorpool/Maintenance Area; and the ESI–7 Former Sewage Treatment Plant. The NPL constitutes Appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).

This proposal for partial deletion pertains only to OU–10, ESI–1, ESI–4, ESI–6, and ESI–7. The U.S. Army Corps of Engineers (USACE), together with EPA, issued a no further action Record of Decision (ROD) for OU–10. USACE and EPA issued no further action Decision Documents for ESIs–1, –4, –6, and –7, which were concurred upon by the West Virginia Department of Environmental Protection (WVDEP). EPA bases its proposal to delete these five areas at WVOW on the determination by EPA, USACE, and WVDEP that all appropriate actions under CERCLA have been implemented to protect human health and the environment at OU–10 and ESIs–1, –4, –6, and –7.

This partial deletion pertains only to these areas of the WVOW site and does not include any other ESI or any OU. All other ESIs and OUs not previously deleted will remain on the NPL, and investigation and response activities will continue at those ESIs and OUs.

DATES: EPA will accept comments on this proposal until April 2, 2004.

ADDRESSES: Comments may be submitted to the following: Mr. Jack Potosnak, PE, Remedial Project Manager, U.S. EPA, Region III (3HS13), 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029, Telephone: (215) 814–3362.

INFORMATION REPOSITORIES: Comprehensive information on the WVOW site, information specific to this proposed partial deletion, the Administrative Record and the Deletion Docket for this partial deletion are available for review at the following WVOW site document/information repositories:

Mason County Public Library, 508 Viand Street, Point Pleasant, WV 25550, (304) 675–0894, Hours of Operation: Monday through Thursday, 10 a.m.–8 p.m. and Friday through Saturday, 10 a.m.–5 p.m.

U.S. EPA Region III Library, 1650 Arch Street, Philadelphia, PA 19103–2029, (215) 814–5254, Hours of Operation: Monday through Friday, 8 a.m.–5 p.m.

U.S. Army Corps of Engineers, Huntington District, 502 8th Street, Huntington, WV 25701, (800) 822–8413 or (304) 399–5388, Hours of Operation: Monday through Friday, 8 a.m.–4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Jack Potosnak, PE, Remedial Project Manager, U.S. EPA Region III (3HS13), 1650 Arch Street, Philadelphia, PA 19103–2029, (215) 814–3362.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The United States Environmental Protection Agency (EPA) Region III announces its intent to delete a portion of the West Virginia Ordnance Works (WVOW) site located in Mason County, West Virginia, from the National Priorities List (NPL), which constitutes Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, and requests comments on this proposal. This proposal for partial deletion pertains to OU–10, ESI–1, ESI–4, ESI–6, and ESI–7.

The WVOW site is located on the east bank of the Ohio River, approximately six miles north of Point Pleasant, Mason County, West Virginia. Contamination of the WVOW site originated from the operation of a trinitrotoluene (TNT) manufacturing facility during World War II. Nitroaromatic (explosive) compounds are the primary contaminants of concern at the WVOW site.

The WVOW site, as added to the NPL in 1983, encompassed an entire area of approximately 8,323 acres. In 1994, after 11 years of investigation and other activities at the WVOW site that helped to determine where contamination at the site existed, EPA, USACE, and WVDEP worked together to clarify the boundary of the WVOW site by developing a site boundary map delineating areas of known or suspected contamination. The WVOW site boundary as delineated in the 1994 mapping encompassed approximately 2700 acres. This clarification of the site boundary was undertaken in accordance with EPA's interpretation of "facility," which was defined by Congress in section 101(9)(B) of CERCLA, 42 U.S.C. 9601(9)(B), as "any site or area where a hazardous substance has been deposited, stored, disposed of, or placed or otherwise come to be located * * *." EPA has routinely explained how site boundaries are determined when notifying the public regarding additions to the NPL. See, *e.g.*, National Priorities List for Uncontrolled Hazardous Waste

Sites, 67 FR 56757, 56759 (Sept. 5, 2002).

A previous partial deletion of the WVOW site from the NPL was completed on December 13, 2002 by publication of a Notice of Partial Deletion (NOPD) in the **Federal Register,** 67 FR 76683 (Dec. 13, 2002). No public comments were received in response to the Notice of Intent for Partial Deletion, which was published in the **Federal Register** approximately seven weeks before the NOPD, 67 FR 64846 (Oct. 22, 2002). The partial deletion, which removed approximately 512 acres from the WVOW site, was comprised of the OU–11 Sellite Plant, the OU–12 North and South Powerhouses and Vicinity, the ENV–6 Wetlands Mitigation Area, the ESI–3 Tract 21, the ESI–5 Refueling Depot, and the ESI–9 Main and Outgoing Classification Yards.

The current WVOW site boundary, after the 2002 partial deletion, encompasses approximately 2,188 acres. All areas proposed for deletion from the NPL are located within the current boundary for the WVOW site. The Clifton F. McClintic Wildlife Management Area (MWMA) occupies 2,788 acres of the 1983 site, and most of the MWMA is also within the current NPL boundary.

OU–10: South Acids Area, Cooling Tower Area, and Toluene Storage Areas

A focused remedial investigation was conducted for OU–10 in 1995; however, surface soil samples were not collected until November 2000. Monitoring wells were installed in 2002 to periodically test and analyze groundwater. Based on these investigations, it was determined that hazardous substances within OU–10 do not pose an imminent and substantial danger to public health and welfare or to the environment. USACE and EPA issued a ROD in September 2003, which was concurred upon by the WVDEP, documenting the conclusion that no remedial action was required at OU–10 because no contaminants present in the soil, sediment, surface water or groundwater at OU–10 pose a threat to human health or the environment.

ESI–1: Magazine Area

The southwest portion of ESI–1 overlaps with OU–7, the Point Pleasant Landfill. Several investigations have been conducted within ESI–1. Based on these investigations, no further risk characterization was recommended for those portions of ESI–1 that do not overlap with OU–7. Therefore, on January 22, 2003, USACE, EPA and WVDEP executed a Decision Document stating that no further action is necessary to protect human health and the environment and that ESI–1 should be removed from the NPL, with the exception of the portion of ESI–1 that overlaps with OU–7. OU–7 is being addressed by EPA and is not part of this proposed partial deletion.

ESI–4: Red Water Outfall Sewer

Field investigations, consisting of soil and groundwater sampling and analysis, geophysical surveys, and confirmatory excavations, were performed in 1994, 1997, and 2003 at the Red Water Outfall Sewer, designated as ESI–4. The data from these field investigations were undertaken to discover if nitroaromatic compounds, which could have been produced by operations at the former WVOW, were present in soil and groundwater. Evaluation of contaminant levels and site conditions indicated that ESI–4 poses no significant threat to human health. On June 25 and 29, 2003, USACE, EPA, and WVDEP executed a Decision Document stating that no further action is necessary to protect human health and the environment and that ESI–4 should be removed from the NPL.

ESI–6: Motorpool/Maintenance Area

Prior to 1994, no known environmental studies of soil or groundwater had been conducted at the Motorpool/Maintenance Area. The objective of ESI–6 was to determine whether contamination directly associated with former WVOW site activities existed within the Motorpool/Maintenance Area and, if present, the nature of this contamination. The initial ESI–6 investigation conducted in 1994 included a geophysical survey and subsurface soil sample collection. In 1997, as part of a data gaps investigation, several hydropunch groundwater samples were collected and analyzed. The 1997 investigation showed magnetic anomalies and low levels of petroleum contamination in site soils in the gasoline area of ESI–6, so an investigation was completed in 1999 to further determine whether underground storage tanks (USTs) could be present. The 1999 investigation did not discover any USTs in the gasoline area, and it was presumed that an UST for storing and dispensing gasoline had most likely been removed at some time after the WVOW facility ceased operation. However, trenching activities were undertaken in the locomotive area and in 2000 an UST was removed. A supplemental investigation was conducted in 2002 to provide further information on potential contamination in ESI–6 surface and subsurface soil from lead, volatile organic compounds (VOCs), and PCBs and in ESI–6 groundwater from VOCs.

Based on these investigations, it was determined that ESI–6 poses no significant threat to human health or the environment. This finding was based on the following facts: (a) Remedial activities in 2000 removed the UST and surrounding soils in the locomotive area, which was the only likely source of contamination; (b) no significant contamination was found in site groundwater; and (c) there is no potential for significant release of hazardous substances because the UST and contaminated soils have been removed. On June 18, 2003, USACE, EPA, and WVDEP executed a Decision Document stating that no further action is necessary to protect human health and the environment and that this area should be removed from the NPL.

ESI–7: Former Sewage Treatment Plant

The objective of ESI–7 was to determine the existence and, if present, the nature of contamination directly associated with the plant's influent lines and outfall. The initial ESI–7 investigation completed in 1994 consisted of the collection and analysis of one collocated surface water and sediment sample taken 100 feet downstream of the plant's discharge conduit. The sample was analyzed for target compound list and target analyte list volatile organic compounds, semivolatile organic compounds, and metals. In addition, the sediment sample was analyzed for nitroaromatic compounds. On September 28, 2000, USACE, EPA, and WVDEP executed a Decision Document stating that no further action is necessary to protect human health and the environment; however, concerns were later raised concerning the wastewater influent lines. Additional sampling within the lines that carry wastewater to the plant was conducted in 2003. Based on the analysis of the sampling and site conditions, ESI–7 poses no significant threat to human health or the environment and requires no further action to address WVOW-related contaminants.

II. NPL Deletion Criteria

This partial deletion of the WVOW site is proposed in accordance with 40 CFR 300.425(e) and the Notice of Policy Change: Partial Deletion of Sites Listed on the National Priorities List, 60 FR 55446 (Nov. 1, 1995). The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further

response is appropriate to protect public health or the environment. In making such a determination pursuant to 40 CFR 300.425(e), EPA will consider, in consultation with the State, whether any of the following criteria have been met:

Section 300.425(e)(1)(i). Responsible parties or other persons have implemented all appropriate response actions required; or

Section 300.425(e)(1)(ii). All appropriate responses under CERCLA have been implemented, and no further response action by responsible parties is appropriate; or

Section 300.425(e)(1)(iii). The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Deletion of a portion of a site from the NPL does not preclude eligibility for subsequent CERCLA actions at the area deleted if future site conditions warrant such actions. Section 300.425(e)(3) of the NCP provides that CERCLA actions may be taken at sites that have been deleted from the NPL. A partial deletion of a site from the NPL does not affect or impede EPA's ability to conduct CERCLA response activities at areas not deleted and remaining on the NPL. In addition, deletion of a portion of a site from the NPL does not affect the liability of responsible parties or impede agency efforts to recover costs associated with response efforts.

III. Deletion Procedures

Deletion of a portion of a site from the NPL does not itself create, alter, or revoke a person's rights or obligations. The NPL is designed primarily for informational purposes and to assist agency management. The following procedures were used for the proposed deletion of OU–10 and ESIs–1, –4, –6, and –7 at the WVOW site:

1. EPA has recommended the partial deletion and USACE has prepared the relevant documents.

2. The State of West Virginia through the West Virginia Department of Environmental Protection concurs with this partial deletion.

3. Concurrent with this national Notice of Intent for Partial Deletion, a notice has been published in a newspaper of record and has been distributed to appropriate federal, state, and local officials, and other interested parties. These notices announce a thirty (30) day public comment period on the deletion package, which commences on the date of publication of this notice in the **Federal Register** and publication of a notice of availability of this notice in a newspaper of record.

4. EPA and USACE have made all relevant documents available at the information repositories listed previously.

This **Federal Register** document and a concurrent notice in a newspaper of record announce the initiation of a thirty (30) day public comment period and the availability of the Notice of Intent for Partial Deletion. The public is asked to comment on EPA's proposal to delete OU–10 and ESIs–1, –4, –6, and –7 of the WVOW site from the NPL. All critical documents needed to evaluate EPA's decision are included in the Deletion Docket and are available for review at the information repositories. Upon completion of the thirty (30) day comment period, EPA will evaluate all comments received before issuing the final decision on the partial deletion. EPA will prepare a Responsiveness Summary for comments received during the public comment period and will address concerns presented in the comments. The Responsiveness Summary will be made available to the public at the information repositories listed previously. Members of the public are encouraged to contact EPA Region III to obtain a copy of the Responsiveness Summary. If, after review of all public comments, EPA determines that the partial deletion from the NPL is appropriate, EPA will publish a final notice of partial deletion in the **Federal Register**. Deletion of the areas does not actually occur until the final Notice of Partial Deletion is published in the **Federal Register**.

IV. Basis for Intended Partial Site Deletion

The following provides EPA's rationale for deletion of OU–10, ESI–1, ESI–4, ESI–6, and ESI–7 from the NPL and EPA's finding that the criteria in 40 CFR 300.425(e) are satisfied.

Background

The WVOW site is located on the east bank of the Ohio River, approximately six miles north of Point Pleasant, Mason County, West Virginia. The WVOW site, as added to the NPL in 1983, encompassed a land mass of approximately 8,323 acres. As explained in section I, earlier in this Notice, the NPL boundary was clarified in 1994, which reduced the WVOW site area to approximately 2,700 acres. A partial deletion from the NPL was completed in December 2002, which further reduced the boundary to approximately 2,188 acres. The Clinton F. McClintic Wildlife Management Area (MWMA) occupies 2,788 acres of the original site, and is mostly included in the current site boundary.

Contamination of the WVOW site originated from the operation of a trinitrotoluene (TNT) manufacturing facility during World War II. Nitroaromatic (explosive) compounds are the primary contaminants of concern at the WVOW site. To expedite CERCLA response actions at this large site, the WVOW site is divided into 13 Operable Units (OUs) and 10 Expanded Site Investigations (ESIs):

OU–1: TNT Manufacturing Area, Burning Grounds, and Waste Water Process Lines
OU–2: Red Water Reservoir
OU–3: Yellow Water Reservoir
OU–4: Groundwater Extraction and Treatment for OUs 2 and 3
OU–5: Pond 13/Wet Well Area
ENV–6: Wetlands Mitigation
OU–7: Point Pleasant Landfill
OU–8: TNT Manufacturing Area Soils
OU–9: TNT Manufacturing Area Groundwater
OU–10: South Acids Area and Toluene Storage Areas
OU–11: Sellite Plant
OU–12: North and South Powerhouses
OU–13: Pantasote Plant.
ESI–1: Magazine Area
ESI–2: Acid Dock
ESI–3: Tract 21
ESI–4: Red Water Outfall Sewer
ESI–5: Refueling Depot
ESI–6: Motorpool and Maintenance Area
ESI–7: Former Sewage Treatment Plant
ESI–8: Dump Site Adjacent to the TNT Manufacturing Area
ESI–9: Classification Yards
ESI–10: Various Areas of Concern

OU–11, OU–12, ENV–6, ESI–3, ESI–5, and ESI–9 were deleted from the NPL site by the December 2002 partial deletion.

USACE has been investigating and conducting human health risk evaluations and assessments for each OU and ESI separately. Once investigations and assessments are complete, USACE and EPA together have made CERCLA response action decisions, with the concurrence of WVDEP.

The WVOW was established in 1942 as a government-owned, contractor-operated plant for the manufacture of TNT from toluene, nitric acid, and sulfuric acid. The WVOW plant was operated by the General Defense Corporation of New York from October 1942 through August 1945. The plant had the capacity to produce 720,000 pounds of TNT each day, utilizing 12 manufacturing lines; however, it has been reported that only lines 1 through 10 were operated, and the plant never reached full capacity.

The facility was constructed on approximately 5,800 acres, of which

more than 2,000 acres were used as a safety zone between the plant and other properties. The plant included the 12 TNT manufacturing lines; two acid manufacturing areas; two coal-fired power plants; a Sellite manufacturing plant; pumping stations; a sewage treatment plant; 100 concrete TNT storage magazines; and various administrative, shop, and housing facilities.

In 1945, the production of TNT ceased, and shutdown of the WVOW plant was initiated. The production of TNT had resulted in soil contamination from nitroaromatic compounds in the manufacturing areas, process facilities, and wastewater disposal facilities. Partial decontamination actions were performed, such as flashing the TNT lines and draining and capping the Red and Yellow Water Reservoirs, and the property was transferred from the U.S. War Department to the U.S. War Assets Administration in late 1946.

Numerous site visits and investigations beginning in 1947 and continuing through the 1950s determined that additional contamination not previously identified was present at the site. In addition, several tracts of land that had received decontamination certificates were determined to be contaminated. Because the site could not be completely decontaminated, a portion of the site was not released for private ownership and was transferred to the State of West Virginia as a wildlife management area in 1949.

In 1981, a red water seepage was discovered at Pond 13, later designated as OU–5. Subsequent investigations led the State of West Virginia to nominate the WVOW site for inclusion on the NPL; ultimately the WVOW site was ranked 84th. A memorandum of understanding was signed in 1983 between EPA Headquarters and the Department of Defense to establish responsibilities for remediating the site. For the Department, the U.S. Army Toxic and Hazardous Materials Agency began the first remedial investigation and feasibility study in 1984. Initially, only two operable units were established, and Records of Decision (RODs) and Interagency Agreements (IAGs) were signed to address these areas. Later, more operable units were created until the current total of thirteen was reached.

Construction of the OU–1 remedy was completed in 1988 before the site was transferred from the U.S. Army Toxic and Hazardous Materials Agency to USACE, Baltimore District, in 1991. OU–1 remediation included capping of the burning grounds and the ten TNT manufacturing lines that had been operated in the 1940s and excavation and flaming of process waste water lines. Construction on OU–2, which included draining and capping of the Red and Yellow Water Reservoirs, was completed in 1992 before the site administration was transferred to USACE, Huntington District, where it remains. Portions of OU–2 were later divided into OU–3, OU–4, and OU–5 to simplify management. The construction of the OU–4 remedy was completed in 1997, and the two groundwater treatment plants are currently operational. Nitroaromatic-contaminated soil from OU–5 and Area of Concern 21 has been excavated and bioremediated on-site via windrow composting. OU–6 was re-designated as ENV–6, and construction of wetlands has been completed. OU–7 and OU–13, the Point Pleasant landfill and the Pantasote plant, respectively, have been designated by EPA as potentially responsible party sites, and EPA is the lead agency for addressing these areas. Buildings were demolished and debris removed at OU–11 and OU–12. Asbestos-containing material has been removed from ESI–3, which was the only hazard posed on that area. An underground storage tank (UST) was removed from ESI–6, and petroleum-contaminated soil from another area of ESI–6 was excavated and bioremediated on-site via windrow composting. Asbestos materials and other debris were removed and capped at ESI–8.

OU–10: South Acids Area, Cooling Tower Area, and Toluene Storage Areas

The South Acids Area (SAA) is located in the central region of the former WVOW, southwest of County Road 12 (Wadsworth Road) and is outside of the MWMA. SAA is currently owned by the State of West Virginia and is part of the West Virginia State Farm Museum property. During the WVOW's period of operation, SAA was used primarily for the production of nitric and sulfuric acids, used in the TNT production process. Most of the buildings in SAA were removed prior to 1968, but a few building foundations, a few buildings, and several concrete tank supports remain. Toluene Storage Area (TSA) 1 and TSA 2 are both located south of SAA. TSA 1 is located south of SAA and west of the TNT Manufacturing Area within the boundaries of the MWMA, which is owned by the State of West Virginia and managed by the WVDNR. TSA 1 previously housed four 270,000-gallon above-ground storage tanks in which toluene was stored and from which toluene was transferred for use in TNT production. These tanks were arranged in a square, with each storage tank surrounded by an earthen berm. Tanks and other structures were removed from TSA 1, except for earthen berms and fire-suppression bunkers, which are still present. TSA 2, comprising approximately 2.3 acres, is located between the Sellite Manufacturing Area and TSA 1 and is outside of the MWMA. Part of this property is owned by the State of West Virginia and is on the West Virginia State Farm Museum property. The other part is owned by the Department of the Army, which plans to transfer the property to the State of West Virginia to be part of the State Farm Museum. TSA 2 contains two earthen berms, but it is unclear from historic records whether the storage tanks were removed from TSA 2 and moved to the Sellite Manufacturing Area (OU–11) or if the tanks were never erected at the TSA 2 location.

The Cooling Tower Area is located north of SAA, outside of the MWMA. The parcel is approximately 2.0 acres and is currently owned by Mason County, West Virginia. The Cooling Tower Area was used to provide noncontact cooling water to various process units in the facility. All structures, except for two building foundations, have been removed. One of these foundations holds standing water.

ESI–1: Magazine Area

The Magazine Area was used for storage of TNT during the WVOW operational period from 1942 through 1945. One hundred concrete dome-shaped magazines (also called "igloos") were constructed for this purpose and still remain at the site; 45 are located within the southern half of the Magazine Area, and the remaining 55 are in the northern half. Each magazine is constructed of reinforced concrete covered with 2 feet of soil and has an interior diameter of 45 feet, a ceiling height of 15 feet, and a TNT storage capacity of 125 tons. No WVOW operations other than TNT storage are known to have been conducted in the Magazine Area.

After closure of the WVOW facility, parts of the Magazine Area were transferred to private ownership. The southwest portion of ESI–1 was transferred to Mason County and comprises a portion of the Point Pleasant Landfill (the "landfill"), which operated from 1974 through 1984 as a municipal landfill. The landfill has been designated by EPA as OU–7, and EPA is the lead agency for addressing OU–7 because many private or public parties could be responsible for any contamination found at OU–7. The

landfill is not included in this Notice of Intent for Partial Deletion.

A portion of the southern half of the Magazine Area, referred to as the TNT Remelt Area, was used for reclamation of explosives, most likely TNT and other nitroaromatics, from naval mines and perhaps other ordnance. The TNT Remelt Area, along with other property in the southern half of the Magazine Area (for a total acreage of 281.5 acres), was sold by the War Assets Administration in 1947 to the Liberty Powder Company. An archives search hypothesized that, after the sale, this area was used for TNT reclamation by the Liberty Powder Company in the 1950s and that reclamation activities by American Cyanamid, observed during a 1966 site visit, were a continuation of the Liberty Powder Company operation.

In the northern half of the Magazine Area, there was an unregulated open civilian dumping area from the end of World War II until the early 1970s. Over the years since the end of World War II, numerous owners and lessees have used portions of the Magazine Area for the storage of herbicides, commercial explosives, waste solvents, materials contaminated with polychlorinated biphenyls, and war surplus explosives.

The southern half of the Magazine Area lies within the boundaries of the MWMA and is heavily wooded. The northern half, which is managed as part of the MWMA, is similarly wooded. The State of West Virginia now owns the southern half of the Magazine Area, which is currently part of the MWMA. The northern half of the Magazine Area is currently owned by American Electric Power but is leased to the State of West Virginia and managed as part of the MWMA. Some of the 100 magazines in the Magazine Area have been emptied and the steel doors welded shut. Other magazines in the southern half of the Magazine Area are currently leased to West Virginia Ordnance Works, Inc., a subsidiary of Hi-Performance Ammunition Company, Inc. of Apollo, Pennsylvania, or to private individuals.

ESI–4: Red Water Outfall Sewer

ESI–4 is comprised of the Red Water Outfall Sewer (RWOS) and its vicinity, an approximately 6,200-foot section of the Red Water Sewer Line (RWSL) extending from the Red Water Reservoir (RWR) to the Ohio River. Except for the approximately 350 feet of RWSL nearest the RWR, ESI–4 is outside of the MWMA and is currently used for agricultural and residential purposes.

The RWSL, constructed in 1942, transported red wastewater generated during the final washing of crystallized TNT. Red wastewater flowed by gravity from the TNT Manufacturing Area through wood-stave and vitrified-clay sewer lines to the main wastewater pumping station in the vicinity of Pond 13 (OU–5). From there, the red wastewater was pumped either directly to the Ohio River or to the retention ponds known as the RWR for temporary storage, when the river was too low to permit proper dilution. The discharge pipe to the Ohio River was located south of Eight Mile Island and extended into the channel. The RWOS, constructed of an 18-inch-diameter vitrified-clay pipeline, is the final section of the RWSL that extends from the RWR downgradient (west) to the Ohio River.

ESI–6: Motorpool/Maintenance Area

ESI–6 is located approximately six-tenths of a mile east of State Route 62, within the boundary of the Mason County Fairgrounds and entirely outside of the MWMA. The site is currently used during the annual county fair for displaying exhibits, showing livestock, and as a storage facility. Part of ESI–6 is also on the West Virginia State Farm Museum property. During the operation of WVOW, the site was used for the repair and maintenance of vehicles, locomotives, and equipment. The need for a sampling investigation was based on historical knowledge regarding the presence and use of petroleum fuels, oils, lubricants, solvents, and related materials. ESI–6 has been subdivided into eight individual study areas: Paint, Solvent, and Acetylene Sheds Area; Locomotive House Area; Maintenance Shop Area; Millwright Shop Area; Auto Repair Shop Area; Gasoline Station Area; General Storehouse Area; and Material Shed Area.

The Paint, Solvent, and Acetylene Sheds Area was used for the storage of oil and paint, solvents, and acetylene. Apparently, the Acetylene Shed was torn down in the post-WVOW operations period, and a larger building was constructed in its place. Locomotives maintenance was performed in Building 718 of the Locomotive House Area, which has been torn down. A pit had been located in the northeast portion of the building. This building with two tracks inside had been located adjacent to the railroad tracks that ran through the Motorpool/Maintenance Area during the WVOW operational period. The railroad tracks are no longer present at the site. A geophysical survey undertaken by USACE indicated that there was an UST in the Locomotive House Area, which was found during trenching activities and subsequently removed. Possible contaminants of concern in this area included oils, lubricants, waste oils, petroleum fuels, solvents, PCBs, and lead.

The Maintenance Shop is still in place and used for exhibits during the annual county fair. Varied maintenance was performed in this large building, apparently including additional space for locomotive maintenance. Presumably, the Millwright Shop and the other small buildings in this area were mainly used as headquarters for the maintenance staff and as storage for their tools. The Auto Repair Shop is not currently standing, but the building housing the Garage and Repair Shop still stands. The Auto Repair Shop was located midway between County Road 12 and Pond 2. It had an attached shed on the southeast side, and the shed had a grease pit. This area was used for the maintenance and repair of WVOW vehicles. The Gasoline Station still stands and is located approximately 120 feet south of the Maintenance Shop. Two dispenser pumps had been located on its northeast and southwest sides. An abandoned refueling line was found east of the site. From a 1944 photograph, no aboveground gasoline storage tank was visible. An UST was probably used to store the gasoline dispensed at the facility at the southeast corner of this same building and was removed in the post-operational period of the facility. During geophysical survey activities undertaken by USACE, a magnetic anomaly was observed at this location, but no UST was found during trenching activities.

The General Storehouse is in place and has been expanded since the WVOW period of operations. A review of existing records did not reveal what categories of supplies were stored in this area. Review of existing records does not show how the Material Shed was utilized. An UST was reported to be located between the Material Shed and the General Storehouse during the period of WVOW operations; however, no UST was indicated by the geophysical survey.

ESI–7: Former Sewage Treatment Plant

ESI–7 is located outside of the MWMA, approximately 1,000 feet southwest of the former RWR in the northwest portion of WVOW and to the south of Mill Run Creek. The plant received sanitary sewage from the former TNT Manufacturing Area, the North and South Acid Areas, and the Administration Area. The system discharged treated effluent into a nearby tributary of Mill Run Creek. USACE undertook a sampling investigation because it was possible that contaminants from the manufacturing

areas could have been transported to the plant via the daily operation of the sewage system.

Response Actions

At OU–10, a removal was performed in 2000 to remove asbestos-containing debris. From ESI–6, an UST was removed in 2000 and a small area of petroleum-contaminated soil was removed in 2003.

Community Involvement

Public participation activities have been satisfied as required in CERCLA Section 113(k), 42 U.S.C. 9613(k), and Section 117, 42 U.S.C. 9617.

On August 26, 2003, a public meeting was held to present the Proposed Plan for OU–10, which proposed no further action, and decision documents for ESI–1, ESI–4, and ESI–6. The public did not comment on the decision documents. A public comment period for the Proposed Plan was open from August 18 through September 16. The plan was made available at the meeting and at the Mason County Library. Only one minor comment was received, and it was answered at the public meeting and in the responsiveness summary of the OU–10 ROD.

On November 8, 2000, a public meeting was held to present a Decision Document for ESI–7. No public comments were received regarding the decision.

Current Status

Removals at OU–10 and ESI–6 have been successfully completed. No further response action is planned or scheduled for OU–10, ESI–1, ESI–4, ESI–6, or ESI–7. Pursuant to the NCP, a five-year review will not need to be performed at any of these five areas. While EPA does not believe that any future response actions will be needed, if future conditions warrant such action, the areas proposed for deletion in this Notice remain eligible for future response actions. Furthermore, this partial deletion does not alter the status of any other OUs or ESIs at the WVOW site that are not proposed for deletion and remain on the NPL. EPA, together with USACE and with concurrence from the State of West Virginia, has determined that all appropriate CERCLA response actions have been completed at OU–10, ESI–1, ESI–4, ESI–6 and ESI–7 and that protection of human health and the environment has been achieved in these areas. Therefore, EPA makes this proposal to delete OU–10, ESI–1, ESI–4, ESI–6, and ESI–7 of the WVOW site from the NPL.

Dated: February 11, 2004.

Thomas Voltaggio,

Acting Regional Administrator, Environmental Protection Agency, Region III.

[FR Doc. 04–4624 Filed 3–2–04; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 69, No. 42
Wednesday, March 3, 2004

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Request for Comments; Forest Stewardship Program Participant Survey

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service announces its intention to establish the new information collection entitled Forest Stewardship Program Participant Survey. The collected information will enable Forest Service officials to determine the extent to which Forest Stewardship management plans are affecting active forest management on the ground.

DATES: Comments must be received in writing on or before May 3, 2004.

ADDRESSES: Comments concerning this notice should be addressed to Karl R. Dalla Rosa, Forest Stewardship Program Manager, Cooperative Forestry, State & Private Forestry, Mail Stop 1123, Forest Service, USDA, 1400 Independence Avenue, SW., Washington, DC 20250.

Comments also may be submitted via facsimile to (202) 205–1271or by e-mail to *kdallarosa@fs.fed.us.*

The public may inspect comments received in the Office of the Director, Cooperative Forestry, State & Private Forestry, Forest Service, Room 4, Southeast Wing, Yates Building, 201 14th Street, SW., Washington, DC. Visitors are encouraged to call ahead to (202) 205–6206 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Karl R. Dalla Rosa, Forest Stewardship Program Manager, (202) 205–6206. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 twenty-four hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Forest Stewardship Program Participant Survey.

OMB Number: 0596–New.

Expiration Date of Approval: N/A.

Type of Request: New.

Abstract: To encourage and enable active long-term forest management, the Cooperative Forestry Assistance Act of 1978 authorizes the Forest Service, through the Forest Stewardship Program (FSP), to provide technical assistance to nonindustrial private forest (NIPF) owners, through State Foresters. A primary focus of the Forest Stewardship Program is the development of comprehensive, multi-resource management plans that provide landowners with the information they need to manage their forests for a variety of products and services. Since its establishment in 1991, the Forest Stewardship Program has produced more than 225,000 multi-resource management plans encompassing more than 25 million acres of nonindustrial private forest (NIPF) land.

Through interviews with a representative sample of participants, such as landowners who have received written management plans, program leaders can learn which aspects of the Forest Stewardship Program are functioning successfully, where improvements may be needed, and the extent to which the Forest Stewardship Program may be complementary to other public programs such as those that offer cost-share assistance for management plan implementation.

While data gathered under the Federal Government Performance and Results Act of 1993 tend to yield measures of program outputs, such as numbers of plans and acres under plans, the goal of the proposed interviews is to provide indicators of outcomes.

The Forest Service has a cooperative agreement with the Center for Great Plains Studies at the University of Nebraska in Lincoln, Nebraska, to collect information. The Center for Great Plains Studies contracted with the public Opinion Lab of Northern Illinois University in De Kalb, Illinois, to conduct telephone interviews with approximately 1,200 respondents. The respondents will be selected randomly by computer from lists of landowner participants provided by State forestry agency partners.

Estimate of Annual Burden: 20 minutes.

Type of Respondents: Non-industrial private landowners, who have received written Forest Stewardship Program management plans.

Estimated Annual Number of Respondents: 1,200 respondents.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 400 hours.

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Use of Comments

All comments received in response to this notice, including names and addresses when provided, will become a matter of public record. Comments will be summarized and included in the submission request for Office of Management and Budget approval.

Dated: February 25, 2004.

Robin L. Thompson,

Acting Deputy Chief, State and Private Forestry.

[FR Doc. 04–4764 Filed 3–2–04; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Trinity County Resource Advisory Committee

AGENCY: USDA Forest Service.

ACTION: Notice of meeting.

SUMMARY: The Trinity County Resources Advisory Committee (RAC) will meet on April 4, 2004, in Weaverville, California. The purpose of the meeting is to discuss the selection of Title II projects under Public Law 106–393,

H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the "Payments to States" Act.

DATES: The meeting will be held on April 4, 2004, from 6:30 to 8:30 p.m.

ADDRESSES: The meeting will be held at the Trinity County Office of Education, 201 Memorial Drive, Weaverville, California.

FOR FURTHER INFORMATION CONTACT: Joyce Anderson, Designated Federal Official, USDA, Shasta Trinity National Forests, P.O. Box 1190, Weaverville, CA 96093. Phone: (530) 623–1709. Email: *jandersen@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting will include reports from the fuels and restoration subcommittees, and a discussion of proposed projects for Fiscal Year 2005. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the committee at that time.

Dated: February 25, 2004.

William D. Metz,

Acting Forest Supervisor.

[FR Doc. 04–4679 Filed 3–2–04; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the New Mexico Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the New Mexico State Advisory Subcommittee will convene at 12 p.m. (m.s.t.) and adjourn at 1:15 p.m. (m.s.t.) on Thursday, March 11, 2004. The purpose of this conference call will be to engage in planning for the Committee's upcoming public forum in Farmington, NM.

This conference call is available to the public through the following call-in number: 1–800–923–4206, confirmation no. 21982531. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the supplied call-in number or made over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and confirmation number.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting John Dulles, Director of the Rocky Mountain Regional Office, (303) 866–1040 (TTY 303–866–1049), by 4 p.m. on Tuesday, March 9, 2004. The subcommittee meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 17, 2004.

Dawn Sweet,

Editor.

[FR Doc. 04–4750 Filed 3–2–04; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Alabama, Arkansas, Louisiana, and Mississippi State Advisory Committees

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the Alabama, Arkansas, Louisiana, and Mississippi Advisory Committees will convene at 1:30 p.m. (c.s.t.) and adjourn at 3 p.m. on Thursday, March 11, 2004. The purpose of the conference call is to discuss the briefing transcript from the "Southern Listening Tour" and to plan for a future face-to-face meeting.

This conference call is available to the public through the following call-in number: 1–800–923–4213, access code number 21980538. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the supplied call-in number or made over wireless lines and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and access code number.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Jo Ann Daniels of the Central Regional Office at 913–551–1400 and TDD 913–551–1414, by 2 p.m. (c.s.t.) on Friday, March 5, 2004.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 24, 2004.

Dawn Sweet,

Editor.

[FR Doc. 04–4751 Filed 3–2–04; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Submission For OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Construction Progress Reporting Surveys.

Form Number(s): C–700, Private Construction Projects; C–700(SL), State and Local Governments Projects; C–700(R), Multi-Family Residential Projects.

Agency Approval Number: 0607–0153.

Type of Request: Revision of a currently approved collection.

Burden: 58,500 hours.

Number of Respondents: 19,500.

Avg. Hours Per Response: 15 minutes.

Needs and Uses: The U.S. Census Bureau conducts the Construction Progress Reporting Surveys (CPRS) to collect information on the dollar value of construction put in place by private companies, individuals, private multifamily residential buildings, and State and local governments. Due to the significant growth in construction activity during the past few years, and to facilitate the publication of construction spending data in more detail by new types of construction, we are increasing the number of respondents/projects sampled.

The C–700 is used to collect data on industrial and manufacturing plants, office buildings, retail buildings, service establishments, religious buildings, schools, universities, hospitals, clinics, and miscellaneous buildings. The C–700(SL) is used to collect data on public schools, courthouses, prisons, hospitals, civic centers, highways, bridges, sewer systems, and water systems. The C–700(R) is used to collect data on residential buildings and apartment projects with two or more housing units.

Data are collected on a sample basis from state and local agency officials, owners of private nonresidential

projects, and owners of private multifamily residential building projects. Total projected cost estimates are requested the first month and monthly progress reports are requested until the project is completed.

The Census Bureau uses the information collected on these forms to publish estimates of the monthly value of construction put in place: (1) For nonresidential projects owned by private companies or individuals; (2) for projects owned by state and local agencies; and (3) for multifamily residential building projects owned by private companies or individuals. Statistics from CPRS become part of the monthly "Value of Construction Put in Place" series that is used extensively by the Federal Government in making policy decisions and become part of the gross domestic product (GDP). Construction now accounts for more than eight percent of GDP.

Published statistics are used by all levels of government to evaluate economic policy, to measure progress toward national goals, to make policy decisions, and to formulate legislation. For example, the Bureau of Economic Analysis uses the data to develop national accounts. The Federal Reserve Board and the Department of the Treasury use the value of construction put in place data to forecast GDP. The private sector uses the statistics for market analysis and other research such as estimating the demand for building materials and to schedule production distribution and sales efforts.

Affected Public: Individuals or households; Business or other for-profit; State, local or tribal government; Not-for-profit institutions.

Frequency: Monthly.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., section 182.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer either by fax (202–395–7245) or email (*susan_schechter@omb.eop.gov*).

Dated: February 27, 2004.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–4709 Filed 3–2–04; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission For OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: 2004 Coverage Research Followup Test.

Form Number(s): Questionnaire: DB–1301(CRFU), Followup Quality Control Questionnaire: DB–1302, Privacy Act Notice: DB–31 (CRFU).

Agency Approval Number: None.

Type of Request: New collection.

Burden: 4,800 hours.

Number of Respondents: 16,000.

Avg Hours Per Response: 18 minutes.

Needs and Uses: The U.S. Census Bureau requests authorization from the Office of Management and Budget to conduct the 2004 Coverage Research Followup (CRFU). Improved coverage is one of the four major goals for Census 2010. As part of the effort to meet this goal, the Census Bureau is planning to conduct a new operation in conjunction with the 2004 Census Test. CRFU is intended to evaluate the effectiveness of revised procedures for improving coverage and reducing duplication. The CRFU operation will be conducted in both 2004 Census Test sites—Northwest Queens, NY, and three rural counties in Georgia (Colquitt, Tift, and Thomas). The CRFU operation will gather information regarding the effectiveness of the wording and presentation of the residence rules instructions and the two coverage questions included in the 2004 Census Test questionnaire. CRFU also will obtain information about the types of possible duplicates for which a household (HH) should be contacted in order to resolve residence status.

The CRFU operation will be followed by a Quality Control procedure designed to ensure that the CRFU enumerators completed their interviews and recorded respondent information correctly.

Affected Public: Individuals or households.

Frequency: One time.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C. 141 and 193.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer either by fax (202–395–7245) or email (*susan_schechter@omb.eop.gov*).

Dated: February 27, 2004.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–4710 Filed 3–2–04; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Economic Analysis.

Title: BEA Customer Satisfaction Survey.

Form Numbers(s): Not applicable.

Agency Approval Number: None.

Type of Request: Reinstatement.

Burden: 125 hours.

Number of Respondents: 500.

Average Hours Per Response: 15 minutes.

Needs and Uses: The Bureau of Economic Analysis (BEA) would like to conduct a Customer Satisfaction Survey to obtain feedback from customers on the quality of BEA products and services. The results of the information collected will serve to assist BEA in improving the quality of its data products and its methods of dissemination.

BEA needs to inform and educate all of its staff about the public's perception of the agency. This customer satisfaction survey will give us first-hand knowledge of what our customers want, need, and expect from BEA. To more effectively inform and educate the public on what we do, how we do it, and why we do it, we need to obtain reliable information on how the public

views our output. The results of this survey will serve that purpose.

The Survey and a cover letter with instructions on how to complete the survey will be mailed to 5,000 potential respondents. BEA will request that responses be returned 30 days after the mailing. The survey will also be posted on BEA's Web site for 2,000 potential respondents. The survey will be designed so that all responses are anonymous and therefore eliminates the necessity for record keeping of respondents.

Affected Public: Individuals from profit and non-profit organizations and individuals from other Federal, state, and local government agencies.

Frequency: Annually.

Respondent's Obligation: Voluntary.

Legal Authority: Executive Order 12862, Section (b), of September 11, 1993.

OMB Desk Officer: Paul Bugg, (202) 395–3093.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Forms Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230, (202) 482–0266, (or via e-mail at *dHynek@doc.gov).*

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Paul Bugg, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: February 27, 2004.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–4711 Filed 3–2–04; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

International Trade Administration

Advocacy Quality Assurance Survey

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burdens, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(2)(A)).

DATES: Written comments must be submitted on or before May 3, 2004.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th & Constitution Avenue, NW., Washington, DC 20230. E-mail: *dHynek@doc.gov.*

FOR FURTHER INFORMATION CONTACT: Request for additional information or copies of the information collection instrument and instructions should be directed to: Erin Butler, 14th & Constitution Avenue, NW., Washington, DC 20230; Phone number: (202) 482–1170; E-mail: *erin.butler@mail.doc.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The International Trade Administration's U.S. Commercial Service is mandated by Congress to help U.S. businesses, particularly small and medium-sized companies, export their products and services to global markets.

As part of its mission, the U.S. Commercial Service uses "Quality Assurance Surveys" to collect feedback from the U.S. business clients it serves. These surveys ask the client to evaluate the U.S. Commercial Service on its customer service provision. Results from the surveys are used to make improvements to the agency's business processes in order to provide better and more effective export assistance to U.S. companies.

The purpose of the attached survey is to collect feedback from U.S. businesses that receive advocacy services from the U.S. Commercial Service. In providing these services, the U.S. Commercial Service advocates on behalf of a U.S. company that is bidding on a project or government contract, trying to recover payment or goods, or facing a barrier to market entry.

II. Method of Collection

Form ITA–XXXX is sent to U.S. companies that receive advocacy assistance from the U.S. Commercial Service.

III. Data

OMB Number: 0625–XXXX.

Form Number: ITA–XXXX.

Type of Review: Regular Submission.

Affected Public: U.S. companies who receive advocacy services from USFCS international posts.

Estimated Number of Respondents: 227.5.

Estimated Time Per Response: 10 minutes.

Estimated Total Annual Burden Hours: 37.92 hours.

Estimated Total Annual Costs: The estimated annual cost for this collection is $1,327.08.

IV. Request for Comments

Comments are invited on (a) Whether the proposed collection of information is necessary for proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and costs) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 27, 2004.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–4708 Filed 3–2–04; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-583–816]

Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: insert date published in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Joe Welton, AD/CVD Enforcement, Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC, 20230, telephone (202) 482–0165.

SUPPLEMENTARY INFORMATION:

Background

On June 2, 2003, the Department of Commerce ("Department") published a notice of opportunity to request an administrative review of the antidumping duty order on stainless steel butt-weld pipe fittings from Taiwan for the period June 1, 2002, through May 31, 2003. *See Notice of Opportunity to Request Administrative Review of Antidumping or*

Countervailing Duty Order, Finding, or Suspended Investigation, 68 FR 32727 (June 2, 2003). On June 30, 2003, Markovitz Enterprises, Inc. (Flowline Division), Shaw Alloy Piping Products Inc., Gerlin, Inc., and Taylor Forge Stainless, Inc. ("petitioners") requested an antidumping duty administrative review for the following companies: Ta Chen Stainless Pipe Co., Ltd. ("Ta Chen"), Liang Feng Stainless Steel Fitting Co., Ltd. ("Liang Feng"), and Tru-Flow Industrial Co., Ltd. ("Tru-Flow"), and PFP Taiwan Co., Ltd., ("PFP") for the period June 1, 2002, through May 31, 2003. On June 30, 2003, Ta Chen requested an administrative review of its sales to the United States during the period of review ("POR"). On July 29, 2003, the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review for the period June 1, 2002, through May 31, 2003. *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation In Part*, 68 FR 44524 (July 29, 2003). The preliminary results are currently due no later than March 1, 2004.

Extension of Time Limit for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), states that the administering authority shall make a preliminary determination within 245 days after the last day of the month in which occurs the anniversary of the date of publication of the order, finding, or suspension agreement for which the review under paragraph (1) is requested. If it is not practicable to complete the review within the foregoing time, the administering authority may extend that 245 day period to 365 days. Completion of the preliminary results within the 245 day period is impracticable for the following reasons: (1) this review involves certain complex constructed export price ("CEP") adjustments including, but not limited to CEP profit and CEP offset; (2) this review involves complex warehouse expenses in the United States including, but not limited to inland freight and inventory; and (3) this review involves complex affiliation issues.

Because it is not practicable to complete this review within the time specified under the Act, we are extending the due date for the preliminary results by 90 days until May 30, 2004, in accordance with section 751(a)(3)(A) of the Act. The final results continue to be due 120 days after the publication of the preliminary results.

Dated: February 25, 2004.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 04–4732 Filed 3–2–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs ("OETCA"), International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Jeffrey C. Anspacher, Director, Office of Export Trading Company Affairs, International Trade Administration, by telephone at (202) 482–5131 (this is not a toll-free number), or by e-mail at *oetca@ita.doc.gov*.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1104H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as "Export Trade Certificate of Review, application number 04–00001." A summary of the application follows.

Summary of the Application

Applicant: Gold Star Exporters Ltd., 405 V E Washington Street, Lake Charles, Louisiana 70601.

Contact: Brenda J. Charles, President/CEO.

Telephone: (337) 433–5980.

Application No.: 04–00001.

Date Deemed Submitted: February 19, 2004.

Members (in addition to applicant): None.

Gold Star Exporters Ltd. seeks a Certificate to cover the following specific Export Trade, Export Markets, and Export Trade Activities and Methods of Operations.

Export Trade

1. Products

All products.

2. Services

All services.

3. Technology Rights

Technology Rights, including, but not limited to, patents, trademarks, copyrights and trade secrets that relate to Products and Services.

4. Export Trade Facilitation Services (as they Relate to the Export of Products, Services and Technology Rights)

Export Trade Facilitation Services, including, but not limited to, professional services and assistance relating to: government relations; state and federal export programs; foreign trade and business protocol; consulting; market research and analysis; collection of information on trade opportunities; marketing; negotiations; joint ventures; shipping and export management; export licensing; advertising; documentation and services related to compliance with customs requirements; insurance and financing; trade show exhibitions; organizational

development; management and labor strategies; transfer of technology; transportation services; and the formation of shippers' associations.

Manner of goods and services will be obtained or provided by sourcing products by acting as producers' export arm earning commissions and/or taking title to products and services, then exporting on our own account along multiple or single product or service lines. The firm will also represent competing producers of products and services in markets where product lines are complementary and appeal to the same customers.

Prices and quantities will be set based on each transaction for our own accounts, or long-term sales and quantity agreements set by producer or foreign retailer/distributor.

Gold Star Exporters Ltd. will employ basic trade arrangements and more sophisticated ones, such as counter-trade, quantity price breaks, discounts for cash deals, cash-down payments, guaranteed loans, low-interest loans, time payments, and home factory trips for training.

Care will be taken to avoid corrupt practices by making sure everything is in the contract and priced.

Exchange of sensitive business information will be done only when permitted and agreed to by all parties involved, provided that the product or service lines are complementary and appeal to the same customers. Brand names will not be used unless an agreement or arrangement to protect the privacy of producers' sensitive business information has been reached.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

With respect to the sale of Products and Services, licensing of Technology Rights and provisions of Export Trade Facilitation Services, Gold Star Exporters Ltd. may:

1. *Sales Prices:* Establish sale prices, minimum sale prices, target sale prices and/or minimum target sale prices, and other terms of sale in Export Markets for Products, Services, Technology Rights and/or Licensing;

2. *Marketing and Distribution:* Conduct marketing and distribution of Products, Services, Technology Rights, and Licensing in Export Markets. Collect the information on trade opportunities in the Export Markets and distribute such information to clients, suppliers, and export intermediaries;

3. *Promotion:* Conduct promotion of Products, Services, Technology Rights and Licensing;

4. *Quantities:* Set quantities of Products, Services, Technology Rights, and Licensing to be sold based on needs in the Export Markets and on information from in-country and domestic sources;

5. *Market and Customer Allocation:* Allocate geographic areas or countries in Export Markets and/or customers in Export Markets among suppliers, distributors and/or sales representatives for the sale and/or distribution of Products, Services, Technology Rights, and/or Licensing;

6. *Refusals to Deal:* Refuse to quote prices for Products, Services, Technology Rights and/or Licensing to or for any customers in the Export Markets, or any countries or geographical areas in the Export Markets;

7. *Exclusive and Non-Exclusive Intermediaries:* Enter into exclusive and non-exclusive agreements appointing one or more export intermediaries for the distribution of Products, Services, Technology Rights and Licensing with price, quantity, territorial and/or customer restrictions as provided above;

8. *Exclusive and Non-Exclusive Suppliers:* Enter into exclusive and/or non-exclusive agreements for the export of Products, Services, Technology Rights and Licensing with price, quantity, territorial and/or customer restrictions as provided above;

9. *Order Allocation:* Allocate export orders among suppliers;

10. *Negotiation of Agreements:* Negotiate, enter into, and/or manage licensing agreements for the export of Technology Rights;

11. *Shipping:* Enter into contracts for shipping;

12. *Information Exchange:* Exchange information on a one-on-one basis with individual Suppliers regarding inventories and near-term production schedules for the purpose of determining the availability of products for export and coordinating export with distributors. Confidential data is private and owned by each party of a transaction.

13. Gold Star Exporters Ltd. and its Suppliers and Export Intermediaries may exchange and discuss information on the following:

(a) Information about sales and marketing efforts for the Export Markets, activities and opportunities for sales of Products, Services, Technology Rights and Licensing in the Export Markets; selling strategies for the Export Markets, contract and spot pricing in the Export Markets; projected demands in Export Markets for Products, Services, prices and availability of Products, Services, Technology Rights, and Licensing from competitors for sale in the Export Markets; and specifications for Products, Services, Technology Rights, Licensing by customers in the Export Markets;

(b) Information about the price, quality, quantity, source, and delivery dates of Products, Services, Technology Rights, and Licensing available to export;

(c) Information about terms and conditions of contract for sale in the Export Markets to consider and/or bid on by Gold Star Exporters Ltd. and its suppliers and Export Intermediaries;

(d) Information about joint bidding or selling arrangements for the Export Markets and allocations of sales resulting from such arrangements among Suppliers;

(e) Information about expenses specific to exporting to and within the Export Markets, including without limitation, transportation, trans- or intermodal shipments, insurance, inland freight to port, port storage, commissions, export sales, documentation, financing, customs duties and taxes;

(f) Information about United States and foreign legislation and regulations, including federal marketing order programs affecting the Export Markets;

(g) Information about Gold Star Exporters Ltd. export operations, including without limitation, sales and distribution networks established by Gold Star Exporters Ltd. and prior export sales by Gold Star Exporters Ltd. (including export price information); and

(h) Information about export customer credit terms and credit history.

Definitions

1. "Supplier" means a person who produces, provides, or sells a Product and/or Service.

2. "Export Intermediaries" means a person who acts as distributor, sales representative, sales or marketing agent, or broker, or who performs similar functions, including providing, or arranging for the provision of, Export Trade Facilitation Services.

Dated: March 26, 2004.

Jeffrey C. Anspacher,

Director, Office of Export Trading, Company Affairs.

[FR Doc. 04–4754 Filed 3–2–04; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

DEPARTMENT OF THE INTERIOR

Office of Insular Affairs

[Docket No. 990813222–0035–03]

RIN 0625–AA55

Allocation of Duty-Exemptions for Calendar Year 2004 Among Watch Producers Located in the Virgin Islands

AGENCY: Import Administration, International Trade Administration, Department of Commerce; Office of Insular Affairs, Department of the Interior.

ACTION: Notice.

SUMMARY: This action allocates calendar year 2004 duty exemptions for watch producers located in the Virgin Islands pursuant to Pub. L. 97–446, as amended by Pub. L. 103–465 ("the Act").

FOR FURTHER INFORMATION CONTACT: Faye Robinson, (202) 482–3526.

SUPPLEMENTARY INFORMATION: Pursuant to the Act, the Departments of the Interior and Commerce (the Departments) share responsibility for the allocation of duty exemptions among watch assembly firms in the United States insular possessions and the Northern Mariana Islands. In accordance with Section 303.3(a) of the regulations (15 CFR 303.3(a)), the total quantity of duty-free insular watches and watch movements for calendar year 2004 is 1,866,000 units for the Virgin Islands (65 F.R. 8048, February 17, 2000).

The criteria for the calculation of the calendar year 2004 duty-exemption allocations among insular producers are set forth in Section 303.14 of the regulations (15 CFR 303.14).

The Departments have verified and adjusted the data submitted on application form ITA–334P by Virgin Islands producers and inspected their current operations in accordance with Section 303.5 of the regulations (15 CFR 303.5).

In calendar year 2003 the Virgin Islands watch assembly firms shipped 413,389 watches and watch movements into the customs territory of the United States under the Act. The dollar amount of creditable corporate income taxes paid by Virgin Islands producers during calendar year 2003 plus the creditable wages paid by the industry during calendar year 2003 to residents of the territory was $4,537,621.

There are no producers in Guam, American Samoa or the Northern Mariana Islands.

The calendar year 2004 Virgin Islands annual allocations, based on the data verified by the Departments, are as follows:

Name of firm	Annual allocation
Belair Quartz, Inc.	500,000
Hampden Watch Co., Inc.	200,000
Goldex Inc.	50,000
Tropex, Inc.	300,000

The balance of the units allocated to the Virgin Islands is available for new entrants into the program or producers who request a supplement to their allocation.

James J. Jochum,

Assistant Secretary for Import Administration, Department of Commerce.

David B. Cohen,

Deputy Assistant Secretary for Insular Affairs, Department of the Interior.

[FR Doc. 04–4734 Filed 3–2–04; 8:45 am]

BILLING CODE 3510–DS–P; 4310–93–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 022604D]

Gulf of Mexico Fishery Management Council; Public Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene a public meeting of the Socioeconomic Panel (SEP).

DATES: A meeting of the SEP will be held beginning at 9 a.m. on Thursday, March 18, 2004 and will conclude at 5 p.m. on Friday, March 19, 2004.

ADDRESSES: The meeting will be held at the Double Tree Hotel, 4500 West Cypress Street, Tampa, FL 33607; telephone: 813-879-4800. *Council address:* Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Leard, Senior Fishery Biologist, Gulf of Mexico Fishery Management Council; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The SEP will meet to discuss an analyses of interactions between red snapper and vermilion snapper fisheries; review recreational economic literature; review Shrimp Amendments 13 and 14 Options Papers; and will hear a presentation on the individual fishing quota for the red snapper commercial fishery.

A report will be prepared by the SEP containing their conclusions and recommendations. This report will be presented for review to the Council's Reef Fish Advisory Panel and Standing and Special Reef Fish Scientific and Statistical Committee at meetings to be held in April 2004 in Tampa, FL and to the Council at its meeting on May 17-20, 2004 in Key Largo, FL.

Composing the SEP membership are economists, sociologists, and anthropologists from various universities and state fishery agencies throughout the Gulf. They advise the Council on the social and economic implications of certain fishery management measures.

A copy of the agenda can be obtained by calling 813–228–2815.

Although other non-emergency issues not on the agenda may come before the SEP for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Actions of the SEP will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

The meeting is open to the public and is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by March 11, 2004.

Dated: February 27, 2004.

Peter H. Fricke,

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

[FR Doc. 04–4745 Filed 3–2–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 022604E]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Ad Hoc Groundfish Trawl Individual Quota Committee (TIQC) will hold a working meeting which is open to the public.

DATES: The TIQC working meeting will begin Thursday, March 18, 2004 at 8:30 a.m. and may go into the evening until business for the day is completed. The meeting will reconvene from 8 a.m. and continue until business for the day is complete on Friday, March 19, 2004.

ADDRESSES: The meeting will be held at: Embassy Suites Hotel, 7900 NE 82nd Avenue, Portland, OR 97220, (503)460–3000.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Seger, Staff Officer (Economist); telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the TIQC working meeting is to continue development of alternatives for an individual quota program to cover limited entry trawl landings in the West Coast groundfish fishery.

Although non-emergency issues not contained in the TIQC meeting agenda may come before the TIQC for discussion, those issues may not be the subject of formal TIQC action during these meetings. TIQC action will be restricted to those issues specifically listed in this notice and to any issues arising after publication of this notice requiring emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the TIQC's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: February 27, 2004.

Peter H. Fricke,

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

[FR Doc. 04–4746 Filed 3–2–04; 8:45 am]

BILLING CODE 3510–22–S

CONSUMER PRODUCT SAFETY COMMISSION

Proposed Collection of Information; Comment Request—Amended Interim Safety Standard for Cellulose Insulation

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission requests comments on a proposed extension of approval of a collection of information from manufacturers and importers of cellulose insulation. The collection of information is in regulations implementing the Amended Interim Safety Standard for Cellulose Insulation (16 CFR part 1209). These regulations establish testing and record keeping requirements for manufacturers and importers of cellulose insulation subject to the amended interim standard. The Commission will consider all comments received in response to this notice before requesting an extension of approval of this collection of information from the Office of Management and Budget.

DATES: Written comments must be received by the Office of the Secretary not later than May 3, 2004.

ADDRESSES: Written comments should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to that office, room 502, 4330 East-West Highway, Bethesda, Maryland, 20814. Alternatively, comments may be filed by telefacsimile to (301) 504–0127 or by e-mail to *cpsc-os@cpsc.gov*. Comments should be captioned "Cellulose Insulation."

FOR FURTHER INFORMATION CONTACT: For information about the proposed extension of approval of the collection of information, or to obtain a copy of 16 CFR part 1209, call or write Linda L. Glatz, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–7671, or by e-mail to *lglatz@cpsc.gov*.

SUPPLEMENTARY INFORMATION: Cellulose insulation is a form of thermal insulation used in houses and other residential buildings. Most cellulose insulation is manufactured by shredding and grinding used newsprint and adding fire-retardant chemicals.

In 1978, Congress passed the Emergency Interim Consumer Product Safety Standard Act of 1978 (Pub. L. 95–319, 92 Stat. 386). That legislation added section 35 to the Consumer Product Safety Act (15 U.S.C. 2082). Section 35 directs the Commission to issue an interim safety standard incorporating the provisions for flammability and corrosiveness of cellulose insulation set forth in a purchasing specification issued by the General Services Administration (GSA). Section 35 provides further that the interim safety standard should be amended to incorporate the requirements for flammability and corrosiveness of cellulose insulation in each revision to the GSA purchasing specification.

In 1978, the Commission issued the Interim Safety Standard for Cellulose Insulation. In 1979, the Commission amended the standard to incorporate the latest revision of the GSA purchasing specification. The Amended Interim Safety Standard for Cellulose Insulation is codified at 16 CFR part 1209.

The amended interim standard contains performance tests to assure that cellulose insulation will resist ignition from sustained heat sources, such as smoldering cigarettes or recessed light fixtures, and from small open-flame sources, such as matches or candles. The standard also contains tests to assure that cellulose insulation will not be corrosive to copper, aluminum, or steel if exposed to water.

Certification regulations implementing the standard require manufacturers, importers, and private labelers of cellulose insulation subject to the standard to perform tests to demonstrate that those products meet the requirements of the standard, and to maintain records of those tests. The certification regulations are codified at 16 CFR part 1209, subpart B.

The Commission uses the information compiled and maintained by manufacturers, importers, and private labelers of cellulose insulation subject to the standard to help protect the public from risks of injury or death associated with fires involving cellulose insulation. More specifically, this information helps the Commission determine whether cellulose insulation subject to the standard complies with all applicable requirements. The Commission also uses this information to obtain corrective actions if cellulose insulation fails to comply with the

standard in a manner that creates a substantial risk of injury to the public.

The Office of Management and Budget (OMB) approved the collection of information in the certification regulations under control number 3041–0022. OMB's most recent extension of approval will expire on May 31, 2004. The Commission now proposes to request an extension of approval without change for the collection of information in the certification regulations.

A. Estimated Burden

The Commission staff estimates that not more than 45 firms manufacture or import cellulose insulation subject to the amended interim standard. The Commission staff estimates that the certification regulations will impose an average annual burden of about 1,320 hours on each of those firms. That burden will result from conducting the testing required by the regulations and maintaining records of the results of that testing. The total annual burden imposed by the regulations on manufacturers and importers of cellulose insulation is approximately 59,400 hours.

The hourly wage for the testing and recordkeeping required to conduct the testing and maintain records required by the regulations is about $24.48, for an estimated annual cost to the industry of approximately $1,454,000.

B. Request for Comments

The Commission solicits written comments from all interested persons about the proposed extension of approval for this collection of information. The Commission specifically solicits information relevant to the following topics:

—Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;

—Whether the estimated burden of the proposed collection of information is accurate;

—Whether the quality, utility, and clarity of the information to be collected could be enhanced; and

—Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Dated: February 26, 2004.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 04–4696 Filed 3–2–04; 8:45 am]

BILLING CODE 6355–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation") has submitted two public information collection requests (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, (44 U.S.C. chapter 35). Copies of these ICRs, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Mr. Ruben Wiley, at (202) 606–5000, extension 224, (*rwiley@cns.gov*); (TTY/TDD) at (202) 606–5256 between the hours of 9 a.m. and 4 p.m. eastern standard time, Monday through Friday.

Comments may be submitted, identified by the title of each the information collection activity, by any of the the following two methods within 30 days from the date of publication in this **Federal Register:**

(1) By fax to: (202) 395–6974, Attention: Ms. Katherine Astrich, OMB Desk Officer for the Corporation for National and Community Service; and

(2) Electronically by e-mail to: *Katherine_Astrich@omb.eop.gov.*

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;

• Evaluate the accuracy of the Corporation's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Propose ways to enhance the quality, utility and clarity of the information to be collected; and

• Propose ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Description: The Corporation is proposing to renew, with changes, two currently approved information collection activities:

• *Corporation for National Service Enrollment Form* (OMB #3045–0006), and

• *Corporation for National Service End of Term/Exit Form* (OMB # 3045–0015).

I. Background

The Corporation supports programs that provide opportunities for individuals who want to become involved in national service. The service opportunities cover a wide range of activities over varying periods of time. Upon successfully completing an agreed-upon term of service in an AmeriCorps program, an AmeriCorps participant receives an "education award". This education award can be used to make a payment towards a qualified student loan or pay for educational expenses at qualified post-secondary institutions and approved school-to-work opportunities programs. This award is an amount of money set aside in the AmeriCorps member's name in the National Service Trust Fund. Members have seven years in which to draw against any unused balance.

The National Service Trust is the office within the Corporation that administers the education award program. This involves:

• Tracking the service for all AmeriCorps members;

• Ensuring that the requirements of the Corporation's enabling legislation are met, vis-a-vis the education award;

• Processing school and loan payments that the members authorize; and

• Processing payments for the interest that accrues on certain qualified student loans during the member's service period.

II. Current Action

The Corporation's *Enrollment Form* serves two purposes essential to the functioning of the AmeriCorps program. It is the means by which programs certify that an individual is eligible to serve in an AmeriCorps program and the date service has begun. Second, it provides the Corporation, Grantees, program managers, and Congress with demographic data on AmeriCorps members.

The Enrollment Form is the beginning-of-service counterpart to the Corporation's *End of Term/Exit Form,*

which concludes the tracking of members at the end of their term of service.

Submission of the *End of Term/Exit* form provides legal certification for the disbursement of an education award to an AmeriCorps member. It is the document by which an authorized program official at an AmeriCorps program site indicates whether an AmeriCorps member is eligible for an education award.

In 1999, the Corporation began using an electronic system to both enroll and exit AmeriCorps members. Local projects can enter into a database information about their members' enrollment and completion of service. This data is transferred to the Trust periodically where it becomes the official record.

A. ENROLLMENT FORM—(OMB #3045–0006)

Currently, AmeriCorps members use a form entitled *Corporation for National Service Enrollment Form* to enroll national service participants in the AmeriCorps program. The form requests program-related as well as demographic information. The program information includes the participant's start date, the code number of the program, the expected completion date, and whether the term of service is full or part time. This is the Corporation's sole source of data for individual members. The demographic information includes background information on the AmeriCorps member (including gender, marital status, education level, and reasons for joining).

The program information is used to:

- Make liability projections for the Trust Fund;
- Verify national service participation when requested by a lender who holds an AmeriCorps member's student loan (members are eligible to have the repayment of certain student loans postponed if they are participating in national service),
- Plan and monitor programs (review recruiting efforts, identify programs with excessive early termination rates, establish and reconcile program's budgets)

The demographic information is used for recruiting purposes and to provide the Corporation, program managers, and the Congress with demographic data on AmeriCorps members.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: Corporation for National Service Enrollment Form.

OMB Number: 3045–0006.

Agency Number: None.

Affected Public: Individuals about to participate in an AmeriCorps program.

Total Respondents: 50,000 annually.

Frequency: Once per service period (average of once per year).

Average Time Per Response: Total of 7 minutes (4 minutes for the AmeriCorps members, and 3 minutes for the program staff).

Estimated Total Burden Hours: 5,833 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

B. END OF TERM/EXIT FORM—(3045–0015)

The Corporation's End of Term/Exit form is the means by which AmeriCorps programs certify that a member has, or has not, successfully satisfied conditions which must be met in order to receive an education award. When an AmeriCorps member successfully completes a term of national service, a designated program official certifies that the service was completed and the individual is eligible for an education award. The End of Term/Exit form is the document upon which this certification is recorded.

Additional information requested on the form includes the member's service completion date, the current address where the education award documentation should be mailed, and two questions regarding the member's desire for post service information.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: Corporation for National Service End of Term/Exit Form.

OMB Number: None.

Agency Number: None.

Affected Public: AmeriCorps members who have ended their term of national service.

Total Respondents: 50,000 annually.

Frequency: Once per term of service (average of once per year).

Average Time Per Response: 7 minutes, total (4 minutes for the AmeriCorps members to complete the form and, 3 minutes for the program staff)

Estimated Total Burden Hours: 5,833 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Dated: February 26, 2004.

Ruben Wiley,

Manager, National Service Trust.

[FR Doc. 04–4755 Filed 3–2–04; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Request for Public Review and Comment of Changes to the Navstar GPS Space Segment/Navigation User Segment Interface Control Document (ICD)

AGENCY: Department of the Air Force, DoD.

ACTION: Notice and request for review/comment of changes to ICD–GPS–200C.

SUMMARY: This notice informs the public that the Global Positioning System (GPS) Joint Program Office (JPO) proposes to revise ICD–GPS–200, Navstar GPS Space Segment / Navigation User Interfaces. This proposal changes the document identifier from ICD–GPS–200 to Interface Specification (IS)–GPS–200. In addition, this revision will increment the revision letter from C to D, resulting in IS–GPS–200 Revision D. One of the main subjects of this revision effort is an introduction of new Improved Clock & Ephemeris (ICE) navigation message that will be broadcast with L2 C signal. These proposed changes are described in a Draft IS–GPS–200D. The draft document can be viewed and downloaded at the following Web site: *http://gps.losangeles.af.mil.* Click on "System Engineering", then "Public Interface Control Working Group (ICWG)". Reviewers should save the document to a local memory location prior to opening and performing the review.

ADDRESSES: Submit comments to SMC/GPERC, 2420 Vela Way, Suite 1467, El Segundo CA 90245–4659. A comment matrix is provided for your convenience at the Web site and is the preferred method of comment submittal. Comments may be submitted to the following Internet address: *smc.gperc@losangeles.af.mil.* Comments may also be sent by fax to 1–310–363–6387.

DATES: The suspense date for comment submittal is March 29, 2004.

FOR FURTHER INFORMATION CONTACT: GPERC at 1–310–363–2883, GPS JPO System Engineering Division, or write to the address above.

SUPPLEMENTARY INFORMATION: The civilian and military communities use the Global Positioning System, which employs a constellation of 24 satellites to provide continuously transmitted signals to enable appropriately configured GPS user equipment to

produce accurate position, navigation, and time information.

Pamela D. Fitzgerald,
Air Force Federal Register Liaison Officer.
[FR Doc. 04–4667 Filed 3–2–04; 8:45 am]
BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Air Force

AFIT Subcommittee of the Air University Board of Visitors; Notice of Meeting

The Air Force Institute of Technology Subcommittee of the Air University Board of Visitors will hold an open meeting on 15–16 March 2004, with the first business session beginning at 0830 in the Superintendent's Conference Room, Hermann Hall, Naval Postgraduate School, Monterey, California (5 seats available).

The purpose of the meeting is to give the board an opportunity to review Air Force Institute of Technology's educational programs and to present to the Commandant a report of their findings and recommendations concerning these programs.

For further information on this meeting, contact Ms. Beverly Houtz, Academic Affairs, Air Force Institute of Tecl1nology, (937) 255–4808.

Pamela D. Fitzgerald,
Air Force Federal Register Liaison Officer.
[FR Doc. 04–4665 Filed 3–2–04; 8:45 am]
BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Air University Board of Visitors; Notice of Meeting

The Air University Board of Visitors will hold an open meeting on 18–21 April 2004. The first business session of each meeting will begin in the Air University Commander's Conference Room at Headquarters Air University, Maxwell Air Force Base, Alabama (5 seats available). The purpose of the meeting is to give the board an opportunity to review Air University educational programs and to present to the Commander, a report of their findings and recommendations concerning these programs.

For further information on this meeting, contact Dr. Dorothy Reed, Chief of Academic Affairs, Air University Headquarters, Maxwell Air Force Base, Alabama 36112–6335, telephone (334) 953–5159.

Pamela D. Fitzgerald,
Air Force Federal Register Liaison Officer.
[FR Doc. 04–4666 Filed 3–2–04; 8:45 am]
BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Announcement of ICD–GPS–200/IS–GPS–705 Working Group Meeting

AGENCY: Department of the Air Force, DoD.

ACTION: Notice, interested parties may submit requests to attend and participate in this Working Group meeting.

SUMMARY: This notice informs the public that the Global Positioning System (GPS) Joint Program Office (JPO) will be hosting a technical working group meeting to discuss ICD–GPS–200 and IS–GPS–705. Changes to be discussed include:

(1) PIRN–200C–008, which deletes all Letters of Exception except for one, updates calendar year data requirement, clarifies applicable UTC/GPS-time relationships, toa and toe.

(2) Dţaft IS–GPS–200D and PPIRN–705–001, which describe the Improved Clock and Ephemeris (ICE) message on L2C and L5. The ICE message is the new GPS nav data that will replace the current clock aud ephemeris data as indicated in section 30.3.2 of current ICD–GPS–200C.

The meeting will also address those deferred comments from the previous ICWG review of IS–GPS–705.

For those who would like to present material related to ICD–GPS–200 or IS–GPS–705 at the meeting, please submit your agenda item and required length of presentation time to the GPS JPO by 3 Mar. 04. The actual briefing material must be submitted by 17 Mar. 04. Please submit your information to *smc.gperc@losangeles.af.mil* and include the words, "200/705 Working Group Agenda" in the subject line of your e-mail.

In order to better prepare for the meeting, the GPS JPO requests e-mail notification from all those planning to participate in the meeting. Please submit your name, organization, and contact information to *smc.gperc@losangeles.af.mil* and include the words, "200/705 Working Group Attendee" in the subject line of your e-mail. More information will be posted on the GPS JPO public Web site: *http://gps.losangeles.af.mil.* Click on "System Engineering", then "Public Interface Control Working Group (ICWG)". Reviewers should save the document to a local memory location prior to opening and performing the review.

Meeting Date and Time: Wed., 24 Mar. 04, 0900–1700; Thurs., 25 Mar. 04, 0900–1600.

Location: ARINC Engineering Services, LLC, 2250 East Imperial Highway, Suite 450, El Segundo, California, U.S.A.

FOR FURTHER INFORMATION CONTACT: GPERC, GPS JPO System Engineering Division via e-mail at *smc.gperc@losangeles.af.mil* or at 1–310–363–2883.

SUPPLEMENTARY INFORMATION: The civilian and military communities use the Global Positioning System, which employs a constellation of 24 satellites to provide continuously transmitted signals to enable appropriately configured GPS user equipment to produce accurate position, navigation and time information.

Pamela D. Fitzgerald,
Air Force Federal Register Liaison Officer.
[FR Doc. 04–4664 Filed 3–2–04; 8:45 am]
BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Pub. L. 92–463, notice is hereby given of the forthcoming Quick look Study Meeting. The purpose of the meeting is to conduct a mid term review of the study. This meeting will be closed to the public.

DATES: March 4–5, 2004.

ADDRESSES: Kirtland AFB NM 87117.

FOR FURTHER INFORMATION CONTACT: Lt Col Nowack, Air Force Scientific Advisory Board Secretariat, 1180 Air Force Pentagon, Rm 5D982, Washington DC 20330–1180, (703) 697–4811.

Pamela D. Fitzgerald,
Air Force Federal Register Liaison Officer.
[FR Doc. 04–4668 Filed 3–2–04; 8:45 am]
BILLING CODE 5001–05–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 3, 2004.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: February 26, 2004.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of Vocational and Adult Education

Type of Review: New.

Title: National School Dropout Prevention Program's Recognition Initiative.

Frequency: On Occasion.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Federal Government.

Reporting and Recordkeeping Hour Burden:

Responses: 49.

Burden Hours: 588.

Abstract: To recognize the successful dropout prevention efforts that schools are making, the Department has established the National School Dropout Prevention Program's Recognition Initiative for schools that are able to provide evidence of effectiveness in reducing dropout rates. Noteworthy programs also may provide evidence of improvements in other areas such as academic achievement, improved behavior, increased high school completion rates, or increased post-secondary employment or enrollment. This application provides an opportunity for schools to demonstrate their effectiveness.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number . When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov.* Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila.Carey at her e-mail address *Sheila.Carey@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 04–4674 Filed 3–2–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 2, 2004.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Melanie Kadlic, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Melanie_Kadlic@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: February 27, 2004.

Jeanne Van Vlandren,

Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Institute of Education Sciences

Type of Review: Revision.

Title: U.S. Department of Education Budget Information—Non-Construction Programs Form and Grant Performance Report Form.

Frequency: Submitted once for each application for a new award (ED 524).

Affected Public: Not-for-profit institutions; Businesses or other for-profit; State, local, or tribal gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 29,377.

Burden Hours: 602,080.

Abstract: This collection is necessary for the award and administration of discretionary and some formula grants. The Budget Information Non-Construction Programs, (ED Form 524) enables the review of all years of a multi-year budget at the time of the initial award. The U.S. Department of Education Grant Performance Report (ED Form 524B) is one of the monitoring tools used by ED Staff in the Post-Award and Grant Closeout functions. Recordkeeping and reporting requirements contained in the Education Department General Administrative Regulations (EDGAR) are also included in this collection.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 2336. When you access the information collection, click on "Download Attachments "to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov.* Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at her e-mail address *Sheila.Carey@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 04–4776 Filed 3–2–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

Overview Information; Teacher Quality Enhancement Grants Program—Partnership Grants; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2004.

Catalog of Federal Domestic Assistance (CFDA) Numbers: 84.336B, 84.336D.

DATES: Applications Available: March 3, 2004.

Deadline for Transmittal of Pre-Applications: April 2, 2004.

Deadline for Transmittal of Full Applications: June 14, 2004.

Note: The Department will invite full applications from those partnerships whose pre-applications ranked highly enough to be competitive at the full application stage. Only those partnerships that are invited to submit a full application will be eligible to receive a grant award.

Deadline for Intergovernmental Review: August 12, 2004.

Eligible Applicants: Eligible partnerships, which include, at a minimum:

a. a partner institution: a private independent or State-supported public institution of higher education with an eligible teacher education program;

b. a school of arts and sciences; and

c. a high-need local educational agency.

A partnership may include additional entities, as listed in title II, part A, section 203(b) of the Higher Education Act of 1965, as amended (HEA). An eligible partnership may include a Governor, State educational agency, the State board of education, the State agency for higher education, an institution of higher education not described in item a, a public charter school, a public or private elementary school or secondary school, a public or private nonprofit educational organization, a business, a teacher organization, or a pre-kindergarten program.

Note: A partnership that received a previous partnership grant under section 203 of the HEA is not eligible for a FY 2004 grant.

Estimated Available Funds: $28,800,000.

Estimated Range of Awards: $500,000—$2,000,000.

Estimated Average Size of Awards: $1,100,000 per year.

Estimated Number of Awards: 25.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of this program is to provide grants to promote improvements in the quality of new teachers, with the ultimate goal of increasing student achievement in the nation's K–12 classrooms. Partnership grants are designed to promote significant improvements in teacher education by strengthening the vital role of K–12 educators in the design and implementation of effective teacher education programs, and by increasing collaboration among these educators and institutions of higher education and schools of arts and sciences.

Priority: In accordance with 34 CFR 75.105(b)(2)(ii), this priority is taken from the regulations for this program (34 CFR 611.25).

Competitive Preference Priority: For FY 2004, this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i) we award up to an additional 10 points to an application, depending on how well the application meets this priority.

This priority is a significant role for private business in the design and implementation of the project.

Program Authority: 20 U.S.C. 1023 *et seq.*

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 84, 85, 86, 97, 98 and 99. (b) The regulations for this program in 34 CFR part 611.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $28,800,000.

Estimated Range of Awards: $500,000—$2,000,000.

Estimated Average Size of Awards: $1,100,000 per year.

Estimated Number of Awards: 25.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* Eligible partnerships which include, at a minimum:

a. a partner institution: a private independent or State-supported public institution of higher education with an eligible teacher education program;

b. a school of arts and sciences; and

c. a high-need local educational agency.

A partnership may include additional entities, listed in title II, part A, section 203(b) of the HEA. An eligible partnership may include a Governor, State educational agency, the State board of education, the State agency for higher education, an institution of higher education not described in item a, a public charter school, a public or private elementary school or secondary school, a public or private nonprofit educational organization, a business, a teacher organization, or a pre-kindergarten program.

Note: A partnership that received a previous partnership grant, under section 203 of the HEA, is not eligible for a FY 2004 grant.

2. *Cost Sharing or Matching: See* 34 CFR 611.62 for cost sharing and matching requirements.

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA numbers 84.336B, 336D.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in section VII.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Notice of Intent to Apply: The intent to submit form is included in the application package.

Pre-application: The pre-application narrative and estimated budget information is where you, the applicant, address the selection criteria that reviewers use to evaluate your pre-application.

Page Limit: You must limit the pre-application abstract to the equivalent of no more than one page and the narrative to the equivalent of no more than 10 pages. You must limit the estimated budget narrative to the equivalent of no more than 3 pages.

For the pre-application abstract, narrative and estimated budget narrative the following standards apply:

- A "page" is 8.5″ × 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the pre-application narrative and estimated budget narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch). Full Applications: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application.

You must limit the full application narrative to the equivalent of no more than 50 pages. In addition, you must limit your accompanying abstract to the equivalent of no more than one page, your work plan to the equivalent of no more than 10 pages, your budget narrative to the equivalent of no more than 10 pages, and your evaluation plan to the equivalent of no more than 5 pages.

For the full application narrative, work plan, budget narrative, and evaluation plan the following standards apply:

- A "page" is 8.5″ × 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, work plan, budget narrative and evaluation plan, including titles, headings, quotations, references, and captions, as well as all text in charts, tables, figures and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to the cover sheet; the budget section, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support.

We will reject your pre-application and full application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: March 3, 2004.

Deadline for Transmittal of Pre-Applications: April 2, 2004.

Deadline for Transmittal of Full Applications: June 14, 2004.

Note: The Department will invite full applications from those partnerships whose pre-applications ranked highly enough to be competitive at the full application stage. Only those partnerships that are invited to submit a full application will be eligible to receive a grant award.

The dates and times for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this program competition. The application package also specifies the hours of operation of the e-Application Web site.

We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: August 12, 2004.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program competition.

5. *Funding Restrictions:* We specify unallowable costs in 34 CFR part 74. We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this Notice.

6. *Other Submission Requirements:* Instructions and requirements for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this program competition.

Application Procedures: The Government Paperwork Elimination Act (GPEA) of 1998 (Pub. L. 105–277) and the Federal Financial Assistance Management Improvement Act of 1999 (Pub. L. 106–107) encourage us to undertake initiatives to improve our grant processes. Enhancing the ability of individuals and entities to conduct business with us electronically is a major part of our response to these Acts. Therefore, we are taking steps to adopt the Internet as our chief means of conducting transactions in order to improve services to our customers and to simplify and expedite our business processes.

Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

We are requiring that applications for grants under the Teacher Quality Enhancement Grants Program for Partnership Grants—CFDA Numbers 84.336B, 84.336D be submitted electronically using the Electronic Grant Application System (e-Application) available through the Department's e-GRANTS system. The e-GRANTS system is accessible through its portal page at: *http://e-grants.ed.gov*

If you are unable to submit an application through the e-GRANTS system, you may submit a written request for a waiver of the electronic submission requirement. In your request, you should explain the reason or reasons that prevent you from using the Internet to submit your application. Address your request to: Luretha Kelley, U.S. Department of Education, 1990 K Street, NW., Room 7096, Washington, DC 20006. Please submit your request no later than two weeks before the application deadline date.

If, within two weeks of the application deadline date, you are unable to submit an application electronically, you must submit a paper application by the application deadline date in accordance with the transmittal instructions in the application package. The paper application must include a written request for a waiver documenting the reasons that prevented you from using the Internet to submit your application.

Pilot Project for Electronic Submission of Applications

We are continuing to expand our pilot project for electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Teacher Quality Enhancement Grants Program for Partnership Grants—CFDA Numbers 84.336B, 84.336D is one of the programs included in the pilot project. If you are an applicant under Teacher Quality Enhancement Grants Program for Partnership Grants you must submit your application to us in electronic format or receive a waiver.

The pilot project involves the use of e-Application. If you use e-Application, you will be entering data online while completing your application. You may not e-mail an electronic copy of a grant application to us. The data you enter online will be saved into a database. We shall continue to evaluate the success of e-Application and solicit suggestions for its improvement.

If you participate in e-Application, please note the following:

- When you enter the e-Application system, you will find information about its hours of operation. We strongly recommend that you do not wait until the application deadline date to initiate an e-Application package.
- You will not receive additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.
- You must submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Your e-Application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the Application for Federal Education Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from e-Application.
2. The institution's Authorizing Representative must sign this form.
3. Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.
4. Fax the signed ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If you are prevented from submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery.

We will grant this extension if—

1. You are a registered user of e-Application and you have initiated an e-Application for this competition; and

2. (a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time) on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgement of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under For Further Information Contact (see VII. Agency Contact) or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for the Teacher Quality Enhancement Grants Program for Partnership Grants at: *http://e-grants.ed.gov*.

V. Application Review Information

Selection Criteria: The selection criteria for this program competition are in 34 CFR 611.21 through 611.24.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures:* Under the Government Performance and Results Act (GPRA), one measure has been developed for evaluating the overall effectiveness of the Teacher Quality Enhancement Grants Program for Partnership Grants.

Highly Qualified Teachers: The percentage of program completers who are highly qualified teachers.

All grantees will be expected to submit an annual performance report documenting their success in addressing this performance measure.

VII. Agency Contact

For Further Information Contact: Luretha Kelley, U.S. Department of Education, 1990 K Street, NW., room 7096, Washington, DC 20006–8526. Telephone: (202) 502–7645 or by e-mail: *Luretha.Kelley@ed.gov*.

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 this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister*.

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*.

Dated: February 27, 2004.

Sally L. Stroup,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 04–4766 Filed 3–2–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; Vocational Rehabilitation Services Projects for American Indians With Disabilities; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2004

Catalog of Federal Domestic Assistance (CFDA) Number: 84.250E.

DATES: *Applications Available:* March 3, 2004.

Deadline for Transmittal of Applications: July 9, 2004.

Eligible Applicants: Applications may be submitted only by the governing bodies of Indian tribes (and consortia of those governing bodies) located on Federal and State reservations.

Estimated Available Funds: $5,290,000.

Estimated Range of Awards: $250,000–$400,000.

Estimated Average Size of Awards: $325,000.

Maximum Award: We will reject any application that proposes a budget exceeding $400,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 13.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: To provide vocational rehabilitation services to American Indians with disabilities who reside on or near Federal or State reservations, consistent with their individual strengths, resources, priorities, concerns, abilities, capabilities, and informed choices, so that they may prepare for and engage in gainful employment, including self-employment, telecommuting, or business ownership.

Priority: In accordance with 34 CFR 75.105(b)(2)(iv), this priority is from section 121(b)(4) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 741).

Competitive Preference Priority: For FY 2004 this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i) we award up to an additional 10 points to an application, depending on how well the application meets this priority.

This priority is:

Continuation of Previously Funded Tribal Programs

In making new awards under this program, we give priority consideration to applications for the continuation of tribal programs that have been funded under this program.

Program Authority: 29 U.S.C. 741.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 80, 81, 82, 84, 85, and 97. (b) The regulations for this program in 34 CFR parts 369 and 371.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $5,290,000.

Estimated Range of Awards: $250,000–$400,000.

Estimated Average Size of Award: $325,000.

Maximum Award: We will reject any application that proposes a budget exceeding $400,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 13.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* Applications may be submitted only by the governing bodies of Indian tribes (and consortia of those governing bodies) located on Federal and State reservations.

2. *Cost Sharing or Matching:* See 34 CFR 371.40.

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov*.

If you request an application from ED Pubs, be sure to identify this competition as follows: 84.250E.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Service Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 205–8207.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. It is suggested that you limit Part III to the equivalent of no more than 35 pages, using the following standards:

• A "page" is 8.5" x 11", on one side only, with 1" margins at the top, bottom, and both sides.

• Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

• Use a font that is either 12 point or larger or no smaller that 10 pitch (characters per inch).

• The page limit does not apply to Part I, the cover sheet; Part II, the Budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support.

3. *Submission Dates and Times:*

Applications Available: March 3, 2004.

Deadline for Transmittal of Applications: July 9, 2004. The dates and times for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this program. The application package also specifies the hours of operation of the e-Application Web site.

We do not consider an application that does not comply with the deadline requirements.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Instructions and requirements for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this program.

Application Procedures:

Note: Some of the procedures in these instructions for transmitting applications differ from those in EDGAR (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications: We are continuing to expand our pilot project for electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. Vocational Rehabilitation Services Projects for American Indians with Disabilities—CFDA Number 84.250E is one of the programs included in the pilot project. If you are an applicant under Vocational Rehabilitation Services Projects for American Indians with Disabilities, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-Application). If you use e-Application, you will be entering data online while completing your application. You may not e-mail an electronic copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter online will be saved into a database. We request your participation in e-Application. We shall continue to evaluate its success and solicit suggestions for its improvement.

If you participate in e-Application, please note the following:

• Your participation is voluntary.

• When you enter the e-Application system, you will find information about its hours of operation. We strongly recommend that you do not wait until the application deadline date to initiate an e-Application package.

• You will not receive additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.

• You may submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

• Your e-Application must comply with any page limit requirements described in this notice.

• After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).

• Within three working days after submitting your electronic application, fax a signed copy of the Application for Federal Education Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from e-Application.

2. The applicant's Authorizing Representative must sign this form.

3. Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.

4. Fax the signed ED 424 to the Application Control Center at (202) 260–1349.

• We may request that you give us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If you elect to participate in the e-Application pilot for Vocational Rehabilitation Services Projects for American Indians with Disabilities and you are prevented from submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

1. You are a registered user of e-Application, and you have initiated an e-Application for this competition; and

2. (a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time) on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgement of any system unavailability, you may contact either (1) the persons listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (see VII. Agency Contacts) or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for Vocational Rehabilitation Services Projects for American Indians with Disabilities at: *http://e-grants.ed.gov.*

V. Application Review Information

Selection Criteria: The selection criteria for this program are in 34 CFR 75.210 of EDGAR. The selection criteria to be used for this competition will be provided in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify

administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures:* Under the Government Performance and Results Act (GPRA), the Department has established the following long-term goal for this program: By the end of FY 2008, at least 65 percent of all American Indians with disabilities who exit the program after receiving services under an individualized plan for employment will achieve an employment outcome. Each grantee must annually report its performance on this measure through the American Indian Vocational Rehabilitation Services Program Annual Performance Reporting System.

VII. Agency Contacts

FOR FURTHER INFORMATION CONTACT: Pamela Martin or Justine Blanks, U.S. Department of Education, 400 Maryland Avenue, SW., room 3314, Switzer Building, Washington, DC 20202–2650. Telephone: for Pamela Martin (202) 205–8494; for Justine Blanks (202) 205–9817.

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 this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact persons in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

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.*

Dated: February 27, 2004.

Troy R. Justesen,

Acting Deputy Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 04–4721 Filed 3–2–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; Personnel Preparation To Improve Services and Results for Children With Disabilities; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2004

Catalog of Federal Domestic Assistance (CFDA) Numbers: 84.325A, 84.325D, 84.325E, and 84.325H.

Note: This notice includes four priorities, key dates, and funding information for each of these competitions.

DATES: For dates regarding the individual priorities, see the chart in the Award Information section of this notice.

Applications Available: See chart.

Deadline for Transmittal of Applications: See chart.

Deadline for Intergovernmental Review: See chart.

Eligible Applicants: Institutions of higher education (IHE).

Estimated Available Funds: $14,200,796.

For funding information regarding the individual priorities, see the chart in the Award Information section of this notice. In addition, the allocation of funds for Absolute Priority 1 is explained in the Award Information section of this notice.

Estimated Range of Awards: See chart.

Estimated Average Size of Awards: See chart.

Maximum Awards: See chart.

Estimated Number of Awards: See chart.

Project Period: See chart. Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purposes of this program are to (1) help address State-identified needs for qualified personnel—in special education, related services, early intervention, and regular education—to work with children with disabilities; and (2) ensure that those personnel have the skills and knowledge—derived from practices that have been determined through research and experience to be successful—that are needed to serve those children.

Priorities: In accordance with 34 CFR 75.105(b)(2)(iv), these priorities are from allowable activities specified in the statute (see sections 661(e)(2) and 673 of the Individuals with Disabilities Education Act (IDEA)).

Absolute Priorities: For FY 2004 these priorities are, except as otherwise specified, absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that meet these absolute priorities.

The priorities are:

Absolute Priority 1—Preparation of Special Education, Related Services, and Early Intervention Personnel To Serve Infants, Toddlers, and Children With Low-Incidence Disabilities (84.325A)

Background: The national demand for special education, related services, and early intervention personnel, to serve infants, toddlers, and children with low-incidence disabilities exceeds available supply. However, because of the relatively small number of personnel needed to serve infants, toddlers, and children with low-incidence disabilities in each State, institutions of higher education and individual States have limited incentive to develop and support programs that train such personnel. Moreover, of the programs that do exist, many fail to produce graduates with the skills necessary to meet the needs of the low-incidence disability population. Thus, Federal support is required to increase the supply of personnel who possess the skills and experience necessary to serve children with low-incidence disabilities.

Priority: This priority supports projects that increase the number and quality of personnel to serve children with low-incidence disabilities by providing preservice preparation of special educators, early intervention personnel, and related services personnel at the associate, baccalaureate, master's, or specialist level. For the purpose of this priority, the term "low-incidence disability" means a visual or hearing impairment,

or simultaneous visual and hearing impairments, a significant cognitive impairment, or any impairment for which a small number of personnel with highly specialized skills and knowledge are needed in order for children with that impairment to receive early intervention services or a free appropriate public education (IDEA, section 673(b)(3)). Training for personnel to serve children with mild-moderate mental retardation, specific learning disabilities, speech or language disorders, or emotional and behavioral disabilities is addressed under the priority for the preparation of personnel to serve children with high-incidence disabilities (84.325H), and, therefore, is not supported under this priority.

A preservice program is a program that leads toward a degree, certification, professional license, or endorsement (or its equivalent), and may include the preparation of currently employed personnel who are seeking additional degrees, certifications, endorsements, or licenses.

Applicants may propose to prepare one or more of the following types of personnel—

(a) Early intervention personnel who serve infants and toddlers and their families. For the purpose of this priority, all children who require early intervention services are considered to have a low-incidence disability. Early intervention personnel include persons who train, or serve as consultants to, service providers and service coordinators;

(b) Special educators, including those who work in the areas of early childhood, speech and language, adapted physical education, and assistive technology; and paraprofessional personnel who work with children with low-incidence disabilities and their families; or

(c) Related services personnel who provide developmental, corrective, and other support services (such as psychological, occupational or physical and recreational therapy) to children with low-incidence disabilities and their families.

This priority may support both comprehensive programs and specialty components within a broader discipline that prepare personnel for work with the low-incidence population. A program that prepares individuals to receive a Doctor of Audiology (DAud) degree is eligible for this competition because the DAud is an entry-level degree. However, for the purpose of this priority, eligible related service providers do not include physicians.

We particularly encourage projects that address the personnel needs of more than one State, provide multi-disciplinary training, and provide for collaboration among several training institutions and between training institutions and public schools. In addition, we encourage projects that foster successful coordination between special education and regular education professional development programs to meet the needs of children with low-incidence disabilities in inclusive settings. Each project funded under this absolute priority must—

(a) Use curricula and pedagogy that are shown to be effective as demonstrated through scientifically based research, in order to prepare personnel who are able to (1) improve outcomes for students with low-incidence disabilities, and (2) foster appropriate access to and achievement in the general education curricula whenever appropriate;

(b) Demonstrate how research-based curriculum and pedagogy are incorporated into training requirements and reflected in all relevant coursework for the proposed training program;

(c) Offer integrated training and practice opportunities that will enhance the collaborative skills of appropriate personnel who share responsibility for providing effective services to children with disabilities;

(d) Prepare personnel to address the specialized needs of children with low-incidence disabilities from diverse cultural and language backgrounds by—

(1) Determining the competencies needed for personnel to work effectively with culturally and linguistically diverse populations; and

(2) Infusing those competencies into early intervention, special education, and related services training programs;

(e) Develop or improve and implement mutually beneficial partnerships between training programs and schools to promote continuous improvement in preparation programs and in service delivery;

(f) If field-based training is provided, include field-based training opportunities for students in diverse settings, including schools and settings in high-poverty communities;

(g) If the project prepares personnel to provide services to visually impaired or blind children that can be appropriately provided in Braille, prepare those individuals to provide those services in Braille.

(h) Provide clear, defensible research-based methods for evaluating the extent to which graduates of the training program are prepared to provide high-quality services that result in improved outcomes for children with disabilities; and communicate the results of this evaluation process to the Office of Special Education Programs (OSEP) in required annual performance reports and the final performance report;

(i) Describe how the proposed training program is aligned with State learning standards for children; and

(j) Include, in the application Appendix, all course syllabi that are relevant to the training program proposed. Course syllabi must clearly reflect the incorporation of research-based curriculum and pedagogy as required under paragraph (b) of this section of the priority.

To be considered for an award, an applicant must satisfy the following requirements in section 673(f)–(i) of IDEA and 34 CFR part 304—

(a) Demonstrate, with letters from one or more States that the project proposes to serve, that the State or States need personnel in the area or areas in which the applicant proposes to provide preparation, as identified in the State's comprehensive system of personnel development under Part B or C of IDEA;

(b) Demonstrate that it has engaged in a cooperative effort with one or more SEAs or, if appropriate, lead agencies for providing early intervention services, to plan, carry out, and monitor the project;

(c) Provide letters from one or more States stating that they intend to accept successful completion of the proposed personnel preparation program as meeting State personnel standards for serving children with disabilities or serving infants and toddlers with disabilities;

(d) Meet State and professionally recognized standards for the preparation of special education, related services, or early intervention personnel;

(e) Ensure that individuals who receive financial assistance under the proposed project will meet the service obligation requirements, or repay all or part of the cost of that assistance, in accordance with section 673(h)(1) of IDEA and 34 CFR part 304. Applicants must describe how they will inform scholarship recipients of this service obligation requirement; and

(f) As authorized under section 673(i) of IDEA and 34 CFR 304.20, use at least 55 percent of the total requested budget for student scholarships.

Competitive Preference Priority: Within Absolute Priority 1, we give competitive preference to applications that address the following priority.

This competitive preference priority is from the program statute (section 673(g)(3)(B) of IDEA).

Under 34 CFR 75.105(c)(2)(i) we award up to 10 points to an application,

depending on the extent to which the application meets this priority.

This competitive preference priority is:

We give preference to IHEs based on the extent to which IHEs successfully recruit and prepare individuals with disabilities and individuals from groups that are underrepresented in the profession for which they are preparing individuals. In the case of a new project, the applicant must submit a plan with strategies on how it will meet this competitive preference.

Absolute Priority 2—Preparation of Leadership Personnel (84.325D)

This priority supports projects that conduct the following preparation activities for leadership personnel:

(a) Preparing personnel at the doctoral and postdoctoral levels to administer, enhance, or to provide special education, related services, or early intervention services for children with disabilities; or

(b) Developing master's and specialist level programs in special education administration.

Note: Training that leads to a Doctor of Audiology (DAud) degree is not included as part of this priority because we address it under Absolute Priority 1 (84.325A).

Projects funded under this absolute priority must—

(a) Prepare personnel to work with culturally and linguistically diverse populations by—

(1) Determining the competencies needed by leadership personnel to understand and work with culturally and linguistically diverse populations; and

(2) Infusing those competencies into early intervention, special education, and related services training programs.

(b) Include coursework reflecting current research and pedagogy on—

(1) Participation and achievement in the general education curriculum and improved outcomes for children with disabilities; or

(2) The provision of coordinated services in natural environments to improve outcomes for infants and toddlers with disabilities and their families.

(c) Demonstrate how research-based curriculum and pedagogy are incorporated into training requirements and reflected in all relevant coursework for the proposed training program.

(d) Offer integrated training and practice opportunities that will enhance the collaborative skills of all personnel who share responsibility for providing effective services for children with disabilities.

(e) Provide clear, defensible research-based methods for evaluating the extent to which graduates of the training program are prepared to provide high-quality services that result in improved outcomes for children with disabilities. Communicate the results of this evaluation process to OSEP in required annual performance reports and the final performance report;

(f) Describe, if appropriate, how the proposed training program is aligned with State learning standards for children; and

(g) Include, in the application Appendix, all course syllabi that are relevant to the training program proposed. Course syllabi must clearly reflect the incorporation of research-based curriculum and pedagogy as required under paragraph (c) of this section of the priority.

To be considered for an award, an applicant must satisfy the following requirements contained in section 673(f)–(i) of IDEA and 34 CFR part 304—

(a) Demonstrate, with letters from one or more States that the project proposes to serve, that each State needs personnel in the area or areas in which the applicant proposes to provide preparation, as identified in each State's comprehensive system of personnel development under Part B or C of IDEA;

(b) Demonstrate that it has engaged in a cooperative effort with one or more SEAs—or, if appropriate, lead agencies for providing early intervention services—to plan, carry out, and monitor the project;

(c) Meet State and professionally recognized standards for the preparation of leadership personnel in special education, related services, or early intervention fields;

(d) Ensure that individuals who receive financial assistance under the proposed project will meet the service obligation requirements, or repay all or part of the cost of that assistance, in accordance with section 673(h)(2) of IDEA and the regulations in 34 CFR part 304. Applicants must describe how they will inform scholarship recipients of this service obligation requirement.

(e) As authorized under section 673(i) of IDEA and 34 CFR 304.20, use at least 65 percent of the total requested budget for student scholarships.

Competitive Preference Priority: Within Absolute Priority 2, we give competitive preference to applications that address the following priority.

This competitive preference priority is from the program statute (section 673(g)(3)(B) of IDEA).

Under 34 CFR 75.105(c)(2)(i) we award up to 10 points to an application, depending on the extent to which the application meets this priority.

This competitive preference priority is:

We give preference to IHEs based on the extent to which IHEs successfully recruit and prepare individuals with disabilities and individuals from groups that are underrepresented in the profession for which they are preparing individuals. In the case of a new project, the applicant must submit a plan with strategies on how it will meet this competitive preference.

Absolute Priority 3—Preparation of Personnel in Minority Institutions (84.325E)

This priority supports awards to IHEs with minority student enrollments of at least 25 percent, including Historically Black Colleges and Universities, for the purpose of preparing personnel to work with children with disabilities.

This priority supports projects that provide preservice preparation of special educators, early intervention personnel, and related services personnel at the associate, baccalaureate, master's, specialist, doctoral, or post-doctoral level.

A preservice program is a program that leads toward a degree, certification, professional license or endorsement (or its equivalent), and may include the preparation of currently employed personnel who are seeking additional degrees, certifications, endorsements, or licenses.

Applicants may propose to prepare one or more of the following types of personnel—

(a) Special educators, including those who work in the areas of early childhood, speech and language, adapted physical education, and assistive technology; and paraprofessional personnel who work with children with disabilities;

(b) Related services personnel who provide developmental, corrective, and other support services (such as psychological, occupational or physical and recreational therapy) to children with disabilities. Comprehensive programs and specialty components within a broader discipline that are designed to prepare personnel for work with children with disabilities may be supported. For the purpose of this priority, eligible related service providers do not include physicians; or

(c) Early intervention personnel who serve infants and toddlers and their families. Early intervention personnel include persons who train, or serve as consultants to, service providers and service coordinators.

Projects funded under this absolute priority must—

(a) Use curricula and pedagogy that are shown to be effective as demonstrated through scientifically-based research, in order to prepare personnel who are able to (1) improve outcomes for students with disabilities, and (2) foster appropriate access to and achievement in the general education curricula as appropriate;

(b) Demonstrate how research-based curriculum and pedagogy are incorporated into training requirements and reflected in all relevant coursework for the proposed training program;

(c) Offer integrated training and practice opportunities that will enhance the collaborative skills of appropriate personnel who share responsibility for providing effective services to children with disabilities;

(d) Prepare personnel to address the specialized needs of children with disabilities from diverse cultural and language backgrounds by—

(1) Determining the competencies needed for personnel to work effectively with culturally and linguistically diverse populations; and

(2) Infusing those competencies into early intervention, special education, and related services training programs;

(e) Develop or improve and implement mutually beneficial partnerships between training programs and schools to promote continuous improvement in preparation programs and in service delivery;

(f) If field-based training is provided, include field-based training opportunities for students in diverse settings, including schools and settings in high-poverty communities;

(g) Employ effective strategies for recruiting students from culturally and linguistically diverse populations;

(h) Provide student support systems (including tutors, mentors, and other innovative practices) to enhance student retention and success in the program;

(i) Provide clear, defensible research-based methods for evaluating the extent to which graduates of the training program are prepared to provide high-quality services that result in improved outcomes for children with disabilities. Communicate the results of this evaluation process to OSEP in required annual performance reports and the final performance report;

(j) Describe how the proposed training program is aligned with State learning standards for children; and

(k) Include, in the application Appendix, all course syllabi that are relevant to the training program proposed. Course syllabi must clearly reflect the incorporation of research-based curriculum and pedagogy as required under paragraph (b) of this section of this priority.

To be considered for an award, an applicant must satisfy the following requirements contained in section 673(f) through (i) of IDEA and 34 CFR part 304—

(a) Demonstrate, with letters from one or more States that the project proposes to serve, that each State needs personnel in the area or areas in which the applicant proposes to provide preparation, as identified in the State's comprehensive system of personnel development under Part B or C of IDEA;

(b) Demonstrate that it has engaged in a cooperative effort with one or more State educational agencies—or, if appropriate, lead agencies for providing early intervention services—to plan, carry out, and monitor the project;

(c) Provide letters from one or more States stating that they intend to accept successful completion of the proposed personnel preparation program as meeting State personnel standards for serving children with disabilities or serving infants and toddlers with disabilities;

(d) Meet State and professionally-recognized standards for the preparation of special education, related services, or early intervention personnel, if the purpose of the project is to assist personnel in obtaining degrees;

(e) Ensure that individuals who receive financial assistance under the proposed project will meet the service obligation requirements, or repay all or part of the cost of that assistance, in accordance with section 673(h)(1) of IDEA and 34 CFR part 304. Applicants must describe how they will inform scholarship recipients of this service obligation requirement; and

(f) As authorized under section 673(i) of IDEA and 34 CFR 304.20, use at least 55 percent of the total requested budget for student scholarships or provide sufficient justification for any designation less than 55 percent for student scholarships.

Sufficient justification for proposing less than 55 percent of the budget for student support would include support for activities such as program development, expansion of a program, or the addition of a new area of emphasis area. Examples include:

- A project that is starting a new program may request up to a year for program development and capacity building. In the initial project year, no student support would be required. Instead, a project could hire a new faculty member or a consultant to assist in program development.
- A project that is proposing to build capacity may hire a field supervisor so that additional students can be trained.
- A project that is expanding or adding a new emphasis area to the program may initially need additional faculty or other resources such as expert consultants, additional training supplies, or equipment that would enhance the program.

Projects that are funded to develop, expand, or to add a new area of emphasis to special education or related services programs must provide information on how these new areas will be institutionalized once Federal funding ends.

Competitive Preference Priority: Within Absolute Priority 3, we give competitive preference to applications that address the following priority.

This competitive preference priority is from the program statute (section 673(g)(3)(B) of IDEA).

Under 34 CFR 75.105(c)(2)(i) we award up to 10 points to an application, depending on the extent to which the application meets this priority.

This competitive preference priority is:

We give preference to IHEs based on the extent to which IHEs successfully recruit and prepare individuals with disabilities and individuals from groups that are underrepresented in the profession for which they are preparing individuals. In the case of a new project, the applicant must submit a plan with strategies on how it will meet this competitive preference.

Absolute Priority 4—Improving the Preparation of Personnel to Serve Children With High-Incidence Disabilities (84.325H)

Background: State agencies, university training programs, local schools, and other community-based agencies and organizations confirm the importance and the difficulty of improving training programs for personnel to serve children with high-incidence disabilities. Localities nationwide are experiencing chronic shortages of such personnel.

Priority: Consistent with section 673(e) of IDEA, the purposes of this priority are (1) to develop or improve, and implement, programs that provide preservice preparation for special and regular education teachers and related services personnel in order to meet the diverse needs of children with high-incidence disabilities and (2) to enhance the supply of well-trained personnel to serve these children in areas of chronic shortage.

For the purpose of this priority, the term high-incidence disability includes

mild or moderate mental retardation, speech or language impairments, emotional disturbance, or specific learning disabilities. Training of early intervention personnel is addressed under the priority for the preparation of personnel to serve children with low-incidence disabilities (84.325A) and, therefore, is not included as part of this priority.

A preservice program is a program that leads toward a degree, certification, professional license or endorsement (or its equivalent), and may include the preparation of currently employed personnel who are seeking additional degrees, certifications, endorsements, or licenses.

Applicants may propose to prepare one or more of the following types of personnel:

(a) Special educators, including those who work in the areas of early childhood, speech and language, adapted physical education, assistive technology; and paraprofessional personnel who work with children with high-incidence disabilities.

(b) Related services personnel, who provide developmental, corrective, and other support services (such as psychological, occupational or physical and recreational therapy) to children with high-incidence disabilities. For the purpose of this priority, eligible related service providers do not include physicians. Comprehensive programs and specialty components within a broader discipline that are designed to prepare personnel for work with the high-incidence population may be supported.

Projects funded under this priority must—

(a) Use curricula and pedagogy that are shown to be effective as demonstrated through scientifically-based research in order to prepare personnel equipped to improve outcomes for students with disabilities;

(b) Demonstrate how research-based curriculum and pedagogy are incorporated into training requirements and reflected in all relevant coursework for the proposed training program;

(c) Offer integrated training and practice opportunities that will enhance the collaborative skills of all personnel who share responsibility for providing effective services for children with high-incidence disabilities;

(d) Prepare personnel to work with culturally and linguistically diverse populations by—

(1) Determining the competencies needed for personnel to work effectively with students with high-incidence disabilities from culturally and linguistically diverse backgrounds; and

(2) Infusing those competencies into special education or related services training;

(e) Develop or improve and implement partnerships that are mutually beneficial to grantees and LEAs in order to promote continuous improvement of preparation programs;

(f) Include field-based training opportunities for students in diverse settings, including schools and high-poverty communities;

(g) Provide clear, defensible research-based methods for evaluating the extent to which graduates of the training program are prepared to provide high-quality services that result in improved outcomes for children with disabilities. Communicate the results of this evaluation process to OSEP in required annual performance reports and the final performance report;

(h) Describe how the proposed training program is aligned with State learning standards for children; and

(i) Include, in the application Appendix, all course syllabi that are relevant to the training program proposed. Course syllabi must clearly reflect the incorporation of research based curriculum and pedagogy as required under paragraph (b) of this section of the priority.

An applicant must satisfy the following requirements contained in section 673(f) through (i) of IDEA and 34 CFR part 304—

(a) Demonstrate, with letters from one or more States that the project proposes to serve, that each State needs personnel in the area or areas in which the applicant proposes to provide preparation, as identified in the State's comprehensive system of personnel development under Part B of IDEA;

(b) Demonstrate that it has engaged in a cooperative effort with one or more SEAs to plan, carry out, and monitor the project;

(c) Provide letters from one or more States stating that they intend to accept successful completion of the proposed personnel preparation program as meeting State personnel standards for serving children with disabilities;

(d) Meet State and professionally-recognized standards for the preparation of special education and related services personnel;

(e) Ensure that individuals who receive financial assistance under the proposed project will meet the service obligation requirements, or repay all or part of the cost of that assistance, in accordance with section 673(h)(1) of IDEA and the regulations in 34 CFR part 304. Applicants must describe how they will inform scholarship recipients of this service obligation requirement; and

(f) As authorized under section 673(i) of IDEA and 34 CFR 304.20, use at least 65 percent of the total requested budget for student scholarships.

Competitive Preference Priority: Within Absolute Priority 4, we give competitive preference to applications that address the following priority.

This competitive preference priority is from the program statute (section 673(g)(3)(B) of IDEA).

Under 34 CFR 75.105(c)(2)(i) we award up to 10 points to an application, depending on the extent to which the application meets this priority.

This competitive preference priority is:

We give preference to IHEs based on the extent to which the IHE successfully recruits and prepares individuals with disabilities and individuals from groups that are underrepresented in the profession for which they are preparing individuals. In the case of a new project, the applicant must submit a plan with strategies on how it will meet this competitive preference.

Waiver of Proposed Rulemaking

Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed priorities. However, section 661(e)(2) of IDEA makes the public comment requirements inapplicable to the priorities in this notice.

Program Authority: 20 U.S.C. 1461, and 1473.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99; and (b) The regulations for this program in 34 CFR part 304.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $14,200,796.

For funding information regarding the individual priorities, see the chart in the Award Information section of this notice. In addition, the allocation of funds for Absolute Priority 1 is explained in the chart.

Estimated Range of Awards: See chart.

Estimated Average Size of Awards: See chart.

Maximum Awards: See chart.

Estimated Number of Awards: See chart.

Project Period: See chart.

INDIVIDUALS WITH DISABILITIES EDUCATION ACT APPLICATION NOTICE FOR FISCAL YEAR 2004

CFDA number and name	Applications available	Deadline for transmittal of applications	Deadline for intergovernmental review	Estimated available funds	Estimated range of awards	Estimated average size of awards	Maximum award (per year)*	Estimated number of awards	Project period
84.325A Preparation of Special Education, Related Services, and Early Intervention Personnel to Serve Infants, Toddlers, and Children with Low-Incidence Disabilities**.	March 4, 2004	April 16, 2004	June 15, 2004 ..	$6,000,000	$200,000–$250,000	$224,440	$250,000	24	Up to 60 months.
84.325D Preparation of Leadership Personnel.	March 4, 2004	April 9, 2004	June 8, 2004	3,174,000	171,969–200,000	196,200	200,000	16	Up to 48 months.
84.325E Preparation of Personnel in Minority Institutions.	March 4, 2004	April 9, 2004	June 8, 2004	2,000,000	186,234–200,000	196,450	200,000	10	Up to 48 months.
84.325H Improving the Preparation of Personnel to Serve Children with High-Incidence Disabilities.	March 4, 2004	April 5, 2004	June 1, 2004	3,026,796	163,848–200,000	196,840	200,000	15	Up to 48 months.

* We will reject any application that proposes a budget exceeding the maximum award for a single budget period of 12 months.
Note: The Department of Education is not bound by any estimates in this notice.
** Under this absolute priority, we plan to award approximately:
60 percent of the available funds for projects that support careers in special education, including early childhood educators;
10 percent of the available funds for projects that support careers in educational interpreter services for hearing impaired individuals;
15 percent of the available funds for projects that support careers in related services, other than educational interpreter services; and
15 percent of the available funds for projects that support careers in early intervention.

III. Eligibility Information

1. *Eligible Applicants:* IHEs.

2. *Cost Sharing or Matching:* This competition does not involve cost sharing or matching.

3. *Other: General Requirements*—(a) The projects funded under this program must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

(b) Each applicant and grant recipient funded under this program must involve individuals with disabilities or parents of individuals with disabilities in planning, implementing, and evaluating the project (see section 661(f)(1)(A) of IDEA).

(c) Applicants funded under this program must submit annual data on each scholar who receives grant support. The scholar data will be due within 60 days after the end of each grant budget year and will be submitted electronically. Applicants are encouraged to visit the Personnel Prep Data (PPD) Web site at *www.osepppd.org* for further information.

(d) Each project funded under this program must budget for a two-day Project Directors' meeting in Washington, DC, during each year of the project.

(e) In a single application an applicant may address only one absolute priority.

(f) If a project maintains a Web site, it must include relevant information and documents in an accessible form.

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827, FAX: 1–301–470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify each competition by its respective CFDA number as follows: CFDA number 84.325A, 84.325D, 84.325E, or 84.325H.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the Grants and Contract Services Team listed in section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 50 pages for each absolute priority, using the following standards:

- A "page" is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, the references, the letters of support, or the appendix. However, you must include all of the application narrative in Part III.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*
Applications Available: See chart.

Deadline for Transmittal of Applications: See chart. The dates and times for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this program. The application package also specifies the hours of operation of the e-Application Web site.

We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: See chart.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for these competitions.

5. *Funding Restrictions:* We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Instructions and requirements for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this program.

Application Procedures

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications:

We are continuing to expand our pilot project for electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Personnel Preparation To Improve Services and Results for Children with Disabilities program—CFDA Numbers 84.325A, D, E, and H is one of the programs included in the pilot project. If you are an applicant for a grant under the Personnel Preparation To Improve Services and Results for Children With Disabilities program, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-Application). If you use e-Application, you will be entering data online while completing your application. You may not e-mail an electronic copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter online will be saved into a database. We request your participation in e-Application. We shall continue to evaluate its success and solicit suggestions for its improvement.

If you participate in e-Application, please note the following:

- Your participation is voluntary.
- When you enter the e-Application system, you will find information about its hours of operation. We strongly recommend that you do not wait until the application deadline date to initiate an e-Application package.
- You will not receive additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.
- You may submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Your e-Application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within three working days of submitting your electronic application, fax a signed copy of the Application for Federal Education Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from e-Application.
2. The institution's Authorizing Representative must sign this form.
3. Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.
4. Fax the signed ED 424 to the Application Control Center at 1–202–260–1349.

We may request that you give us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If you elect to participate in the e-Application pilot for the Personnel Preparation to Improve Services and Results for Children with Disabilities program and you are prevented from submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail or hand delivery. We will grant this extension if—

1. You are a registered user of e-Application, and have initiated an e-Application for this competition; and

2. (a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC, time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC, time) on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgement of any system unavailability, you may contact either (1) the persons listed elsewhere in this notice under For Further Information Contact (see VII. Agency Contact) or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for the Personnel Preparation to Improve Services and Results for Children with Disabilities program at *http://e-grants.ed.gov*.

V. Application Review Information

Selection Criteria: The selection criteria for these competitions are listed in 34 CFR 75.210. The specific selection criteria to be used for these competitions will be provided in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notice (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures:* Under the Government Performance and Results Act (GPRA), the Department has established a set of performance measures that are designed to yield information on the effectiveness of the Personnel Preparation program. These measures address: (1) the percentage of scholars that complete their program; and (2) the percentage of scholars employed upon program completion in the area trained.

If funded, applicants will be asked to collect and report data through the Personnel Preparation Data (PPD) Web site at *www.osepppd.org* (see section III.3.(c) of this notice for further information on the PPD) and in their required annual performance reports. The PPD and annual performance reports are designed, in part, to provide an opportunity for grantees to document their success in addressing these performance measures.

Beyond the performance measures previously described, the Department is also currently developing measures that will be designed to yield information on various aspects of program quality (*e.g.,* the extent to which programs support scholars who are highly qualified for the position for which they are trained; the extent to which the curricula of training programs reflect the current knowledge base on effective practices; and the percentage of program completers maintaining employment for three or more years in the area(s) for which they were trained) for projects funded under this notice. If funded, applicants will also be asked to participate in assessing and providing information on program quality.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: The Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: 1–202–205–8207.

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 this document in an alternative format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to the Grants and Contracts Services Team listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/news/fedregister.*

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 1–202–512–1530.

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: *www.gpoaccess.gov/nara/index.html.*

Dated: February 24, 2004.

Troy R. Justesen,

Acting Deputy Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 04–4722 Filed 3–2–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–104]

ANR Pipeline Company; Notice of Negotiated Rate Filing

February 26, 2004.

Take notice that on February 10, 2004, ANR Pipeline Company (ANR) tendered for filing and approval two negotiated rate agreements between ANR and ConocoPhillips Company pursuant to ANR's Rate Schedule ITS, as well as of the Negotiated Rate Letters and the related Lease Dedication Agreement. ANR tenders complete copies of these agreements, pursuant to the Commission's Letter Order dated January 29, 2004, where it accepted the filing subject to ANR filing a complete copy of the associated liquefiables ITS agreement as the pages of this agreement were out of order in the original transmittal, creating the impression that the copy was incomplete. Also, the signature page for one of the Negotiated Rate Letters was missing; therefore, ANR has submitted a complete set of all the agreements involved.

ANR requests that the Commission accept and approve the subject negotiated rate agreement amendments to be effective February 1, 2004.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed on or before the date as indicated below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Intervention and Protests Date: March 4, 2004.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–450 Filed 3–2–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES03–43–003]

Aquila, Inc.; Notice of Application

February 25, 2004.

Take notice that on February 13, 2004, in Docket No. ES03–43–003, Aquila, Inc. tendered for filing a supplement to Aquila's February 3 response to a second data request issued on November 18, 2003, by the Director of the Division of Tariffs and Market Development-Central, in the above-referenced docket.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of

practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: March 5, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–449 Filed 3–2–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER01–313–005, ER01–424–005, and EL03–131–002]

California Independent System Operator Corporation, Pacific Gas and Electric Company, San Diego Gas & Electric Company v. California Independent System Operator Corporation; Notice of Filing

February 26, 2004.

Take notice that on February 23, 2004, California Independent System Operator Corporation (ISO), tendered for filing a compliance refund report pursuant to the Commission's Order issued January 23,. 2004, in Docket No. ER01–313–003, *et al.*

ISO also states that, in addition to the official service lists for the above-referenced proceedings it has served copies to all ISO Scheduling Coordinators, the California Public Utilities Commission, the California Energy Commission and the California Electricity Oversight Board.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: March 15, 2004.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–451 Filed 3–2–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–174–000]

CenterPoint Energy-Mississippi River Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

February 26, 2004.

Take notice that on February 23, 2004, CenterPoint Energy Mississippi River Transmission Corporation (MRT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to be effective April 1, 2004:

Fifth Revised Sheet No. 226
Fifth Revised Sheet No. 226A
Original Sheet No. 226A.01

MRT states that the purpose of this filing is to add a new type of discount provision to section 18.2 of the General Terms and Conditions of MRT's tariff that MRT may include in a discount rate agreement in a manner that would not constitute a material deviation from MRT's *pro forma* service agreement. MRT states that this new provision would provide for discounts to be based on published index prices for specific receipt or delivery points or other agreed-upon published pricing reference points.

MRT states that copies of the tariff sheets are being mailed to all parties on MRT's official service list, to MRT's jurisdictional customers, and to interested State commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *ERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–443 Filed 3–2–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER04–359–000]

Emera Energy U.S. Subsidiary No. 1, Inc.; Notice of Issuance of Order

February 26, 2004.

Emera Energy U.S. Subsidiary No. 1, Inc. (Emera Sub No. 1) filed an application for market-based rate authority, with an accompanying tariff. The proposed tariff provides for wholesale sales of capacity and energy at market-based rates. Emera Sub No. 1 also requested waiver of various Commission regulations. In particular, Emera Sub No. 1 requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by the Emera Sub No. 1.

On February 24, 2004, pursuant to delegated authority, the Director, Division of Tariffs and Market Development-South, granted the request for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Emera Sub No. 1 should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214).

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is March 25, 2004.

Absent a request to be heard in opposition by the deadline above, Emera Sub No. 1 is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Emera Sub No. 1, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Emera Sub No. 1's issuances of securities or assumptions of liability.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the e library (FERRIS) link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E4–445 Filed 3–2–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–70–006]

Gas Transmission Northwest Corporation; Notice of Compliance Filing

February 26, 2004.

Take notice that on February 23, 2004, Gas Transmission Northwest Corporation (GTN) tendered for filing a compliance filing to demonstrate that the Malin index, which is used to determine the collateral requirement for lent gas on GTN's system, is sufficiently reliable to meet the criteria of the FERC's Policy Statement on Natural Gas and Electric Price Indices, in compliance with the Commission's December 24, 2003, Order on Compliance Filing and Rehearing in Docket Nos. RP03–70–002, *et al.* GTN requests that the Commission approve GTN's use of the Malin index for purposes of establishing a collateral requirement for shippers utilizing GTN's lending service.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested State regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–442 Filed 3–2–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–363–010]

North Baja Pipeline, LLC; Notice of Compliance Filing

February 26, 2004.

Take notice that on February 23, 2004, North Baja Pipeline, LLC (NBP) tendered for filing a compliance filing to demonstrate that the SoCal index, which is used to determine the collateral requirement for lent gas on NBP's system, is sufficiently reliable to meet the criteria of the FERC's Policy Statement on Natural Gas and Electric Price Indices, in compliance with the Commission's December 24, 2003, Order on Compliance Filing and Rehearing in Docket Nos. RP02–363–002, *et al.* NBP requests that the Commission approve NBP's use of the SoCal index for purposes of establishing a collateral requirement for shippers utilizing NBP's lending service.

NBP further states that a copy of this filing has been served on NBP's jurisdictional customers and interested State regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be

viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–441 Filed 3–2–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–176–000]

Northwest Pipeline Corporation; Notice of Proposed Changes in FERC Gas Tariff

February 26, 2004.

Take notice that on February 23, 2004, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets listed in Appendix B of its filing, to be effective July 1, 2004.

Northwest states that the purpose of this filing is to redesign its Forms of Service Agreement for transportation services under Rate Schedules TF–1, TF–2 and TI–1 and to implement related conforming changes to such rate schedules and the applicable general terms and conditions in order to facilitate: (i) More accurate and complete compliance with the Commission's transactional reporting requirements and non-conforming contract filing requirements; and (ii) more efficient contract administration.

Northwest states that a copy of this filing has been served upon Northwest's customers and interested State regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–436 Filed 3–3–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–114–005]

Tennessee Gas Pipeline Company; Notice of Compliance Tariff Filing and Refund Plan

February 26, 2004.

Take notice that on February 23, 2004, Tennessee Gas Pipeline Company, (Tennessee) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the tariff sheets attached as Appendix A to the filing, with an effective date of March 24, 2004, and a revised refund plan attached as Appendix B.

Tennessee states that the revised tariff sheets and refund plan are being filed in accordance with the Commission's December 24, 2003, Order in the referenced proceeding, which relates to Tennessee's Cashout Report for the period from September 2000 through August 2001.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed on or before the protest date as shown below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Protest Date: March 8, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–440 Filed 3–2–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–175–000]

Transcontinental Gas Pipe Line Corporation; Notice of Tariff Filing

February 26, 2004.

Take notice that on February 23, 2004, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Twenty-Fifth Revised Sheet No. 28, to be effective February 1, 2004.

Transco states that the purpose of the instant filing is to track rate changes attributable to storage service purchased from Texas Eastern Transmission Corporation (TETCO) under its Rate Schedule X–28, the costs of which are included in the rates and charges payable under Transco's Rate Schedule S–2. Transco further states that this filing is made pursuant to tracking provisions under Section 26 of the General Terms and Conditions of Transco's Third Revised Volume No. 1.

Transco states that copies of the filing have been mailed to affected customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance

with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–444 Filed 3–2–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC04–67–000, et al.]

Astoria Energy, LLC, et al.; Electric Rate and Corporate Filings

February 24, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Astoria Energy, LLC

[Docket Nos. EC04–67–000 and ER01–3103–006]

Take notice that on February 20, 2004, Astoria Energy, LLC filed with the Federal Energy Regulatory Commission an application pursuant to Section 203 of the Federal Power Act for authorization of an indirect disposition of jurisdictional facilities whereby additional equity interests will be issued to new non-utility investors in the application's proposed 1000 MW new gas-fired generating station in Queens County, New York. The application seeks privileged treatment of a term sheet.

Comment Date: March 12, 2004.

2. Fox Energy Company LLC

[Docket No. EG04–35–000]

Take notice that on February 20, 2004, Fox Energy Company LLC (Applicant) filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Applicant, a Wisconsin limited liability company, proposes to own and operate a 235 megawatt natural gas-fired combined cycle electric generating facility located in the Town of Kaukauna, Outagamie County, Wisconsin. Applicant further states that copies of the application were served upon the United States Securities and Exchange Commission and Public Service Commission of Wisconsin.

Comment Date: March 12, 2004.

3. Niagara Mohawk Power Corporation

[Docket No. EL03–204–002]

Take notice that on February 6, 2004, Niagara Mohawk Power Corporation, a National Grid company tendered for filing a compliance report pursuant to Commission Order issued December 23, 2003 in Docket No. EL03–204–000.

Comment Date: March 5, 2004.

4. Niagara Mohawk Power Corporation

[Docket No. EL03–234–002]

Take notice that on February 6, 2004, Niagara Mohawk Power Corporation, a National Grid company, tendered for filing a compliance report pursuant to Commission Order issued December 23, 2003 in Docket No. EL03–234–000.

Comment Date: March 5, 2004.

5. South Mississippi Electric Power Association, Complainant v. Entergy Corp., Entergy Services, Inc., Entergy Mississippi, Inc., Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., and Entergy New Orleans, Inc., Respondents

[Docket No. EL04–84–000]

Take notice that on February 23, 2004, South Mississippi Electric Power Association (SMEPA), (Complainant), filed a Complaint Concerning Improper Reactive Power Charges against Entergy Corp., Entergy Services, Inc., Entergy Mississippi, Inc., Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., and Entergy New Orleans, Inc. (collectively Entergy) pursuant to Sections 201, 206, and 306 of the Federal Power Act and Rule 206 of the Commission's Rules (18 CFR 385.206).

Complainant requests that the Commission find that Entergy's reactive power charges for the transmission of SMEPA's 75 MW purchase from the Big Cajun II Generating Plant violate the SMEPA-Entergy pre-Order No. 888 transmission contract because it prohibits imposition of additional charges absent SMEPA's consent, and, in addition, even if they were applicable, Entergy's Open Access Transmission Tariff and Order No. 888, because SMEPA is self-supplying reactive power to Entergy. Complainant further requests that the Commission determine that Entergy's reactive power charges to SMEPA are unduly discriminatory. Complainant requests that the Commission order Entergy to cease billing SMEPA for Schedule 2 charges for the transmission of SMEPA's 75 MW purchase from Big Cajun II and order Entergy to return, with interest, the Schedule 2 charges which SMEPA has paid under protest.

Comment Date: March 15, 2004.

6. CPN Pleasant Hill, LLC and CPN Pleasant Hill Operating, LLC

[Docket No. ER01–915–002]

Take notice that on February 20, 2004, CPN Pleasant Hill, LLC (CPN) and CPN Pleasant Hill Operating, LLC (CPN Operating) submitted for filing their triennial updated market power analysis in compliance with the Commission order issued in Docket No. ER01–915–000 on February 20, 2001.

Comment Date: March 12, 2004.

7. Entergy Services, Inc.

[Docket No. ER04–35–002]

Take notice that on February 20, 2004, Entergy Services, Inc., (Entergy) tendered for filing on behalf of the Entergy Operating Companies, Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., a compliance filing in response to the Commission's issued December 22, 2003 in Docket No. ER04–35–000, in Entergy Services, Inc., 105 FERC ¶ 61,318 (2003).

Comment Date: March 12, 2004.

8. PJM Interconnection, L.L.C.

[Docket No. ER04–391–001]

Take notice that on February 20, 2004, PJM Interconnection, L.L.C. (PJM), submitted for filing an executed substitute interconnection service agreement (ISA) among PJM, Fairless Energy, L.L.C., and PECO Energy Company that includes language, requested by Commission staff, regarding disclosure of confidential information to the Commission or its staff. PJM requests a waiver of the Commission's 60-day notice requirement to permit a December 12, 2003 effective date for the ISA.

PJM states that copies of this filing were served upon the parties to the agreements, the state regulatory commissions within the PJM region, and

the official service list complied by the Secretary in this proceeding.

Comment Date: March 12, 2004.

9. CalPeak Power—El Cajon, LLC

[Docket No. ER04–517–001]

Take notice that on February 20, 2004, CalPeak Power—El Cajon, LLC (El Cajon) tendered for filing substitute rate schedule sheets to the January 30, 2004 filing in Docket No. ER04–517–000, setting forth corrections to the schedules to the Must-Run Service Agreement between El Cajon and the California Independent System Operator Corporation.

Comment Date: March 12, 2004.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E4–434 Filed 03–02–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL03–14–002, et al.]

City of Azusa, California, et al.; Electric Rate and Corporate Filings

February 25, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. City of Azusa, California

[Docket Nos. EL03–14–002 and EL04–35–001]

Take notice that on February 20, 2004, the City of Azusa, California (Azusa) submitted for filing its revised Transmission Owner Tariff in compliance with the Commission's December 18, 2003, Order on Settlement and Establishing Hearing Procedures in Docket No. EL03–14–000, *et al.* Azusa also submitted changes to its Transmission Revenue Balancing Account Adjustment to Appendix I of its FERC Electric Tariff to reflect ISO calculations of Azusa's Net Firm Transmission Rights Revenues.

Comment Date: March 12, 2004.

2. City of Anaheim, California

[Docket Nos. EL03–15–003 and EL04–40–001]

Take notice that on February 20, 2004, the City of Anaheim, California (Anaheim) submitted for filing its revised Transmission Owner Tariff in compliance with the Commission's December 18, 2003, Order on Settlement and Establishing Hearing Procedures in Docket No. EL03–14–000, *et al.* Anaheim also submitted changes to its Transmission Revenue Balancing Account Adjustment and to Appendix I of its FERC Electric Tariff to reflect ISO calculations of Anaheim's Net Firm Transmission Rights Revenues.

Comment Date: March 12, 2004.

3. City of Riverside, California

[Docket Nos. EL03–20–003 and EL04–39–001]

Take notice that on February 20, 2004, the City of Riverside, California (Riverside) submitted for filing its revised Transmission Owner Tariff in compliance with the Commission's December 18, 2003, Order on Settlement and Establishing Hearing Procedures in Docket No. EL03–14–000, *et al.* Riverside also submitted changes to its Transmission Revenue Balancing Account Adjustment and to Appendix I of its FERC Electric Tariff to reflect ISO calculations of Riverside's Net Firm Transmission Rights Revenues.

Comment Date: March 12, 2004.

4. City of Banning, California

[Docket Nos. EL03–21–002 and EL04–42–001]

Take notice that on February 20, 2004, the City of Banning, California (Banning) submitted for filing its revised Transmission Owner Tariff in compliance with the Commission's December 18, 2003, Order on Settlement and Establishing Hearing Procedures in Docket No. EL03–14–000, *et al.* Banning also submitted changes to its Transmission Revenue Balancing Account Adjustment and to Appendix I of its FERC Electric Tariff to reflect ISO calculations of Banning's Net Firm Transmission Rights Revenues.

Comment Date: March 12, 2004.

5. Entergy Services, Inc.

[Docket No. ER04–207–002]

Take notice that on February 23, 2004, Entergy Services, Inc. (Entergy) on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies) filed a compliance filing incorporating revisions to the creditworthiness provisions of Entergy's Open Access Transmission Tariff as required by the Commission's Order issued January 23, 2004 in Docket Nos. ER04–207–000 and 001, Entergy Services, Inc., 106 FERC ¶ 61,039 (2004).

Comment Date: March 15, 2004.

6. Twin Cities Power Generation

[Docket No. ER04–275–001]

Take notice that on February 17, 2004, Twin Cities Power Generation submitted a compliance filing pursuant to the Commission's Order dated January 14, 2003, in Docket No. ER04–275–000.

Comment Date: March 9, 2004.

7. Redwood Energy Marketing, LLC

[Docket No. ER04–545–001]

Take notice that on February 23, 2004, Redwood Energy Marketing, LLC (Redwood) filed an Amended Rate Schedule FERC No. 1. Amending their February 6, 2004, petition for Commission acceptance to engage in wholesale Electric power and energy transactions as a marketer; the granting of certain blanket power approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

Comment Date: March 15, 2004.

8. Southwest Reserve Sharing Group

[Docket No. ER04–574–000]

Take notice that on February 23, 2004, Tucson Electric Power Company (TEP) tendered for filing on behalf of the members of the Southwest Reserve Sharing Group (SRSG) an amendment to the Southwest Reserve Sharing Group Participation Agreement expanding SRSG membership include PPL Energy Plus, LLC and Panda Gila Rener, L.P.

Comment Date: March 15, 2004.

9. PL Electric Utilities Corporation

[Docket No. ER04–575–000]

Take notice that on February 23, 2004, PPL Electric Utilities Corporation (PPL Electric) filed an Agreement between PPL Electric and Baltimore Gas and Electric Company (BG&E) that sets forth the terms and conditions governing the design, construction, installation and operation of the Yorkana-Otter Creek 230 kV transmission line.

PPL Electric states that it has served a copy of its filing on BG&E.

Comment Date: March 15, 2004.

10. Wolverine Power Supply Cooperative, Inc.

[Docket No. ER04–576–000]

Take notice that on February 23, 2004, Wolverine Power Supply Cooperative, Inc., (Wolverine) tendered a Notice of Termination of Service Agreement No. 13 under Wolverine's FERC Electric Tariff, Original Vol. No. 2. Wolverine states that the Service Agreement expired by its own terms effective December 31, 2003. Wolverine requested a cancellation effective date of December 31, 2003, for the Service Agreement.

Wolverine states that a copy of this filing has been served upon Wolverine Power Marketing Cooperative, Inc.

Comment Date: March 15, 2004.

11. Styrka Energy Fund Ltd.

[Docket No. ER04–577–000]

Take notice that on February 23, 2004, Styrka Energy Fund Ltd. tendered for filing an application for waivers and blanket approvals under various regulations of the Commission and for an order accepting Styrka Energy Fund Ltd.'s FERC Electric Rate Schedule No. 1. Styrka Energy Fund Ltd. is seeking authority to make sales of electrical capacity, energy, ancillary services, and Firm Transmission Rights, Congestion Credits, Fixed Transmission Rights, and Auction Revenue Rights (collectively, FTRs), as well as reassignments of transmission capacity, to wholesale customers at market-based rates. Styrka Energy Fund Ltd. requests waiver of the 60-day prior notice requirement to permit the Rate Schedule to be effective February 24, 2004.

Comment Date: March 15, 2004.

12. Styrka Energy Fund LLC

[Docket No. ER04–578–000]

Take notice that on February 23, 2004, Styrka Energy Fund LLC tendered for filing an application for waivers and blanket approvals under various regulations of the Commission and for an order accepting Styrka Energy Fund LLC's FERC Electric Rate Schedule No. 1. Styrka Energy Fund LLC is seeking authority to make sales of electrical capacity, energy, ancillary services, and Firm Transmission Rights, Congestion Credits, Fixed Transmission Rights, and Auction Revenue Rights (collectively, FTRs), as well as reassignments of transmission capacity, to wholesale customers at market-based rates. Styrka Energy Fund LLC requests waiver of the 60-day prior notice requirement to permit the Rate Schedule to be effective February 24, 2004.

Comment Date: March 15, 2004.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E4–435 Filed 3–2–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2213–009]

Public Utility District No. 1 of Cowlitz County, Washington; Notice Of Availability of Final Environmental Assessment

February 25, 2004.

In accordance with the National Environmental Policy Act of 1969, as amended, and the Federal Energy Regulatory Commission's regulations (18 CFR part 380), the Commission staff have reviewed plans, filed September 3, 2003, supplemented November 17, 2003, and December 10, 2003, to repair the Swift No. 2 Project's power canal, tailrace, and switchyard. The project is located on the North Fork Lewis River in Washington.

The project licensee (Public Utility District No. 1 of Cowlitz County) proposes to repair and reconstruct the damage to the Swift No. 2 Project following an April 21, 2002, partial canal breach and washout. Under section 10(c) of the Federal Power Act, the licensee is obligated to maintain the project works in a good state of repair. The licensee has proposed a reasonable schedule for the work. In the final environmental assessment (FEA), Commission staff has analyzed the probable environmental effects of the proposed work and has concluded that approval, with appropriate environmental measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

A copy of the FEA is available for public inspection in the Public Reference Room of the Commission's offices at 888 First Street, NE., Washington, DC 20426. The FEA may also be viewed on the Internet at *http://www.ferc.gov* using the "eLibrary" link-select "Docket #" and follow the instructions. For assistance, please contact FERC online support at *FERCOnlineSupport@ferc.gov* or call toll-free 866–208–3676 or (202) 502–8659 for TTY.

Magalie R. Salas,

Secretary.

[FR Doc. E4–447 Filed 3–02–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1354–031]

Pacific Gas and Electric; Notice of Availability of Environmental Assessment

February 26, 2004.

In accordance with the National Environmental Policy Act of 1969, as amended, and the Federal Energy Regulatory Commission's regulations (18 CFR part 380), the Commission staff have prepared an environmental assessment (EA) that analyzes the environmental impacts of allowing Pacific Gas and Electric, licensee for the Crane Valley Hydroelectric Project, to authorize the Pines Resort to use project lands and waters. Specifically, the Pines Resort, located on the north shore of Bass Lake, proposes to expand and modernize an existing marina. The EA contains staff's analysis of the potential environmental impacts of the proposal and concludes that approval of the proposed action would not constitute a major Federal action significantly affecting the quality of the human environment.

A copy of the EA is attached to a February 24, 2004, Commission Order titled "Order Approving Non-Project Use of Project Lands and Waters," which is available for review and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426. The EA may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "elibrary" link. Enter the docket number (prefaced by P-) and excluding the last three digits, in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–437 Filed 3–2–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission, Soliciting Additional Study Requests, and Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments

February 26, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New major license.

b. *Project No.:* 2082–027.

c. *Date Filed:* February 25, 2004.

d. *Applicant:* PacifiCorp.

e. *Name of Project:* Klamath Hydroelectric Project.

f. *Location:* On the Klamath River in Klamath County, Oregon and on the Klamath River and Fall Creek in Siskiyou County, California. The project currently includes 219 acres of federal lands administered by the Bureau of Reclamation and the Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Todd Olson, Project Manager, PacifiCorp, 825 NE Multnomah, Suite 1500, Portland, Oregon 97232, (503) 813–6657.

i. *FERC Contact:* John Mudre, (202) 502–8902 or *john.mudre@ferc.gov.*

j. *Cooperating Agencies:* We are asking Federal, State, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item l below.

k. Pursuant to section 4.32(b)(7) of 18 C.F.R. of the Commission's regulations, if any resource agency, Indian tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. Deadline for filing additional study requests and requests for cooperating agency status: April 26, 2004.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's rules of practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Additional study requests and requests for cooperating agency status may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

m. This application is not ready for environmental analysis at this time.

n. The proposed project consists of four existing generating developments (J.C. Boyle, Copco No. 1, Copco No. 2. and Iron Gate) along the mainstem of the Upper Klamath River, between RM 228 and RM 254, and one generating development (Fall Creek) on Fall Creek, a tributary to the Klamath River at about RM 196. The existing Spring Creek diversion is proposed for inclusion with the Fall Creek Development. The currently licensed East Side, West Side, and Keno Developments are not included in the proposed Project.

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. With this notice, we are initiating consultation with the California State Historic Preservation Officer (CaSHPO) and the Oregon State Historic Preservation Officer (OSHPO) as required by (§ 106, National Historic Preservation Act, and the regulations of

the Advisory Council on Historic Preservation, 36 CFR 800.4.

q. *Procedural Schedule and Final Amendments:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Issue Acceptance/Deficiency Letter	April 2004.
Scoping Meetings	May 2004.
Additional Study Requests, if needed	July 2004.
Request Additional Information	July 2004.
Notice of application is ready for environmental analysis	November 2004.
Notice of the availability of the draft EIS	July 2005.
Notice of the availability of the final EIS	December 2005.
Ready for Commission's decision on the application	February 2006.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Magalie R. Salas,

Secretary.

[FR Doc. E4–438 Filed 3–2–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions to Intervene and Protests

February 26, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New major license.

b. *Project No.:* P–289–013.

c. *Date filed:* October 7 , 2003.

d. *Applicant:* Louisville Gas and Electric Company (LG&E).

e. *Name of Project:* Ohio Falls Hydroelectric Project.

f. *Location:* On the Ohio River, in Jefferson County, Kentucky. This project is located at the U.S. Army Corp of Engineer's McAlpine Locks and Dam Project.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Ms. Linda S. Portasik, Senior Corporate Attorney, Louisville Gas and Electric Company, 220 West Main Street, Louisville, Kentucky, 40202, (502) 627–2557.

i. *FERC Contact:* John Costello, *john.costello@ferc.gov*, (202) 502–6119.

j. *Deadline for Filing Motions to Intervene and Protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. The Commission's rules of practice require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link. The Commission encourages electronic filings.

k. This application has been accepted, but is not ready for environmental analysis at this time.

l. *Project Description:* The Ohio Falls Hydroelectric Station consists of the following existing facilities: (a) A concrete powerhouse containing eight-10,040kW generating units, located at the U.S. Army Corp of Engineer's McAlpine Locks and Dam Project; (b) a concrete headworks section, 632 feet long and 2 feet wide, built integrally with the powerhouse; (c) an office and electric gallery building; (d) a 69 kV transmission line designated as line 6608 to the Canal substation; (e) an access road, (f) a 266.6-foot long swing bridge over McAlpine Locks for access; (g) one half mile of railroad tracks; and (h) appurtenant facilities. The project facilities are owned by LG&E.

m. A copy of the application is on file with the Commission and is available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "E Library" link—select "Docket #" and follow the instructions. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676 or for TTY, contact (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE"; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

o. *Procedural Schedule:* The Commission staff proposes to issue one Environmental Assessment (EA) rather than issuing a draft and final EA. Staff intends to allow 30 days for entities to comment on the EA, and will take into consideration all comments received on the EA before final action is taken on the license application. The application will be processed according to the following schedule, but revisions to the schedule may be made as appropriate:

Action	Date
Issue Scoping Document	July 2004.

Action	Date
Notice Application Ready for Environmental Assessment	November 2004.
Notice Availability of EA	February 2005.
Ready for Commission Decision on Application	October 2005.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of this notice.

Magalie R. Salas,

Secretary.

[FR Doc. E4–439 Filed 3–2–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission, Soliciting Additional Study Requests, and Establishing Procedures for Relicensing and a Deadline for Submission of Final Amendments

February 25, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New major license.

b. *Project No.:* 2692–032.

c. *Date Filed:* February 20, 2004.

d. *Applicant:* Duke Power.

e. *Name of Project:* Nantahala Hydroelectric Project.

f. *Location:* On the Nantahala River and its tributaries, in Macon and Clay Counties, North Carolina. There are 41 acres of USFS managed land (Nantahala National Forest) within the Nantahala Project boundary.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* John C. Wishon, Nantahala Area Relicensing Project Manager, Duke Power, 301 NP&L Loop, Franklin, NC 28734, (828) 369–4604, *jcwishon@duke-energy.com.*

i. *FERC Contact:* Carolyn Holsopple at (202) 502–6407, or *carolyn.holsopple@ferc.gov.*

j. *Cooperating Agencies:* We are asking Federal, State, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item (l) below.

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for Filing Additional Study Requests and Requests for Cooperating Agency Status:* April 20, 2004.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. The Commission's rules of practice require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Additional study requests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filing. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link. After logging into the e-Filing system, select "Comment on Filing" from the Filing Type Selection screen and continue with the filing process."

m. *Status:* This application is not ready for environmental analysis at this time.

n. *Description of Project:* The existing Nantahala Project operates in a peaking mode and consists of the following features: (1) A 1,042-foot-long, 250-foot-tall earth and rockfill dam; (2) a spillway for the dam located at the east abutment; (3) a 1,605-acre reservoir, with a normal reservoir elevation of 3,012.2 feet National Geodetic Vertical Datum and a storage capacity of 38,336-acre-feet; (4) a reinforced concrete powerhouse containing one generating unit having an installed capacity of 42 megawatts (MW); (5) two diversions (Dicks Creek and Whiteoak Creek) that provide additional flow into the project; and (6) appurtenant facilities.

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number, excluding the last three digits in the docket number field (P–2692), to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov*, or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

You may also register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. With this notice, we are initiating consultation with the North Carolina State Historic Preservation Officer (SHPO), as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

q. *Procedural Schedule and Final Amendments:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made if the Commission determines it necessary to do so:

Action	Tentative date
Issue Deficiency Letter and Request Additional Information	March 2004.
Issue Acceptance letter	June 2004.
Issue Scoping Document 1 for comments	July 2004.
Request Additional Information, if necessary	September 2004.
Notice of application is ready for environmental analysis	October 2004.

Action	Tentative date
Notice of the availability of the final EA	April 2005.
Ready for Commission's decision on the application	July 2005.

Unless substantial comments are received in response to the EA, staff intends to prepare a single EA in this case. If substantial comments are received in response to the EA, a final EA will be prepared with the following modifications to the schedule.

Action	Tentative date
Notice of the availability of the final EA	July 2005.
Ready for Commission's decision on the application	September 2005.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of this notice.

Magalie R. Salas,

Secretary.

[FR Doc. E4–448 Filed 3–2–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–12–000]

Florida Gas Transmission Company; Notice of Informal Settlement Conference

February 25, 2004.

Take notice that an informal settlement conference will be convened in this proceeding commencing at 9:30 a.m. on Thursday, March 11, 2004, and 9 a.m. on Friday, March 12, 2004, in a room to be designated at a later date, at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, for the purpose of exploring the possible settlement in the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations(18 CFR 385.214).

For additional information, please contact Hollis Alpert at 202–502–8783, *hollis.alpert@ferc.gov.* or Carmen Gastilo at 202–502–6447, *carmen.gastilo@ferc.gov.*

Magalie R. Salas,

Secretary.

[FR Doc. E4–446 Filed 3–2–04; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2003–0033; FRL–7630–2]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for Ethylene Oxide Emissions From Sterilization Facilities (40 CFR Part 63, Subpart O) (Renewal), EPA ICR Number 1666.06, OMB Control Number 2060–0283

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act, this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on February 29, 2004. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before April 2, 2004.

ADDRESSES: Submit your comments, referencing docket ID number OECA–2003–0033, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *docket.oeca@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, Mail Code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Gregory Fried, Compliance Assessment and Media Programs Division, Office of Compliance, Mail Code 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–7016; fax number: (202) 564–0050; e-mail address: *fried.gregory@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 19, 2003 (68 FR 27059), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments, or has addressed the comments received.

EPA has established a public docket for this ICR under Docket ID Number OECA–2003–0033, which is available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center is (202) 566–1752. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. When in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public

viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket*.

Title: NESHAP for Ethylene Oxide Emissions from Sterilization Facilities (40 CFR Part 63, Subpart O) (Renewal)

Abstract: The Administrator has judged that ethylene oxide (EO) emissions from sterilization facilities cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Owners or operators of the affected facilities described must submit one-time reports of start of construction, anticipated or actual startup dates, and physical or operation changes to existing facilities. In addition, owners or operators of existing or new commercial EO sterilization facilities will submit one-time reports of actual or estimated annual EO use.

Reports of initial emissions testing are necessary to determine that the applicable emission limit is being met. The owner or operator of an EO sterilization facility that uses an air pollution control device to meet the emission limit is required to maintain records of the site-specific monitoring parameters as well as daily and monthly inspections of the control device.

The emissions test reports and other records must be kept at the facility for a minimum of five years and be made available to the Administrator upon request. All reports and records must comply with the General Provisions to 40 CFR part 63. Owners or operators of a source subject to these standards will provide a semiannual report of excess emissions that includes the monitored operating parameter value readings required by the standards. The respondent's state or local agency can be delegated enforcement authority by EPA and also request these reports.

In order to ensure compliance with the standards promulgated to protect public health, adequate reporting and recordkeeping is necessary. In the absence of such information enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 37 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to adjust the existing ways to comply with any previously applicable instructions and requirements; to train personnel to be able to respond to a collection of information; search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information.

Respondents/Affected Entities: Ethylene Oxide Sterilization Facilities.

Estimated Number of Respondents: 119.

Frequency of Response: Initial and semiannual.

Estimated Total Annual Hour Burden: 8,662 hours.

Estimated Total Annual Costs: $1,196,000, which includes $65,000 annualized capital/startup costs, $583,000 annual O&M costs and $548,000 annual labor costs.

Changes in the Estimates: There is an increase of 1,334 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. The increase in burden from the most recently approved ICR is primarily due to an adjustment in the number of sources subject to the standard.

Dated: February 24, 2004.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 04–4697 Filed 3–2–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OAR–2003–0169, FRL–7630–3]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Conflict of Interest, Rule #1, EPA ICR Number 1550.06, OMB Control Number 2030–0023

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on February 29, 2004. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments must be submitted on or before April 2, 2004.

ADDRESSES: Submit your comments, referencing docket ID number OAR–2003–0169, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *a-and-r-Docket@epa.gov*, or by mail to: EPA Docket Center, U.S. Environmental Protection Agency, Air and Radiation Docket (6102T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Patrick Murphy, OAM, 3802R, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; telephone number: (202) 564–4382; fax number (202) 565–2551; e-mail address: *Murphy.Patrick@epa.gov*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for

review and approval according to the procedures prescribed in 5 CFR 1320.12. On September 10, 2003 (68 *FR* 53367), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OAR–2003–0169, which is available for public viewing at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket*.

Title: Conflict of Interest, Rule #1.

Abstract: Contractors performing at Superfund sites will be required to disclose business relationships and corporate affiliations to determine whether EPA's interests are jeopardized by such relationships. Because EPA has the dual responsibility of cleanup and enforcement and because its contractors are often involved in both activities, it is imperative that contractors are free from conflicts of interest so as not to prejudice response and enforcement actions. Contractors will be required to maintain a database of business relationships and report information to EPA on either an annual basis or when each work assignment is issued.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 1821 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Large and small businesses performing contracts for the agency.

Estimated Number of Respondents: 80.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 145,640.

Estimated Total Annual Cost: $101,717.00, includes $0 annualized capital or O&M costs.

Changes in the Estimates: There is a decrease of 179,245 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. The agency based its burden estimate on actual experience in collecting, reviewing, approving, and storing this data over previous years. Because the number of respondents has decreased approximately 50% since the last renewal, the Agency burden hours should decrease commensurately.

Dated: February 24, 2004.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 04–4698 Filed 3–2–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OW–2003–0064, FRL–7630–1]

Agency Information Collection Activity: Submission to OMB for Review and Approval; Comment Request; Questionnaire for Nominees for the Annual National Clean Water Act Recognition Awards Program, EPA ICR 1287.07, OMB Control Number 2040–0101

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following continuing Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on February 29, 2004. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before April 2, 2004.

ADDRESSES: Submit your comments, referencing docket ID number OW–2003–0064, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *ow-docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Water Docket, MC 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION OR CONTACT: Maria E. Campbell, Office of Wastewater Management, Mail Code 4204–M, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–564–0628; fax number 202–501–2396; e-mail address *campbell.maria@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for

review and approval according to the procedures prescribed in 5 CFR 1320.12. On August 14, 2003 (68 FR 48606), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). No comments were received.

EPA has established a public docket for this ICR under Docket ID No. OW–2003–0064, which is available for public viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

Title: Questionnaire for Nominees for the Annual National Clean Water Act Recognition Awards Program

Abstract: This ICR requests re-approval of an existing approval to collect data from EPA's National Clean Water Act Recognition Awards nominees. The awards are for the following program categories: Operations and Maintenance (O&M) Excellence, Biosolids (Biosolids) Management Excellence, Combined Sewer Overflow Control (CSO) Program Excellence and Storm Water (SW) Management Excellence.

Note: Information collection approval for the Pretreatment awards Program is included in the National Pretreatment Program ICR (OMB No. 2040–0009, EPA ICR No. 0002.09), approved through November 30, 2006. The National Clean Water Act Recognition Awards Program is managed by EPA's Office of Wastewater Management (OWM). The Awards Program is authorized under Section 501(e) of the Clean Water Act, as amended. The Awards Program is intended to provide recognition to municipalities and industries which have demonstrated outstanding technological achievements, innovative processes, devices or other outstanding methods in their waste treatment and pollution abatement programs. Over 40 awards are presented annually. The achievements of these award winners are summarized in reports, news articles, national publications, and **Federal Register** notice.

Submission of information on behalf of the respondents is voluntary. No confidential information is requested. The Agency only collects information from award nominees under a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

An agency may conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 8 hours (per respondents) and 6 hours (per State) per response. Burden means the total time, effort or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose information.

Respondents/Affected Entities: Officials at public wastewater treatment plants, municipalities, States and manufacturing sites.

Estimated Number of Respondents: 195.

Frequency of Response: Annually.

Estimated Total Annual Hour Burden: 2030.

Estimated Total Annual Cost: $94,975, includes $0 annualized capital or O&M costs.

Changes in Estimates: The burden estimated in this supporting statement changes OMB's inventory as a result of a decrease in the estimated number of respondents (from 200 respondents to 195 respondents), changes to review time and reporting estimates (from 2800 burden hours to 2030 hours) and adjustments made to estimated personnel costs. The change reflects a decrease of 5 respondents and 770 burden hours in the total estimated burden currently identified in the OMB inventory of approved ICR burdens.

Dated: February 20, 2004.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 04–4701 Filed 3–2–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2003–0153; FRL–7629–8]

Agency Information Collection Activities; Submission for OMB Review and Approval; Comment Request; NESHAP for the Manufacture of Amino/Phenolic Resins, EPA ICR Number 1869.03, OMB Control Number 2060–0434

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act, this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on February 29, 2004. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before April 2, 2004.

ADDRESSES: Submit your comments, referencing docket ID number OECA–2003–0153, to (1) EPA online using EDOCKET (our preferred method), by email to *docket.oeca@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Enforcement and Compliance Docket and Information Center (ECDIC), Mail Code 2201T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Leonard Lazarus, Compliance Assessment and Media Programs Division, Office of Compliance, Mail Code 2223A, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–6369; fax number: (202) 564–0050; e-mail address: *lazarus.leonard@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On December 8, 2003 (68 FR 68374), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID Number OECA–2003–0153, which is available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center is: (202) 566–1752. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. When in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *www.epa.gov/edocket*.

Title: NESHAP for the Manufacture of Amino/Phenolic Resins (40 CFR Part 63, Subpart OOO), OMB Control Number 2060–0434, EPA ICR Number 1869.03.

Abstract: This NESHAP standard requires initial notification, performance tests, and periodic reports. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance and are required, in general, of all sources subject to NESHAP.

Any owner or operator subject to the provisions of this part shall maintain a file of these measurements, and retain the file for at least 5 years following the date of such measurements, maintain reports, and records. All reports are sent to the delegated State or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA regional office. This information is being collected to assure compliance with 40 CFR part 63, subpart EE as authorized in sections 112 and 114(a) of the Clean Air Act. The required information consists of emissions data and other information that have been determined not to be private.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB Control Numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 293 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners or operators of amino/phenolic resins manufacturing operations.

Estimated Number of Respondents: 40.

Frequency of Response: On occasion, initially, quarterly, semiannually.

Estimated Total Annual Hour Burden: 24,044 hours.

Estimated Total Annual Costs: $1,537,017 which includes $0 annualized capital/startup costs, $16,000 annual O&M costs and $1,521,017 labor costs for respondents.

Changes in the Estimates: There is a decrease of 8,208 hours in the total estimated burden currently identified in the OMB inventory of approved ICR burdens. This decrease is due to a reduction in annual burden after facilities have completed initial compliance activities during their first year of required compliance.

Dated: February 24, 2004.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 04–4702 Filed 3–2–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OAR–2003–0060, FRL–7629–9]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Emission Control System Performance Warranty Regulations and Voluntary Aftermarket Part Certification Program (Renewal), EPA ICR Number 0116.07, OMB Control Number 2060–0060

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request. (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on 2/29/2004. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before April 2, 2004.

ADDRESSES: Submit your comments, referencing docket ID number OAR–2003–0060, to (1) EPA online using EDOCKET (our preferred method), by email to *a-and-r-Docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket and Information Center, Mail Code 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Nydia Y. Reyes-Morales, Certification and Compliance Division, Office of Transportation and Air Quality, Office of Air and Radiation, Mail Code 6403J, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–343–9264; fax number: 202–343–2804; email address: *reyes-morales.nydia@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On December 24, 2003 (68 FR 74574), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID number OAR–2003–0060, which is available for public viewing at the Air and Radiation Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket and Information Center is (202) 566–1742. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *www.epa.gov/edocket.*

Title: Emission Control System Performance Warranty Regulations and Voluntary Aftermarket Part Certification Program (Renewal).

Abstract: Per sections 207(a) of the Clean Air Act, manufacturers or builders of automotive aftermarket parts may seek emissions compliance certification if they can demonstrate that their product is comparable in emission performance and durability to the original parts they replace. To apply for a certificate of conformity, manufacturers submit descriptions of their product and emission and durability test results, among other information items.

The information is collected by the Outreach and Planning Group, Certification and Compliance Division, Office of Transportation and Air Quality, Office of Air and Radiation. Confidentiality of proprietary information submitted by manufacturers is granted in accordance with the Freedom of Information Act, EPA regulations at 40 CFR part 2, and class determinations issued by EPA's Office of General Counsel.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 258 hours per respondent. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Manufacturers of automotive aftermarket parts.

Estimated Number of Respondents: 1.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 258.

Estimated Total Annual Cost: $12,000 includes $0 annualized capital/startup costs, $1,000 annual O&M costs and $11,000 annual labor costs.

Changes in the Estimates: There is a decrease of 1464 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is due to a change in the estimated number of

responses. The decrease in burden is, therefore, due to an adjustment to the estimates.

Dated: February 24, 2004.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 04–4703 Filed 3–2–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ORD–2003–0011; FRL–7630–5]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Longitudinal Study of Young Children's Exposures in Their Homes to Selected Pesticides, Phthalates, Brominated Flame Retardants, and Perfluorinated Chemicals (A Children's Environmental Exposure Research Study—CHEERS), EPA ICR Number 2126.01

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request for a new collection. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before April 2, 2004.

ADDRESSES: Submit your comments, referencing docket ID number ORD–2003–0011, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *oei.docket@epa.gov* or by mail to: EPA Docket Center, Environmental Protection Agency, Office of Environmental Information Docket, Mail Code 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Interested persons may obtain a copy of this ICR without charge by contacting Barbara Blackwell, National Exposure Research Laboratory, MD–E–205–01, Environmental Protection Agency, 109 TW Alexander Dr., Research Triangle Park, NC 27709; telephone number: (919) 541–2886; fax number: (919) 541–0239; email address: *blackwell.barbara@epa.gov*. For technical information on the proposed study, contact the Co-Principal investigators: Nicolle S. Tulve, National Exposure Research Laboratory, MD–E–205–04, Environmental Protection Agency, 109 TW Alexander Dr., Research Triangle Park, NC 27709; (919) 541–1077; (919) 541–0905 (fax); *tulve.nicolle@epa.gov* or Roy Fortmann, National Exposure Research Laboratory, MD–E–205–04, Environmental Protection Agency, 109 TW Alexander Dr., Research Triangle Park, NC 27709; (919) 541–1021; (919) 541–0905 (fax); *fortmann.roy@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On October 3, 2003 (68 FR 57442), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received numerous requests for the study design, and sent the information via email. There was one formal public comment submitted to the docket. EPA addressed and submitted the responses to the comment using the edocket procedures.

EPA has established a public docket for this ICR under Docket ID No. ORD–2003–0011, which is available for public viewing at the Office of Environmental Information Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Office of Environmental Information Docket is (202) 566–1752. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 *FR* 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket*.

Title: Longitudinal Study of Young Children's Exposures in their Homes to Selected Pesticides, Phthalates, Brominated Flame Retardants, and Perfluorinated Chemicals (A Children's Environmental Exposure Research Study—CHEERS)

Abstract: The U.S. EPA's Office of Research and Development's National Exposure Research Laboratory proposes to conduct a two-year longitudinal field measurement study of young children's (aged 0 to 3 years) potential exposures to current-use pesticides and selected phthalates, polybrominated diphenyl ethers, and perfluorinated compounds that may be found in residential environments. The study will be conducted in Duval County, Jacksonville, Florida over a two-year period from 2004 to 2006. Sixty young children will be recruited into this study in two cohorts: (1) infants recruited into the study soon after birth, and, (2) children recruited into the study at approximately 12 months of age. The study involves up to six monitoring events to each home during the two-year study period during which environmental, personal, biological, and activity pattern data will be collected. Each monitoring event consists of four visits to each participant's home. Aggregate exposure estimates will be conducted for the current-use pesticides and selected phthalates in the study. The data collected on the polybrominated diphenyl ethers and the perfluorinated compounds will provide valuable information on concentrations of these compounds in residential environments, the potential magnitude for exposure, and the temporal and spatial variability of these chemicals in residences.

The data collected in this study is very important to the EPA's Program Offices. The reasons for collecting this data are to better identify the exposure factors, routes, and pathways of exposure for these chemicals, thus

improving the Agency's ability to regulate these chemicals, conduct meaningful risk assessments, and develop future studies. Responses to the survey are completely voluntary.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 6.5 hours per respondent. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Residents of Duval County, Jacksonville, Florida.

Estimated Number of Respondents: 60.

Frequency of Response: Quarterly.

Estimated Total Annual Hour Burden: 390.

Estimated Total Annual Respondent Cost: $3,913.

Dated: February 24, 2004.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 04–4704 Filed 3–2–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2003–0021; FRL–7630–4]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NSPS for New Residential Wood Heaters (40 CFR Part 60, Subpart AAA) (Renewal), ICR Number 1176.07, OMB Number 2060–0161

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act, this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on February 29, 2004. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before April 2, 2004.

ADDRESSES: Submit your comments, referencing docket ID number OECA 2003–0021, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, Mail Code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: John DuPree, Compliance Assessment and Media Programs Division, Office of Compliance, Mail Code 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–5960; fax number: (202) 564–0050; e-mail address: *dupree.john@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 19, 2003 (68 *FR* 27059), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID Number OECA–2003–0021, which is available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center is (202) 566–1752. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or to view public comments, to access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. When in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 *FR* 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

Title: NSPS for New Residential Wood Heaters (40 CFR part 60, subpart AAA) (Renewal).

Abstract: The Standards of Performance for New Stationary Sources, New Residential Wood Heaters, were proposed on February 18, 1987, and promulgated on February 26, 1988. These standards apply to each

wood heater manufactured on or after July 1, 1988, or sold at retail on or after July 1, 1990. Wood heaters manufactured on or after July 1, 1990, or sold at retail on or after July 1, 1992, must meet more stringent emission standards. Approximately 54 manufacturers, 875 retailers, and 5 certification laboratories are currently subject to the regulations. No increase is expected in those estimates over the next three years. Particulate matter is the pollutant regulated under the standards.

Two features of this rulemaking are unique to the New Source Performance Standard (NSPS) program. First, these standards were negotiated by representatives of groups affected by the NSPS, including those groups which are burdened by the information collection activities. None of these activities were judged to be unreasonable by these representatives. Some of these provisions were recommended by the affected groups as a means of promoting an efficient and smooth-running certification and enforcement program. Second, these regulations established a certification program instead of the usual NSPS requirement that each affected facility demonstrates compliance through new source review and testing. Under this certification program, a single wood heater is tested to demonstrate compliance for an entire model line, which could consist of thousands of stoves. The certification approach significantly reduces the compliance burden, including information collection, for the manufacturers of wood heaters. Because of the potential risks to the environment from the intentional or accidental misuse of the certification approach, there were, however, several safeguards included, some of which entail reporting and recordkeeping.

Under this regulation, wood heater manufacturers, testing laboratories, and retailers are required to submit reports to EPA and/or to maintain records for demonstrating compliance with the NSPS.

The information supplied by the manufacturer to the Agency is used: (1) To ensure that Best Demonstrated Technology is being applied to reduce emissions from wood heaters; (2) to ensure that the wood heater tested for certification purposes is in compliance with the applicable emission standards; (3) to provide assurance that untested production model heaters have emission performance characteristics similar to tested models; and (4) to provide an indicator of continued compliance.

Information supplied to the Agency by testing laboratories is used to grant or to deny laboratory accreditation, and to assist in enforcement and compliance activities. Information requested by the Agency from manufacturers is used to determine compliance with requirements that are based upon volume of production.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB Control Numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 51 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to adjust the existing ways to comply with any previously applicable instructions and requirements; to train personnel to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information.

Respondents/Affected Entities: Manufacturers and sellers of new residential wood stoves.

Estimated Number of Respondents: 934.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 9,728.

Estimated Total Costs: $1,964,000 which includes $1,346,000 annualized capital/startup costs, $3,000 annual O&M costs and $615,000 annual labor costs.

Changes in the Estimates: The labor hour increase of 2,075 hours is due to the increase in the number of accredited test laboratories and the number of wood stove manufacturers.

Dated: February 24, 2004.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 04–4705 Filed 3–2–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0061; FRL–7348–7]

Pesticide Registration Improvement Act of 2003; Notice of Public Workshop

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice

SUMMARY: EPA's Office of Pesticide Programs will hold a public workshop on March 11, 2004. An agenda is being developed and will be posted by March 4, 2004, on EPA's website. This meeting will focus on the Agency's efforts to implement the new enhanced registration service fee program created as part of the Pesticide Registration Improvement Act of 2003.

DATES: The workshop will be held on Thursday, March 11, 2004, from 9 a.m. to 4 p.m.

ADDRESSES: The workshop will be held at the National Rural Electric Cooperative Association (NRECA) Conference Center, 4301 Wilson Boulevard, Arlington, VA; telephone number: (703) 907–5500. The NRECA Conference Center is located approximately 3 blocks from the Ballston Metro Station and about a 15 minute taxi ride from Ronald Reagan Washington National Airport.

FOR FURTHER INFORMATION: Richard Keigwin, Office of Pesticide Programs (7501C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7618; fax number: (703) 308–4776; e-mail address: *keigwin.richard@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general; however, persons may be interested who work in agricultural settings or persons who are concerned about implementation of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA); the Federal Food, Drug, and Cosmetic Act (FFDCA); and the amendments to both of these major pesticide laws by the Food Quality Protection Act (FQPA), (Public Law 104–170) of 1996. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.** Potentially affected entities

may include but are not limited to: Agricultural workers and farmers; pesticide industry and trade associations; environmental, consumer and farmworker groups; pesticide users and growers; pest consultants; State, local, and tribal governments; academia; public health organizations; food processors; and the public. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2004–0061 The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.* An agenda for the meeting will be posted by March 4, 2004, on EPA's Website at *http://www.epa.gov/pesticides/.*

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

II. Background

The Consolidated Appropriations Act of 2004, signed by President Bush on January 23, 2004, established a new section 33 of FIFRA, under which EPA is required to establish a registration service fee system for applications for pesticide registration and amended registration. Under that system, fees will be charged for new applications for registration received on or after the effective date of the statute (March 23, 2004), and for certain applications received before that date. EPA is required to render a decision on the application within the decision times specified. The fee system is authorized until September 30, 2010, although the decision times under the system do not apply after September 30, 2008.

List of Subjects

Environmental protection, Agriculture, Agricultural workers, Chemicals, Fees, Foods, Pesticides and pests, Registration, Tolerance reassessment, Public health.

Dated: February 25, 2004.

James Jones,

Director, Office of Pesticide Programs.

[FR Doc. 04–4813 Filed 3–1–04; 11:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0020; FRL–7343–8]

Bacillus pumilus GB34; Notice of Filing a Pesticide Petition to Establish an Exemption from the Requirement of a Tolerance for a Certain Microbial Pesticide in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2004–0020, must be received on or before April 2, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Anne Ball, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8717;e-mail address: *ball.anne@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturer (NAICS 311)
- Pesticide manufacturer (NAICS 32532)

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

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2004–0020. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's

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

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment asprescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2004–0020. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID number OPP–2004–0020. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID number OPP–2004–0020.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID number OPP–2004–0020. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public

docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

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

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 23, 2004.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Gustafson LLC

PP 1F6344

EPA has received a pesticide petition 1F6344 from Gustafson LLC, 1400 Preston Road, Suite 400, Plano, TX 75093, proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for the microbial pesticide *Bacillus pumilus* GB34 when used as a seed treatment in or on all food commodities and on soybeans after harvest.

Pursuant to section 408(d)(2)(A)(i) of the FFDCA, as amended, Gustafson LLC has submitted the following summary of information, data, and arguments in support of their pesticide petition. This summary was prepared by Gustafson LLC and EPA has not fully evaluated the merits of the pesticide petition. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary unintentionally made the reader conclude that the findings reflected EPA's position and not the position of the petitioner.

A. Product Name and Proposed Use Practices

The active ingredient *Bacillus pumilus* GB34 is formulated into the technical product GB34 Technical Biological Fungicide and the end use product GB34 Concentrate Biological Fungicide. GB34 Concentrate contains bacteria which colonize the developing root system of cotton, sugar beet, corn, and vegetable, legume group 06, suppressing disease organisms such as *Rhizoctonia* and *Fusarium* that attack root systems. GB34 Concentrate is used as a seed treatment before planting.

B. Product Identity/Chemistry

1. *Identity of the pesticide and corresponding residues. Bacillus pumilus* GB34 is a naturally occurring isolate from the soil.

2. *Magnitude of residue at the time of harvest and method used to determine the residue.* Two processing studies with soybeans were conducted. The studies showed no uptake of *Bacillus pumilus* GB34 beyond the seed hull. No residues were found in meal, oil, soymilk or tofu.

3. *A statement of why an analytical method for detecting and measuring the levels of the pesticide residue are not needed.* An analytical method for enumeration of microorganisms is available but is not required since the petitioner is requesting an expansion of the existing exemption from the requirement of a tolerance.

C. Mammalian Toxicological Profile

Bacillus pumilus GB34 was not found to be toxic or pathogenic from acute intravenous administration of 1.1×10^7 cfu of technical grade material. The oral LD_{50} of GB34 Technical was greater than 5,000 milligrams/kilogram (mg/kg) of body weight. GB34 Technical was classified non-irritating to the skin and mildly irritating to the eye in primary skin irritation and eye irritation studies. The oral LD_{50} of GB34 Concentrate was greater than 5,000 mg/kg of body weight. GB34 Concentrate was classified as non-irritating to the skin and minimally irritating to the eye in primary skin irritation and eye irritation studies. An avian oral pathogenicity and toxicity study in Northern Bobwhite showed no evidence of pathogenicity during gross necropsy. The no observed adverse effect level (NOAEL) was approximately 3.4×10^{11} cfu/kg/day for 5 days.

D. Aggregate Exposure

1. *Dietary exposure*—i. *Food. Bacillus pumilus* GB34 does not exhibit any mammalian toxicity. Therefore, any dietary exposure would not be harmful to humans. Also *Bacillus pumilus* GB34 is a naturally occurring, ubiquitous microorganism indigenous to the United States.

ii. *Drinking water. Bacillus pumilus* is found in the soil and the use rate of GB34 Concentrate is 0.1 ounces per 100 pounds of seed, equivalent to 1.7 grams per acre. *Bacillus pumilus* GB34 is unlikely to leach from the treated seed and would not be distinguishable from other naturally occurring *Bacillus pumilus*.

2. *Non-dietary exposure.* As a commercial seed treatment for cotton,

sugar beet, corn, and vegetable, legume group 06, the general population, including infants and children, will have a very low possibility of exposure. Occupational exposure will be limited to employees in commercial facilities handling the seed treatment product. Commercial seed treating equipment minimizes occupational exposure. Wearing protective equipment will also minimize occupational exposure. Non-dietary exposure would not be expected to pose a quantifiable risk.

E. Cumulative Exposure

The product strain belongs to the bacterial genus of *Bacillus*. *Bacillus pumilus* GB34 may have a similar mode of action in mammals as *Bacillus subtilis* that has been shown to be non-toxic and non-pathogenic in mammalian species. A similar mode of action of *Bacillus pumilus* GB34 and *Bacillus subtilis* would not be expected to result in an increased adverse effect since both were shown to be non-toxic and non-pathogenic in intravenous toxicity and pathogenicity studies.

F. Safety Determination

1. *U.S. population.* Based on the low treating rate of seed treatment use, little evidence of toxicity or pathogenicity and limited exposure potential, Gustafson LLC believes there is a reasonable certainty of no harm to the U.S. population in general from aggregate exposure to *Bacillus pumilus* GB34 residue from all anticipated dietary and non-dietary exposures.

2. *Infants and children.* Based on the lack of toxicity and low exposure there is a reasonable certainty that no harm to infants, children or adults will result from aggregate exposure to *Bacillus pumilus* GB34.

G. Effects on the Immune and Endocrine Systems

Gustafson LLC had no information to suggest that *Bacillus pumilus* GB34 will have any effect on the immune and endocrine systems.

H. Existing Tolerances

There is an existing exemption from tolerance for *Bacilluspumilus* GB34 when used as a seed treatment in or on soybeans and soybeans after harvest 40 CFR 180.1224.

I. International Tolerances

Gustafson LLC is not aware of any international tolerances, exemptions from tolerance or maximum residue levels for *Bacillus pumilus* GB34.

[FR Doc. 04–4629 Filed 3–1–04; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0009; FRL–7344–5]

Experimental Use Permit; Receipt of Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application 524–EUP–96 from Monsanto Company requesting to extend and amend an experimental use permit (EUP) for ZMIR39 x MON810 combined insecticidal trait stacked corn hybrids along with ZMIR39 and MON810 corn hybrids; *Bacillus thuringiensis* Cry3Bb1 protein and the genetic material necessary for its production (vector ZMIR39) in corn (ZMIR39) and *Bacillus thuringiensis* Cry1Ab delta-endotoxin and the genetic material necessary for its production (vector PV–ZMCT01) in corn (MON810). The Agency has determined that the application may be of regional and national significance. Therefore, in accordance with 40 CFR 172.11(a), the Agency is soliciting comments on this application.

DATES: Comments, identified by docket ID number OPP–2004–0009, must be received on or before April 2, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Mike Mendelsohn, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8715; e-mail address: *mendelsohn.mike@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA) or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2004–0009. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may

be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

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Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2004–0009. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2004–0009. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2004–0009.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2004–0009. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

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

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number

assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

In the **Federal Register** of January 7, 2004 (69 FR 917) (FRL–7325–6), EPA announced the issuance of EUP 524–EUP–96 to Monsanto Company, 800 N. Lindberg Blvd., St. Louis, MO 63167. Monsanto has requested to extend this EUP to February 28, 2005 and to amend it by allowing an additional 2,530 acres to be planted . Plantings are still to include the plant-incorporated protectants ZMIR39 x MON810 combined insecticidal trait stacked corn hybrids along with ZMIR39 and MON810 corn hybrids; *Bacillus thuringiensis* Cry3Bb1 protein and the genetic material necessary for its production (vector ZMIR39) in corn (ZMIR39) and *Bacillus thuringiensis* Cry1Ab delta-endotoxin and the genetic material necessary for its production (vector PV–ZMCT01) in corn (MON810) for breeding and observation nursery, inbred seed increase production, line per se and hybrid yield, insect efficacy, product characterization and performance/ labeling, insect resistance management, non-target organism and benefit, seed treatment, swine growth. and feed efficiency, dairy cattle feed efficiency, beef cattle growth and feed efficiency, and cattle grazing feed efficiency trials. The program is proposed for the States of Alabama, California, Colorado, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Mexico, New York, North Carolina, Ohio, Pennsylvania, Puerto Rico, South Dakota, Tennessee, Texas, Virginia, and Wisconsin.

III. What Action is the Agency Taking?

Following the review of the Monsanto application and any comments and data received in response to this notice, EPA will decide whether to issue or deny the EUP request for this EUP program, and if issued, the conditions under which it is to be conducted. Any issuance of an EUP will be announced in the **Federal Register.**

IV. What is the Agency's Authority for Taking this Action?

The Agency's authority for taking this action is under FIFRA section 5.

List of Subjects

Environmental protection, Experimental use permits.

Dated: February 19, 2004.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. E4–454 Filed 3–2–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7631–1]

Proposed CERCLA Administrative Cost Recovery Settlement; Union Pacific Railroad Company, Northwest Oil Drain Superfund Site, Salt Lake City, UT

AGENCY: Environmental Protection Agency (EPA).

ACTION: Administrative Order On Consent; request for public comment.

SUMMARY: In accordance with the requirements of Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA), 42 U.S.C. 9622(i), notice is hereby given of a proposed Administrative Order On Consent (AOC) for recovery of certain past response costs concerning the Northwest Oil Drain (NWOD) Superfund Site in Salt Lake City, Utah, with the Union Pacific Railroad Company (UPRR), Respondent. The settlement requires UPRR to pay $100,000.00 to the Hazardous Substance Superfund for partial payment of past response costs incurred by EPA. The settlement includes a covenant not to sue the Respondent pursuant to Sections 106 and 107 (a) of CERCLA, 42 U.S.C. 9606 and 9607(a), Sections 309(b) and 311 of the Clean Water Act, 42 U.S.C. 1319 and 1321, and Section 1002 (a) and (b)(1) of the Oil Pollution Act of 1990, 33 U.S.C. 2702(a) and (b)(1), for the Site, for the Matters Addressed in the AOC. The AOC also provides that Respondent is entitled to contribution protection for Matters Addressed, as provided by Section 113(j) of CERCLA, 42 U.S.C. 9613(j).

The NWOD is located in northern Salt Lake County and in Davis County, northwest of downtown Salt Lake City, Utah. The NWOD was constructed in the 1920's and was used to convey stormwater and industrial and municipal discharges into the Great Salt Lake. Presently, the NWOD is composed of a series of former and existing unlined canals including a flowing and open section and a non-flowing section. The sludge/sediment in the NWOD contains elevated concentrations of organic contaminants and metals.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at the Day-Riverside Branch Library, 1575 West 1000 North, Salt Lake City, Utah, and at the Superfund Records Center, EPA Region 8, 999 18th Street, Suite 300, Denver, Colorado.

DATES: Comments must be submitted on or before April 2, 2004.

ADDRESSES: The proposed settlement is available for public inspection at the Superfund Records Center, EPA Region 8, 999 18th Street, Suite 300, Denver, CO 80202–2466, (303) 312–6473, and at the Day-Riverside Branch Library, Salt Lake City, Utah. Comments should be addressed to James M. Stearns, (8ENF–L), Enforcement Attorney, U.S. Environmental Protection Agency, Region 8, 999 18th Street, Suite 300, Denver, CO 80202–2466, and should reference the Administrative Order on Consent, Respondent UPRR, Northwest Oil Drain Superfund Site, Salt Lake City, Utah.

FOR FURTHER INFORMATION CONTACT: James M. Stearns, (8ENF–L), Enforcement Attorney, U.S. Environmental Protection Agency, Region 8, 999 18th Street, Suite 300, Denver, CO 80202–2466, (303) 312–6912.

SUPPLEMENTARY INFORMATION: An earlier AOC, EPA Docket No. CERCLA–08–2003–0014, was entered into by Respondents Salt Lake City Corporation, Salt Lake County, BP Products North America Inc., and Chevron U.S.A. Inc. ("NWOD PRP Group"), to perform response activities to remove contaminated sludge/sediment in the NWOD and to pay certain past response costs. The proposed settlement with UPRR includes a covenant-not-to-sue with respect to Future Response Costs and the work to be performed at the Site. The covenant-not-to-sue will only take effect upon certification by UPRR that it has performed or paid for the performance of its proportionate share of the work to be performed by the NWOD PRP Group.

Dated: February 17, 2004.

Carol Rushin,

Assistant Regional Administrator, Office of Enforcement, Compliance, and Environmental Justice.

[FR Doc. 04–4699 Filed 3–2–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7630–6]

Notice of Tentative Approval and Solicitation of Request for a Public Hearing for Public Water System Supervision Program Revision for the State of Delaware

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of tentative approval and solicitation of requests for a public hearing.

SUMMARY: Notice is hereby given in accordance with the provision of section 1413 of the Safe Drinking Water Act as amended, and the rules governing National Primary Drinking Water Regulations Implementation that the State of Delaware has revised its approved Public Water System Supervision Program. The Delaware statute has been amended to clarify the authority of Delaware Health and Social Services to impose administrative penalties on systems of all sizes. This resolves a question regarding the Department's authority to impose administrative penalties on systems serving less than 500 service connections. Delaware has adopted a Radionuclides Rule to establish a new maximum contaminant level (MCL) for uranium and revise monitoring requirements, a Filter Backwash Recycling Rule to require water systems to institute changes to return recycle flows of a plant's treatment process that may compromise pathogen treatment, a Consumer Confidence Report Rule which requires annual drinking water quality reports from community water suppliers, and a Public Notification Rule to revise the general public notification regulations (set requirements for public water systems to follow regarding the form, manner, frequency, and content of a public notice). The State has agreed to a schedule to correct several minor errors in its Radionuclides Rule submission. EPA has determined that these revisions are no less stringent than the corresponding Federal regulations. Therefore, EPA has decided to tentatively approve these program revisions. All interested parties are invited to submit written comments on this determination and may request a public hearing.

DATES: Comments or a request for a public hearing must be submitted by April 2, 2004. This determination shall become effective on April 2, 2004 if no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, and if no comments are received which cause EPA to modify its tentative approval.

ADDRESSES: Comments or a request for a public hearing must be submitted to the U.S. Environmental Protection Agency Region III, 1650 Arch Street, Philadelphia, PA 19103–2029. Comments may also be submitted electronically to Jennie Saxe at *saxe.jennie@epa.gov.* All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

- Drinking Water Branch, Water Protection Division, U.S. Environmental Protection Agency Region III, 1650 Arch Street, Philadelphia, PA 19103–2029.
- Office of Drinking Water, Division of Public Health, Delaware Health and Social Services, Blue Hen Corporate Center, Suite 203, Dover, DE 19901.

FOR FURTHER INFORMATION CONTACT: Jennie Saxe, Drinking Water Branch (3WP22) at the Philadelphia address given above; telephone (215) 814–5806 or fax (215) 814–2318.

SUPPLEMENTARY INFORMATION: All interested parties are invited to submit written comments on this determination and may request a public hearing. All comments will be considered, and, if necessary, EPA will issue a response. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by April 2, 2004, a public hearing will be held.

A request for public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such a hearing; and (3) the signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

Dated: February 23, 2004.

James W. Newsom,

Acting Regional Administrator, EPA, Region III.

[FR Doc. 04–4700 Filed 3–2–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: United States Election Assistance Commission.

* * * * *

DATE AND TIME: Tuesday, March 23, 2004, at 10 A.M.

PLACE: 1201 Constitution Ave., NW., Washington, DC (EPA East Building, room 1153).

STATUS: This meeting will be open to the public.

NOTE: Early arrival: Those attending are advised to arrive early for registration and security check.

PURPOSE: Organizational plans for the newly established United States Election Assistance Commission.

* * * * *

PERSON TO CONTACT FOR INFORMATION: Bryan Whitener, Telephone: (202) 694–1095.

DeForest B. Soaries, Jr.,

Chairman, United States Election Assistance Commission.

[FR Doc. 04–4809 Filed 3–1–04; 8:45 am]

BILLING CODE 6820–MP–M

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register.**

Agreement No.: 010982–035 (Correction).

Title: Florida-Bahamas Shipowner and Operators Association.

Parties: Tropical Shipping and Construction Co., Ltd.; Atlantic Caribbean Line, Inc.; Pioneer Shipping Ltd.; Crowley Liner Services, Inc.; Seaboard Marine, Ltd.; G&G Marine, Inc.; and Caicos Cargo Ltd.

Synopsis: An earlier notice indicated that King Maritime, Inc. would be

joining the agreement. This was in error. A related company, Atlantic Caribbean Line, Inc., will be participating in the agreement in place of King Maritime, Inc.

Agreement No.: 011075–065.
Title: Central America Discussion Agreement.
Parties: APL Co. PTE Ltd.; A.P. Moller-Maersk A/S; Crowley Liner Services, Inc.; Dole Ocean Cargo Express; Great White Fleet; King Ocean Services Limited; Seaboard Marine, Ltd.; and Lykes Lines Limited, LLC.
Synopsis: The amendment adds Great White Fleet as a party to the agreement.

Agreement No.: 011259–024.
Title: U.S./Southern Africa Agreement.
Parties: A.P. Moller-Maersk A/S; Mediterranean Shipping Company, S.A.; and Safmarine Lines N.V.
Synopsis: The amendment updates Maersk's corporate name.

Agreement No.: 011707–003.
Title: Gulf/South America Discussion Agreement.
Parties: Associated Transport Line, LLC; ATL Investments Ltd.; Industrial Maritime Carriers (U.S.A.) Inc.; and Seaboard Marine Ltd.
Synopsis: The amendment adds Seaboard Marine Ltd. as a party to the agreement.

Agreement No.: 011770–003.
Title: NSCSA/CNCO Slot Exchange Agreement.
Parties: National Shipping Company of Saudi Arabia and the China Navigation Co. Ltd.
Synopsis: The amendment substitutes China Navigation Co. Ltd. for Oldendorff Carriers (Indotrans) Ltd. as a party to the agreement, and revises each parties' vessel contribution under the agreement.

Agreement No.: 201152.
Title: New Orleans/Ceres Gulf Napoleon Avenue Terminal Lease Agreement.
Parties: Board of Commissioners of the Port of New Orleans and Ceres Gulf, Inc.
Synopsis: The agreement provides for the lease of terminal facilities at the Napoleon Avenue Terminal Complex.

Agreement No.: 201153.
Title: New Orleans/Ceres Lease Agreement.
Parties: Board of Commissioners of the Port of New Orleans and Ceres Gulf, Inc.
Synopsis: The agreement provides for the lease of office space at the Napoleon Avenue Terminal Complex.

Agreement No.: 201154.
Title: Sublease Agreement.
Parties: Tioga Fruit Terminal, Inc. and Delaware River Stevedores, Inc.
Synopsis: The agreement provides for the sublease of space from Delaware River Stevedores to Tioga Fruit at the Port of Philadelphia.

By Order of the Federal Maritime Commission.

Dated: February 27, 2004.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 04–4765 Filed 3–2–04; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 26, 2004.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521:

1. FSB Mutual Holdings, Inc., and FSB Bankshares Corporation, both of Perkasie, Pennsylvania; to become bank holding companies by acquiring 100 percent of the voting shares of FSB Bankshares Corporation, Perkasie, Pennsylvania, and First Savings Bank of Perkasie, Perkasie, Pennsylvania.

B. Federal Reserve Bank of Kansas City (James Hunter, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Sundance State Bank Profit Sharing ESOP and Trust, Sundance, Wyoming; to become a bank holding company by acquiring 25.65 percent of the voting shares of Sundance Bankshares, Inc., Sundance, Wyoming, and thereby acquire Sundance State Bank, Sundance, Wyoming.

Board of Governors of the Federal Reserve System, February 26, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E4–453 Filed 3–2–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General Advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Trans#	Acquiring	Acquired	Entities
Transactions Granted Early Termination—01/20/2004			
20040369	Henkel KGaA	Amitee Cosmetics, Inc.	Amitee Cosmetics, Inc., Henkel KGaA
20040374	Comcast Corporation	Stephen E. Myers	Comcast Corporation, Stephen E. Myers, US Cable of Coastal-Texas L.P.
20040375	Harvest Partners IV, L.P	BellSouth Corporation	BellSouth Corporation, Harvest Partners IV, L.P., NFIL Holdings Corp.
20040376	Caxton Global Investments Limited	Norteck Holdings, Inc.	Caxton Global Investments Limited, Norteck Holdings, Inc., Ply Gem Industries, Inc.
20040378	James Dimon	Bank One Corporation	Bank One Corporation, James Dimon
20040382	Kellwood Company	Russell and Kimora Lee Simmons	Kellwood Company, Phat Fashions, LLC and Phat Licensing, LLC, Russell and Kimora Lee Simmons
20040386	Harvest Partners IV, L.P	Transit Holdings, Inc.	Harvest Partners IV, L.P., Transit Holdings, Inc.
20040387	Code Hennessy & Simmons IV, L.P	Gundle/SLT Environmental, Inc.	Code Hennessy & Simmons IV, L.P., Gundle/SLT Environmental, Inc.
Transactions Granted Early Termination—01/22/2004			
20040335	VeriSign, Inc.	Guardent, Inc.	Guardent, Inc., VeriSign, Inc.
20040343	Canfor Corporation	Slocan Forest Products Ltd	Canfor Corporation, Slocan Forest Products Ltd.
20040381	Royal Bank of Canada	William R. Hough & Co., Inc.	Royal Bank of Canada, William R. Hough & Co., Inc.
20040383	Humana Inc.	Ochsner Clinic Foundation	Humana Inc., Ochsner Clinic Foundation, Ochsner Health Plan Interests Inc.
Transactions Granted Early Termination—01/27/2004			
20040359	3M Company	HighJump Software, Inc.	3M Company, HighJump Software, Inc.
20040392	Teleglobe Holdings LLC	ITXC Corp.	ITXC Corp., Teleglobe Holdings LLC
20040394	Comcast Corporation	TVMAX Holdings, Inc.	Comcast Corporation, TVMAX Colorado, Inc., TVMAX DFW, L.P., TVMAX Georgia Inc., TVMAX Holdings, Inc., TVMAX Miami, Inc., TVMAX N. California, Inc.,TVMAX Tampa, LLC
20040397	Ford Motor Company	ZF Friedrichshafen AG	Ford Motor Company, AF Batavia, LLC, ZF Friedrichshafen AG
20040400	Oak Hill Capital Partners, L.P	Duane Reade Inc.	Duane Reade Inc., Oak Hill Capital Partners, L.P.
20040401	MBNA Corporation	Meriwest Credit Union	MBNA Corporation, Meriwest Credit Union
20040404	Colony Resorts LVH Co-Investment Partners, L.P.	Caesars Entertainment, Inc.	Caesars Entertainment, Inc., Colony Resorts LVH Co-Investment Partners, L.P., LVH Corporation
20040405	AutoNation, Inc.	Steven Jerry Glauser	AutoNation, Inc., S.J. Glauser, Inc., Steven Jerry Glauser
Transactions Granted Early Termination—01/28/2004			
20040361	James A. Perdue, c/o Perdue Farms Incorporated.	Cagle's, Inc.	Cagle's, Inc., James A. Perdue, c/o Perdue Farms Incorporated
20040367	Valeant Pharmaceuticals International.	Amarin Corporation plc	Amarin Corporation plc, Amarin Pharmaceuticals, Inc., Valeant Pharmaceuticals International
20040388	OCM Principal Opportunities Fund II, L.P.	Chart Industries, Inc.	Chart Industries, Inc., OCM Principal Opportunities Fund II, L.P.
Transactions Granted Early Termination—01/29/2004			
20040364	The First American Corporation	Pacific Northwest Title Holding Company.	Pacific Northwest Title Holding Company, The First American Corporation
20040371	EPIQ Systems, Inc.	P–D Holding Corp.	EPIQ Systems, Inc., P–D Holding Corp.

Trans#	Acquiring	Acquired	Entities
20040409	Aber Diamond Corporation	Fenway Partners Capital Fund II, L.P	Aber Diamond Corporation, Fenway Partners Capital Fund II, L.P. HW Holdings, Inc.
Transactions Granted Early Termination—02/03/2004			
20040399	GTCR Fund VIII, L.P.	TSG3 L.P.	GTCR Fund VIII, L.P., Medtech Holdings, Inc., The Denorex Company, TSG3 L.P.
20040414	Blackstone FC Communications Partners L.P.	Freedom Communications, Inc.	Blackstone FC Communications Partners L.P., Freedom Communications, Inc.
20040415	Providence Equity Partners IV L.P	Freedom Communications, Inc.	Freedom Communications, Inc., Providence Equity Partners IV L.P.
20040418	Sir Frederick Barclay	Lord Black of Crossharbour	Hollinger, Inc., Lord Black of Crossharbour, Sir David Barclay
20040438	Sir Frederick Barclay	Lord Black of Crossharbour	Hollinger, Inc., Lord Black of Crossharbour, Sir Frederick Barclay
Transactions Granted Early Termination—02/04/2004			
20040407	Pegasus Related Partners, L.P	Property Risk Services, LLC	Pegasus Related Partners, L.P., Property Risk Services, LLC
20040422	Roto-Rooter, Inc.	Vitas Healthcare Corporation	Roto-Rooter, Inc., Vitas Healthcare Corporation
20040428	SAVVIS Communications Corporation.	Cable & Wireless plc	Cable & Wireless Internet Services, Inc., Cable & Wireless plc, Cable & Wireless USA, Inc., Cable & Wireless USA of Virginia, Inc., Exodus Communciations Real Property I, LLC, Exodus Communications Real Property I, LP, Exodus Communications Real Property Managers I, LLC, SAVVIS Communications Corporation
Transactions Granted Early Termination—02/05/2004			
20040429	DLJ Real Estate Capital Partners II, L.P.	Lanter Company	DLJ Real Estate Capital Partners II, L.P., Lanter Company, Lanter Logistics, Inc., Lanter Refrigerated Distributing Co.
Transactions Granted Early Termination—02/06/2004			
20040434	Finisar Corporation	Honeywell International Inc.	Finisar Corporation, Honeywell Intellectual Properties, Inc., Honeywell International Inc.
20040435	OCM Principal Opportunities Fund III, L.P..	Jacob M. Schorr	Jacob M. Schorr, OCM Principal Opportunities Fund III, L.P., Spirit Airlines, Inc.
20040436	Penn National Gaming, Inc.	Shawn A. Scott	Bangor Historic Track, Inc., Penn National Gaming, Inc., Shawn A. Scott
20040437	Myers Industries, Inc.	SKM Equity Fund II, L.P.	ATP Automotive, Inc., Myers Industries, Inc., SKM Equity Fund II, L.P.
20040439	H.I.G. Capital Partners III, L.P	T-Netix, Inc.	H.I.G. Capital Partners III, L.P., T-Netix, Inc.
20040440	White Mountain Insurance Group, Ltd.	Sierra Health Services, Inc.	California Indemnity Insurance Company, Sierra Health Services, Inc., White Mountain Insurance Group, Ltd.
20040443	Providence Equity Partners IV L.P	Lamco Communications, Inc.	Lamco Communications, Inc., Providence Equity Partners IV L.P.
20040444	Homebase Acquisition, LLC	TXU Corp.	Homebase Acquisition, LLC, TXU Communications Ventures Company, TXU Corp.
20040446	Merrill Lynch & Co., Inc.	ABN AMRO Holding N.V.	ABN AMRO Holding N.V., ABN AMRO Inc., Merrill Lynch & Co., Inc.

Trans#	Acquiring	Acquired	Entities
Transactions Granted Early Termination—02/09/2004			
20040420	Richard P. Kiphart	First Data Corporation	First Data Corporation, Richard P. Kiphart
20040441	Charlesbank Equity Fund V, Limited Partnership.	Duke Energy Corporation	Charlesbank Equity Fund V, Limited Partnership, Duke Energy Corporation, Duke Energy Field Services, LP
20040454	Wells Fargo & Company	Jacobson Warehouse Company Employee Stock Ownership Plan.	Jacobson Warehouse Company Employee Stock Ownership Plan, Jacobson Warehouse Company, Inc., Wells Fargo & Company
Transactions Granted Early Termination—02/11/2004			
20030957	Caremark Rx, Inc.	AdvancePCS	AdvancePCS, Caremark Rx, Inc.
20040389	Societe Air France	Koninklijlke Luchtvaart Maatschappij N.V.	KLM Royal Dutch Airlines, Koninklijlke Luchtvaart Maatschappij N.V., Societe Air France
20040393	AMVESCAP PLC	SRIC HOLDING LLC	AMVESCAP PLC, SRIC HOLDING LLC, Stein Roe Investment Counsel LLC
20040453	Pixiegrove Limited	ABB Ltd.	ABB Ltd., ABB Offshore Systems Inc., ABB Vetco Gray Inc., Pixiegrove Limited
Transactions Granted Early Termination—02/17/2004			
20040402	Advanced Fibre Communications, Inc..	Marconi Corporation PLC	Advanced Fibre Communications, Inc., Marconi Communications, Inc., Marconi Corporation PLC, Marconi Intellectual Property (Ringfence) Inc.
20040433	Central Garden & Pet Company	Heritage Fund I, L.P.	Central Garden & Pet Company, Heritage Fund I, L.P., New England Pottery Co., Inc.
20040457	Cofra Holding AG	Garden Fresh Restaurant Corp.	Cofra Holding AG, Garden Fresh Restaurant Corp.
20040459	Riverside Forest Products Limited	John C. Kerr	John C. Kerr, Lignum Limited, Riverside Forest Products Limited
20040460	Riverside Forest Products Limited	Timothy C. Kerr	Lignum Limited, Riverside Forest Products Limited, Timothy C. Kerr
20040461	Willis Stein & Partners III, L.P	Brynwood Partners III L.P	Brynwood Partners III L.P., Lincoln Snacks Company, Willis Stein & Partners III, L.P.
20040464	Wis-Pak, Inc.	Douglas C. Malmquist	Douglas C. Malmquist, M.B.C., Inc., Wis-Pak, Inc.
20040465	Wind Point Partners V, L.P	Nonni's Food Company, Inc.	Nonni's food Company, Inc., Wind Point Partners V, L.P.
20040468	Robert G. Miller	Sipex Corporation	Robert G. Miller, Sipex Corporation
20040469	Blackstone Capital Partners (Cayman) IV L.P.	Celanese AG	Blackstone Capital Partners (Cayman) IV L.P., Celanese AG
20040470	Blackstone Capital Partners (Cayman) IV L.P.	Blackstone Crystal Holdings Capital Partners (Cayman) IV Ltd.	Blackstone Capital Partners (Cayman) IV L.P. Blackstone Crystal Holdings Capital Partners (Cayman) IV Ltd
20040471	Blackstone Chemical Coinvest Partners (Cayman) L.P.	Blackstone Crystal Holdings Capital Partners (Cayman) IV Ltd.	Blackstone Chemical Coinvest Partners (Cayman) L.P. Blackstone Crystal Holdings Capital Partners (Cayman) IV Ltd
20040474	Gilbert Global Equity Partners, L.P	Cornerstone Equity Investors IV, L.P	Cornerstone Equity Investors IV, L.P., Gilbert Global Equity Partners, L.P., True Temper Corporation
20040475	WP FlexPack Holdings S.a.r.l.	Clondalkin Group Holdings Limited	Clondalkin Group Holdings Limited, WP FlexPack Holdings S.a.r.l.
20040486	Telephone and Data Systems, Inc. Voting Trust.	Telephone and Data Systems, Inc. Voting Trust.	Telephone and Data Systems, Inc. Voting Trust, U.S. Cellular Telephone Company (Greater Knoxville), L.P.
20040487	Verity, Inc.	Cardiff Software, Inc.	Cardiff Software, Inc., Verity, Inc.

Trans#	Acquiring	Acquired	Entities
Transactions Granted Early Termination—02/19/2004			
20040342	Vestas Wind Systems A/S	NEG Micon A/S	NEG Micon A/S, Vestas Wind Systems A/S
20040462	Toshiba Corporation	Samsung Electronics Co., Ltd	Samsung Electronics Co., Ltd., Toshiba Corporation
20040479	Peninsula Investment Partners, L.P ..	Marshall W. Pagon	Marshall W. Pagon, Pegasus Communications Corporation, Peninsula Investment Partners, L.P.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, contact representative, or Renee Hallman, legal technician. Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room H–303, Washington, DC 20580; (202) 326–3100.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 04–4767 Filed 3–2–04; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–198]

Availability of Final Toxicological Profiles

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of three new and three updated final toxicological profiles of priority hazardous substances comprising the fifteenth set prepared by ATSDR.

FOR FURTHER INFORMATION CONTACT: Ms. Yulandia Jordon, Office of Communication, Agency for Toxic Substances and Disease Registry, Mailstop E–29, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone 1–888–422–8737 or (404) 498–0261.

SUPPLEMENTARY INFORMATION: The Superfund Amendments and Reauthorization Act (SARA) (Pub. L. 99–499) amends the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) (42 U.S.C. 9601 *et seq.*) by establishing certain requirements for ATSDR and the U.S. Environmental Protection Agency (EPA) with regard to hazardous substances that are most commonly found at facilities on the CERCLA National Priorities List (NPL). Among these statutory requirements is a mandate for the Administrator of ATSDR to prepare toxicological profiles for each substance included on the priority lists of hazardous substances. These lists identified 275 hazardous substances that ATSDR and EPA determined pose the most significant potential threat to human health. The availability of the revised list of the 275 priority substances was announced in the **Federal Register** on November 7, 2003 (68 FR 63098). For prior versions of the list of substances, *see* **Federal Register** notices dated April 17, 1987 (52 FR 12866); October 20, 1988 (53 FR 41280); October 26, 1989 (54 FR 43619); October 17, 1990 (55 FR 42067); October 17, 1991 (56 FR 52166); October 28, 1992 (57 FR 48801); February 28, 1994 (59 FR 9486); April 29, 1996 (61 FR 18744; November 17, 1997 (62 FR 61332); October 21, 1999 (64 FR 56792) and October 25, 2001 (66 FR 54014).

Notice of the availability of drafts of these three new and three updated toxicological profiles for public review and comment was published in the **Federal Register** on October 23, 2001, (66 FR 53611), with notice of a 90-day public comment period for each profile, starting from the actual release date. Following the close of the comment period, chemical-specific comments were addressed, and, where appropriate, changes were incorporated into each profile. The public comments and other data submitted in response to the **Federal Register** notices bear the docket control number ATSDR–173. This material is available for public inspection at the Division of Toxicology, Agency for Toxic Substances and Disease Registry, 1825 Century Boulevard, Atlanta, Georgia, (not a mailing address) between 8 a.m. and 4:30 p.m., Monday through Friday, except legal holidays.

Availability

This notice announces the availability of three new and three updated final toxicological profiles comprising the fifteenth set prepared by ATSDR. The following toxicological profiles are now available through the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, telephone 1–800–553–6847. There is a charge for these profiles as determined by NTIS.

Fifteenth Set:

Toxicological profile	NTIS Order No.	CAS No.
1. Atrazine	PB2004–10001	001912–24–9
1. Fluorides (Update)	PB2004–10002	016984–48–8
2. Malathion	PB2004–10003	000121–75–5
3. Pyrethrins and Pyrethroids	PB2004–100004	[1]
5. Selenium (Update)	PB2004–100005	007782–49–2
6. Sulfur Mustard (Update)	PB2004–100006	000505–60–2

[1] Various.

Dated: January 24, 2004.

Georgi Jones,

Director, Office of Policy, Planning, and Evaluation, National Center for Environmental Health/Agency for Toxic Substances and Disease Registry.

[FR Doc. 04–4659 Filed 3–2–04; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Health Promotion and Disease Prevention Research Centers Cooperative Agreements, Program Announcement Number 04003

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): Health Promotion and Disease Prevention Research Centers Cooperative Agreements, Program Announcement Number 04003.

Times and Dates: 8:30 a.m.–9 a.m., March 30, 2004 (open); 9 a.m.–5 p.m., March 30, 2004 (closed); 9 a.m.–5 p.m., March 31, 2004 (closed).

Place: Sheraton Colony Square Hotel, 188 14th Street, NE., Atlanta, GA 30361, telephone 404.892.2004.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c) (4) and (6), title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement Number 04003.

Contact Person for More Information: Michael N. Waller, Deputy Director, National Center for Chronic Disease Prevention and Health Promotion, CDC, 4770 Buford Highway, NE., MS–K 45, Atlanta, GA 30341, telephone 770.488.5269.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: February 24, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–4680 Filed 3–2–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Federal Tax Offset, Administrative Offset, and Passport Denial Program.

OMB No.: 0970–0161.

Description: The Tax Refund Offset and Administrative Offset Programs collect past-due child support by intercepting certain federal payments, including federal tax refunds, of parents who have been ordered to pay child support and are behind in paying the debt. The program is a cooperative effort including the Department of Treasury's Financial Management Service (FMS), the Federal Office of Child Support Enforcement (OCSE) and state Child Support Enforcement (CSE) agencies. The Passport Denial Program reports non-custodial parents who owe arrears above a threshhold to the Departement of State (DOS), which will then deny passports to these individuals. On an ongoing basis, CSE agencies submit to OCSE the names, Social Security numbers (SSNs) and the amount(s) of past-due child support of people who are deliquent in making child support payments.

Respondents: State IV–D Agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Input Record	54	52	.3 hours ...	842.4 hours.
Output Record	54	52	.46 hours	1292 hours.
Payment File	54	26	.27 hours	379 hours.
Certification Letter	54	1	.4 hours ...	21.6 hours.

Estimated Total Annual Burden Hours: 2535 hours.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *rsargis@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register.** Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Attn: Desk Officer for ACF, E-mail address: *katherine_t._astrich@omb.eop.gov.*

Dated: February 26, 2004.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 04–4752 Filed 3–2–04; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Agency Recordkeeping/Reporting Requirements Under Emergency Review by the Office of Management and Budget (OMB)

Title: ORR Quarterly Performance Report, ORR–6.

OMB No.: 0970–0036.

Description: We ask for the information on this form in order to determine the effectiveness of the state cash and medical assistance, social services, and targeted assistance

programs as required by 412(e) of the Immigration and Naturalization Act. We also calculate state-by-state Refugee Cash Assistance and Refugee Medical Assistance utilization rates for use in formulating program initiatives, priorities, standards, budget requests, and assistance policies. The Office of Refugee Resettlement regulations require that this form be completed in order to participate in the program.

Respondents: States.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ORR–6	48	4	3.875	744

Estimated Total Annual Burden Hours: 744 hours.

Additional Information: The Administration for Children and Families (ACF) is requesting that OMB grant a 180-day approval for this information collection under procedures for emergency processing by March 5, 2004. A copy of this information collection, with applicable supporting documentation, may be obtained by calling the ACF Reports Clearance Officer, Robert Sargis at (202) 690–7275. In addition, a request may be made by sending an e-mail request to: *rsargis@acf.hhs.gov.*

Comments and questions about the information collection described above should be directed to the following address by March 5, 2004: Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ACF, Office of Management and Budget, Paperwork Reduction Project, Washington, DC. E-mail address: *katherine_t._astrich@omb.eop.gov.*

Dated: February 26, 2004.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 04–4753 Filed 3–2–04; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0508]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Focus Groups as Used by the Food and Drug Administration

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by April 2, 2004.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Focus Groups as Used by the Food and Drug Administration—(OMB Control Number 0910–0497)—Extension

FDA will collect and use information gathered through the focus group vehicle. This information will be used to develop programmatic proposals, and as such, compliments other important research findings to develop these proposals. Focus groups provide an important role in gathering information because they allow for a more in depth understanding of consumers' attitudes, beliefs, motivations, and feelings than quantitative studies.

Also, information from these focus groups will be used to develop policy and redirect resources, when necessary, to our constituents. If this information is not collected, a vital link in information gathering by FDA to develop policy and programmatic proposals will be missed causing further delays in policy and program development.

FDA estimates the burden for completing the forms for this collection of information in table 1 of this document. The total annual estimated burden imposed by this collection of information is 2,830 hours annually.

Annually, FDA projects about 28 focus group studies using 186 focus groups lasting an average of 1.78 hours each. FDA has allowed burden for unplanned focus groups to be completed so as not to restrict the agency's ability to gather information on public sentiment for its proposals in its regulatory as well as other programs.

In the **Federal Register** of November 24, 2003 (68 FR 65938), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Center	Subject	No. of Focus Groups per Study	No. of Focus Groups Sessions Conducted Annually	No. of Participants per Group	Hours of Duration for Each Group (includes screening	Total Hours
Center for Biologics Evaluation and Research	May use focus groups when appropriate	1	5	9	1.58	71
Center for Drug Evaluation and Research	Varies (e.g., direct-to-consumer Rx drug promotion, physician labeling of Rx drugs, medication guides, over-the-counter drug labeling, risk communication	10	100	9	1.58	1,422
Center for Devices and Radiological	Varies (e.g., FDA Seal of Approval, patient labeling, tampons, on-line sales of medical products, latex gloves	4	16	9	2.08	300
Center for Food Safety and Applied Nutrition	Varies (e.g., food safety, nutrition, dietary supplements, consumer education)	8	40	9	1.58	569
Center for Veterinary Medicine	Varies (e.g., animal nutrition, supplements, labeling of animal Rx)	5	25	9	2.08	468
Total		28	186		1.78	2,830

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: February 19, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–4655 Filed 3–2–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2002D–0333]

Guidance for Industry: Juice Hazard Analysis Critical Control Point Hazards and Controls Guidance, First Edition; Availability

AGENCY: Food and Drug Administration, HHS

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance document related to the processing of juice entitled "Guidance for Industry: Juice HACCP Hazards and Controls Guidance, First Edition." The guidance document supports and complements FDA's regulation that requires a processor of juice to evaluate its operations using Hazard Analysis Critical Control Point (HACCP) principles and, if necessary, to develop and implement HACCP systems for its operations. The guidance represents FDA's views on potential hazards in juice products and recommends how to control such hazards, and is designed to assist juice processors in the development of their HACCP plans.

DATES: You may submit written or electronic comments on the guidance document at any time.

ADDRESSES: Submit written requests for single copies of the guidance to Michael E. Kashtock, Center for Food Safety and Applied Nutrition (HFS–305), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the guidance document to the Division of Dockets Management (HFA–305), 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Michael E. Kashtock, Center for Food Safety and Applied Nutrition (HFS–305), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2022, e-mail: *mkashtoc@cfsan.fda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of September 12, 2002 (67 FR 57829), FDA announced the availability of a draft guidance document entitled "Draft Guidance for Industry: Juice HACCP Hazards and Controls Guidance, First Edition." Under FDA's HACCP regulations in part 120 (21 CFR part 120), juice processors are required to evaluate their operations using HACCP principles and, if necessary, to develop and implement HACCP systems for their operations. Under § 120.9, juice products are adulterated under section 402(a)(4) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342(a)(4)), if a processor fails to have and implement a HACCP plan when one is necessary, or otherwise fails to meet any of the requirements of the regulations. The primary purpose of the guidance is to help processors of juice products evaluate the likelihood that a food safety hazard may occur in their product, and to guide them in the preparation of appropriate HACCP plans for those

hazards that are reasonably likely to occur. Interested persons were given until November 12, 2002, to comment on the draft guidance.

FDA received 11 written comments on the draft guidance document. The agency reviewed and evaluated these comments and has modified the guidance where appropriate.

The guidance document is being issued as level 1 guidance, consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on the potential hazards that are associated with various juice products and processing operations, and how such hazards can be avoided using HACCP controls when the hazards are reasonably likely to occur, as required under part 120. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if it satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**), written or electronic comments regarding this guidance document at any time. Two paper copies of any mailed comments are to be submitted, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Interested persons also may access the guidance document at *http://www.cfsan.fda.gov/guidance.html.*

Dated: February 19, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E4–452 Filed 3–2–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Pilot Study Evaluating the Cross-Cultural Equivalency of the Tobacco Use Supplement to the Current Population Survey (TUS–CPS)

SUMMARY: In compliance with the requirement of Section 3506()(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Cancer Institute (NCI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: Pilot Study Evaluating the Cross-Cultural Equivalency of the Tobacco Use Supplement to the Current Population Survey (TUS–CPS). *Type of Information Collection Request:* New. *Need and Use of Information Collection:* NCI recognizes the need for research studies that assess trends in tobacco-related risk factors, behaviors, and health services to determine changes over time and the influence of these trends on cancer incidence, morbidity, mortality, and survival. Through population-based surveys, NCI is able to monitor a number of issues related to individual tobacco use behavior such as prevalence of use, how often and how much people use tobacco, age of initiation, and quitting history. To understand all the dynamics of tobacco control, NCI actively monitors the progress of tobacco control efforts that are primarily funded and carried out at the state level. Information from these surveys allow us to monitor Americans' progress in reducing tobacco use, evaluate tobacco use, evaluates tobacco control programs, and conduct other tobacco-related research. NCI monitors progress in reducing tobacco use, evaluates tobacco control programs, and conducts other tobacco-related research. The NCI- and CDC-sponsored Tobacco Use Supplement to the Current Population Survey (*http://riskfactor.cancer.gov/studies/tus-cps/*) is a survey of tobacco use that has been administered by the US Census Bureau in 1992–93, 1995–96, 1998–99, 2001–02 and 2003. The TUS–CPS is a key source of national and state level data on smoking and other tobacco use in the US household population because it uses a large, nationally representative sample that contains information on about 240,000 individuals within a given survey period. These data can be used by researchers to monitor progress in the control of tobacco use; conduct tobacco-related research; and evaluate tobacco control programs. In an effort to better capture the tobacco-related patterns and behaviors of U.S. communities with limited English proficiency, the TUS–CPS has been translated into Spanish, Chinese, Vietnamese and Korean. The translated versions of the TUS–CPS were evaluated in cognitive interviews, will be made available to the public, and are scheduled for cultural equivalency testing. The primary purpose of this study is to evaluate the cross-cultural equivalency of the TUS–CPS in English, Spanish, Chinese, Korean and Vietnamese. Each version of the questionnaire will be administered to 50 native speakers. The Chinese version will be administered to both mandarin and Cantonese speakers. Each interview will be behavior coded to ensure that respondents are interpreting the items correctly and any translation problems are identified item by item. Twenty percent of respondents will be retrospectively debriefed on the interview to determine how well the items are understood and examine whether any translation issues exist. The findings will provide valuable information concerning the clarity of the survey prior to full-scale administration.

Frequency of response: One-time study. *Affected Public:* Individuals. *Type of Respondents:* Adults who are native Chinese (Mandarin and Cantonese), Korean, Vietnamese, and Spanish speakers. The annual reporting burden is as follows:

Data collection task	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimate total hour burden
Screener	2,568	1	0.167	429
TUS–CPS	300	1	1	300
Retrospective Debriefing	60	1	.50	30
Total	2,568			759

There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility, (2q) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used, (3) Ways to enhance the quality, utility and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. Deirdre Lawrence, Project Office, National Cancer Institute, EPN 4005, 6130 Executive Blvd., MSC 7344, Bethesda, MD 20892–7344, or call non-toll-free number 301–594–3599, or Fax your request to 301–435–3710, or E-mail your request, including your address, to: *DL177n@nih.gov*.

Comments Due Date: Comments regarding this information are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: February 23, 2004.

Rachelle Ragland-Greene,

NCI Project Clearance Liaison, National Institutes of Health.

[FR Doc. 04–4646 Filed 3–2–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The 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 Heart, Lung, and Blood Institute Special Emphasis Panel, Review of RFA: HL–04–007, "Interventions to Improve Hypertension Control Rates in Africans Americans".

Date: April 20, 2004.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Zoe Huang, MD, Health Scientist Administrator, Review Branch, Room 7190, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, MSC 7924, Bethesda, MD 20892–7924, 301–435–0314.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: February 25, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–4641 Filed 3–2–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of 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 Muscular Dystrophy Coordinating Committee.

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 inform the contact person listed below in advance of the meeting.

Name of Committee: Muscular Dystrophy Coordinating Committee.

Date: March 22, 2004.

Time: 8:30 a.m. to 4 p.m.

Agenda: The Muscular Dystrophy Coordinating Committee (MDCC) is mandated by the MD–CARE Act to "develop a plan for conducting and supporting research and education on muscular dystrophy through the national research institutes." The purpose of this meeting is to review and discuss a draft muscular dystrophy research and education plan for NIH.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, Maryland 20817.

Contact Person: Lorraine Fitzsimmons, Executive Secretary, Muscular Dystrophy Coordinating Committee, Director, Office of Science Policy and Planning, National Institute of Neurological Disorders and Stroke, NIH, 31 Center Drive, Room 8A023, MSC 2540, Bethesda, MD 20892, E-mail: *fitzsiml@ninds.nih.gov*, Phone: (301) 496–9271.

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS).

Dated: February 25, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–4637 Filed 3–2–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C.,

as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Institutional Training and Career Development.

Date: March 9, 2004.

Time: 2 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, 3208, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Raul A. Saavedra, Ph.D., Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, NSC; 6001 Executive Blvd., Ste. 3208, Bethesda, MD 20892–9529, 301–496–9223, *saavedrr@ninds.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Neurodegenerative Disorders.

Date: March 9, 2004.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Andrea Sawczuk, DDS, Ph.D., Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, 6001 Executive Boulevard, Room #3208, Bethesda, MD 20892, 301–496–0660, *sawczuka@ninds.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Neural Mechanisms in Somatosensation.

Date: March 24, 2004.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, 3208, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Andrea Sawczuk, DDS, Ph.D., Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, 6001 Executive Boulevard, Room #3208, Bethesda, MD 20892, 301–496–0660, *sawczuka@ninds.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: February 25, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–4638 Filed 3–2–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed 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 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 Neurological Disorders and Stroke Special Emphasis Panel, Quality of Life Special Emphasis Panel.

Date: March 5, 2004.

Time: 2:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Phillip F. Wiethorn, Scientific Review Administrator, DHHS/NIH/NINDS/DER/SRB, 6001 Executive Boulevard; MSC 9526, Neuroscience Center; Room 3203, Bethesda, MD 20892–9529, (301) 496–5388, *wiethorp@ninds.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: February 25, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–4639 Filed 3–2–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; 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 on 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/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 04–38, Review of R13 Grants.

Date: March 25, 2004.

Time: 2 pm to 3:30 pm.

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: H. George Hausch, PhD, Acting Director, 45 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2904, *george_hausch@nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 04–35, Review of K22s.

Date: April 2, 2004.

Time: 2:30 pm to 3:30 pm.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892. (Telephone conference Call).

Contact Person: Lynn M. King, PhD, Scientific Review Administrator, Scientific Review Branch, 45 Center Dr., Rm AN–38K, National Institutes of Dental & Craniofacial Research, National Institutes of Health, Bethesda, MD 20892–6402, (301) 594–5006.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 04–42, Review of P50s.

Date: May 10–11, 2004.
Time: 8 am to 5 pm.
Agenda: To review and evaluate grant applications and/or proposals.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.
Contact Person: Yujing Lu, MD PhD, Scientific Review Administrator, National Institutes of Dental & Craniofacial Res., 45 Center Drive, Natcher Building, Rm. 4AN38E, Bethesda, MD 20892, (301) 594–3169, *yujing_lliu@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: February 25, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–4642 Filed 3–2–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The 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 Institutes of Allergy and Infectious Diseases Special Emphasis Panel, Comprehensive International Program of Research of AIDS (CIPRA).
Date: March 16, 2004.
Time: 10:30 a.m. to 1:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817. (Telephone Conference Call).
Contact Person: Cheryl K. Lapham, PhD, Scientific Review Administrator, NIH/NIAID, Scientific Review Program, Room 2217, 6700–B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–496–2550, *clapham@niaid.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transportation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: February 25, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–4643 Filed 3–2–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Immune System Development and the Genesis of Asthma.
Date: April 5–6, 2004.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Katherine L. White, PhD, Scientific Review Administrator, AIDS Preclinical Research Review Branch, Scientific Review Program, NIH/NIAID, 6700 B Rockledge Drive, Room 3131, Bethesda, MD 20892, (301) 435–1615, *kw174b@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: February 25, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–4644 Filed 3–2–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed 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 552(b)(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 contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Novel HIV Therapies: Integrated Preclinical/Clinical Program.
Date: March 22–23, 2004.
Time: 8:30 a.m. to 4:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Tracy A. Shahan, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, (301) 496–2606. *tshahan@niaid.nih.gov*.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, HIV Vaccine Research and Design Program.
Date: March 22–24, 2004.
Time: 8:30 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Cheryl K. Lapham, PhD, Scientific Review Administrator, NIH/NIAID, Scientific Review Program, Room 2217, 6700–B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, (301) 496–2550. *clapham@niaid.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: February 25, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–4645 Filed 3–2–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Library of Medicine.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting..

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual other conducted by the National Library of Medicine, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Library of Medicine, National Center for Biotechnology Information.

Date: April 13, 2004.

Open: 9 a.m. to 12 p.m.

Agenda: Program Discussion.

Place: National Library of Medicine, Building 38, Board Room, 2nd Floor, 8600 Rockville Pike, Bethesda, MD 20892.

Closed: 12 p.m. to 2 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Library of Medicine, Building 38, Board Room, 2nd Floor, 8600 Rockville Pike, Bethesda, MD 20892.

Open: 2 p.m. to 5 p.m.

Agenda: Program Discussion.

Place: National Library of Medicine, Building 38, Board Room, 2nd Floor, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: David J. Lipman, MD, Director, Natl Ctr, Natl Ctr for Biotechnology Information, National Library of Medicine, Department of Health and Human Services, Bethesda, MD 20894.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

(Catalogue Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: February 25, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–4640 Filed 3–2–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Agency Information Collection Activities: Distribution of Continued Dumping and Subsidy Offset to Affected Domestic Producers

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Distribution of Continued Dumping and Subsidy Offset to Affected Domestic Producers. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with a change to the burden hours. This document is published to obtain comments form the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (68 FR 70282) on December 17, 2003, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before April 2, 2004.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Treasury Desk Officer, Washington, DC 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395–6974.

SUPPLEMENTARY INFORMATION: The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Title: Distribution of Continued Dumping and Subsidy Offset to Affected Domestic Producers.

OMB Number: 1651–0086.

Form Number: N/A.

Abstract: The collection of information is required to implement the duty preference provisions of the Continued Dumping and Subsidy Offset Act of 2000, by prescribing the administrative procedures under which anti-dumping and counterveiling duties are assessed on imported products.

Current Actions: This submission is being submitted to extend the expiration date with a change in the burden hours.

Type of Review: Extension (with change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 2000.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 2000 hours.

Estimated Total Annualized Cost on the Public: $56,000.

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229, at 202–927–1429.

Dated: February 25, 2004.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 04–4727 Filed 3–2–04; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Agency Information Collection Activities: Land Border Carrier Initiative Program

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Land Border Carrier Initiative Program. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (68 FR 70282–70283) on December 17, 2003, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before April 2, 2004.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Homeland Security Desk Officer, Washington, DC 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395–6974.

SUPPLEMENTARY INFORMATION: The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L.104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Title: Land Border Carrier Initiative Program.

OMB Number: 1651–0077.

Form Number: CBP Form–3299.

Abstract: The Land Border Carrier Initiative Program is designed to prevent smugglers of illicit drugs from utilizing commercial conveyances for their commodities, and to make participation in this program at certain, high-risk locations a condition for use of the Line Release method of processing repetitive entries of merchandise.

Current Actions: This submission is being submitted to extend the expiration date with no change to the burden hours.

Type of Review: Extension (without change).

Affected Public: Businesses, individuals, institutions.

Estimated Number of Respondents: 1,050.

Estimated Time Per Respondent: 5 hours.

Estimated Total Annual Burden Hours: 5,250.

Estimated Total Annualized Cost on the Public: $78,750.

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229, at 202–927–1429.

Dated: February 25, 2004.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 04–4728 Filed 3–2–04; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Submission for OMB Review; 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 (FEMA) has submitted the following information collection to the Office of Management and Budget (OMB) for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The submission describes the nature of the information collection, the categories of respondents, the estimated burden (*i.e.*, the time, effort and resources used by respondents to respond) and cost, and includes a description of how States will manage the Hazard Mitigation Grant Program (HMGP) in the event of a disaster and the procedures States establish to implement required activities.

Title: State Administrative Plan for the Hazard Mitigation Grant Program.

OMB Number: 1660–0026.

Abstract: States must have approved State Administrative Plans to be eligible to receive funds under the HMGP. The plan outlines the procedures for administration of the program and management of program funds. The plan is revised after each major disaster declaration to take into account changes in the administration of the program or in current program policy, and must be submitted for review and approval by the appropriate Regional Director. Independent of the frequency of disaster declarations, each State should review and update the plan at least annually.

Affected Public: State, Local, or Tribal Government, and Federal Government.

Number of Respondents: 56.

Estimated Time per Respondent: 8 hours.

Estimated Total Annual Burden Hours: 383 hours.

Frequency of Response: On Occasion.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs at OMB, Attention: Desk Officer for the Department of Homeland Security/FEMA at e-mail address *kflee@omb.eop.gov* or facsimile number (202) 395–7285. Comments must be submitted on or before April 2, 2004. In addition, interested persons may also send comments to FEMA (*see* contact information below).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, Chief, Records Management Branch, FEMA at 500 C Street, SW., Room 316, Washington, DC 20472, facsimile number (202) 646–3347, or e-mail address *InformationCollections@dhs.gov*.

Dated: February 26, 2004.

George S. Trotter,

Acting Division Director, Information Resources Management Division, Information Technology Services Directorate.

[FR Doc. 04–4673 Filed 3–2–04; 8:45 am]

BILLING CODE 9110–11–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No.FR–4903–N–8]

Notice of Submission of Proposed Information Collection to OMB: Customer Satisfaction Surveys

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

HUD will conduct various customer satisfaction surveys to gather feedback and data directly from our customers to determine the kind and quality of services and products they want and expect to receive.

DATES: Comments Due Date: April 2, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number should be sent to: HUD Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; fax number (202) 395–6974; e-mail *Melanie_Kadlic@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW. Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35). The notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the contact information of an agency official familiar with the proposal and the OMB Desk Officer for the Department.

This notice also lists the following information:

Title of Proposal: Customer Satisfaction Surveys.

OMB Approval Number: 2535–XXXX.

Form Numbers: None.

Description of the Need for the Information and its Proposed Use: HUD will conduct various customer satisfaction surveys to gather feedback and data directly from our customers to determine the kind and quality of services and products they want and expect to receive.

Respondents: Individuals or households, business or other for-profit, not-for-profit institutions, State, local or tribal government.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden:	1	1		1		1

Total Estimated Burden Hours: 1

Status: New Collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: February 24, 2004.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 04–4651 Filed 3–2–04; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–160–1640–HO]

Notice of Emergency Closure in California

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Order.

SUMMARY: This Emergency Order temporarily closes to public access BLM managed land to public access at the Riconda Mine Site in San Luis Obispo County, California, in coordination with emergency removal actions initiated by the United States Environmental Protection Agency (EPA).

DATES: This closure will become effective on March 3, 2004. The closure will end upon the termination of EPA

actions and removal of EPA equipment, facilities, and personnel at the Rinconada Mine area.

ADDRESSES: Field Manager, Bureau of Land Management, Bakersfield Field Office, 3801 Pegasus Drive, Bakersfield, CA 93308.

FOR FURTHER INFORMATION CONTACT: Kent Varvel, Environmental Protection Specialist, Bakersfield Field Office, Bureau of Land Management, 3801 Pegasus Drive, Bakersfield, CA 93308, telephone 661–391–6138.

SUPPLEMENTARY INFORMATION: The following land is hereby ordered closed to public access: All of the BLM managed land on or immediately adjacent to the Rinconada Mine and located within Township 30 South, Range 14 East, Mount Diablo Meridian, Sections 21 and 28. The mine is located on West Pozo Road, in San Luis Obispo County, 11 miles southeast of Santa Margarita, California. This closure order is established under the authority of 43 CFR 8364.1. Violation of the closure may result in prosecution under 43 CFR 8360.0–7 and is punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

The EPA will shortly begin characterization and removal of environmental contaminants at the Rinconada Mine. This is expected to include soils and abandoned equipment contaminated by mercury. This closure will protect the public from exposure to environmental contaminants at the abandoned mine and protect public property and employees.

This closure order applies to all persons except public employees acting within the scope of their duties and contractors or individuals present to further the objectives of this emergency action. This closure does not apply to emergency service personnel, law enforcement officers, or other public officials acting in the performance of their duties.

Dated: January 20, 2004.

J. Anthony Danna,

Deputy State Director, Natural Resources (CA–930), California State Office.

[FR Doc. 04–4758 Filed 3–2–04; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CACA 7994 and CACA 7995]

Public Land Order No. 7597; Partial Revocation of Secretarial Orders Dated February 9, 1927, and May 6, 1927; California

AGENCY: Bureau of Land Management.

ACTION: Public Land Order.

SUMMARY: This order partially revokes two Secretarial Orders insofar as they affect 67.72 acres of National Forest System lands withdrawn for Power Site Classification Nos. 168 and 178. This order makes the lands available for exchange.

EFFECTIVE DATE: April 2, 2004.

FOR FURTHER INFORMATION CONTACT: Duane Marti, BLM California State Office, 2800 Cottage Way, Sacramento, California 95825, 916–979–2858.

SUPPLEMENTARY INFORMATION: The land described in Paragraph 1 was not surveyed until after Power Site Classification No. 168 was established. Power Site Interpretation No. 111 modified the description in the original order to be in conformance with the survey.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (2000), it is ordered as follows:

1. The Secretarial Order dated February 9, 1927, as modified by Power Site Interpretation No. 111, which established Power Site Classification No. 168, is hereby revoked insofar as it affects the following described land:

Eldorado National Forest

Mount Diablo Meridian

T. 14 N., R. 13 E.,
Sec. 22, lots 1 to 5, inclusive.

The area described contains 27.72 acres in Placer County.

2. The Secretarial Order dated May 6, 1927, which established Power Site Classification No. 178, is hereby revoked insofar as it affects the following described land:

Eldorado National Forest

Mount Diablo Meridian

T. 13 N., R. 14 E.,
Sec. 29, NE¼NE¼.

The area described contains 40 acres in El Dorado County.

3. The above described lands are hereby made available for exchange under the Act of March 20, 1922, as amended, 16 U.S.C. 485 (2000) and Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716 (2000).

Dated: February 13, 2004.

Rebecca W. Watson,

Assistant Secretary, Land and Minerals Management.

[FR Doc. 04–4757 Filed 3–2–04; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–074–2822–JL–F658]

Notice of Temporary Closure to Motorized Vehicles and Camping Use on Public Lands in Clark County, Idaho

AGENCY: Bureau of Land Management.

ACTION: Notice of Motor Vehicle Use.

SUMMARY: The Bureau of Land Management (BLM) intends to temporarily close, in Clark County, Idaho: (1) All roads and trails except three designated access roads on BLM managed public lands within the 29,468 burned acres of the Deep Fire (F658) to all motorized vehicles; and (2) any camping on such lands within the burn area.

DATES: The closure took effect on October 21, 2003 and will remain in effect until August 1, 2005, or until such time as the authorized officer of the Idaho Falls Field Office determines the closure may be lifted.

FOR FURTHER INFORMATION CONTACT: Bill Boggs, Outdoor Recreation Planner, (208) 524–7500, BLM Idaho Falls Field Office, 1405 Hollipark Drive, Idaho Falls, ID 83401.

SUPPLEMENTARY INFORMATION: This temporary closure is a direct result of the Deep Fire (F658), which burned this area in July and August of 2003, and subsequent rehabilitation efforts of the BLM. The closure will promote the reestablishment of vegetation, improve the potential for recovery of wildlife habitat, and reduce the potential for erosion and noxious weed invasion. Exceptions are granted to the following: Access by law enforcement patrols, emergency services, and administratively approved access for actions such as monitoring, research studies, and access to private lands and any other actions will be considered on a case-by-case basis by the BLM Field Manager, Idaho Falls.

After the closure is lifted, motorized vehicle use will be limited to existing roads and two track trails. The closure is in accordance with 43 CFR

9268.3(d)(1). Violation of this order is punishable by a fine not to exceed $1,000.00 and/or imprisonment not to exceed 12 months.

Authority: 43 CFR 8364.1.

The area of closure and impoundment affected by this notice is the burned portion of public lands administered by the BLM, specifically described wholly or partially:

T. 10 N., R. 34 E,
Secs. 2, 3.
T. 11 N., R. 33 E,
Secs. 1 to 4, inclusive, secs. 10 to 15, inclusive, secs. 22 to 26, inclusive, secs. 35 and 36.
T. 11 N., R. 34 E,
Secs. 3 to 10, inclusive, secs. 15 to 23, inclusive, secs. 26 to 31, inclusive, secs. 33 to 35, inclusive.
T. 12 N., R. 33 E.,
Secs. 1 to 5, inclusive, secs. 8 to 17, inclusive, secs. 21 to 28, inclusive, and secs. 33 to 36, inclusive.
T. 12. N. R. 34 E.,
Sec. 7, secs. 18 to 20, inclusive, and secs. 28 to 33, inclusive.
T. 13. N. R. 33 E.,
Secs. 22, 23, 26, 27, 33, 34, 35.

Detailed maps of the areas closed to OHV and camping use will be posted with this notice at key locations that provide access into the closure areas as well as being available at the Idaho Falls Field Office at the address below. A burn area rehabilitation plan for the area has been completed and signed on 9/5/03. A NEPA Document and ROD was completed with this plan. (ID–074–2003–053).

FOR FURTHER INFORMATION CONTACT: Bill Boggs, Outdoor Recreation Planner, (208) 524–7500, BLM Idaho Falls Field Office, 1405 Hollipark Drive, Idaho Falls, ID 83401.

Dated: November 25, 2003.

Carol McCoy Brown,

Idaho Falls Field Manager.

[FR Doc. 04–4756 Filed 3–2–04; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–095–04–1430–FM; IDI–34282;DBG 04–0002]

Notice of Intent To Amend the Lower Snake River District's Cascade Resource Management Plan and Notice of Exchange Proposal

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent and Notice of Exchange Proposal.

SUMMARY: This notice provides for two related proposals, one a proposed plan amendment and the other a proposed land exchange. The proposed plan amendment would involve about 137.73 acres of Federal Land. The proposed land exchange would involve about 341.54 acres of Federal land and 730 acres of land owned by the State of Idaho.

DATES: The Bureau of Land Management must receive your comments within 45 days of the date of the publication of this notice in the **Federal Register** at the address listed below. You may submit comments concerning the plan amendment, proposed exchange, including notification of any liens, encumbrances, or other claims relating to the lands we are considering for exchange.

ADDRESSES: Please send your written comments to the Bureau of Land Management, Four Rivers Field Office, 3948 Development Avenue, Boise, ID 83705, attention Daryl Albiston.

FOR FURTHER INFORMATION CONTACT: For further information, contact Daryl Albiston, Four Rivers Field Manager at (208) 384–3430.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management (BLM) is proposing to amend the Lower Snake River District's Cascade Resource Management Plan (RMP) with respect to the following Federal lands in Ada, Boise, and Valley Counties, Idaho. The plan amendment will consider whether the following lands are suitable for disposal by exchange.

Tract name	Legal description	Acres
Carbarton	Township 13 North, Range 4 East, Valley County	
	Section 7: Lot 3; (NW¼SW¼	17.73
Easley Creek	Township 10 North, Range 4 East, Boise County	
	Section 29: N½NW¼, SE¼NW¼	120.00
	Total Plan amendment acres	137.73

The BLM is also considering a proposal to exchange land under section 206 of the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1716) with the Idaho Department of Lands. The BLM is considering all or part of the above described Federal lands (which require a plan amendment) along with all or part of the following Federal land (identified for disposal in an existing plan) for disposal by exchange.

Tract name	Legal description	Acres
Scott	Township 24 North, Range 1 East, Idaho County	
	Section 8: NW¼NE¼	40.00
	Section 9: SE¼SW¼, SW¼SE¼	80.00
	Section 15: SW¼NW¼	40.00
Highway 21	Township 2 North, Range 3 East, Ada County	
	Section 5: Lot 4 (NW¼NW¼)	43.81
	Total	203.81

BLM is considering a total of 341.54 acres of Federal lands for exchange.

In exchange, the United States would acquire all or a portion of the following described non-Federal land from the Idaho Department of Lands.

Tract name	Legal description	Acres
	Township 3 North, Range 3 East, Ada County	
Rocky Canyon East	Section 5: Lots 2, 3, SW¼NE¼, S½NW¼ N½SE¼, SW¼SE¼	319.44
Rocky Canyon West	Section 6: Lots 4, 5, 6, 7, S½NE¼, SE¼NW¼, E½SW¼, N½SE¼	410.88
	Total State Acres	730.32

Subject to valid existing rights, BLM segregated the Federal lands identified above from appropriation under the public land laws and mineral laws beginning February 25, 2003.

Daryl Albiston,

Field Manager, Four Rivers Field Office, Bureau of Land Management.

[FR Doc. 04–4146 Filed 3–2–04; 8:45 am]

BILLING CODE 4310–66–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Department Policy, 28 CFR, § 50.7, notice is hereby given that on February 13, 2004, a proposed consent decree in *United States* v. *Kanaway Seafoods, Inc., d/b/a Alaska General Seafoods,* Docket No. A04–0039 CV (JWS), was lodged with the United States District Court for the District of Alaska. In this action brought pursuant to section 309 of the Clean Water Act, as amended, 33 U.S.C. 1319, the United States has requested the imposition of civil penalties and injunctive relief on the defendant. This action arose out of the operation by Kanaway Seafoods, Inc., d/b/a Alaska General Seafoods (AGS) of its seafood processing facility in Ketchikan, Alaska. The United States has alleged that AGS failed to meet several of the discharge and reporting requirements of its authorization to discharge under the general National Pollutant Discharge Elimination System permit for seafood processors in Alaska (General Permit) on numerous days between January of 1999 and August of 2001, all in violation of section 301 of the Clean Water Act, 33 U.S.C. 1311.

The Consent Decree requires that AGS pay a civil penalty of $110,000 and perform certain injunctive relief at its Ketchikan facility. The injunctive relief provisions of the Consent Decree oblige AGS: (1) During the next two processing seasons, to barge its processing waste to an at-sea discharge location or use an alternate, EPA-approved method of disposal to prevent the discharge of its processing waste to Tongass Narrows; (2) to remediate the seafood waste piles that have accumulated on the seafloor as a result of its past discharges; and (3) to use means necessary to prevent eruptions of those piles.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, United States Department of Justice, Environment and National Resources Division, Post Office Box, 7611, Ben Franklin Station, Washington, DC 20044–7611 and should refer to *United States* v. *Kanaway Seafood, Inc.*, d/b/a Alaska General Seafoods, D.J. Ref. #90–5–1–1–07394.

The proposed consent decree may be examined at the office of the United States Attorney, 222 West 7th Avenue, #9, Room 253, Anchorage, Alaska 99513 and at United States EPA Region 10, 1200 Sixth Avenue, Seattle, Washington 98101. During the comment period the consent decree may be examined on the following Department of Justice Web Site, *http://www.usdoj.gov/enrd/open.html*. A copy of the consent decree may also be obtained by mail from the Consent Decree Library, Post Office Box 7611, Ben Franklin Station, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood *(tonia.fleetwood@usdoj.gov)*, fax number (202) 514–0097, telephone confirmation number (202) 514–1547. In requesting a copy by mail, please enclose a check in the amount of $6.00 for *United States* v. *Kanaway Seafoods, Inc.* (25 cents per page reproduction cost) payable to the U.S. Treasury.

Robert E. Maher, Jr.,

Assistant Section Chief, Environmental Enforcement Section.

[FR Doc. 04–4763 Filed 3–2–04; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA")

Consistent with Departmental policy, 28 CFR 507.38 FR 19029, and 42 U.S.C. § 9622(d), notice is hereby given that on February 11, 2004, a proposed consent decree in *United States* v. *Princeton Gamma-Tech, et al.*, Civil Action No. 91–809 (AET), was lodged with the United States District Court for the District of New Jersey.

In this action the United States sought recovery of response costs pursuant to section 107(a) of CERCLA, for costs incurred related to the Montgomery Township Housing Development Superfund Site and the Rocky Hill Municipal Wellfield site located in Somerset County, New Jersey. The consent decree requires defendant Princeton Gamma-Tech, Inc. to pay a total of $21.5 million to the United States and the State of New Jersey. The United States will receive $14,204,000 in reimbursement of past and future response costs at the Sites, and the State of New Jersey will receive $7,296,000 in reimbursement of past and future response costs as well as natural resource damages. The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Princeton Gamma-Tech, Inc., et al.*, D.J. Ref. #90–11–2–290.

The consent decree may be examined at the Office of the United States Attorney, District of New Jersey, Clarkson S. Fisher Federal Building and U.S. Courthouse, 402 E. State Street, Trenton, New Jersey 08608 (contact AUSA Irene Dowdy), and at U.S. EPA Region II, 290 Broadway, New York, New York 10007–1866 (contact Amelia Wagner). During the public comment period, the consent decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html*. A copy of the consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of

$16.50 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ronald G. Gluck,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 04–4762 Filed 3–2–04; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on February 18, 2004, a proposed Consent Decree ("CD") in *United States* v. *Reunion Industries, Inc.*, Civil Action No. C–04–0671 (MHP) was lodged with the United States District Court for the Northern District of California.

In this action, the United States sought reimbursement pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9607 *et seq.*, of past response costs incurred by EPA in connection with the release or threatened release of hazardous substances at the Gambonini Mercury Mine Site (the "Site") located in Marin County, California. The CD provides for Reunion Industries, Inc., the successor corporation to Buttes Gas and Oil Co., to settle its liability at the Site for past response costs by paying $100,000 in installments over three years.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Reunion Industries, Inc.*, D.J. Ref. #90–11–3–07848.

The Consent Decree may be examined at the Office of the United States Attorney, 450 Golden Gate Avenue, San Francisco, California, and at the U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html*. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $5.50 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ellen M. Mahan,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 04–4761 Filed 3–2–04; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day notice of information collection under review: Application for license under 18 U.S.C. chapter 44, firearms.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until May 3, 2004. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Craig Sabo, Firearms, Explosives and Arson Services Division, Room 5100, 650 Massachusetts Avenue, NW., Washington, DC 20226.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) Type of Information Collection: Extension of a currently approved collection.

(2) Title of the Form/Collection: Application for License Under 18 U.S.C. Chapter 44, Firearms.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number: ATF F 7 (5310.12). Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Business or other for-profit. Other: Individual or households. The form is used when applying for a Federal firearms license as a dealer, importer, or manufacturer. The information requested on the form establishes eligibility for the license.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: It is estimated that 10,000 respondents will complete a 1 hour and 15 minute form.

(6) An estimate of the total public burden (in hours) associated with the collection: There are an estimated 12,500 annual total burden hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Deputy Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: February 27, 2004.

Brenda E. Dyer,

Deputy Clearance Officer, Department of Justice.

[FR Doc. 04–4773 Filed 3–2–04; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day notice of information collection under review: Letter application to obtain authorization for the assembly of a nonsporting rifle or nonsporting shotgun for the purpose of testing or evaluation.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until May 3, 2004. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Larry White, Firearms Programs Division, Room 7400, 650 Massachusetts Avenue, NW, Washington, DC 20226

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Letter Application to Obtain Authorization for the Assembly of a Nonsporting Rifle or Nonsporting Shotgun for the Purpose of Testing and Evaluation.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. The information is required by ATF to provide a means to obtain authorization for the assembly of a nonsporting rifle or nonsporting shotgun for the purpose of testing or evaluation.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 5 respondents will complete a written letter in 30 minutes.

(6) An estimate of the total public burden (in hours) associated with the collection: There are an estimated 3 annual total burden hours associated with this collection.

FOR FURTHER INFORMATION CONTACT: Brenda E. Dyer, Deputy Clearance Officer, Information Management and Security Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: February 27, 2004.

Brenda E. Dyer,

Deputy Clearance Officer, Department of Justice.

[FR Doc. 04–4774 Filed 3–2–04; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF LABOR

Employment and Training Administration

Labor Certification Process for the Temporary Employment of Aliens in Agriculture and Logging in the United States: 2004 Adverse Effect Wage Rates, Allowable Charges for Agricultural and Logging Workers' Meals, and Maximum Travel Subsistence Reimbursement

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of Adverse Effect Wage Rates (AEWR's), allowable charges for meals, and maximum travel subsistence reimbursement for 2004.

SUMMARY: The Employment and Training Administration (ETA) announces 2004 adverse effect wage rates for employers seeking nonimmigrant alien (H–2A) workers for temporary or seasonal agricultural labor or services and logging; the allowable charges employers seeking nonimmigrant alien (H–2A) workers for temporary or seasonal agricultural labor or services and logging work may levy upon their workers when they provide three meals per day; and the maximum travel subsistence reimbursement which a worker with receipts may claim in 2004.

AEWR's are the minimum wage rates the Department of Labor has determined must be offered and paid to U.S. and prevent the employment of these aliens from adversely affecting wages of similarly employed U.S. workers.

The Department of Labor also announces the new rates which covered agricultural and logging employers may charge their workers for three daily meals.

Under specified conditions, workers are entitled to reimbursement for travel subsistence expenses. The minimum reimbursement is the charge for three daily meals as discussed above. The Department of Labor (DOL) also announces the current maximum reimbursement for workers with receipts.

EFFECTIVE DATE: March 3, 2004.

FOR FURTHER INFORMATION CONTACT: William Carlson, Chief, Division of Foreign Labor Certification, U.S. Department of Labor, Room C–4318, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: 202–693–3010 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The U.S. Citizenship and Immigration Services may not approve an employer's petition for admission of temporary alien agricultural H–2A workers to perform agricultural labor or services of a temporary or seasonal nature in the United States unless the petitioner has received from the DOL an H–2A labor certification. Approved labor certifications attest (1) there are not sufficient U.S. workers who are able, willing, and qualified and who will be available at the time and place needed to perform the labor or services involved in the petition; and (2) the employment of the alien in such labor or services will not adversely affect the wages and working conditions of workers in the U.S. similarly employed. 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c), and 1188.

DOL's regulations for the H–2A program require that covered employers offer and pay their U.S. and H–2A workers no less than the applicable hourly Adverse Effect Wage Rate. 20 CFR 655.102(b)(9); see also 20 CFR 655.107. Reference should be made to the preamble of the July 5, 1989, Final Rule (54 FR 28037), which explains in great depth the purpose and history of AEWR's, DOL's discretion in setting AEWR's, and the AEWR computation methodology at 20 CFR 655.107(a). See also 52 FR 20496, 20502–20505 (June 1, 1987).

A. Adverse Effect Wage Rates for 2004

Adverse effect wage rates are the minimum wage rates which DOL has determined must be offered and paid to U.S. and alien workers by employers of nonimmigrant H–2A agricultural workers. DOL emphasizes, however, that such employers must pay the highest of the AEWR, the applicable prevailing wage, or the statutory minimum wage, as specified in the regulations. 20 CFR 655.102(b)(9). Except as otherwise provided in 20 CFR part 655, subpart B, the region-wide AEWR for all agricultural employment (except those occupations deemed inappropriate under the special circumstances provisions of 20 CFR 655.93) for which temporary alien agricultural labor H–2A certification is being sought, is equal to the annual weighted average hourly wage rate for field and livestock workers (combined) for the region as published annually by the U.S. Department of Agriculture (USDA). USDA does not provide data on Alaska. 20 CFR 655.107(a).

The regulation at 20 CFR 655.107(a) requires the Assistant Secretary, Employment and Training Administration, to publish USDA field and livestock worker (combined) wage data as AEWR's in a **Federal Register** notice. Accordingly, the 2004 AEWR's for work performed on or after the effective date of this notice, are set forth in the table below:

TABLE—2004 ADVERSE EFFECT WAGE RATES

State	2004 AEWR
Alabama	$7.88
Arizona	7.54
Arkansas	7.38
California	8.50
Colorado	8.36
Connecticut	9.01
Delaware	8.52
Florida	8.18
Georgia	7.88
Hawaii	9.60
Idaho	7.69
Illinois	9.00
Indiana	9.00
Iowa	9.28
Kansas	8.83
Kentucky	7.63
Louisiana	7.38
Maine	9.01
Maryland	8.52
Massachusetts	9.01
Michigan	9.11
Minnesota	9.11
Mississippi	7.38
Missouri	9.28
Montana	7.69
Nebraska	8.83
Nevada	8.36
New Hampshire	9.01
New Jersey	8.52
New Mexico	7.54
New York	9.01
North Carolina	8.06
North Dakota	8.83
Ohio	9.00
Oklahoma	7.73
Oregon	8.73
Pennsylvania	8.52
Rhode Island	9.01
South Carolina	7.88
South Dakota	8.83
Tennessee	7.63
Texas	7.73
Utah	8.36
Vermont	9.01
Virginia	8.06
Washington	8.73
West Virginia	7.63
Wisconsin	9.11
Wyoming	7.69

B. Allowable Meal Charges

Among the minimum benefits and working conditions which DOL requires employers to offer their alien and U.S. workers in their applications for temporary logging and H–2A agricultural labor certification, is the provision of three meals per day or free and convenient cooking and kitchen facilities. 20 CFR 655.102(b)(4) and 655.202(b)(4). Where the employer provides meals, the job offer must state the charge, if any, to the worker for meals.

DOL has published at 20 CFR 655.102(b)(4) and 655.111(a) the methodology for determining the maximum amounts covered H–2A agricultural employers may charge their U.S. and foreign workers for meals. The same methodology is applied at 20 CFR 655.202(b)(4) and 655.211(a) to covered H–2 logging employers. These rules provide for annual adjustments of the previous year's allowable charges based upon Consumer Price Index (CPI) data.

Each year the maximum charges allowed by 20 CFR 655.102(b)(4) and 655.202(b)(4) are changed by the same percentage as the twelve-month percent change in the CPI for all Urban Consumers for Food (CPI–U for Food) between December of the year just past and December of the prior year. Those regulations and 20 CFR 655.111(a) and 655.211(a) provide that the appropriate Regional Administrator (RA), Employment and Training Administration, may permit an employer to charge workers no more than a higher maximum amount for providing them with three meals a day, if justified and sufficiently documented. Each year, the higher maximum amounts permitted by 20 CFR 655.111(a) and 655.211(a) are changed by the same percentage as the twelve-month percent change in the CPI-U for Food between December of the year just past and December of the prior year. The regulations require the DOL to make the annual adjustments and to publish a notice in the **Federal Register** each calendar year, announcing annual adjustments in allowable charges that may be made by covered agricultural and logging employers for providing three meals daily to their U.S. and alien workers. The 2003 rates were published in a Notice on February 26, 2003 at 68 FR 8929.

DOL has determined the percentage change between December of 2002 and December of 2003 for the CPI–U for Food was 2.2 percent.

Accordingly, the maximum allowable charges under 20 CFR 655.102(b)(4), 655.202(b)(4), 655.111, and 655.211 were adjusted using this percentage change, and the new permissible charges for 2004 are as follows: (1) For 20 CFR 655.102(b)(4) and 655.202(b)(4), the charge, if any, shall be no more than $8.78 per day, unless the RA has approved a higher charge pursuant to 20 CFR 655.111 or 655.211(b); for 20 CFR 655.111 and 655.211, the RA may permit an employer to charge workers up to $10.88 per day for providing them with three meals per day, if the employer justifies the charge and submits to the RA the documentation required to support the higher charge.

C. Maximum Travel Subsistence Expense

The regulations at 20 CFR 655.102(b)(5) establish that the minimum daily subsistence expense related to travel expenses, for which a worker is entitled to reimbursement, is the employer's daily charge for three meals or, if the employer makes no charge, the amount permitted under 20 CFR 655.104(b)(4). The regulation is silent about the maximum amount to which a qualifying worker is entitled.

The Department, in Field Memorandum 42–94, established that the maximum is the meals component of the standard CONUS (continental United States) per diem rate established by the General Services Administration (GSA) and published at 41 CFR Ch. 301. The CONUS meal component is now $30.00 per day.

Workers who qualify for travel reimbursement are entitled to reimbursement up to the CONUS meal rate for related subsistence when they provide receipts. In determining the appropriate amount of subsistence reimbursement, the employer may use the GSA system under which a traveler qualifies for meal expense reimbursement per quarter of a day. Thus, a worker whose travel occurred during two quarters of a day is entitled, with receipts, to a maximum reimbursement of $15.00. If a worker has no receipts, the employer is not obligated to reimburse above the minimum stated at 20 CFR 655.102(b)(4) as specified above.

Signed at Washington, DC, this 17th day of February, 2004.

Emily Stover DeRocco,

Assistant Secretary for Employment and Training.

[FR Doc. 04–4731 Filed 3–2–04; 8:45 am]

BILLING CODE 4510–30–U

NATIONAL COUNCIL ON DISABILITY

Sunshine Act Meetings

TIMES AND DATES:

9 a.m.–12 p.m., April 13, 2004, Quarterly Meeting (Open).

12 p.m.–5 p.m., April 13, 2004, Working Session (Closed).

9 a.m.–3 p.m., April 14, 2004, Working Session (Closed).

9 a.m.–12 noon, April 15, 2004, Native American Forum (Open).

PLACE: Hyatt Regency Tamaya Resort and Spa, 1300 Tuyuna Trail, Santa Ana Pueblo, New Mexico.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Reports from the Chairperson and the Executive Director, Committee Reports, Executive Session, Unfinished Business, New Business, Announcements, Adjournment.

PORTIONS OPEN TO THE PUBLIC: Reports from the Chairperson and the Executive Director, Committee Reports, Unfinished Business, New Business, Announcements, Adjournment, and Native American Forum.

Public comments will be taken during the opening session on Tuesday morning, April 13 and during the Native American forum on Thursday morning, April 15.

PORTIONS CLOSED TO THE PUBLIC: Working Session.

CONTACT PERSON FOR MORE INFORMATION: Mark S. Quigley, Director of Communications, National Council on Disability, 1331 F Street, NW., Suite 850, Washington, DC 20004; 202–272–2004 (Voice), 202–272–2074 (TTY), 202–272–2022 (Fax), *mquigley@ncd.gov* (E-mail).

AGENCY MISSION: The National Council on Disability (NCD) is an independent federal agency composed of 15 members appointed by the President and confirmed by the U.S. Senate. Its overall purpose is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all people with disabilities, including people from culturally diverse backgrounds, regardless of the nature or significance of the disability; and to empower people with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

ACCOMMODATIONS: Those needing sign language interpreters or other disability accommodations should notify NCD at least one week before this meeting.

LANGUAGE TRANSLATION: In accordance with E.O. 13166, Improving Access to Services for Persons with Limited English Proficiency, those people with disabilities who are limited English proficient and seek translation services for this meeting should notify NCD at least one week before this meeting.

MULTIPLE CHEMICAL SENSITIVITY/ ENVIRONMENTAL ILLNESS: People with multiple chemical sensitivity/ environmental illness must reduce their exposure to volatile chemical substances to attend this meeting. To reduce such exposure, NCD requests that attendees not wear perfumes or scented products at this meeting. Smoking is prohibited in meeting rooms and surrounding areas.

Dated: March 1, 2004.

Ethel D. Briggs,

Executive Director.

[FR Doc. 04–4894 Filed 3–1–04; 3:25 pm]

BILLING CODE 6820–MA–P

OFFICE OF NATIONAL DRUG CONTROL POLICY

Meeting of the Drug Control Research, Data, and Evaluation Advisory Committee

AGENCY: Office of National Drug Control Policy.

ACTION: Notice of Meeting.

SUMMARY: The Drug Control Research, Data, and Evaluation Advisory Committee will meet to discuss federal drug control initiatives, ONDCP's three strategic priorities: Stopping Drug Use Before it Starts; Healing America's Drug Users; and Disrupting the Market, and the operational aspects of the: (1) Media Campaign; (2) 25 Cities Initiative; (3) Marijuana Initiative; (4) Domestic Market Disruption; (5) Student Drug Testing; (6) Prescription Drug Safety; (7) Colombia/Mexico; and (8) Access to Recovery.

DATES: The meeting will be held Thursday, April 1, through Friday, April 2, 2004 each day from 9 a.m. to 4 p.m. There will be an opportunity for public comment on April 1st from 3:30 p.m. to 4 p.m.

ADDRESSES: The meeting will be held at the Office of National Drug Control Policy, 750 17th Street, NW., 5th Floor Conference Room, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Janie Dargan, (202) 395–6714.

Dated: February 27, 2004.

Daniel R. Petersen,

Assistant General Counsel.

[FR Doc. 04–4687 Filed 3–2–04; 8:45 am]

BILLING CODE 3180–02–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Leadership Initiatives Advisory Panel—Notice of Change

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a teleconference meeting of the Leadership Initiatives Advisory Panel (Arts Journalism Institutes section) to the National Council on the Arts previously announced as an open meeting for March 25, 2004, will instead be held on Monday, March 15, 2004, from 3 p.m. to 3:30 p.m. e.s.t., from Room 620 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendations on financial

assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of April 30, 2003, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Panel Coordinator, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: February 26, 2004.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 04–4661 Filed 3–2–04; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Leadership Initiatives Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a teleconference meeting of the Leadership Initiatives Advisory Panel (International section) to the National Council on the Arts will be held on Monday, March 15, 2004 from 12:30 p.m. to 1:30 p.m. e.s.t., from Room 709 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of April 30, 2003, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5691.

Dated: February 26, 2004.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 04–4662 Filed 3–2–04; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL SCIENCE FOUNDATION

Notice of the Availability of Two Comprehensive Environmental Evaluations for Antarctic Activities

AGENCY: National Science Foundation (NSF).

ACTION: Notice of availability of two draft Environmental Impact Statements/ Comprehensive Environmental Evaluations (EIS/CEEs) for activities proposed to be undertaken in Antarctica.

SUMMARY: The National Science Foundation gives notice of the availability of two draft Environmental Impact Statements/Comprehensive Environmental Evaluations (EIS/CEEs) for activities proposed to be undertaken in Antarctica. Interested members of the public are invited to submit comments relative to these EIS/CEEs.

DATES: Comments must be submitted on or before June 1, 2004.

ADDRESSES: Send comments to Polly A. Penhale, Office of Polar Programs, Room 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, or to *ppenhale@nsf.gov.*

FOR FURTHER INFORMATION CONTACT: Polly A. Penhale, Program Manager, Office of Polar Programs, (703) 292–8033.

SUPPLEMENTARY INFORMATION: Article 3 of Annex I to the Protocol on Environmental Protection of the Antarctic Treaty required the preparation of an EIS/CEE for any proposed Antarctic activity likely to have more than a minor or transitory impact. Draft EIS/CEEs are to be made publicly available with a 90-day period for receipt of comments, as specified in 45 CFR 641.18(c). This notice is published pursuant to 16 U.S.C. 2403a.

The National Science Foundation has submitted two draft EIS/CEEs:

1. An EIS/CEE for development and implementation of surface traverse capabilities in Antarctica. The document is available at the following Web site: *http://www.nsf.gov/od/opp/antarct/treaty/cees/traverse/traverse_cee.pdf.*

2. An EIS/CEE for the operation of a high-energy neutrino telescope (Project IceCube) at the South Pole. The document is available at the following Web site: *http://www.nsf.gov/od/opp/antarct/treaty/cees/icecube/icecube_cee.pdf.*

The National Science Foundation invites interested members of the public to provide written comments on these draft EIS/CEEs.

Robert A. Wharton,

Executive Officer, Officer of Polar Programs, National Science Foundation.

[FR Doc. 04–4729 Filed 3–2–04; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of final guidance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is publishing final policy guidance on Title VI's prohibition against national origin discrimination as it affects limited English proficient persons.

FOR FURTHER INFORMATION CONTACT: Marva C. Gary, Civil Rights Program Manager, at 301–415–7382, TDD 301–415–5244, or by e-mail at *MCG@nrc.gov.*

SUPPLEMENTARY INFORMATION: Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, *et seq.* and its implementing regulations provide that no person shall be subjected to discrimination on the basis of race, color, or national origin under any program or activity that receives Federal financial assistance. In Executive Order 13166, reprinted at 65 FR 50119 (August 16, 2000), Federal grant agencies are directed to issue guidance to their respective recipients of Federal financial assistance on ensuring meaningful access to their programs and activities by persons with limited English proficiency (LEP). Executive Order 13166 further requires that agency guidance be consistent with the compliance standards set out in Department of Justice Policy Guidance issued contemporaneous with the Executive Order and published at 65 FR 50123 (August 16, 2000).

On October 26, 2001, and January 11, 2002, the Assistant Attorney General for Civil Rights issued to Federal departments and agencies guidance memoranda, which reaffirmed the Department of Justice's commitment to ensuring that federally assisted programs and activities fulfill their LEP responsibilities, which clarified and answered certain questions raised regarding the August 16th publication. On March 14, 2002, the Office of Management and Budget (OMB) issued

a Report To Congress titled "Assessment of the Total Benefits and Costs of Implementing Executive Order No. 13166: Improving Access to Services for Persons with Limited English Proficiency." Among other things, the Report recommended the adoption of uniform guidance across all Federal agencies, with flexibility to permit tailoring to each agency's specific recipients. Consistent with this OMB recommendation, the Department of Justice (DOJ) published LEP Guidance for DOJ recipients which was drafted and organized to also function as a model for similar guidance by other Federal grant agencies. The final NRC guidance is consistent with the model LEP Guidance document published by DOJ.

It has been determined that this guidance does not constitute a regulation subject to the rulemaking requirements of the Administrative Procedure Act, 5 U.S.C. 553. It has also been determined that this guidance document is not subject to the requirements of Executive Order 12866.

The text of the final guidance document appears below.

Dated at Rockville, Maryland, this 24th day of February, 2004.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons

I. Introduction

Most individuals living in the United States read, write, speak and understand English. There are many individuals, however, for whom English is not their primary language. For instance, based on the 2000 census, over 26 million individuals speak Spanish and almost 7 million individuals speak an Asian or Pacific Island language at home. If these individuals have a limited ability to read, write, speak, or understand English, they are limited English proficient, or "LEP." While detailed data from the 2000 census has not yet been released, 26 percent of all Spanish-speakers, 29.9 percent of all Chinese-speakers, and 28.2 percent of all Vietnamese-speakers reported that they spoke English "not well" or "not at all" in response to the 1990 census.

Language for LEP individuals can be a barrier to accessing important benefits or services, understanding and exercising important rights, complying with applicable responsibilities, or understanding other information provided by federally funded programs and activities. The Federal Government funds an array of services that can be made accessible to otherwise eligible LEP persons. The Federal Government is committed to improving the accessibility of these programs and activities to eligible LEP persons, a goal that reinforces its equally important commitment to promoting programs and activities designed to help individuals learn English.

In certain circumstances, failure to ensure that LEP persons can effectively participate in or benefit from federally assisted programs and activities may violate the prohibition under Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d and Title VI regulations against national origin discrimination. The purpose of this policy guidance is to assist recipients in fulfilling their responsibilities to provide meaningful access to LEP persons under existing law. This policy guidance clarifies existing legal requirements for LEP persons by providing a description of the factors recipients should consider in fulfilling their responsibilities to LEP persons.[1] These are the same criteria the United States Nuclear Regulatory Commission (NRC) will use in evaluating whether recipients are in compliance with Title VI.

Before discussing these criteria in greater detail, it is important to note two basic underlying principles. First, we must ensure that federally assisted programs aimed at the American public do not leave some behind simply because they face challenges communicating in English. Second, we must achieve this goal while finding constructive methods to reduce the costs of LEP requirements on recipients of Federal financial assistance.

There are many productive steps that the Federal government, either collectively or as individual grant agencies, can take to help recipients reduce the costs of language services without sacrificing meaningful access for LEP persons. To that end, the NRC, in conjunction with the Department of Justice (DOJ), plans to continue to provide assistance and guidance in this important area. In addition, the NRC plans to work with its recipients and LEP persons to identify and share model plans, examples of best practices, and cost-saving approaches.

Moreover, the NRC intends to explore how language assistance measures, resources and cost-containment approaches developed with respect to its own federally conducted programs and activities can be effectively shared or otherwise made available to recipients. An interagency working group on LEP has developed a Web site: *www.lep.gov*, to assist in disseminating this information to recipients, Federal agencies, and the communities being served.

In cases where a recipient of Federal financial assistance from the NRC also receives assistance from one or more other Federal agencies, there is no obligation to conduct and document separate data, when the data would be identical and for the same purpose. The same analyses and language assistance plans can be used. The NRC, in discharging its compliance and enforcement obligations under Title VI, will look to analyses performed and plans developed in response to similar detailed LEP guidance issued by other Federal agencies. Accordingly, as an adjunct to this guidance, recipients may, where appropriate, also rely on guidance issued by other agencies in discharging their Title VI LEP obligations.

Many commentators have noted that some have interpreted the case of *Alexander* v. *Sandoval*, 532 U.S. 275 (2001), as impliedly striking down the regulations promulgated under Title VI that form the basis for the part of Executive Order 13166 that applies to federally assisted programs and activities. The NRC and DOJ have taken the position that this is not the case, and will continue to do so. Accordingly, NRC will strive to ensure that federally assisted programs and activities work in a way that is effective for all eligible beneficiaries, including those with limited English proficiency.

II. Legal Authority

Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, provides that no person shall "on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." Section 602 authorizes and directs Federal agencies that are empowered to extend Federal financial assistance to any program or activity "to effectuate the provisions of [section 601] * * * by issuing rules, regulations, or orders of general applicability." 42 U.S.C. 2000d–1.

[1] The policy guidance is not a regulation but rather a guide. Title VI and its implementing regulations require that recipients take reasonable steps to ensure meaningful access by LEP persons. This guidance provides an analytical framework that recipients may use to determine how best to comply with statutory and regulatory obligations to provide meaningful access to the benefits, services, information, and other important portions of their programs and activities for individuals who are limited English proficient.

In pertinent part, the NRC's regulations promulgated pursuant to section 602 forbid recipients from "utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program [with respect to] individuals of a particular race, color, or national origin." See 10 CFR part 4 subpart A, § 4.12 (b) [29 FR 19277, December 31, 1964].

The Supreme Court, in *Lau* v. *Nichols*, 414 U.S. 563 (1974), interpreted regulations promulgated by the former Department of Health, Education, and Welfare, including language identical to that of 45 CFR part 1110, to hold that Title VI prohibits conduct that has a disproportionate effect on LEP persons because such conduct constitutes national-origin discrimination. In *Lau*, a San Francisco school district that had a significant number of non-English speaking students of Chinese origin was required to take reasonable steps to provide them with a meaningful opportunity to participate in federally funded educational programs.

On August 11, 2000, Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," (65 FR 50121; August 16, 2000), was issued. Under that Order, every Federal agency that provides financial assistance to non-Federal entities must publish guidance on how their recipients can provide meaningful access to LEP persons and thus comply with Title VI regulations forbidding funding recipients from "[restricting] an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program" or from "utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin."

On that same day, DOJ issued a general guidance document addressed to "Executive Agency Civil Rights Officers" setting forth general principles for agencies to apply in developing guidance documents for recipients pursuant to the Executive Order. "Enforcement of Title VI of the Civil Rights Act of 1964 National Origin Discrimination Against Persons With Limited English Proficiency," (65 FR 50123; August 16, 2000) ("DOJ LEP Guidance").

Subsequently, Federal agencies raised questions regarding the requirements of the Executive Order, especially in light of the Supreme Court's decision in *Alexander* v. *Sandoval*, 532 U.S. 275 (2001). On October 26, 2001, Ralph F. Boyd, Jr., Assistant Attorney General for the Civil Rights Division, issued a memorandum for "Heads of Departments and Agencies, General Counsels and Civil Rights Directors." This memorandum clarified and reaffirmed the DOJ LEP guidance in light of *Sandoval*.[2] The Assistant Attorney General stated that because *Sandoval* did not invalidate any Title VI regulations that proscribe conduct that has a disparate impact on covered groups—the types of regulations that form the legal basis for the part of Executive Order 13166 that applies to federally assisted programs and activities—the Executive Order remains in force.

This guidance is thus published pursuant to Executive Order 13166.

III. Who Is Covered?

The NRC regulations at 10 CFR part 4 subpart A require all recipients of Federal financial assistance from the NRC to provide meaningful access to LEP persons.[3] Federal financial assistance includes grants, training, use of equipment, donations of surplus property, and other assistance. Recipients of assistance from the NRC typically include, but are not limited to:

- Educational systems, universities, colleges, and research institutions;
- Day care center providers;
- Food service providers;
- Emergency response entities;
- State Health and Radiological Offices;
- Fitness center providers;
- Profit and non-profit organizations and institutions;
- Healthcare center providers; and
- Professional societies.

Subrecipients are also covered when Federal funds are passed through from one recipient to a subrecipient.

Coverage extends to a recipient's entire program or activity; *i.e.*, to all parts of a recipient's operations. This is true even if only one part of the recipient receives Federal assistance.[4]

Finally, some recipients operate in jurisdictions in which English has been declared the official language. Nonetheless, these recipients continue to be subject to Federal non-discrimination requirements, including those applicable to the provision of federally assisted services to persons with limited English proficiency.

IV. Who Is a Limited English Proficient Individual?

Individuals who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English can be limited English proficient, or "LEP," entitled to language assistance with respect to a particular type of service, benefit, or encounter.

Examples of populations likely to include LEP persons who are encountered and/or served by the NRC's recipients and should be considered when planning language services include, but are not limited to:

- Persons reasonably likely to be subject to emergency evacuation measures;
- Residents located in reasonable proximity to NRC-licensed facilities;
- Persons served by or subject to State health and radiological offices; and
- Students and faculty at colleges and universities with associated research centers.

V. How Does a Recipient Determine the Extent of Its Obligation To Provide LEP Services?

Recipients are required to take reasonable steps to ensure meaningful access to their programs and activities by LEP persons. While designed to be a flexible and fact-dependent standard, the starting point is an individualized assessment that balances the following

[2] The memorandum noted that some commentators have interpreted *Sandoval* as impliedly striking down the disparate-impact regulations promulgated under Title VI that form the basis for the part of Executive Order 13166 that applies to Federally assisted programs and activities. *See, e.g., Sandoval*, 532 U.S. at 286, 286 n.6 ("[W]e assume for purposes of this decision that section 602 confers the authority to promulgate disparate-impact regulations; * * *. We cannot help observing, however, how strange it is to say that disparate-impact regulations are 'inspired by, at the service of, and inseparably intertwined with' Sec. 601 * * * when Sec. 601 permits the very behavior that the regulations forbid."). The memorandum, however, made clear that DOJ disagreed with the commentators' interpretation. *Sandoval* holds principally that there is no private right of action to enforce Title VI disparate-impact regulations. It did not address the validity of those regulations or Executive Order 13166 or otherwise limit the authority and responsibility of Federal grant agencies to enforce their own implementing regulations.

[3] Pursuant to Executive Order 13166, the meaningful access requirement of the Title VI regulations and the four-factor analysis set forth in the DOJ LEP guidance are to additionally apply to the Federally conducted programs and activities of Federal agencies, including the NRC.

[4] However, if a Federal agency were to decide to terminate Federal funds based on noncompliance with Title VI or its regulations, only funds directed to the particular program or activity that is out of compliance would be terminated. 42 U.S.C. 2000d–1.

four factors: (1) The number or proportion of LEP persons eligible to be served or likely to be encountered by the program or grantee; (2) the frequency with which LEP individuals come in contact with the program; (3) the nature and importance of the program, activity, or service provided by the program to people's lives; and (4) the resources available to the grantee/recipient and costs. As indicated above, the intent of this guidance is to suggest a balance that ensures meaningful access by LEP persons to critical services while not imposing undue burdens on small state and local governments or small nonprofit entities.

After applying the above four-factor analysis, a recipient may conclude that different language assistance measures are sufficient for the different types of programs or activities in which it engages. For instance, some of a recipient's activities will be more important than others or have greater impact on or contact with LEP persons, and thus may require more in the way of language assistance. The flexibility that recipients have in addressing the needs of the LEP populations they serve does not diminish, and should not be used to minimize, the obligation that those needs be addressed. The NRC's recipients should apply the following four factors to the various kinds of contacts that they have with the public to assess language needs and decide what reasonable steps they should take to ensure meaningful access for LEP persons.

(1) The Number or Proportion of LEP Persons Served or Encountered in the Eligible Service Population

One factor in determining what language services recipients should provide is the number or proportion of LEP persons from a particular language group served or encountered in the eligible service population. The greater the number or proportion of these LEP persons, the more likely language services are needed. Ordinarily, persons "eligible to be served, or likely to be directly affected, by" a recipient's program or activity are those who are served or encountered in the eligible service population. This population will be program-specific, and includes persons who are in the geographic area that has been approved by a Federal grant agency as the recipient's service area. However, where, for instance, a research facility or university operates a day care center limited to children of recipient personnel, and that extended groups include a significant LEP population, the appropriate service area is most likely the pool of eligibles from which the center draws its potential participants. When considering the number or proportion of LEP individuals in a service area, recipients providing services to minor LEP individuals should also include the individuals' LEP parent(s) or primary caretaker(s) among those likely to be encountered.

Recipients should first examine their prior experiences with LEP encounters and determine the breadth and scope of language services that were needed. In conducting this analysis, it is important to include language minority populations that are eligible for their programs or activities, but may be under-served because of existing language barriers. Other data should be consulted to refine or validate a recipient's prior experience, including the latest census data for the area served, data from school systems and from community organizations, and data from state and local governments.[5] Community agencies, school systems, religious organizations, legal aid entities, and others can often assist in identifying populations for whom outreach is needed and who would benefit from the recipients' programs and activities where language services are provided.

(2) The Frequency With Which LEP Individuals Come in Contact With the Program

Recipients should assess, as accurately as possible, the frequency with which they have or should have contact with an LEP individual from different language groups seeking assistance. The more frequent the contact with a particular language group, the more likely that enhanced language services in that language are needed. The steps that are reasonable for a recipient that serves an LEP person on a one-time basis will be very different from those expected from a recipient that serves LEP persons daily.

It is also advisable to consider the frequency of different types of language contacts. For example, frequent contacts with Spanish-speaking people who are LEP may require certain assistance in Spanish. Less frequent contact with different language groups may suggest a different and less intensified solution. If an LEP individual accesses a program or service on a daily basis, a recipient has greater duties than if the same individual's program or activity contact is unpredictable or infrequent. Recipients that serve LEP persons on an unpredictable or infrequent basis should use this balancing analysis to determine what to do if an LEP individual seeks services under the program in question. This plan need not be intricate. It may be as simple as using one of the commercially-available telephonic interpretation services to obtain immediate interpreter services. In applying this standard, recipients should take care to consider whether appropriate outreach to LEP persons could increase the frequency of contact with LEP language groups.

(3) The Nature and Importance of the Program, Activity, or Service Provided by the Program

The more important the activity, information, service, or program, or the greater the possible consequences of the contact to the LEP individuals, the more likely language services are needed. For example, due to its direct impact on the public, the obligations of a federally assisted state health and radiological office enforcing health and safety standards are generally far greater than those of a federally assisted science or engineering program. A recipient needs to determine whether denial or delay of access to services or information could have serious or even life-threatening implications for the LEP individual. Decisions by a Federal, State, or local entity to make an activity compulsory, such as participation in an educational program or compliance with emergency procedures, can serve as strong evidence of the program's importance. While all situations must be analyzed on a case-by-case basis, the following general observations may be helpful to the NRC's recipients considering the implications of applying this factor of the four-factor test to their respective programs:

- An assisted local environmental protection office providing information on radiological hazards and charged with responsibility to receive and investigate environmental complaints that serves in a city with a large Hispanic population including a significant number of LEP members should consider translating at least some of its informational pamphlets and its complaint form into Spanish (or implementing a procedure through which Spanish-speaking LEP persons

[5] The focus of the analysis is on lack of English proficiency, not the ability to speak more than one language. Note that demographic data may indicate the most frequently spoken languages other than English and the percentage of people who speak that language who speak or understand English less than well. Some of the most commonly spoken languages other than English may be spoken by people who are also overwhelmingly proficient in English. Thus, they may not be the languages spoken most frequently by limited English proficient individuals. When using demographic data, it is important to focus in on the languages spoken by those who are not proficient in English.

could be served by Spanish-speaking officers). This same office could also consider Spanish summaries of its vital but technical or complex public documents as a possible alternative to full text translations.

• Assisted emergency response entities serving a significant LEP community which are part of an emergency evacuation plan coordinated by an NRC Licensed Facility should consider either for themselves or as part of a coordinated plan on the part of related entities:

(1) Employing of bilingual State Liaison Officers, or staff members capable of providing timely and vital information in the language and dialogue of the LEP population located in the vicinity of the NRC licensed facility;

(2) Ensuring that the LEP population has access to emergency evacuation information, procedures for filing complaints of contamination, hazards, safety concerns, or denial of access;

(3) Posting and disseminating information in the language of the LEP population, in high stress situations; and

(4) Identifying individuals or community groups who might serve as bi-lingual volunteers with a small LEP population.

As part of a language assistance emergency response plan, such recipients could, for example, consider reliance upon a telephonic interpretation service that is fast enough and reliable enough to attend to the emergency situation, or include some other accommodation short of hiring bilingual staff.

With respect to the importance of a program, activity, or service provided by one of the Agency's recipients, the obligation to provide interpretation or translation services will most likely be greatest in educational/training situations or in connection with the provision of safety, and/or emergency evacuation services. Entities that receive Federal financial assistance from another agency such as the Department of Education, may rely on the more particularized LEP guidance of that other agency to ensure compliance with the obligation to provide meaningful access in those respective contexts.

(4) The Resources Available to the Recipient and Costs

A recipient's level of resources and the costs that would be imposed on it may have an impact on the nature of the steps it should take. Smaller recipients with more limited budgets are not expected to provide the same level of language services as larger recipients with larger budgets. In addition, "reasonable steps" may cease to be reasonable where the costs imposed substantially exceed the benefits.

Resource and cost issues, however, can often be reduced by technological advances; the sharing of language assistance materials and services among and between recipients, advocacy groups, and Federal grant agencies; and reasonable business practices. Where appropriate, training bilingual staff to act as interpreters and translators, information sharing through industry groups, telephonic and video conferencing interpretation services, pooling resources and standardizing documents to reduce translation needs, using qualified translators and interpreters to ensure that documents need not be "fixed" later and that inaccurate interpretations do not cause delay or other costs, centralizing interpreter and translator services to achieve economies of scale, or the formalized use of qualified community volunteers, for example, may help reduce costs.[6] Recipients should carefully explore the most cost-effective means of delivering competent and accurate language services before limiting services due to resource concerns. Large entities and those entities serving a significant number or proportion of LEP persons should ensure that their resource limitations are well-substantiated before using this factor as a reason to limit language assistance. These recipients may find it useful to be able to articulate, through documentation or in some other reasonable manner, their process for determining that language services would be limited based on resources or costs.

This four-factor analysis necessarily implicates the "mix" of LEP services required. Recipients have two main ways to provide language services: Oral interpretation either in person or via telephone interpretation service (hereinafter "interpretation"), and written translation (hereinafter "translation"). Oral interpretation can range from onsite interpreters for critical services provided to a high volume of LEP persons to access through commercially-available telephonic interpretation services. A written translation can range from translation of an entire document to translation of a short description of the document. In some cases, language services should be made available on an expedited basis while in others the LEP individual may be referred to another office of the recipient for language assistance.

The correct mix should be based on what is both necessary and reasonable in light of the four-factor analysis. Regardless of the type of language service provided, quality and accuracy of those services can be critical to avoid serious consequences to the LEP person and to the recipient. Recipients have substantial flexibility in determining the appropriate mix.

VI. Selecting Language Assistance Services

Recipients have two main ways to provide language services: oral and written language services. Quality and accuracy of the language service is critical to avoid serious consequences to the LEP person and to the recipient.

A. Oral Language Services (Interpretation)

Interpretation is the act of listening to something in one language (source language) and orally translating it into another language (target language). Where interpretation is needed and is reasonable, recipients should consider some or all of the following options for providing competent interpreters in a timely manner:

Competence of Interpreters. When providing oral assistance, recipients should ensure competency of the language service provider no matter which of the strategies outlined below are used. Competency requires more than self-identification as bilingual. Some bilingual staff and community volunteers, for instance, may be able to communicate effectively in a different language when communicating information directly in that language, but not be competent to interpret in and out of English. Also, they may not be able to do written translations.

Competency to interpret, however, does not necessarily mean formal certification as an interpreter, although certification is helpful. When using interpreters, recipients should ensure that they:

• Demonstrate proficiency in and ability to communicate information accurately in both English and in the other language and identify and employ the appropriate mode of interpreting (*e.g.*, consecutive, simultaneous, summarization, or sight translation);

• Have knowledge in both languages of any specialized terms or concepts peculiar to the entity's program or activity and of any particularized vocabulary and phraseology used by the

[6] Small recipients with limited resources may find that entering into a bulk telephonic interpretation service contract will prove cost effective.

LEP person;[7] and, if applicable, understand and follow confidentiality and impartiality rules to the same extent the recipient employee for whom they are interpreting and/or to the extent their position requires; and

• Understand and adhere to their role as interpreters without deviating into any other role such as counselor, or advisor.

Some recipients may have additional self-imposed requirements for interpreters. Where individual rights depend on precise, complete, and accurate interpretation or translations, the use of certified interpreters is strongly encouraged.[8] Where such proceedings are lengthy, the interpreter will likely need breaks and team interpreting may be appropriate to ensure accuracy and to prevent errors caused by mental fatigue of interpreters. The NRC recognizes, however, that such situations are infrequent in the types of programs and activities it typically funds.

While quality and accuracy of language services is critical, the quality and accuracy of language services is nonetheless part of the appropriate mix of LEP services required. The quality and accuracy of language services in compulsory educational classes, for example, must be quite high while the quality and accuracy of language services in translation of general public announcements, need not meet the same exacting standards.

Finally, when interpretation is needed and is reasonable, it should be provided in a timely manner. To be meaningfully effective, language assistance should be timely. While there is no single definition for "timely" applicable to all types of interactions at all times by all types of recipients, one clear guide is that the language assistance should be provided at a time and place that avoids the effective denial of the service, benefit, or right at issue or the imposition of an undue burden on or delay in important rights, benefits, or services to the LEP person. Conversely, where access to or exercise of a service, benefit, or right is not effectively precluded by a reasonable delay, language assistance can likely be delayed for a reasonable period.

Hiring Bilingual Staff. When particular languages are encountered often, hiring bilingual staff offers one of the best, and often most economical, options. Recipients and sub-recipients can, for example, fill public contact positions, such as program directors, with staff who are bilingual and competent to communicate directly with LEP persons in their language and at the appropriate level of competency. Similarly, a State Liaison Officer or a State Tribal Program serving an area with a significant LEP population could seek to match individuals with limited English skills with language-appropriate bilingual mentors. If bilingual staff are also used to interpret between English speakers and LEP persons, or to orally interpret written documents from English into another language, they should be competent in the skill of interpreting. Being bilingual does not necessarily mean that a person has the ability to interpret. In addition, there may be times when the role of the bilingual employee may conflict with the role of an interpreter (for instance, a bilingual member of a formal review panel adjudicating allegations of program or fiscal noncompliance would probably not be able to perform effectively the role of interpreter and adjudicator at the same time, even if the bilingual employee were a qualified interpreter). Effective management strategies, including any appropriate adjustments in assignments and protocols for using bilingual staff, can ensure that bilingual staff are fully and appropriately used. When bilingual staff cannot meet all of the language service obligations of the recipient, the recipient should turn to other options.

Hiring Staff Interpreters. Hiring interpreters may be most helpful where there is a frequent need for interpreting services in one or more languages. Depending on the facts, sometimes it may be necessary and reasonable to provide onsite interpreters to provide accurate and meaningful communication with an LEP person.

Contracting for Interpreters. Contract interpreters may be a cost-effective option when there is no regular need for a particular language skill. In addition to commercial and other private providers, many community-based organizations and mutual assistance associations provide interpretation services for particular languages. Contracting with and providing training regarding the recipient's programs and processes to these organizations can be a cost-effective option for providing language services to LEP persons from those language groups.

Using Telephone Interpreter Lines. Telephone interpreter service lines often offer speedy interpreting assistance in many different languages in public-contact situations. They may be particularly appropriate where the mode of communicating with a LEP proficient person would also be over the phone. Although telephonic interpretation services are useful in many situations, it is important to ensure that, when using these services, the interpreters are competent to interpret any technical terms specific to a particular program that may be important parts of the conversation. Nuances in language and non-verbal communication can often assist an interpreter and cannot be recognized over the phone. Video teleconferencing may sometimes help to resolve this issue where necessary. In addition, when discussing documents, it is important to give telephonic interpreters adequate opportunity to review the document prior to the discussion, and to address any logistical problems.

Using Community Volunteers. In addition to consideration of bilingual staff, staff interpreters, or contract interpreters (either in-person or by telephone) as options to ensure meaningful access by LEP persons, use of recipient-coordinated community volunteers, working with, for instance, community-based organizations may provide a cost-effective supplemental language assistance strategy under appropriate circumstances. They may be particularly useful in providing language access for a recipient's less critical programs and activities. To the extent the recipient relies on community volunteers, it is often best to use volunteers who are trained in the information or services of the program and can communicate directly with LEP persons in their language. Just as with all interpreters, community volunteers skilled in interpreting between English speakers and LEP persons, or when sight translating documents, one should be competent in the skill of interpreting, and knowledgeable about applicable confidentiality and impartiality rules, if any. Recipients should consider formal arrangements with community-based organizations that provide volunteers to address these concerns and to help ensure that services are available more regularly.

Use of Family Members or Friends as Interpreters. Although recipients should not plan to rely on an LEP person's

[7] Many languages have "regionalisms," or differences in usage. For instance, a word that may be understood to mean something in Spanish for someone from Cuba may not be so understood by someone from Mexico. In addition, because there may be languages which do not have an appropriate direct interpretation of some terms and, the interpreter should be so aware and be able to provide the most appropriate interpretation. The interpreter should likely make the recipient aware of the issue and the interpreter and recipient can then work to develop a consistent and appropriate set of descriptions of these terms in that language that can be used again, when appropriate.

[8] For those languages in which no formal accreditation or certification currently exists, courts and law enforcement agencies should consider a formal process for establishing the credentials of the interpreter.

family members, friends, or other informal interpreters to provide meaningful access to important programs and activities they should be permitted to use, at their own expense, an interpreter of their own choosing (whether a professional interpreter, family member, or friend) in place of or as a supplement to the free language services expressly offered by the recipient. LEP persons may feel more comfortable when a trusted family member or friend acts as an interpreter. In addition, in exigent circumstances that are not reasonably foreseeable, temporary use of interpreters not provided by the recipient may be necessary. However, with proper planning and implementation, recipients should be able to avoid most of these situations.

Recipients, however, should take special care to ensure that family, legal guardians, caretakers, and other informal interpreters are appropriate in light of the circumstances and subject matter of the program, service or activity, including protection of the recipient's own interest in accurate interpretation. In many circumstances, family members (especially children) or friends are not competent to provide quality and accurate interpretations. Issues of confidentiality, privacy, or conflict of interest may also arise. LEP individuals may feel uncomfortable revealing or describing confidential information to a family member, friend, or member of the local community. In addition, these informal interpreters may have a personal connection to the LEP person or an undisclosed conflict of interest. For these reasons, when oral language services are necessary, recipients should generally offer competent interpreter services free of cost to the LEP person.

While issues of competency, confidentiality, and conflict of interest in the use of family members or friends often make their use inappropriate, the use of these individuals as interpreters may be an appropriate option where proper application of the four factors would lead to a conclusion that recipient-provided services are not necessary. An example of this might be to use, as one part of a public information program, language-capable community groups or volunteers to help provide oral notice or disseminate written postings about important public meetings. There, the nature of the activity may be unlikely to implicate issues of confidentiality, conflict of interest, or the need for accuracy. In addition, the resources needed and costs of providing language services may be high. In such a setting, an LEP person's use of family, friends, or others may be appropriate.

If the LEP person voluntarily chooses to provide his or her own interpreter, a recipient should consider whether a record of that choice and of the recipient's offer of assistance is appropriate. Where precise, complete, and accurate interpretations or translations of information and/or testimony are critical, or where the competency of the LEP person's interpreter is not established, a recipient might decide to provide its own, independent interpreter, even if an LEP person wants to use his or her own interpreter as well. Extra caution should be exercised when the LEP person chooses to use a minor as the interpreter. While the LEP person's decision should be respected, there may be additional issues of competency, confidentiality, or conflict of interest when the choice involves using children as interpreters. The recipient should take care to ensure that the LEP person's choice is voluntary, that the LEP person is aware of the possible problems if the preferred interpreter is a minor child, and that the LEP person knows that a competent interpreter could be provided by the recipient at no cost.

B. Written Language Services (Translation)

Translation is the replacement of a written text from one language (source language) into an equivalent written text in another language (target language).

What Documents Should be Translated? After applying the four-factor analysis, a recipient may determine that an effective LEP plan for its particular program or activity includes the translation of vital written materials into the language of each frequently-encountered LEP group eligible to be served and/or likely to be affected by the recipient's program.

These written materials could include, for example:

- Notices advising LEP persons of free language assistance;
- Written tests that do not assess English language competency, but test competency for a particular license, job, or skill for which knowing English is not required; or
- Applications to participate in a recipient's program or activity or to receive recipient benefits, grants, or services.

Whether a document (or the information it solicits) is "vital" may depend upon the importance of the program, information, encounter, or service involved, and the consequence to the LEP person if the information in question is not provided accurately or in a timely manner. Where appropriate, recipients are encouraged to create a plan for consistently determining, over time and across its various activities, what documents are "vital" to the meaningful access of the LEP populations they serve.

Classifying a document as vital or non-vital is sometimes difficult, especially in the case of outreach materials like brochures or other information on rights and services. Awareness of rights or services is an important part of "meaningful access." Lack of awareness that a particular program, right, or service exists may effectively deny LEP individuals meaningful access. Thus, where a recipient is engaged in community outreach activities in furtherance of its activities, it should regularly assess the needs of the populations frequently encountered or affected by the program or activity to determine whether certain critical outreach materials should be translated. Community organizations may be helpful in determining what outreach materials may be most helpful to translate. In addition, the recipient should consider whether translations of outreach material may be made more effective when done in tandem with other outreach methods, including using the ethnic media, schools, religious, and community organizations to spread a message.

Sometimes a document includes both vital and non-vital information. This may be the case when the document is very large. It may also be the case when the title and a phone number for obtaining more information on the contents of the document in frequently-encountered languages other than English is critical, but the document is sent out to the general public and cannot reasonably be translated into many languages. Thus, vital information may include, for instance, the provision of information in appropriate languages other than English regarding where a LEP person might obtain an interpretation or translation of the document.

Into What Languages Should Documents be Translated? The languages spoken by the LEP individuals with whom the recipient has contact determine the languages into which vital documents should be translated. A distinction should be made, however, between languages that are frequently encountered by a recipient and less commonly-encountered languages. Many recipients serve communities in large cities or across the country. They regularly serve LEP persons who speak dozens and sometimes over 100 different languages.

To translate all written materials into all of those languages is unrealistic. Although recent technological advances have made it easier for recipients to store and share translated documents, such an undertaking would incur substantial costs and require substantial resources. Nevertheless, well-substantiated claims of lack of resources to translate all vital documents into dozens of languages do not necessarily relieve the recipient of the obligation to translate those documents into at least several of the more frequently-encountered languages and to set benchmarks for continued translations into the remaining languages over time. As a result, the extent of the recipient's obligation to provide written translations of documents should be determined by the recipient on a case-by-case basis, looking at the totality of the circumstances in light of the four-factor analysis. Because translation is a one-time expense, consideration should be given to whether the up-front cost of translating a document (as opposed to oral interpretation) should be amortized over the likely lifespan of the document when applying this four-factor analysis.

Safe Harbor. Many recipients would like to ensure with greater certainty that they comply with their obligations to provide written translations in languages other than English. Paragraphs (a) and (b), under *Safe Harbor Guides*, outline the circumstances that can provide a "safe harbor" for recipients regarding the requirements for translation of written materials. A "safe harbor" means that if a recipient provides written translations under these circumstances, such action will be considered strong evidence of compliance with the recipient's written-translation obligations.

The failure to provide written translations under the circumstances outlined in paragraphs (a) and (b), under *Safe Harbor Guides*, does not mean there is non-compliance. Rather, they provide a common starting point for recipients to consider whether and at what point the importance of the service, benefit, or activity is involved; the nature of the information sought; and the number or proportion of LEP persons served call for written translations of commonly-used forms into frequently-encountered languages other than English. Thus, these paragraphs merely provide a guide for recipients that would like greater certainty of compliance than can be provided by a fact-intensive, four-factor analysis.

Example: Even if the safe harbors are not used, if written translation of a certain document(s) would be so burdensome as to defeat the legitimate objectives of its program, the translation of the written materials is not necessary. Other ways of providing meaningful access, such as effective oral interpretation of certain vital documents, might be acceptable under these circumstances.

Safe Harbor Guides. The following actions will be considered strong evidence of compliance with the recipient's written-translation obligations:

(a) The recipient provides written translations of vital documents for each eligible LEP language group that constitutes five percent or 1,000, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered. Translation of other documents, if needed, can be provided orally; or

(b) If there are fewer than 50 persons in a language group that reaches the five percent trigger in (a), the recipient does not translate vital written materials but provides written notice in the primary language of the LEP language group of the right to receive competent oral interpretation of those written materials, free of cost.

These safe harbor provisions apply to the translation of written documents only. They do not affect the requirement to provide meaningful access to LEP individuals through competent oral interpreters where oral language services are needed and are reasonable.

The NRC acknowledges that it provides assistance to a wide range of programs and activities serving different geographic areas with varying populations. Moreover, as noted above, the obligation to consider translations applies only to a recipient's vital documents having a significant impact on access rather than all types of documents used or generated by a recipient in the course of its activities. For these reasons, a strict reliance on the numbers or percentages set out in the safe harbor standards may not be appropriate for all of the NRC's recipients and for all their respective programs or activities. While the safe harbor standards outlined above offer a common guide, the decision as to what documents should be translated should ultimately be governed by the underlying obligation under Title VI to provide meaningful access by LEP persons by ensuring that the lack of appropriate translations of vital documents does not adversely impact upon an otherwise eligible LEP person's ability to access its programs or activities.

Competence of Translators. As with oral interpreters, translators of written documents should be competent. Many of the same considerations apply. However, the skill of translating is very different from the skill of interpreting, and a person who is a competent interpreter may or may not be competent to translate.

Particularly where vital documents are being translated, competence can often be achieved by use of certified translators. Certification or accreditation may not always be possible or necessary.[9] Competence can often be ensured by having a second, independent translator "check" the work of the primary translator. Alternatively, one translator can translate the document, and a second, independent translator could translate it back into English to check that the appropriate meaning has been conveyed. This is called "back translation."

Translators should understand the expected reading level of the audience and, where appropriate, have fundamental knowledge about the target language group's vocabulary and phraseology. Sometimes direct translation of materials results in a translation that is written at a much more difficult level than the English language version or has no relevant equivalent meaning.[10] Community organizations may be able to help consider whether a document is written at a good level for the audience. Likewise, consistency in the words and phrases used to translate terms of art, or other technical concepts helps avoid confusion by LEP individuals and may reduce costs. Creating or using already-created glossaries of commonly-used terms may be useful for LEP persons and translators and cost effective for the recipient. Providing translators with examples of previous accurate translations of similar material by the

[9] For those languages in which no formal accreditation currently exists, a particular level of membership in a professional translation association can provide some indicator of professionalism.

[10] There may be languages which do not have an appropriate direct translation of some terms and the translator should be able to provide an appropriate translation. The translator should likely also make the recipient aware of this. Recipients can then work with translators to develop a consistent and appropriate set of descriptions of these terms in that language that can be used again, when appropriate. Recipients will find it more effective and less costly if they try to maintain consistency in the words and phrases used to translate terms of art and legal or other technical concepts. Creating or using already-created glossaries of commonly used terms may be useful for LEP persons and translators and cost effective for the recipient. Providing translators with examples of previous translations of similar material by the recipient, other recipients, or Federal agencies may be helpful.

recipient, other recipients, or Federal agencies may be helpful.

While quality and accuracy of translation services is critical, it is nonetheless part of the appropriate mix of LEP services required. For instance, documents that are simple and have no significant consequence for LEP persons who rely on them may use translators that are less skilled than important documents with legal or other information upon which reliance has important consequences. The permanent nature of written translations, however, imposes additional responsibility on the recipient to ensure that the quality and accuracy permit meaningful access by LEP persons.

VII. Elements of Effective Plan on Language Assistance for LEP Persons

After completing the four-factor analysis and deciding what language assistance services are appropriate, a recipient should develop an implementation plan to address the identified needs of the LEP populations they serve. Recipients have considerable flexibility in developing this plan. The development and maintenance of a periodically-updated written plan on language assistance for LEP persons ("LEP plan") for use by recipient employees serving the public will likely be the most appropriate and cost-effective means of documenting compliance and providing a framework for the provision of timely and reasonable language assistance. Moreover, these written plans would provide additional benefits to a recipient's managers in the areas of training, administration, planning, and budgeting. These benefits should lead most recipients to document their language assistance services in a written LEP plan, and show how the staff and LEP persons can access those services. Despite these benefits, certain recipients, such as recipients serving very few LEP persons and recipients with very limited resources, may choose not to develop a written LEP plan. However, the absence of a written LEP plan does not obviate the underlying obligation to ensure meaningful access by LEP persons to a recipient's program or activities. Accordingly, in the event that a recipient elects not to develop a written plan, he/she should consider alternative ways to articulate in some other reasonable manner a plan for providing meaningful access. Entities having significant contact with LEP persons, such as schools, religious organizations, community groups, and groups working with new immigrants can be very helpful in providing important input into this planning process from the beginning.

The following five steps may be helpful in designing an LEP plan and are typically part of effective implementation plans.

(1) Identifying LEP Individuals Who Need Language Assistance

The first two factors in the four-factor analysis require an assessment of the number or proportion of LEP individuals eligible to be served or encountered and the frequency of encounters. This requires recipients to identify LEP persons with whom it has contact.

One way to determine the language of communication is to use language identification cards (or "I speak cards"), which invite LEP persons to identify their language needs to staff. Such cards, for instance, might say "I speak Spanish" in both Spanish and English, "I speak Vietnamese" in both English and Vietnamese, etc. When records are normally kept of past interactions with members of the public, the language of the LEP person can be included as part of the record. In addition to helping employees identify the language of LEP persons they encounter, this process will help in future applications of the first two factors of the four-factor analysis. In addition, posting notices in commonly encountered languages notifying LEP persons of language assistance will encourage them to self-identify.

(2) Language Assistance Measures

An effective LEP plan would likely include information about the ways in which language assistance will be provided. For instance, recipients may want to include information on at least the following:

- Types of language services available;
- How staff can obtain those services;
- How to respond to LEP callers;
- How to respond to written communications from LEP persons;
- How to respond to LEP individuals who have in-person contact with recipient staff; and
- How to ensure competency of interpreters and translation services.

(3) Training Staff

Staff should know their obligations to provide meaningful access to information and services for LEP persons. An effective LEP plan would likely include training to ensure that:

- Staff know about LEP policies and procedures; and
- Staff having contact with the public are trained to work effectively with in-person and telephone interpreters.

Recipients may want to include this training as part of the orientation for new employees. It is important to ensure that all employees in public contact positions are properly trained. Recipients have flexibility in deciding the manner in which the training is provided. The more frequent the contact with LEP persons, the greater the need will be for in-depth training. Staff with little or no contact with LEP persons may only have to be aware of an LEP plan. However, management staff, even if they do not interact regularly with LEP persons, should be fully aware of and understand the plan so they can reinforce its importance and ensure its implementation by staff.

(4) Providing Notice to LEP Persons

Once an organization has decided, based on the four factors, that it will provide language services, it is important for the recipient to let LEP persons know that those services are available and that they are free of charge. Recipients should provide this notice in a language LEP persons will understand. Examples of notification that recipients should consider include:

- Posting signs in intake areas and other entry points. When language assistance is needed to ensure meaningful access to information and services, it is important to provide notice in appropriate languages in intake areas or initial points of contact so that LEP persons can learn how to access those language services. For instance, signs in intake offices could state that free language assistance is available. The signs should be translated into the most common languages encountered. They should explain how to get the language help.[11]
- Stating in outreach documents that language services are available from the agency. Announcements could be in brochures, booklets, and in outreach and recruitment information. These statements should be translated into the most common languages and could be "tagged" onto the front of common documents.
- Working with community-based organizations and other stakeholders to inform LEP individuals of the recipients' services, including the availability of language assistance services.
- Using a telephone voice mail menu. The menu could be in the most common languages encountered. It should provide information about available

[11] The Social Security Administration has made such signs available at *www.ssa.gov/multilanguage/langlist1.htm*. These signs could, for example, be modified for recipient use.

language assistance services and how to get them.

- Including notices in local newspapers in languages other than English.
- Providing notices on non-English-language radio and television stations about the available language assistance services and how to get them.
- Presentations and/or notices at schools and religious organizations.

(5) Monitoring and Updating the LEP Plan

Recipients should, where appropriate, have a process for determining, on an ongoing basis, whether new documents, programs, services, and activities need to be made accessible for LEP individuals, and they may want to provide notice of any changes in services to the LEP public and to employees. In addition, recipients should consider whether changes in demographics, types of services, or other needs require annual reevaluation of their LEP plan. Less frequent reevaluation may be more appropriate where demographic services, and needs are more static. One way to evaluate the LEP plan is to seek feedback from the community.

In their reviews, recipients may want to consider assessing changes in:

- Current LEP populations in service area or population affected or encountered;
- Frequency of encounters with LEP language groups;
- Nature and importance of activities to LEP persons;
- Availability of resources, including technological advances and sources of additional resources, and the costs imposed;
- Whether existing assistance is meeting the needs of LEP persons;
- Whether staff knows and understands the LEP plan and how to implement it; and
- Whether identified sources for assistance are still available and viable.

In addition to these five elements, effective plans set clear goals, management accountability, and opportunities for community input and planning throughout the process.

VIII. Voluntary Compliance Effort

The goal for Title VI regulatory enforcement is to achieve voluntary compliance. The requirement to provide meaningful access to LEP persons is enforced and implemented by the NRC through the procedures identified in the Title VI regulations. These procedures include complaint investigations, compliance reviews, efforts to secure voluntary compliance, and technical assistance.

The Title VI regulations provide that the NRC will investigate whenever it receives a complaint, report, or other information that alleges or indicates possible noncompliance with Title VI or its regulations. If the investigation results in a finding of compliance, the NRC will inform the recipient in writing of this determination, including the basis for the determination. The NRC uses voluntary mediation to resolve most complaints. However, if a case is fully investigated and results in a finding of noncompliance, the NRC must inform the recipient of the noncompliance through a Letter of Findings that sets out the areas of noncompliance and the steps that must be taken to correct the noncompliance. It must attempt to secure voluntary compliance through informal means. If the matter cannot be resolved informally, the NRC must secure compliance through the termination of Federal assistance after the recipient has been given an opportunity for an administrative hearing and/or by referring the matter to a DOJ litigation section to seek injunctive relief or pursue other enforcement proceedings. The NRC engages in voluntary compliance efforts and provides technical assistance to recipients at all stages of an investigation. During these efforts, the NRC proposes reasonable timetables for achieving compliance and consult with and assist recipients in exploring cost-effective ways of coming into compliance. In determining a recipient's compliance with the Title VI regulations, the NRC's primary concern is to ensure that the recipient's policies and procedures provide meaningful access for LEP persons to the recipient's programs and activities.

While all recipients must work toward building systems that will ensure access for LEP individuals, the NRC acknowledges that the implementation of a comprehensive system to serve LEP individuals is a process and that a system will evolve over time as it is implemented and periodically reevaluated. As recipients take reasonable steps to provide meaningful access to federally assisted programs and activities for LEP persons, the NRC will look favorably on intermediate steps recipients take that are consistent with this guidance, and that, as part of a broader implementation plan or schedule, move their service delivery system toward providing full access to LEP persons. This does not excuse noncompliance but instead recognizes that full compliance in all areas of a recipient's activities and for all potential language minority groups may reasonably require a series of implementing actions over a period of time. However, in developing any phased implementation schedule, recipients should ensure that the provision of appropriate assistance for significant LEP populations or with respect to activities having a significant impact on the health, safety, legal rights, or livelihood of beneficiaries is addressed first. Recipients are encouraged to document their efforts to provide LEP persons with meaningful access to federally assisted programs and activities.

In determining a recipient entity's compliance with Title VI, the NRC's primary concern is to ensure that the entity's policies and procedures overcome barriers resulting from language differences that would deny LEP persons a meaningful opportunity to participate in and access programs, services, and benefits. A recipient entity's appropriate use of the methods and options discussed in this policy guidance is viewed by the NRC as evidence of that entity's willingness to comply voluntarily with its Title VI obligations.

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BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for the Extension of a Currently Approved Information Collection, SF 2809

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for the extension of a currently approved information collection. SF 2809, Employee Health Benefits Election Form, is used by Federal employees, certain separated former Federal employees, and former dependents of Federal employees, to enroll for health insurance coverage under the Federal Employees Health Benefits (FEHB) Program. Certain former spouses who are eligible for enrollment under the Spouse Equity Act of 1984 (Pub. L. 98–615), and former employees and former dependents who are eligible for enrollment under the Temporary Continuation of Coverage (TCC)

provisions of FEHB law (5 U.S.C. 8905a) also use this form.

Approximately 9,000 SF 2809 forms are completed annually. Each form takes approximately 30 minutes to complete. The annual estimated burden is 4,500 hours.

Comments are particularly invited on: whether this information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–2150, or E-mail to *mbtoomey@opm.gov*. Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to: Frank D. Titus, Assistant Director, Insurance Services Programs, Center for Retirement & Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3400, Washington, DC 20415.

For Information Regarding Administrative Coordination Contact: Cyrus S. Benson, Team Leader, Publications Team, Administrative Services Branch, (202) 606–0623.

U.S. Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 04–4735 Filed 3–2–04; 8:45 am]

BILLING CODE 6325–50–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of an Expiring Information Collection, SF 2809–1

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management intends to submit to the Office of Management and Budget a request for an expiring collection. SF 2809–1, Annuitant/OWCP Health Benefits Election Form, is used by annuitants of Federal retirement systems other than the Civil Service Retirement System (CSRS) and the Federal Employees Retirement System (FERS), including the Foreign Service Retirement System and the Office of Workers' Compensation Programs (OWCP), and certain former dependents of these individuals. These former dependents include certain former spouses who are eligible for enrollment under the Spouse Equity Act of 1984 (Pub. L. 98–615), and certain former dependents who are eligible for enrollment under the Temporary Continuation of Coverage (TCC) provisions of FEHB law (5 U.S.C. 8905a).

Approximately 9,000 SF 2809–1 forms are completed annually. Each form takes approximately 30 minutes to complete. The annual estimated burden will be 4,500 hours.

Comments are particularly invited on: Whether this information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or E-mail to *mbtoomey@opm.gov*. Please be sure to include a mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to: Frank D. Titus, Assistant Director, Insurance Services Program, Center for Retirement & Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3400, Washington, DC 20415.

For Information Regarding Administrative Coordination Contact: Cyrus S. Benson, Team Leader, Publications Team, Administrative Services Branch, (202) 606–0623.

U.S. Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 04–4736 Filed 3–2–04; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of a Revised Information Collection: RI 25–14 and RI 25–14A

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for review of a revised information collection. RI 25–14, Self-Certification of Full-Time School Attendance For The School Year, is used to survey survivor annuitants who are between the ages of 18 and 22 to determine if they meet the requirements of Section 8341(a)(4)(C), and Section 8441, title 5, U.S. Code, to receive benefits as a student. RI 25–14A, Information and Instructions for Completing the Self-Certification of Full-Time School Attendance, provides instructions for completing the Self-Certification of Full-Time School Attendance For The School Year survey form.

Comments are particularly invited on: whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Approximately 14,000 RI 25–14 forms are completed annually. We estimate it takes approximately 12 minutes to complete the form. The annual burden is 2,800 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or via E-mail to *mbtoomey@opm.gov*. Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to— Ronald W. Melton, Chief, Operations Support Group, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E

Street, NW., Room 3349, Washington, DC 20415–3540.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Cyrus S. Benson, Team Leader, Publications Team, RIS Support Services, (202) 606–0623.

U.S. Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 04–4737 Filed 3–2–04; 8:45 am]

BILLING CODE 6325–50–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Review of a Revised Information Collection: SF 2823

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for review of a revised information collection. SF 2823, Designation of Beneficiary: Federal Employees' Group Life Insurance, is used by any Federal employee or retiree covered by the Federal Employees' Group Life Insurance Program to instruct the Office of Federal Employees' Group Life Insurance how to distribute the proceeds of his or her life insurance when the statutory order of precedence does not meet his or her needs.

Approximately 47,000 SF 2823 forms are completed annually by annuitants and 1,000 forms are completed by assignees. Each form takes approximately 15 minutes to complete for an annual estimated burden of 12,000 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or via E-mail to *mbtoomey@opm.gov*. Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to:

Christopher N. Meuchner, Life Insurance & Long Term Care Group, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 2H22, Washington, DC 20415–3661, and

Joseph Lackey, OPM Desk Office, Office of Information & Regulatory Affairs, Office of Management & Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

For Information Regarding Administrative Coordination Contact: Cyrus S. Benson, Team Leader, Publications Team, Support Group, (202) 606–0623.

U.S. Office of Personnel Management:

Kay Coles James,

Director.

[FR Doc. 04–4738 Filed 3–2–04; 8:45 am]

BILLING CODE 6325–50–P

POSTAL RATE COMMISSION

[Docket No. MC2004–1; Order No. 1392]

Experimental Mail Classification Case

AGENCY: Postal Rate Commission.

ACTION: Notice and order on new experimental docket.

SUMMARY: This document provides notice of a Postal Service request for several changes affecting Periodicals mailers. It also addresses related preliminary procedural matters, including authorization of settlement discussions. One proposal would extend alternative experimental discounts to co-palletized, dropshipped Periodicals publications exhibiting a relatively heavy-weight, high-editorial, small-circulation profile. Another proposal would extend the expiration date of the current Periodicals co-palletization experiment, thereby establishing coinciding expiration dates. A third proposal would allow sample copies of Periodicals publications to be mailed with parcels at Parcel Post or Bound Printed Matter rates. Publication of this notice will allow interested parties to determine their position on the Postal Service's request.

DATES:

1. March 17, 2004: deadline for intervention.

2. March 19, 2004: deadline for (a) answers to Postal Service motion for waiver, and (b) comments on Postal Service request for experimental treatment.

3. March 18–19 and March 22–23, 2004: settlement conferences (as needed).

4. March 25, 2004: prehearing conference at 10 a.m.

ADDRESSES: Submit documents electronically via the Commission's Filing Online system at *http://www.prc.gov*.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6818.

SUPPLEMENTARY INFORMATION:

Regulatory History

See 67 FR 62993 (October 9, 2002).

On February 25, 2004, the United States Postal Service filed a request seeking a recommended decision from the Postal Rate Commission approving an experimental mail classification, along with related discounts, for certain high-editorial, heavy-weight, small-circulation Periodicals mail that is co-palletized and dropshipped.[1] The Request further proposes a modification to the expiration date of the Periodicals co-palletization dropship discounts experiment recommended in Docket No. MC2002–3 such that the expiration date for that experiment and the recommended expiration date for the instant request for experiment expire on the same date. The Request also includes a request for a minor classification change to Domestic Mail Classification Schedule (DMCS) § 511, which proposes to allow sample copies of periodicals to be mailed with parcels using Parcel Post or Bound Printed Matter rates. This request is unrelated to the request for experiment. The Request, which includes six attachments, was filed pursuant to chapter 36 of the Postal Reorganization Act, 39 U.S.C. 3601 *et seq.*[2]

In contemporaneous filings, the Service asks for waiver of certain standard filing requirements (if the Commission deems such waiver is required),[3] and seeks expedited consideration of its proposal, including establishment of procedures for settlement.[4] The Service's request for expedition is in addition to that generally available under the Commission's experimental rules (39

[1] Request of the United States Postal Service for a Recommended Decision on Experimental Periodicals Co-Palletization Dropship Discounts for High-Editorial, Heavy-Weight, Small-Circulation Publications, February 25, 2004 (Request).

[2] Attachments A and B to the Request contain proposed changes to the Domestic Mail Classification Schedule and the associated rate and fee schedules; Attachment C references the United States Certified Financial Statements for the Years Ended September 30, 2003, and September 30, 2002; Attachment D is the certification required by Commission rule 54(p); Attachment E is an index of testimony and exhibits; and Attachment F is a compliance statement addressing satisfaction of various filing requirements.

[3] Statement of the United States Postal Service Concerning Compliance with Filing Requirements and Conditional Motion for Waiver, February 25, 2004 (Motion for Waiver).

[4] United States Postal Service Request for Expedition and Establishment of Settlement Procedures, February 25, 2004 (Request for Expedition).

CFR 3001.67–3001.67d). The Service's Request, the accompanying testimony of witness Taufique (USPS–T–1), and other related material are available for inspection in the Commission's docket section during regular business hours. They also can be accessed electronically, via the Internet, on the Commission's Web site (*http://www.prc.gov*).

I. The Service Characterizes Its Proposal as a Logical Extension of the Co-Palletization Discounts Recommended in Docket No. MC2002–3 to Mailers of Certain High-Editorial, Heavy-Weight, Small-Circulation Periodicals Mail That Is Co-Palletized and Dropshipped

Docket No. MC2002–3 established experimental co-palletization dropship per-piece discounts for Periodicals that allow mailers to combine different publications or print runs on pallets with the objective of moving certain Periodicals mail from sacks to pallets, and to encourage mailers to dropship closer to final destination. Although the Postal Service asserts that these discounts have begun to generate a significant amount of co-palletization, the discounts do not provide an effective incentive for mailers of low-circulation, heavy, high-editorial publications to co-palletize their mail.

To encourage mailers of high-editorial, heavy-weight, small-circulation Periodicals mail to co-palletize and dropship closer to final destination, the Postal Service proposes conducting a two-year experiment to test discounts for certain Periodicals mail that is co-palletized and dropshipped to either an area distribution center (ADC) or a sectional center facility (SCF). The discounts would apply exclusively to publications with advertising content of 15 percent or less, copy weight of 9 ounces or more, and circulation of 75,000 pieces or less (including all editions, issues and supplemental mailings). The proposed discounts range from $0.008 to $0.131 per editorial content pound. The amount of discount is proposed to be based on the number of zones skipped as a result of co-palletization and dropshipping, and whether the mail is entered at an ADC or a SCF. The discounts would be available only as an alternative to the existing co-palletization discounts. Request at 1–4. The discounts were developed using the advertising pound rates used in Docket No. R2001–1 and the general methodology used in Docket No. MC2002–3. USPS–T–1 at 12–14. A conservative passthrough of 30 percent of estimated cost savings is proposed. *Id.* at 16. The proposed discounts leave existing Periodicals classifications and rates otherwise unchanged.

Experimental designation. The Service seeks consideration of its proposal under the Commission's experimental rules (rules 67–67d). In support of this approach, it notes that it currently lacks data about how much response there will be to a rate incentive for co-palletization focused on high-editorial, heavy-weight, small-circulation publications, but intends to gather more complete data during the proposed term of the experiment. It says this effort may support a request for a permanent classification. The Service proposes that the experimental classification be in effect for two years, but also seeks approval of a provision that would allow for a brief extension if permanent classification authority is sought while the experiment is pending. Request at 4–5.

The Service contends that the expedition allowed under the experimental rules is appropriate in light of the interest in promoting efficiency in Periodicals operations as soon as possible. It also states that flexibility is required because the detailed, conventional data necessary to support a request for a permanent classification are currently unavailable. The Service believes that this proposal will be attractive to mailers, contribute to the long-term viability of the postal system, and further the general policies of efficient postal operations and reasonable rates and fees enunciated in the Postal Reorganization Act, including 39 U.S.C. 3622(b) and 3623(c). *Id.* at 6.

II. The Service Seeks Waiver of Certain Filing Requirements, if Deemed Necessary

The Service maintains that its filing satisfies applicable Commission filing requirements, but seeks waiver of pertinent provisions of rules 54, 64 and 67 to the extent the Commission concludes otherwise. In support of its primary position, the Service contends that its Compliance Statement (Attachment F to the Request) addresses each filing requirement and indicates which parts of the filing satisfy each rule. It also notes that it has incorporated by reference pertinent documentation from the recent omnibus rate case (Docket No. R2001–1). The Service contends, among other things, that the rate case documentation satisfies most filing requirements because the proposed discounts will not materially alter the rates, fees and classifications established in that docket, and therefore will have only a limited impact on overall postal costs, volumes and revenues. It also asserts that there is substantial overlap between information sought in the general filing requirements and the materials provided in Docket No. R2001–1. Motion for Waiver at 1–4.

However, if the Commission concludes that the materials from the omnibus case are not sufficient to satisfy the requirements, the Service contends strict compliance is not warranted, and seeks waiver. It cites the reasons expressed in support of its general position on the adequacy of its filing; the nature of the proposed experiment; and the small impact on total costs and revenues and on the costs, volumes and revenues of mail categories. *Id.* at 4–5. Responses to the Service's Motion for Waiver are due by March 19, 2004.

III. The Service Seeks Expedition and Suggests Several Specific Procedures, Including Prompt Establishment of Settlement Procedures

In support of expedition, the Service asserts that the proposed change is straightforward; limited in scope and duration; and insignificant in terms of its effect on overall volumes, revenues and costs. It also states that there is a distinct possibility of settlement in this case. Request for Expedition at 1–2.

The Service does not propose a specific schedule, but identifies four procedures the Commission could employ to facilitate a quick resolution of this case. These include setting a relatively short intervention period and requiring participants to identify, in their notices of intervention, whether they intend to seek a hearing and to identify any genuine issues of material fact that would warrant such a hearing. They also include scheduling a settlement conference as quickly as possible following the deadline for intervention; abbreviating the time allotted for discovery on the Postal Service's direct case, including limiting the related time for responses, objections, and motions; and, considering the possibility of dispensing with briefs and oral argument. *Id.* at 2–3.

IV. Commission Response

Appropriateness of proceeding under the experimental rules. For administrative purposes, the Commission has docketed the instant filing as an experimental case. Formal status as an experiment under Commission rules 67–67d is based on an evaluation of factors such as the proposal's novelty, magnitude, ease or difficulty of data collection, and duration. A final determination regarding the appropriateness of the experimental designation and

application of Commission rules 67–67d will not be made until participants have had an adequate opportunity to comment. Participants are invited to file comments on this matter by March 19, 2004.

Appropriateness of establishing other expedited procedures. The Commission grants the Service's Request for Expedition to the extent of authorizing settlement procedures; allowing a shorter-than-usual period for intervention; and requiring participants, in their notices of intervention, to state whether they intend to seek a hearing and to identify with particularity any genuine issues of material fact that would warrant a hearing. Decisions on other expedited procedures, such as limiting discovery time limits, will be made at a later time.

Settlement. The Commission authorizes settlement negotiations in this proceeding. It appoints Postal Service counsel as settlement coordinator. In this capacity, counsel for the Service shall file periodic reports on the status of settlement discussions. The Commission authorizes the settlement coordinator to hold settlement conferences on March 18, 19, 22, or 23, 2004, in the Commission's hearing room. Authorization of settlement discussions does not constitute a finding on the proposal's experimental status or on the need for a hearing.

Representation of the general public. In conformance with section 3624(a) of title 39, the Commission designates Shelley S. Dreifuss, director of the Commission's Office of the Consumer Advocate (OCA), to represent the interests of the general public in this proceeding. Pursuant to this designation, Ms. Dreifuss will direct the activities of Commission personnel assigned to assist her and, upon request, will supply their names for the record. Neither Ms. Dreifuss nor any of the assigned personnel will participate in or provide advice on any Commission decision in this proceeding.

Intervention; need for hearing. Those wishing to be heard in this matter are directed to file a written notice of intervention with Steven W. Williams, Secretary of the Commission, 1333 H Street, NW., Suite 300, Washington, DC 20268–0001, on or before March 17, 2004. Notices should indicate whether participation will be on a full or limited basis. *See* 39 CFR 3001–20 and 3001–20a. No decision has been made at this point on whether a hearing will be held in this case. To assist the Commission in making this decision, participants are directed to indicate, in their notices of intervention, whether they seek a hearing and, if so, to identify with particularity any genuine issues of material facts believed to warrant such a hearing.

Prehearing conference. A prehearing conference will be held March 25, 2004, at 10 a.m. in the Commission's hearing room. Participants shall be prepared to address matters referred to in this ruling.

Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. MC2004–1, Experimental Periodicals Co-Palletization Dropship Discounts For High Editorial Publications to consider the Postal Service Request referred to in the body of this order.

2. The Commission will sit *en banc* in this proceeding.

3. The deadline for filing notices of intervention is March 17, 2004.

4. Notices of intervention shall indicate whether the participant seeks a hearing and identify with particularity any genuine issues of material fact that warrant a hearing.

5. The deadline for answers to the Motion of United States Postal Service for Waiver is March 19, 2004.

6. The deadline for comments on the Postal Service's request for treatment under Commission rules 67–67d is March 19, 2004.

7. The Commission will make its hearing room available for settlement conferences on March 18, 19, 22, or 23, 2004, at such times as deemed necessary by the settlement coordinator.

8. Postal Service counsel is appointed to serve as settlement coordinator in this proceeding.

9. The Postal Service's Request for Expedition is granted to the extent of allowing a shorter-than-usual intervention period, allowing settlement discussions, and requiring participants' interest in a hearing to be identified in the notice of intervention.

10. A prehearing conference will be held Thursday, March 25, 2004, at 10 a.m. in the Commission's hearing room.

11. Shelley S. Dreifuss, director of the Commission's Office of the Consumer Advocate, is designated to represent the interests of the general public.

12. The Secretary shall arrange for publication of this notice and order in the **Federal Register**.

By the Commission.

Issued: February 27, 2004.

Steven W. Williams,

Secretary.

[FR Doc. 04–4769 Filed 3–2–04; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:

Form S–3, OMB Control No. 3235–0073, SEC File No. 270–61

Form S–8, OMB Control No. 3235–0066, SEC File No. 270–66

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

Form S–3 (OMB Control No. 3235–0073; File No. SEC 270–61) is used by issuers to register securities pursuant to the Securities Act of 1933. Form S–3 gives investors the necessary information to make investment decisions regarding securities offered to the public. Approximately 2,010 issuers file Form S–3 at an estimated 398 hours per response for a total annual burden of 799,980 hours. It is estimated that 50% of the total burden hours (399,990 reporting burden hours) is prepared by the issuer.

Form S–8 (OMB Control No. 3235–0066; SEC File No. 270–66) is the primary registration statement used by qualified registrants to register securities issued in connection with employee benefit plans. It is estimated that 4,050 issuers file Form S–8 annually at an estimated 24 hours per response for a total annual burden of 97,200 hours. It is estimated that 50% of the total burden hours (48,600 reporting burden hours) is prepared by the issuer.

Written comments are invited on: (a) Whether these proposed collections of information are 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 collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given

to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: February 24, 2004.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–4713 Filed 3–2–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49322; File No. SR–OPRA–2003–01]

Options Price Reporting Authority; Order Granting Permanent Approval to an Amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information and Amendments No. 1 and 2 Thereto To Revise the Manner in Which the Options Price Reporting Authority Engages in Capacity Planning and Allocates Its Available System Capacity Among the Parties to the Plan

February 26, 2004.

On April 15, 2003, the Options Price Reporting Authority ("OPRA") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 11A of the Securities Exchange Act of 1934 ("Act")[1] and Rule 11Aa3–2 thereunder,[2] an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information ("OPRA Plan" or "Plan").[3] The proposed amendment would revise the manner in which OPRA engages in capacity planning and allocates capacity among the exchanges that are parties to the Plan. On July 16, 2003 and October 12, 2003, respectively, OPRA submitted Amendments No. 1 and 2 to the proposal.[4] On November 21, 2003, the Commission issued notice of and approved the proposal, as amended, on a temporary basis not to exceed 120 days, and solicited comment on the proposal.[5] The Commission received no comments on the proposal, as amended. This order approves the OPRA Plan amendment, as amended, on a permanent basis.

The proposed Plan amendment would revise the manner in which OPRA engages in capacity planning and allocates its available system capacity among the exchanges that are parties to the Plan. In addition, proposed amendments to the OPRA Plan would make it clear that participation in OPRA is limited to those self-regulatory organizations ("SROs") that are engaged in the business of providing a market for the trading of securities options and other eligible securities under the OPRA Plan.[6] Furthermore, the functions and objectives of OPRA would be specifically set forth in the OPRA Plan, most particularly in the preamble to the Plan and in Section III(b) thereof. The proposed amendment would make explicit in the preamble to the Plan that joint action by the parties to the Plan is limited to those matters as to which they share authority under the Plan, and then only to circumstances where such joint action is necessary in order to fulfill the functions and objectives of OPRA as stated in the Plan.

Under the proposed amendment to the OPRA Plan, OPRA would require each party to the Plan from time to time to independently project the capacity it would need and to privately submit requests for capacity based on its projections to an Independent System Capacity Advisor ("ISCA"), which would maintain these individual capacity projections and requests in confidence. The Plan would require the ISCA to maintain the confidentiality of this information, consistent with the provisions of section III(g) of the Plan.[7] Furthermore, confidential capacity-related information obtained by the ISCA would not be used by the ISCA in any of its other business activities in a manner that may result in the information being made available to any of the parties to the Plan, or to use it in any manner that is otherwise inconsistent with the ISCA's obligation to hold the information in confidence.[8]

The ISCA would then determine how and when to modify the OPRA System in order to provide to each party the capacity it has requested and how the cost of such modifications is to be allocated among the parties, all in accordance with, and subject to, the proposed Capacity Guidelines that are incorporated in the Plan as part of the proposed amendment.

Moreover, future Plan amendments, including amendments to the proposed provisions of the Plan pertaining to capacity planning and allocation, would continue to require the unanimous approval of the parties. However, decisions relating to the selection or termination of the ISCA, certain changes to the authority of the ISCA, and changes to the Capacity Guidelines may be authorized by a vote of 75% of the parties. In addition, the selection of the ISCA would be required to be filed with the Commission as an amendment to OPRA's national market system plan. In accordance with this requirement, OPRA selected the Options Clearing Corporation ("OCC") to act as the ISCA.

After careful review, the Commission finds that the proposed OPRA Plan amendment, as amended by Amendments No. 1 and 2, is consistent

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 240.11Aa3–2.

[3] OPRA is a national market system plan approved by the Commission pursuant to Section 11A of the Act and Rule 11Aa3–2 thereunder. *See* Securities Exchange Act Release No. 17638 (March 18, 1981), 22 S.E.C. Docket 484 (March 31, 1981).

The OPRA Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the participant exchanges. The six participants to the OPRA Plan are the American Stock Exchange LLC ("Amex"), the Boston Stock Exchange, Inc. ("BSE"), the Chicago Board Options Exchange, Inc. ("CBOE"), the International Securities Exchange, Inc., the Pacific Exchange, Inc. ("PCX"), and the Philadelphia Stock Exchange, Inc. ("Phlx").

[4] *See* letters from Michael L. Meyer, Counsel to OPRA, Schiff, Hardin & Waite, to Deborah Flynn, Assistant Director, Division of Market Regulation, Commission, dated July 15, 2003 ("Amendment No. 1") and October 15, 2003 ("Amendment No. 2").

[5] *See* Securities Exchange Act Release No. 48822 (November 21, 2003), 68 FR 66892 (November 28, 2003).

[6] The proposed amendment would revise the OPRA Plan in response to the Commission's Order instituting public administrative proceedings against four of OPRA's participant exchanges (Amex, CBOE, PCX and Phlx, referred to collectively as the "respondent exchanges") pursuant to Section 19(h)(1) of the Act, and specifically in response to Section IV.B.c. of the Order (the "Undertaking"). The Undertaking requires each of the four respondent exchanges, acting jointly with all other options exchanges, to modify the structure and operation of OPRA in various ways that would eliminate undesirable joint and collective action in the capacity planning and allocation process. *See* Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Act, Making Findings and Imposing Remedial Sanctions. Securities Exchange Act Release No. 43268, dated September 11, 2000 and Administrative Proceeding File 3–10282 ("Order").

[7] *See* Amendment No. 2, *supra* note 4.

[8] Guideline No. 1 of the Capacity Guidelines would require the ISCA to maintain internal safeguards and procedures adequate to assure that the requirements of the Plan pertaining to the confidentiality of information provided to the ISCA would be satisfied. In addition to the confidentiality requirements imposed on the ISCA, the proposal would amend Section III(b) of the Plan to make explicit the requirement that each person who performs administrative functions for OPRA, including its Executive Director and other officials and its processor, shall agree that any nonpublic business information pertaining to any party shall be held in confidence and not be shared with the other parties, except for information that may be shared in connection with permitted joint activities. The proposal would also make explicit in the preamble to the Plan that the parties themselves are each obligated to take reasonable steps to insure that their nonpublic business information remains segregated and confidential from the other parties, except for information that may be shared in connection with permitted joint activities.

with the requirements of the Act and the rules and regulations thereunder.[9] Specifically, the Commission believes that the proposed OPRA Plan amendment, which would revise the manner in which OPRA engages in capacity planning and the allocation of system capacity among the exchanges that are parties to the Plan, is consistent with section 11A of the Act[10] and Rule 11Aa3–2 thereunder,[11] in that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.

Specifically, the Commission believes that OPRA's proposal to require each party to the Plan to independently project the capacity it would need and to confidentially submit to the ISCA requests for capacity based on such projections is designed to eliminate joint action by the OPRA participants in determining the amount of total capacity to be procured and the allocation of such capacity. The Commission notes that the proposal requires that the ISCA maintain these individual capacity projections and requests in confidence, and not use such confidential, capacity-related information in any of its business activities that may result in the information being made available to any of the parties of the Plan, or in any manner that is inconsistent with its obligation to hold the information in confidence. The Commission believes that these requirements provide additional assurances that each exchange's non-public business information would remain segregated and would not be made available to its competitors. Furthermore, the Commission emphasizes that neither the Plan nor the Capacity Guidelines should be construed in any manner that would permit individual exchange capacity projections or requests or other confidential, capacity-related information to be shared with the other parties to the Plan.

The Commission believes that the proposed Capacity Guidelines adequately provide for the allocation of capacity to new parties to OPRA. Under Guideline No. 2 of the proposed Capacity Guidelines, a prospective new options exchange would have to inform the ISCA, at least 6 months prior to the time it proposes to commence trading, of the initial amount of system capacity it would need. The ISCA would then aggregate this request for capacity with the requests received from the existing exchanges. Also, under Guideline No. 6 of the proposed Capacity Guidelines, if the new party has not received the capacity it has requested at the time it has commenced trading options, and to the extent there is any excess capacity available in the system that has not been provided to any of the parties, the ISCA would be able to allocate to the new party all or a portion of any such excess capacity to provide the new party with the amount of capacity determined by the ISCA to be sufficient to satisfy the reasonable needs of the new party until it has been provided with the capacity it initially requested. These provisions in the proposed Capacity Guidelines, which specifically contemplate new entrants and provide a mechanism for them to acquire capacity, together with the prohibitions imposed on the ISCA from using confidential capacity-related information in any of its other business activities that may result in the information being made available to any of the parties to the Plan or in any manner inconsistent with the ISCA's obligations to hold such information in confidence, are designed to ensure that the existing exchanges would not be able to restrain new entrants from joining OPRA and acquiring the capacity that they require.[12]

Accordingly, to permit the exchanges to commence capacity planning without the need for joint action, as required by the Order, the Commission believes it is necessary or appropriate in the public interest, for the protection of investors or the maintenance of fair and orderly markets, to remove impediments to, and perfect mechanisms of, a national market system to approve the proposed amendment to the OPRA Plan on a permanent basis.

It is therefore ordered, pursuant to section 11A of the Act,[13] and Rule 11Aa3–2 thereunder,[14] that the proposed OPRA Plan amendment, as modified by Amendments No. 1 and 2, (SR–OPRA–2003–01) is hereby approved on a permanent basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–4717 Filed 3–2–04; 8:45 am]

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[9] In approving this proposed OPRA Plan amendment, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78k–1.

[11] 17 CFR 240.11Aa3–2.

[12] The Commission notes that the BSE recently joined OPRA and began operation of a fully electronic options exchange ("Boston Options Exchange" or "BOX"). *See* Securities Exchange Act Release No. 49068 (January 13, 2004), 69 FR 2775 (January 20, 2004) (SR–BSE–2002–15).

[13] 15 U.S.C. 78k–1.

[14] 17 CFR 240.11Aa3–2.

[15] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49319; File No. SR–Amex–2003–39]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2, 3 and 4 Thereto by the American Stock Exchange LLC To Adopt an Obvious Error Rule and Half-Point Error Guarantee for Trades on the Exchange in Nasdaq National Market Securities

February 25, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 30, 2003, 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. The Amex submitted Amendment No. 1 to the proposed rule change on October 15, 2003.[3] The Amex submitted Amendment No. 2 to the proposed rule change on November 21, 2003.[4] The Amex submitted Amendment No. 3 to the proposed rule change on December 10, 2003.[5] The Amex submitted Amendment No. 4 to the proposed rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Bill Floyd Jones, Associate General Counsel, Amex, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated October 14, 2003 ("Amendment No. 1"). Amendment No. 1 replaced the original proposed rule change in its entirety.

[4] *See* Letter from Bill Floyd Jones, Associate General Counsel, Amex, to Nancy J. Sanow, Assistant Director, Division, Commission, dated November 20, 2003 ("Amendment No. 2"). Amendment No. 2 replaced the original proposed rule change and Amendment No. 1 in their entirety.

[5] *See* Letter from Bill Floyd Jones, Associate General Counsel, Amex, to Nancy J. Sanow, Assistant Director, Division, Commission, dated December 9, 2003 ("Amendment No. 3"). Amendment No. 3 replaced the original proposed rule change and Amendment Nos. 1 and 2 in their entirety. In Amendment No. 3, Amex also represented that Exchange Staff plans to propose the adoption of an obvious error rule similar to proposed Amex Rule 118(l) for Amex listed securities similar to that contained in the proposed rule change, at the next regularly scheduled Amex board meeting.

change on February 2, 2004.[6] 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 adopt an obvious error rule and half point error guarantee for transactions on the Exchange in Nasdaq National Market securities.

The text of the proposed rule change is below. Additions are *italicized:*

* * * * *

Trading in Nasdaq National Market Securities

Rule 118. (a) through (j) No change.

(k) Reserved

(l) *Clearly Erroneous Transactions in Nasdaq National Market Securities—*

(i) A Floor Official shall, pursuant to the procedures set forth in below, have the authority to review any transaction in a Nasdaq National Market security that is claimed to be clearly erroneous arising out of the use or operation of any facility of the Exchange. In reviewing a trade in a Nasdaq National Market security that is claimed to be clearly erroneous, a Floor Official shall review the transaction with a view toward maintaining a fair and orderly market and the protection of investors and the public interest. Based upon this review, the Floor Official shall decline to "break" a disputed transaction if the Floor Official believes that the transaction under dispute is not clearly erroneous. If the Floor Official determines the transaction in dispute is clearly erroneous, however, he or she shall declare that the transaction is null and void or modify one or more terms of the transaction. When adjusting the terms of a transaction, the Floor Official shall seek to adjust the price and/ or size of the transaction to achieve an equitable rectification of the error that would place the parties to a transaction in the same position, or as close as possible to the same position, as they would have been in had the error not occurred. For the purposes of this Rule, the terms of a transaction are clearly erroneous when there is an obvious error in any term, such as price, number of shares or other unit of trading, or identification of the security.

(ii) Any member who seeks to have a transaction reviewed pursuant to subparagraph (i) above shall submit the matter to a Floor Official and deliver a written complaint to Service Desk within 30 minutes of the transaction. Once a complaint has been received, the complainant shall have up to thirty 30 minutes, or such longer period as the Floor Official may specify, to submit any supporting written information concerning the complaint necessary for a review of the transaction. The other party to the trade shall have up to thirty minutes after being notified of the complaint, or such longer period as specified by the Floor Official, to submit any supporting written information concerning the complaint necessary for a review of the transaction. Either party to a disputed trade may request the written information provided by the other party pursuant to this subparagraph. Once a party to a disputed trade communicates that he or she does not intend to submit any further information concerning a complaint, the party may not thereafter provide additional information unless requested to do so by the Floor Official. If both parties to a disputed trade indicate that they have no further information to provide concerning the complaint before their respective thirty-minute information submission period has elapsed, then the matter may be immediately considered by a Floor Official. Members or persons associated with members and member organizations involved in the transaction shall provide the Floor Official with any information that he or she requests in order to resolve the matter on a timely basis notwithstanding the time parameters set forth above. Once a member has applied to a Floor Official for a ruling, the Floor Official shall review the transaction and make a ruling unless both parties to the transaction agree to withdraw the application for review prior to the time that the Floor Official makes the ruling. A member may seek review of a Floor Official's ruling pursuant to the procedures described in Rule 22(d) and Commentary .02 to Rule 22.

(iii) In the event of (1) a disruption or malfunction in the use or operation of any facility of the Exchange, (2) a disruption or malfunction in the use or operation of any facility of Nasdaq that results in Nasdaq nullifying or modifying trades in the Nasdaq market pursuant to its rules, or (3) extraordinary market conditions or other circumstances in which the nullification or modification of transactions executed on the Exchange in Nasdaq National Market securities may be necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest, a Floor Governor may review any transactions arising out of or reported through any facility of the Exchange; provided, however, that a Floor Governor may not review transactions arising out of the use or operation of any execution or communication system owned or operated by Nasdaq. Prior to the nullification or modification of transactions as a result of a disruption or malfunction in the use or operation of any facility of Nasdaq, the Exchange must receive confirmation from NASD or Nasdaq that there is a disruption or malfunction on Nasdaq's market that has resulted in the nullification or modification of trades in that market. A Floor Governor acting pursuant to this subsection may declare any Amex transaction null and void or modify the terms of any such transactions if the Floor Governor determines that (1) the transaction is clearly erroneous, or (2) such actions are necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest; provided, however, that, in the absence of extraordinary circumstances, the Floor Governor must take action pursuant to this subsection within thirty (30) minutes of detection of the transaction, but in no event later than 3 p.m., Eastern Time, on the next trading day following the date of the trade at issue. A member may seek review of a Floor Governor's ruling from a three Governor Panel as described in Rule 22(d) and Commentary .02 to Rule 22 without first seeking review of the ruling from a Floor Official or Exchange Official.

(m) Half-Point Error Guarantee. The provisions of Rule 129 shall not apply to orders for Nasdaq National Market securities of 1,000 shares or less received by the specialist through the Exchange's electronic order routing system ("System"). As to such orders, erroneous execution reports sent by the specialist via the System shall be binding except that (i) if the erroneous report is at a price which is more than $.50 away from the execution price, then the price of the execution shall be binding, and (ii) if the member organization that entered the order requests a correction from the specialist prior to the opening on the second business day following the day of the transaction, the specialist shall correct

[6] *See* Letter from Bill Floyd Jones, Associate General Counsel, Amex, to Nancy J. Sanow, Assistant Director, Division, Commission, dated January 30, 2004 ("Amendment No. 4"). In Amendment No. 4, Amex revised the proposed rule change to: (1) make technical amendments to the rule text to better reflect the proposed rule change, and (2) confirm that the Exchange has determined for business reasons not to extend the half-point error guarantee to other securities traded on the Exchange at this time.

the execution report to the price of the execution and that price shall be binding. If the erroneous execution report sent by the specialist is at a price which is more than $.50 away from the execution price and if a transaction has appeared on the tape at the price of the erroneous report and in a quantity equal to or exceeding the amount reported, the specialist must render a corrected report no later than noon on the business day following the day of the transaction. If not so corrected, the specialist will be responsible for any resulting loss. However, as to limit orders, erroneous execution reports sent by the specialist shall also not be binding where the subject security did not trade at or below (or above, as the case may be) the limit price specified on the order on that trading day.

(n) Rule 390 shall not preclude a member, member organization, allied member, registered representative, or officer from sharing or agreeing to share in any losses in any customer's account with respect to Nasdaq National Market securities after the member organization has established that the loss was caused in whole or in part by the action or inaction of such member, member organization, allied member, registered representative or officer, provided, however, that this provision shall not permit a member, member organization, allied member, registered representative or officer to guarantee any customer against loss in his account.

Commentary: No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, 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

Trades in Nasdaq securities may occur at clearly erroneous prices due to human or system errors. The Exchange, accordingly, is proposing to adopt an obvious error rule for use on the Exchange in connection with unlisted trading privileges ("UTP") transactions on the Exchange in Nasdaq securities. New Amex Rule 118(l) would be similar to Rule 11890 (Clearly Erroneous Transactions) of the National Association of Securities Dealers, Inc. ("NASD") for the Nasdaq Stock Market.

Like the NASD's rule, the proposed Amex obvious error rule would allow the Exchange to break or revise single or multiple trades that are obviously erroneous. Under the proposed rule, a member may request an Amex Floor Official [7] to review a transaction that is claimed to be clearly erroneous. Once a ruling is requested, a Floor Official must review the trade unless both parties agree to withdraw the application before the Floor Official makes a ruling.

The proposed rule requires a Floor Official to review a transaction or series of transactions with a view toward maintaining a fair and orderly market and the protection of investors and the public interest. Based upon this review, a Floor Official would decline to "break" a disputed transaction if the Floor Official believes that the transaction under dispute is not clearly erroneous. If the Floor Official determines the transaction in dispute is clearly erroneous, however, the Floor Official may declare the transaction null and void or modify one or more terms of the transaction. When adjusting the terms of a transaction, the Floor Official would seek to adjust the price and/or size of the transaction to achieve an equitable rectification of the error that would place the parties to a transaction in the same position, or as close as possible to the same position, as they would have been in had the error not occurred.

Subparagraph (ii) of proposed Amex Rule 118(l) establishes deadlines and procedures for Floor Official review of a disputed transaction. Any member who seeks to have a transaction or series of transactions reviewed must submit the matter to a Floor Official and deliver a written complaint to Service Desk within 30 minutes of the transaction. Once a complaint has been received, the complainant would have up to thirty 30 minutes, or such longer period as the Floor Official may specify, to submit any supporting written information concerning the complaint necessary for a review of the transaction. The other party to the trade would have up to thirty minutes after being notified of the complaint, or such longer period as specified by the Floor Official, to submit any supporting written information concerning the complaint necessary for a review of the transaction. Either party to a disputed trade may request the written information provided by the other party. Once a party to a disputed trade communicates that he or she does not intend to submit any further information concerning a complaint, the party may not thereafter provide additional information unless requested to do so by the Floor Official. If both parties to a disputed trade indicate that they have no further information to provide concerning the complaint before their respective thirty-minute information submission period has elapsed, then the matter may be immediately considered by a Floor Official. Members or persons associated with members and member organizations involved in the transaction would be required to provide the Floor Official with any information that he or she requests in order to resolve the matter on a timely basis.

Subparagraph (iii) of proposed Amex Rule 118(l) provides that, in the event of (1) a disruption or malfunction in the use or operation of any facility of the Exchange, (2) a disruption or malfunction in the use or operation of any facility of Nasdaq that results in the nullification or modification of trades in that market,[8] or (3) extraordinary market conditions or other circumstances in which the nullification or modification of transactions in Nasdaq National Market securities may be necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest, a Floor Governor may review any transactions arising out of or reported through any facility of the Exchange. A Floor Governor acting pursuant to this subsection may declare any Amex transaction null and void or modify the terms of any such transactions if the Floor Governor determines that (1) the transaction is clearly erroneous, or (2)

[7] Floor Officials are deemed to be Officers of the Exchange. *See* Amex Rule 22(c). Floor Officials are generally responsible for the supervision of operations the Exchange Floor. There are four classifications of Floor Official. In ascending order of responsibility, these classifications are: (1) Floor Official, (2) Exchange Official, (3) Senior Floor Official, and (4) Senior Supervisory Officer. The Vice Chairman of the Exchange is a Floor Governor and serves as the Senior Supervisory Officer. Governors of the Exchange that spend a significant amount of time on the Floor are Senior Floor Officials. Numerous provisions of the Exchange's rules specifically call for Floor Official involvement in the Exchange's operations.

[8] Prior to the nullification or modification of transactions as a result of a disruption or malfunction in the use or operation of any facility of Nasdaq, the Exchange must receive confirmation from NASD or Nasdaq that there is a disruption or malfunction on Nasdaq's market that has resulted in the nullification or modification of trades in that market.

such actions are necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest; provided, however, that, in the absence of extraordinary circumstances, the Floor Governor must take action pursuant to proposed Amex Rule 118(l)(iii) within thirty minutes of detection of the transaction, but in no event later than 3 p.m., Eastern Time, on the next trading day following the date of the trade at issue.

A member seeking a prompt, *i.e.*, prior to settlement, review of a Floor Official's ruling under proposed Amex Rule 118(l) would follow the procedures outlined in Amex Rule 22(d). These procedures provide possible appeals first to an Exchange Official, next to a Floor Governor, and finally to a three governor panel. Proposed Amex Rule 118 also provides that a member aggrieved by a Floor Governor's ruling under subsection (iii) of the proposed rule may appeal the ruling directly to a three Governor panel pursuant to Amex Rule 22(d) and Commentary .02. Commentary .02 to Amex Rule 22 requires Floor Officials to prepare and submit a written record of their decisions as soon as practical after making a ruling.[9] Floor Officials, consequently, would have to prepare and submit written decisions regarding rulings on trades that may be clearly erroneous. The Commission recently reviewed and approved amendments to the Exchange's procedures for appealing Floor Official rulings.[10]

In conjunction with the adoption of an obvious error rule, the Exchange also proposes the adoption of a Half-Point Error Guarantee for transactions in Nasdaq stocks (proposed Amex Rule 118(m)). The proposed Amex error guarantee would allow small investors to rely upon reports of executions of system orders of sizes that may be designated by the Exchange from time to time where the report is within $.50 of the execution price. System orders of 1,000 shares or less would be eligible for the Half-Point Error Guarantee.

As to such others, erroneous execution reports sent by the specialist via the Exchange's electronic order routing system would be binding except that if the erroneous report is at a price which is more than $.50 away from the execution price, then the execution price would be binding. In addition, if the member organization that entered the order requests a correction from the specialist prior to the opening on the second business day following the day of the transaction, the specialist would correct the execution report to the price of the execution and that price would be binding. If the erroneous execution report sent by the specialist is at a price which is more than $.50 away from the execution price and if a transaction has appeared on the tape at the price of the erroneous report and in a quantity equal to or exceeding the amount reported, the specialist would be required to render a corrected report no later than noon on the business day following the day of the transaction. If not so corrected, the specialist would be responsible for any resulting loss. However, as the limit orders, erroneous execution reports sent by the specialist would also not be binding where the subject security did not trade at or below (or above, as the case may be) the limit price specified on the order on that trading day.[11] The Exchange believes that the Half-Point Error Guarantee would encourage investors to use the Exchange's electronic order routing facilities.[12]

To implement the Half-Point Error Guarantee, the Exchange also is proposing to adopt a rule (Rule 118(n)) that would codify current practice with respect to the resolution of errors in Nasdaq securities traded on the Exchange. The proposed rule change would state that members and member organizations may share in losses in a customer's account when the member or member organizations determine that the member or firm was responsible for the loss.[13]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[14] in general and furthers the objectives of Section 6(b)[15] 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.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–Amex–2003–39. This file number

[9] Floor Governors would also have to comply with similar procedures under this rule. Telephone Conversation between Bill Floyd Jones, Associate General Counsel, Amex, and Ian K. Patel, Attorney, Division, Commission, dated January 16, 2004.

[10] *See*, Securities Exchange Act Release No. 47078 (December 30, 2002), 67 FR 79668 (December 20, 2002) (SR–Amex–2001–07).

[11] Thus, if the subject security did not trade at or below (above) the limit price specified on the order on that trading day, then the provisions of Amex Rule 129 would apply. If the subject security did trade at or below (above) the limit price specified on the order on that trading day, then the Half-Point Error Guarantee would apply. Telephone conversation between Bill Floyd Jones, Associate General Counsel, Amex, David Fisch, Managing Director, Amex, Susie Cho, Special Counsel, Division, Commission, and Ian Kiran Patel, Attorney, Division, Commission, on January 29, 2004.

[12] Proposed Amex Rule 118(m) is similar to New York Stock Exchange, Inc. Rule 123B(b)(2).

[13] Proposed Amex Rule 118(n) is based upon Supplementary Material .20 to NYSE Rule 352. The Exchange has represented that it plans to propose an obvious error rule for listed securities. *See supra* n. 5. However, for business reasons, the Exchange does not plan to propose a Half-Point Error Guarantee for listed securities. See Amendment No. 4, *supra* note 6.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex 2003–39 and should be submitted by March 24, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–4715 Filed 3–2–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49318; File No. SR–CBOE–2004–10]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to the Expansion of the $5 Bid-Ask Differential Pilot Program

February 25, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 20, 2004, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I and II below, which items have been prepared by the Exchange. The CBOE has submitted the proposed rule change under 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 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

In January 2004, the CBOE implemented a six-month pilot program ("Pilot Program"), which expires on June 29, 2004, that permits quote spread parameters of up to $5, regardless of the price of the bid, for up to 200 option classes traded on the CBOE's Hybrid Trading System ("Hybrid").[5] The CBOE proposes to amend its rules to expand the Pilot Program to include all option classes traded on Hybrid.

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

The Pilot Program, which expires on June 29, 2004, permits quote spread parameters of up to $5, regardless of the price of the bid, for up to 200 option classes traded on Hybrid. The purpose of the proposed rule change is to expand the Pilot Program to include all option classes traded on Hybrid.[6] As a condition to the effectiveness of the Pilot Program, the CBOE committed to monitor the quotation quality of all classes in the Pilot Program and, based on the results, recommend either relaxing the spread requirements for all Hybrid classes, ending the Pilot Program, or adjusting the spread requirements for all Hybrid classes. To this end, the CBOE committed to prepare and submit to the Commission a report assessing the operation of the Pilot Program and, in particular, the quality of the quotations for the Pilot Program options.[7]

The CBOE proposes to expand the number of option classes included in the Pilot Program from 200 classes to all classes trading on Hybrid. As proposed, any class trading on Hybrid would be eligible for inclusion in the Pilot Program, which means that when the proposal becomes operative, the permissible bid-ask differential for all Hybrid series will be $5, regardless of the price at which they trade.[8]

As described above, the CBOE previously committed to prepare and submit to the Commission a report assessing the operation of the Pilot Program. The CBOE further commits to expand the scope of this report to include the top 550 Hybrid classes. The report will analyze the AQWA scores for the Pilot Program options and will include data from the date of inclusion in the Pilot Program through June 1, 2004.[9]

The CBOE believes that it is reasonable to expand the Pilot Program to include all Hybrid classes. In this

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] See Securities Exchange Act Release No. 49153 (January 29, 2004), 69 FR 5620 (February 5, 2004) (notice of filing and immediate effectiveness of File No. SR-CBOE–2003–50) ("Pilot Notice").

[6] As of February 17, 2004, approximately 550 classes traded on Hybrid.

[7] In this respect, the CBOE committed to provide to the Commission a report analyzing the Average Quote Width Analysis ("AQWA") scores for each of the Pilot Program options. The CBOE's report will compare the AQWA scores for each stock prior to the implementation of the Pilot Program versus the AQWA scores for each stock during the operation of the Pilot Program. The CBOE believes that this information will provide a meaningful comparison during the relevant periods so that the CBOE will be able to determine the effect of the $5 quote width on quote quality. The CBOE expects to provide the Commission with its report on the Pilot Program by June 15, 2004. Telephone conversation between Steve Youhn, CBOE, and Yvonne Fraticelli, Special Counsel, Division of Market Regulation, Commission, on February 19, 2004.

[8] The relaxed quotation spread requirements will apply after the opening trading rotation. During the opening rotation, market makers will be required to quote in accordance with the traditional bid-ask width requirements. The $5 quotation requirements permitted under the Pilot Program would become operative immediately following the opening rotation.

[9] *See* note 7, *supra*, for a description of the information that the CBOE will include in its Pilot Program report. When the current proposal becomes operative, the CBOE will add to the 200 classes currently included in the Pilot Program all of the remaining classes currently traded on Hybrid (approximately 350 classes). If after the operative date of the current proposal the CBOE converts additional classes to Hybrid trading, those classes will be eligible for inclusion in the Pilot Program. However, the CBOE will not include data for these additional classes in its Pilot Program report to the Commission. The CBOE proposes to exclude this information from the report because these classes may be added to Hybrid at different times (and some may not be added until near the end of the Pilot Program), which would result in separate measurement periods for each class and would necessarily complicate the preparation of the Pilot Program report. Moreover, the CBOE believes that it is unlikely that data provided for this relatively small number of classes would produce significant additional information concerning the operation of the Pilot Program.

regard, the CBOE notes that the Hybrid market structure creates strong incentives for competing market makers and other market participants to disseminate competitive prices. In Hybrid, each market maker quotes independently and customers and broker-dealers can enter limit orders in the limit order book at prices better than those posted by market makers. The Exchange automatically collects this trading interest information, calculates the CBOE best bid and offer, and disseminates that value to the Options Price Reporting Authority. Accordingly, the CBOE believes that the CBOE Hybrid market is competitive, accessible and transparent.

The CBOE notes that market participants in Hybrid have strong incentives to quote competitively. The CBOE allocates incoming orders based on the price and size of orders and quotes resting in the book. Under the CBOE's Ultimate Matching Algorithm, the larger the size of a market maker's quote at the best price, the greater the size of the allocation he or she receives. Conversely, if a market participant does not quote at the best price, the market participant will not participate in any electronic trade allocations. The CBOE believes, moreover, that given NBBO protections in place at each exchange as well as through the Options Market Linkage plan, market participants have even stronger incentives to quote at the best price, lest incoming orders be filled away. Thus, the CBOE believes that inter- and intra-market competitive forces provide strong incentives for market participants to quote competitively and enter quotes and orders that improve the price and depth of the market.

For these reasons, the CBOE believes that it is reasonable to expand the Pilot Program to include all Hybrid classes.

2. Statutory Basis

The CBOE believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of section 6(b) of the Act.[10] Specifically, the CBOE believes the proposed rule change is consistent with the section 6(b)(5)[11] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE 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

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The CBOE has filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act[12] and subparagraph (f)(6) of Rule 19b–4 thereunder.[13] Because the foregoing proposed 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) does not become operative for 30 days, or such shorter time as the Commission may designate, and the CBOE provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The CBOE has requested that the Commission waive the 30-day operative delay to allow the CBOE to expand the Pilot Program to include all Hybrid classes without delay. The CBOE notes that its Pilot Program is similar to a pilot program adopted by the International Securities Exchange, Inc. ("ISE").[14]

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[15] Specifically, the Commission believes that allowing the CBOE to expand its Pilot Program to include all option classes trading on Hybrid will permit a larger number of option classes to be included in the Pilot Program, thereby helping the CBOE to assess the effects of the $5 spreads permitted under the Pilot Program. In this regard, the Commission notes that the CBOE's report concerning the Pilot Program will include data from 550 option classes traded on Hybrid. The Commission believes that the CBOE's proposal raises no new issues or regulatory concerns that the Commission did not consider in approving the ISE's quote spread pilot program or in permitting the CBOE to implement its Pilot Program.[16] For these reasons, the Commission designates that the proposal become operative immediately.

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.

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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–CBOE–2004–10. 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, your comments should be sent in hardcopy or by e-mail but not by both methods.

Copies of the submission, all subsequent amendments, all written

[10] 15 U.S.C. 78f.

[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).

[14] *See* Securities Exchange Act Release No. 47352 (March 19, 2003), 68 FR 14728 (March 26, 2003) (order approving File No. SR–ISE–2001–15). The ISE's pilot program has been extended through March 31, 2004. *See* Securities Exchange Act Release No. 49149 (January 29, 2004), 69 FR 5627 (February 5, 2004) (notice of filing and immediate effectiveness of File No. SR–ISE–2004–02, extending the ISE's pilot program through March 31, 2004). *See also* Securities Exchange Act Release No. 48514 (September 22, 2003), 68 FR 55685 (September 26, 2003) (notice of filing and immediate effectiveness of File No. SR–ISE–2003–21, extending the ISE's pilot program through January 31, 2004). The ISE also has filed a proposal with the Commission seeking permanent approval of its pilot program and extending its pilot program to apply to all equity options listed on the ISE. *See* File No. SR–ISE–2003–22.

[15] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] *See* Pilot Notice, *supra* note 5.

statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–2004–10 and should be submitted by March 24, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–4663 Filed 3–2–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49323; File No. SR–ISE–2003–06]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the International Securities Exchange, Inc. to Establish Rules Implementing a Price Improvement Mechanism

February 26, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 25, 2003, the International Securities Exchange, Inc. ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On February 25, 2004, the ISE submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated February 24, 2004 ("Amendment No. 1"). In Amendment No. 1, the ISE replaced the proposed rule text in its entirety.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to adopt rules implementing a "Price Improvement Mechanism" ("PIM"). Proposed new language is *italicized;* proposed deletions are in [brackets].

* * * * *

Rule 717. Limitations on Orders.

* * * * *

(d) Principal Transactions.

Electronic Access Members may not execute as principal orders they represent as agent unless (i) agency orders are first exposed on the Exchange for at least thirty (30) seconds, (ii) the Electronic Access Member has been bidding or offering on the Exchange for at least thirty (30) seconds prior to receiving an agency order that is executable against such bid or offer, [or] (iii) the Member utilizes the Facilitation Mechanism pursuant to Rule 716(d), *or (iv) the Member utilizes the Price Improvement Mechanism for Crossing Transactions pursuant to Rule 723.*

(e) Solicitation Orders.

Electronic Access Members must expose orders they represent as agent on the Exchange for at least thirty (30) seconds before such orders may be executed in whole or in part by orders solicited from Members and non-member broker-dealers to transact with such orders, *unless with respect to orders solicited from Members, the Member utilizes the Price Improvement Mechanism for Crossing Transactions pursuant to Rule 723.*

* * * * *

Rule 723. Price Improvement Mechanism for Crossing Transactions

(a) The Price Improvement Mechanism is a process by which an Electronic Access Member can provide price improvement opportunities for a transaction wherein the Electronic Access Member seeks to facilitate an order it represents as agent, or a transaction wherein the Electronic Access Member solicited an order from a Member to execute against an order it represents as agent (a "Crossing Transaction").

(b) Crossing Transaction Entry. A Crossing Transaction is comprised of the order the Electronic Access Member represents as agent (the "Agency Order") and a counter-side order for the full size of the Agency Order (the "Counter-Side Order").

(1) A Crossing Transaction must be entered only at a price that is better than the national best bid or offer ("NBBO"), and only when there are at least three (3) market makers quoting in the options series.

(2) The Crossing Transaction may be priced in one-cent increments.

(3) The Crossing Transaction may not be canceled, but the price of the Counter-Side Order may be improved during the exposure period.

(c) Exposure Period. Upon entry of a Crossing Transaction into the Price Improvement Mechanism, a broadcast message will be sent to all Members. This broadcast message will not be included in the ISE disseminated best bid or offer and will not be disseminated through OPRA.

(1) Members will be given three seconds to indicate the size and price at which they want to participate in the execution of the Agency Order ("Improvement Orders").

(2) Improvement Orders may be entered by all Members for their own account or for the account of a Public Customer in one-cent increments at the same price as the Crossing Transaction or at an improved price for the Agency Order, and for any size up to the size of the Agency Order.

(3) During the exposure period, Improvement Orders may not be canceled, but may be modified to (1) increase the size at the same price, or (2) improve the price of the Improvement Order for any size up to the size of the Agency Order.

(4) During the exposure period, the aggregate size of the best-priced Improvement Orders will continually be updated and broadcast to all Members.

(5) The exposure period will automatically terminate (i) at the end of the three second period, (ii) upon the receipt of a market or marketable limit order on the Exchange in the same series, or (iii) upon the receipt of a non-marketable limit order in the same series on the same side of the market as the Agency Order that would cause the price of the Crossing Transaction to be outside of the best bid or offer on the Exchange.

(d) Execution. At the end of the exposure period the Agency Order will be executed in full at the best prices available, taking into consideration orders and quotes in the Exchange market, Improvement Orders and the Counter-Side Order. The Agency Order will receive executions at multiple price levels if there is insufficient size to execute the entire order at the best price.

(1) At a given price, Public Customer interest is executed in full before any Non-Customer interest.

(2) After Public Customer interest at a given price, agency orders for the account of non-Member broker-dealers

will be executed in full before any proprietary interest of Members (i.e., proprietary interest from Electronic Access Members and Exchange market makers).

(3) After Public Customer interest and agency orders for the account of non-Member broker-dealers, Member proprietary interest will participate in the execution of the Agency Order based upon the percentage of the total number of contracts available at the price that is represented by the size of the Non-Customer's interest.

(4) In the case where the Counter-Side Order is at the same price as Member interest in (d)(3), the Counter-Side order will be allocated the greater of one (1) contract or forty percent (40%) of the initial size of the Agency Order before other Member interest is executed.

(5) When a market order or marketable limit order on the opposite side of the market from the Agency Order ends the exposure period, it will participate in the execution of the Agency Order at the price that is mid-way between the best counter-side interest and the bid or offer on the Exchange, so that both the market order and the Agency Order receive price improvement. Transactions will be rounded, when necessary, to the $.01 increment that favors the Agency Order.

(6) When a market order or marketable limit order on the same side of the market as the Agency Order ends the exposure period, it will execute against any unexecuted interest in the Price Improvement Mechanism after the Agency Order is executed in full, so that the market order or marketable limit order receives an opportunity for price improvement.

Supplementary Material to Rule 723

.01 It shall be considered conduct inconsistent with just and equitable principles of trade for any Member to enter orders, quotes, Agency Orders, Counter-Side Orders or Improvement Orders for the purpose of disrupting or manipulating the Price Improvement Mechanism.

.02 The Price Improvement Mechanism may only be used to execute bona fide Crossing Transactions.

.03 Initially, and for at least a Pilot Period expiring on July 18, 2005, there will be no minimum size requirements for order to be eligible for the Price Improvement Mechanism. During the Pilot Period, the Exchange will submit certain data, periodically as required by the Commission, to provide supporting evidence that, among other things, there is meaningful competition for all size order within the Price Improvement Mechanism, that there is significant price improvement for all orders executed through the Price Improvement Mechanism, and that there is an active and liquid market functioning on the Exchange outside of the Price Improvement Mechanism. Any data which is submitted to the Commission will be provided on a confidential basis.

.04 Only one PIM may be ongoing at any given time in a series. PIMs will not queue or overlap in any manner.

* * * * *

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

The purpose of this proposed rule change is to adopt rules implementing the ISE's PIM. The PIM is a mechanism that would allow an ISE Electronic Access Member ("EAM") to enter matched trades called "Crossing Transactions." Similar to the ISE's Facilitation Mechanism,[4] a Crossing Transaction would be comprised of an order that the EAM represents as agent ("Agency Order") and an order that is executable against the Agency Order for the full size of the Agency Order (the "Counter-Side Order"). In the case of the PIM, the Counter-Side Order could be either the EAM's own principal interest, one or more orders the EAM solicited to trade against the Agency Order from other ISE members, or a combination of the EAM's own principal interest and such solicited order(s). A Member must enter the Crossing Transaction at a price at least one cent better than the national best bid and offer ("NBBO").[5]

The ISE would broadcast the Crossing Transaction to all ISE members. During a three-second auction, all ISE members could enter "Improvement Orders," in pennies, to improve the price of the Agency Order.[6] Improvement Orders may be for the account of a Public Customer or for the member's own account. After three seconds, the ISE would execute the Agency Order against the best prices as follows: (1) All Public Customer Improvement Orders and unrelated Public Customer orders on the book at the best price would be executed first; (2) all unrelated agency orders on the book for the account of a non-Member broker-dealer would then be executed; (3) if the entering EAM is at the best price, it would then execute against the greater of one contract or 40 percent of the Agency Order; and (4) the remainder of the order would be allocated to all other interest, which includes Improvement Orders and unrelated orders on the book for the account of an ISE member (including ISE market makers), at the best price pro-rata based on size.[7]

The three-second PIM exposure period would be ended immediately upon the receipt of certain orders in the regular Exchange market. Specifically, the PIM would end immediately when a market or marketable limit order is received in the same series or when a limit order on the same side of the market as the Agency Order is received that would cause the price of the Crossing Transaction to be outside of the best bid or offer on the Exchange. In the case where a market or marketable limit order on the opposite side of the market from the Agency Order is received, the order would execute against the Agency Order at a price that is mid-way between the best PIM price and the bid or offer on the Exchange. As a result, both orders would receive an improved price.[8] In addition, when a

[4] *See* ISE Rule 716(d).

[5] A PIM could not be initiated unless there are at least three ISE market makers quoting in the series. Moreover, there could be only one PIM ongoing in a series at any given time. Therefore, a PIM could not be initiated during an ongoing PIM in the same series.

[6] The ISE would broadcast Improvement Orders to all members. Crossing Transactions and Improvement Orders would not be displayed in the ISE BBO and would not be disseminated to the Options Price Reporting Authority.

[7] This sized-based allocation formula for the remainder of the order would be the same formula the Exchange applies in the regular market, without any special allocation rights for the Primary Market Maker. *See* ISE Rule 713, Supplementary Material .01. Improvement Orders entered by the Primary Market Maker would be treated the same as Improvement Orders entered by other broker-dealers. *See also* ISE Rule 716(d)(4)(ii) (providing for the same allocation formula in the Facilitation Mechanism).

[8] For example, assume (i) the NBBO is $5 to $5.10, (ii) a PIM has been initiated for an Agency Order to sell 100 contracts, and (iii) the best PIM price is $5.06. If a market order to buy 50 contracts is received, the PIM would terminate and the market order would execute against the Agency Order for 50 contracts at $5.08. This represents a

market order or marketable limit order on the same side of the market as the Agency Order ends the PIM, it would execute against any unexecuted Improvement Orders after the Agency Order is executed in full. The ISE believes that this would provide an opportunity for price improvement to orders in the regular Exchange market.[9]

The PIM would be available for orders of all sizes for a Pilot Period expiring on July 13, 2005. The ISE represents that during this pilot period it would provide the Commission with the following information on a monthly basis:

(1) The number of orders of fewer than 50 contracts entered into the PIM;

(2) The percentage of all orders of fewer than 50 contracts sent to the ISE that are entered into the PIM;

(3) The percentage of all ISE trades represented by orders of fewer than 50 contracts;

(4) The percentage of all ISE trades effected through the PIM represented by orders of fewer than 50 contracts;

(5) The percentage of all contracts traded on the ISE represented by orders of fewer than 50 contracts;

(6) The percentage of all contracts effected through the PIM represented by orders of fewer than 50 contracts;

(7) The spread in the option, at the time an order of fewer than 50 contracts is submitted to the PIM;

(8) Of PIM trades, the percentage done at the NBBO plus $.01, plus $.02, plus $.03, etc.; and

(9) The number of PIM orders submitted when the spread was $.05, $.10, $.15, etc. For each spread, we will specify the percentage of contracts in orders of fewer than 50 contracts submitted to the PIM that were traded by: (a) The EAM that submitted the order to the PIM; (b) ISE market makers assigned to the class; (c) Improvement Orders; and (d) unrelated orders (orders in standard increments entered during the PIM).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act [10] in general, and furthers the objectives of section 6(b)(5)[11] in particular, in that it is designed to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the ISE believes that the proposal would provide an opportunity for Public Customers to receive price improvement of their orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange did not solicit or receive written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–ISE–2003–06. The file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should be submitted by March 24, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

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$.02 improvement for the market order over the best offer price and a $.02 improvement for the Agency Order over the PIM price. The 50 contracts remaining in the Agency Order would be executed at the PIM price of $5.06, assuming that there were 50 contracts available at that price. Telephone conversation between Michael Simon, Senior Vice President and General Counsel, ISE, and Deborah Flynn, Assistant Director, Division, Commission, on February 25, 2004. All executions would be in $.01 increments, and rounding would be in favor of the Agency Order. Thus, in this example, if the best PIM price had been $5.07, the market order would have executed against the Agency Order for 50 contracts at $5.09.

[9] For example, assume (i) the NBBO is $5 to $5.10, (ii) a PIM has been initiated for an Agency Order to sell 100 contracts, and (iii) the best PIM price is $5.06 for 125 contracts. If a market order to sell 50 contracts is received, the PIM would terminate, the Agency Order would be executed at $5.06 and the market order to sell would receive 25 contracts at $5.06.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49324; File No. SR–Phlx–2004–08]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. To Amend Its Equity Option Specialist Deficit (Shortfall) Fee

February 26, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1], and Rule 19b-4 thereunder,[2] notice is hereby given that on January 30, 2004, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which Items have been prepared by the Exchange. On February 25, 2004, the Exchange filed Amendment No. 1 to the proposed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

rule change.[3] The proposed rule change, as amended, has been filed by the Phlx as establishing or changing a due, fee, or other charge, pursuant to section 19 (b)(3)(A)(ii)[4] of the Act and Rule 19b-4(f)(2)[5] thereunder, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Equity Option Specialist Deficit (Shortfall) fee ("shortfall fee") to adopt a revised tiered threshold schedule for: (1) Any newly listed top 120 option;[6] and (2) any top 120 option acquired by a new specialist unit, not affiliated with an existing Phlx options specialist unit. The text of the proposed rule change, as amended, is available at the Phlx and at the Commission.

Current Fee Structure

Currently, the Exchange charges specialist units[7] a monthly $0.35 per contract shortfall fee for trading in any top 120 option if at least 12 percent of the total national monthly contract volume ("volume threshold") is not effected on the Exchange in that month.[8] The fee is limited to $10,000 per month per option if the total monthly market share effected on the Phlx for a top 120 option is equal to or greater than 50 percent of the volume threshold in effect. The current volume threshold of 12 percent does not apply during the transition period when an option is first listed; a tiered threshold is implemented during this transition period such that the requisite volume threshold is three percent for the first full calendar month of trading and six percent for the second full calendar month of trading.[9]

Proposed Fee Structure

The Exchange now proposes to amend its tiered shortfall fee thresholds that are implemented during transition periods for any newly listed top 120 options[10] or for any top 120 option (including those equity options listed on the Exchange before February 1, 2004) acquired by a new specialist unit.[11] The thresholds will be implemented in monthly stages, similar to current threshold requirements, beginning with the first business day of the first full month following the commencement of trading a top 120 option. Listed below are the amended shortfall fee thresholds:

First full month of trading: 0% national market share
Second full month of trading: 3% national market share
Third full month of trading: 6% national market share
Fourth full month of trading: 9% national market share
Fifth full month of trading (and thereafter): 12% national market share[12]

The $10,000 limit would apply to each threshold provided that the market share effected on the Phlx for a top 120 option is equal to or greater than 50 percent of the applicable month's volume threshold.[13]

Any new specialist unit that is allocated a top 120 option may implement the tiered shortfall fee thresholds only in the first 60 calendar days of operating.[14]

The current rate of $0.35 per contract and other procedures relating to the shortfall fee remain unchanged at this time.[15] The Exchange intends to implement this shortfall fee proposal to be effective February 1, 2004.[16]

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, as amended, and discussed any comments it received on the proposed rule change, as amended. 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 create an incentive for new specialist units to enter the Phlx market place and to give existing specialist units who trade in a newly listed top 120 option a reasonable period to attract order flow to the Exchange, without imposing a potentially onerous financial burden. A revised tiered threshold should encourage specialists to continue to compete for market share in the top 120 options, while reducing the economic burden on new specialists who trade in the top 120 options and

[3] *See* letter from Cynthia Hoekstra, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated February 25, 2004 ("Amendment No. 1"). In Amendment No. 1, Phlx clarified the definition of a new specialist unit for purposes of the fee and added the definition to the fee schedule.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b-4(f)(2).

[6] The Exchange defines a top 120 option as one of the 120 most actively traded equity options in terms of the total number of contracts in that option that were traded nationally for a specified month, based on volume reflected by the Options Clearing Corporation.

[7] The Exchange uses the terms "specialist" and "specialist unit" interchangeably herein.

[8] *See* Securities Exchange Act Release No. 48459 (September 8, 2003), 68 FR 54034 (September 15, 2003) (SR–Phlx–2003–61). Specialist units may elect to pay a fixed monthly fee in lieu of Phlx specialist equity and index option transaction charges and shortfall fees.

[9] In connection with the requisite volume threshold of three percent and six percent, the $10,000 limit applies if at least 1.5 percent of the total national monthly contract volume was reached in the first full calendar month of trading and at least three percent of the total national monthly contract volume was reached in the second full calendar month of trading. *See* Securities Exchange Act Release Nos. 43201 (August 23, 2000), 65 FR 52465 (August 29, 2000) (SR–Phlx–00–71); and 48207 (July 22, 2003), 68 FR 44558 (July 29, 2003) (SR–Phlx–2003–47).

[10] Any top 120 option listed after February 1, 2004, will be considered newly listed for purposes of this proposal.

[11] A new specialist unit is one that is approved to operate as a specialist unit by the Options Allocation, Evaluation and Securities Committee on or after February 1, 2004, and is a specialist unit that is not currently affiliated with an existing options specialist unit as reported on the member organization's Form BD, which refers to direct and indirect owners, or as reported in connection with any another financial arrangement, such as is required by Exchange Rule 783. *See* Amendment No. 1.

[12] Therefore, if a new specialist unit acquires a top 120 option in mid-February, then, in March, the specialist unit will not be assessed a shortfall fee, but will be assessed a 3 percent shortfall fee in April, its second full month of trading, 6 percent in May, 9 percent in June and then 12 percent for July and future months.

[13] For example, the $10,000 limit would apply in the second calendar month of trading if at least 1.5 percent of the total national monthly contract volume is reached.

[14] Therefore, if a new specialist unit begins trading any equity option on the Phlx, it may only utilize the tiered shortfall fee thresholds if it begins trading a top 120 option during its initial 60 days of operation. For example, if a specialist unit begins trading an equity option on February 2, and begins trading a top 120 option 60 days from that date, it may utilize the tiered thresholds.

[15] For example, the total volume calculation for purposes of determining the requisite thresholds will continue to be based on the current month's volume and the three-month differentiation to determine whether an equity option is considered a top 120 option will also remain in effect, *i.e.*, December's top 120 options are based on September's volume. Any excess volume (over the total volume target) may not be carried over to a future month. *See* Securities Exchange Act Release No. 43201 (August 23, 2000), 65 FR 52465 (August 29, 2000) (SR–Phlx–00–71).

[16] A top 120 option that is not subject to this proposal (*i.e.*, listed before February 1, 2004) will continue to be subject to the threshold requirements currently in effect.

existing specialists who trade in a newly listed top 120 option.

2. Statutory Basis

The Exchange believes the proposed rule change, as amended, is consistent with the provisions of section 6(b) of the Act,[17] in general, and section 6(b)(4) of the Act,[18] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among Exchange members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change, as amended, has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[19] and Rule 19b–4(f)(2)[20] thereunder, because it changes a fee imposed by the Exchange. 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.[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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–Phlx–2004–08. This file number should be included on the subject line if e-mail is used. To help the Commission process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2004–08 and should be submitted by March 24, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–4714 Filed 3–2–04; 8:45 am]

BILLING CODE 8010–01–P

Any member who qualifies a member organization in more than one category

Order Flow Provider Permit Fee:[4]	
a. Permits used only to submit orders to the equity, foreign currency options or options trading floor (one floor only).	$200 per month
b. Permits used only to submit orders to more than one trading floor	$300 per month
Floor Broker, Specialist or ROT (on any trading floor) or Off-Floor Trader Permit Fee	
a. First permit	$1,200 per month
b. Additional permits for members in the same organization	$1,000 per month

[4] This fee applies to a permit held by a permit holder who does not have physical access to the Exchange's trading floor, is not registered as a Floor Broker, Specialist or Registered Options Trader ("ROT") (on any trading floor) or Off-Floor Trader, and whose member organization submits orders to the Exchange. *See* Phlx Rule 620(a).

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(4).

[19] 15 U.S.C. 78(s)(b)(3)(A)(ii).

[20] 17 CFR 240.19b–4(f)(2).

[21] *See* 15 U.S.C. 78s(b)(3)(C). For purposes of calculating the 60-day abrogation period, the Commission considers the period to commence on February 25, 2004, the date the Phlx filed Amendment No. 1.

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49320; File No. SR–Phlx–2004–09]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Permit Fees

February 25, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 30, 2004, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which the Exchange has prepared. 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 Phlx proposes to amend its schedule of dues, fees and charges to adopt a new category of permit holders for billing purposes to address possible situations where permit holders would not fall under one of the two existing permit fee categories.

The Exchange recently adopted the following permit fees, which are assessed based on how each permit is used:[3]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 49157 (January 30, 2004), 69 FR 5883 (February 6, 2004) (SR–Phlx–2004–02).

pays the higher of the applicable fees for such permit.[5]

In some instances, there may be permit holders in the same organization, other than the permit holder who qualifies the member organization, who either: (1) are not Floor Brokers, Specialists or ROTs (on any trading floor) or who are not Off-Floor Traders; or (2) are not associated with a member organization that meets the definition of an order flow provider. In those cases, the permit holders may be designated as "excess" permit holders. This designation would therefore create a third category of permit holders who would be assessed $200 for each "excess permit" that is not specifically designated for use in any of the two previously established categories.

The highest applicable permit fee will be assessed each month. Therefore, in the same month, if one was a floor broker and then became a clerk (and therefore, an "excess" permit holder, if one kept his or her permit) for the same member organization, such person would be charged the higher of the possible applicable fees.

The Exchange intends to implement the proposal as described herein effective February 2, 2004.

The text of the proposed rule change is below. Proposed new language is *italicized.*

* * * * *

Appendix A

Order Flow Provider Permit Fee	
a. Permits used only to submit orders to the equity, foreign currency options, or options trading floor (one floor only).	$200.00 per month
b. Permits used only to submit orders to more than one trading floor.	$300.00 per month
Floor Broker, Specialist, or ROT (on any trading floor) or Off-Floor Trader Permit Fee	
a. First Permit	$1,200.00 per month
b. Additional permits for members in the same organization.	$1,000.00 per month
Excess Permit Holders	*$200.00 per month*
Foreign Currency User Fee	$1,200.00 monthly
Application Fee	$350.00
Initiation Fee[6]	$1,500.00
Transfer Fee for FCO Participant	$500.00
Trading Post/Booth	$250.00 monthly
Trading Post with Kiosk	$375.00 monthly
Kiosk Construction Fee (when requested by specialist)	Pass-through cost
Controller Space	$250.00 monthly
Floor Facility Fees	$125.00 monthly
Shelf Space on Equity Option Trading Floor	$125.00 monthly
Direct Wire to the Floor	$20.00 monthly
Telephone System Line Extensions	$22.50 monthly/per extension
Wireless Telephone System	$100.00 monthly
Tether Initial Connectivity Fee	$1,100.00 per initial connection
Tether Monthly Service Fee	$150.00 monthly
Execution Services/Communication Charge	$200.00 monthly
Stock Execution Machine Registration Fee (Equity Floor)	$300.00
Equity, Option, or FCO Transmission Charge	$750.00 monthly
FCO Pricing Tape	$600.00 monthly
PHLX CCH Guide	$200.00 annually[7]
Option Report Service	
(New York)	$600.00 monthly
(Chicago)	$800.00 monthly
Quotron Equipment	$225.00 monthly
Instinet, Reuters Equipment	cost passed through
Examination Fee	$2,000.00 monthly[8] or pass-through of another SRO's fees

[5] For example, if a member organization with only one permit was an order flow provider and the permit holder associated with the member organization then registered as a floor broker on the Exchange for that or another member organization, that permit would be subject to a permit fee of $1,200 (the higher of $200 and $1,200, but not both fees).

Review/Process Subordinated Loans	$25.00
Registered Representative Registration: [9]	
Initial	$55.00
Renewal	$55.00 annually
Transfer	$55.00
Termination	$30.00
Trading Floor Personnel Registration Fee [10]	$25.00 monthly
Option Mailgram Service	$117.00 monthly
Off-Floor Trader Initial Registration Fee	$100.00
Off-Floor Trader Annual Fee	$350.00
Computer Equipment Services,	
Repairs or Replacements	$100.00 per service call and $75.00 per hour (Two hour minimum)
Computer Relocation Requests	$100.00 per service call and $75.00 per person, per hour (Two hour minimum)
Remote Specialist System Fee*	$250.00 per month per workstation
Remote Specialist Security Routing Fee	$250.00 per month per specialist
Remote Specialist Telecommunications Installation Fee	Pass-through cost
Remote Specialist Telecommunications Fee	
No. of Workstations*	Monthly Charge
2	$2,800.00
3	$3,600.00
4	$4,000.00
5	$4,700.00
6	$5,100.00
7	$5,875.00
8	$6,275.00
9	$7,535.00
10	$7,935.00
11	$8,335.00
12	$8,735.00
Remote Specialist Equipment Installation Fee	$500.00 per remote facility
Remote Specialist Equipment Rental Fee*	$355.00 per month for the first two workstations at a single site; $144.00 per month for each workstation in excess of two at such site

* Payment for a minimum of two remote workstations will be required for each remote location.

[6] This fee is imposed on a member upon election, on a non-member FCO participant upon the purchase of an FCO participation, and on persons or entities registering as approved lessors.

[7] PHLX Guides will be provided to new members/member organizations without charge but there will be a $200/year charge for renewals. Alternatively, members/member organizations can get access to the PHLX Guide at no cost through the internet.

[8] This fee is applicable to member/participant organizations for which the PHLX is the DEA. The following organizations are exempt: (1) inactive organizations; (2) organizations operating from the PHLX trading floor or as remote specialists which have demonstrated that at least 25% of their income as reflected on the most recently submitted FOCUS Report was derived from floor activities or remote specialist activities; (3) organizations for any month where they incur transaction or clearing fees charged directly by the Exchange or by its registered clearing subsidiary, provided that the fees exceed the examinations fee for that month; and (4) organizations affiliated with an organization exempt from this fee due to the second or third category. Affiliation includes an organization that is a wholly owned subsidiary of or controlled by or under the common control with an exempt member or participant organization. An inactive organization is one which had no securities transaction revenue, as determined by semi-annual FOCUS reports, as long as the organization continues to have no such revenue each month.

[9] For the purposes of these fees, the registered representative categories include registered options principals, general securities representatives, general securities sales supervisors and United Kingdom limited general securities registered representatives and shall not apply to "off-floor" traders, as defined in Phlx Rule 604(e).

[10] This fee is imposed on member/participant organizations for individuals who are employed by such member/participant organizations and who work on the Exchange's trading floor, such as clerks, interns, stock execution clerks and other associated persons, but who are not registered as members or participants.

* * * * *

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 had 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 purpose of the proposed rule change is to clarify the application of the permit fee schedule currently in effect to address, in advance, instances when a person who is neither a Floor Broker, Specialist, ROT (on any trading

floor) nor Off-Floor Trader is the permit holder for a member organization who is also not an order flow provider. Creating a category to cover these permit holders who do not currently fall within an existing category should help to minimize member confusion in connection with the billing of these permit holders and to ensure that each permit is subject to a permit fee.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of dues, fees and charges is consistent with section 6(b) of the Act [11] in general, and furthers the objectives of section 6(b)(4) of the Act [12] in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among Exchange members.

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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Phlx neither solicited nor received written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has been designated as a fee change pursuant to section 19(b)(3)(A)(ii) of the Act [13] and Rule 19b–4(f)(2)[14] thereunder. Accordingly, the proposal will take effect upon filing with the Commission. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–Phlx–2004–09. This file number should be included on the subject line if e-mail is used. To help the Commission process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to file number SR–Phlx–2004–09 and should be submitted by March 24, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–4718 Filed 3–2–04; 8:45 am]

BILLING CODE 8010–01–P

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4).

[13] 15 U.S.C. 78(s)(b)(3)(A)(ii).

[14] 17 CFR 240.19b–4(f)(2).

[15] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 4635]

Culturally Significant Objects Imported for Exhibition Determinations: "Byzantium: Faith and Power (1261–1557)"

AGENCY: Department of State.

ACTION: Notice; correction.

SUMMARY: On December 12, 2003, notice was published as page 69429 of the **Federal Register** (volume 68, number 239) by the Department of State pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875]. The referenced Notice is corrected to include an additional object in the exhibition "Byzantium: Faith and Power (1261–1557)," imported from abroad for temporary exhibition within the United States, which I determine is of cultural significance. The additional object is imported pursuant to loan agreement with the foreign owner. I also determine that the exhibition or display of the exhibit objects at the Metropolitan Museum of Art, New York, NY, from on or about March 15, 2004, to on or about July 4, 2004, and at possible additional venues yet to be determined, is in the national interest. Public notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the additional exhibit object, contact Julianne Simpson, Attorney-Adviser, Office of the Legal Adviser, Department of State, (telephone: 202/619–6529). The address is Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: February 26, 2004.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 04–4748 Filed 3–2–04; 8:45 am]

BILLING CODE 4710–08–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS–294]

WTO Dispute Settlement Proceeding Regarding Offsets to Calculated Dumping Margins for Instances of Non-Dumping

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative ("USTR") is providing notice that on February 5, 2004, the European Communities ("EC") requested the establishment of a dispute settlement panel under the Marrakesh Agreement Establishing the World Trade Organization ("WTO Agreement") regarding offsets to calculated dumping margins for instances of non-dumping. On February 16, 2004, the EC submitted to the WTO another request for the establishment of a dispute settlement panel, which the EC described as a "corrected version" of its request of February 5. The EC asserts that various U.S. laws, regulations, administrative procedures, measures and

methodologies are inconsistent with Articles 1, 2, 3, 5, 9, 11, and 18 of the Agreement on Implementation of Article VI of the General Agreements on Tariffs and Trade 1994 ("AD Agreement"), Articles VI:1 and VI:2 of the General Agreement on Tariffs and Trade 1994 ("GATT 1994"), and Article XVI:4 of the WTO Agreement. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before April 16, 2004, to be assured of timely consideration by USTR.

ADDRESSES: Comments should be submitted (i) electronically, to *FR0080@ustr.gov*, with "Dumping Margin Offset" in the subject line, or (ii) by fax to Sandy McKinzy at (202) 395–3640, with a confirmation copy sent electronically to the address above, in accordance with the requirements for submission set out below.

FOR FURTHER INFORMATION CONTACT: William D. Hunter, Associate General Counsel, Office of the United States Trade Representative (202) 395–3582.

SUPPLEMENTARY INFORMATION: Section 127(b) of the Uruguay Round Agreements Act ("URAA") (19 U.S.C. 3537(b)(1)) requires that notice and opportunity for comment be provided after the United States submits or receives a request for the establishment of a WTO dispute settlement panel. Consistent with this obligation, USTR is providing notice that the EC has requested the establishment of a dispute settlement panel pursuant to the WTO Dispute Settlement Understanding ("DSU"). The panel, which will hold its meetings in Geneva, Switzerland, is expected to issue a report on its findings and recommendations within six to nine months after it is established.

Major Issues Raised by the EC

With respect to the alleged measures at issue, the EC's request for the establishment of a panel refers to the following: [1]

- The Tariff Act of 1930, as amended, including the Statement of Administrative Action, in particular Title VII and sections 731, 751, 771(35)(A), 771(35)(B), and 777(A)(d) [sic];
- The implementing regulation of the U.S. Department of Commerce ("DOC"), 19 CFR Part 351, in particular section 351.414(c)(2);
- The methodology of the DOC for determining the dumping margin in investigations on the basis of the comparison of a weighted average normal value with a weighted average export price;
- The methodology of the DOC for determining the dumping margin in reviews on the basis of a comparison of a weighted average normal value with an individual export price;
- The Import Administration Antidumping Manual (1997 edition), including the computer program(s) to which it refers;
- The determinations of dumping by the DOC, the determinations of injury by the U.S. International Trade Commission ("ITC"), and the imposition of definitive duties in the following investigations: [2]
- Certain hot-rolled carbon steel from the Netherlands, DOC Case No. A–421–807, ITC Case No. A–903;
- Stainless steel bar from France DOC Case No. A–427–820, ITC Case No. A–913;
- Stainless steel bar from Germany, DOC Case No. A–428–830, ITC Case No. A–914;
- Stainless steel bar from Italy, DOC Case No. A–475–829, ITC Case No. A–915;
- Stainless steel bar from the United Kingdom, DOC Case No. A–412–822, ITC Case No. A–918;
- Stainless steel wire rod from Sweden, DOC Case No. A–401–86, ITC Case No. A–774;
- Stainless steel wire rod from Spain, DOC Case No. A–469–807, ITC Case No. A–773;
- Stainless steel wire rod from Italy, DOC Case No. A–475–820, ITC Case No. A–770;
- Certain stainless steel plate in coils from Belgium, DOC Case No. A–423–808, ITC Case No. A–788;
- Stainless steel sheet and strip in coils from France, DOC Case No. A–427–814, ITC Case No. A–797;
- Stainless steel sheet and strip in coils from Italy, DOC Case No. A–475–824, ITC Case No. A–799;
- Stainless steel sheet and strip in coils from the United Kingdom, DOC Case No. A–412–818, ITC Case No. A–804;
- Certain cut-to-length carbon-quality steel plate from France, DOC Case No. A–427–816, ITC Case No. A–816;
- Certain cut-to-length carbon-quality steel plate from Italy, DOC Case No. A–475–826, ITC Case No. A–819;
- Certain pasta from Italy, DOC Case No. A–475–818, ITC Case No. A–734; and
- The final results of the administrative reviews by the DOC in the following proceedings.[3]
- Industrial nitrocellulos from France, DOC Case No. A–427–009, 66 FR 54213 (Oct. 26, 2001);
- Industrial nitrocellulos from the United Kingdom, DOC Case No. A–412–803, 67 FR 77747 (Dec. 19, 2002);
- Stainless steel plate in coils from Belgium, DOC Case No. A–423–808, 67 FR 64352 (Oct. 18, 2002);
- Certain pasta from Italy, DOC Case No. A–475–818, 66 FR 300 (Jan. 3, 2002), amended 67 FR 5088 (Feb. 4, 2002);
- Certain pasta from Italy, DOC Case No. A–475–818, 68 FR 6882 (Feb. 11, 2003);
- Stainless steel sheet and strip in coils from Italy, DOC Case No. A–475–824, 67 FR 1715 (Jan. 14, 2002);
- Stainless steel sheet and strip in coils from Italy, DOC Case No. A–475–824, 68 FR 6719 (Feb. 10, 2003);
- Granular polytetrafluoenthylene [*sic*] from Italy, DOC Case No. A–475–703, 67 FR 1960 (Jan. 15, 2002);
- Granular polytetrafluoenthylene [*sic*] from Italy, DOC Case No. A–475–703, 68 FR 1960 (Jan. 15, 2003);
- Stainless steel sheet and strip in coils from France, DOC Case No. A–427–814, 67 FR 6493 (Feb. 12, 2002), amended 67 FR 12522 (March 19, 2002);
- Stainless steel sheet and strip in coils from France, DOC Case No. A–427–814, 67 FR 78773 (Dec. 26, 2002), amended 68 FR 4171 (Jan. 19, 2003);
- Stainless steel sheet and strip in coils from Germany, DOC Case No. A–428–825, 67 FR 7668 (Feb. 20, 2002), amended 67 FR 15178 (March 29, 2002);
- Stainless steel sheet and strip in coils from Germany, DOC Case No. A–428–825, 68 FR 6716 (Feb. 10, 2003);
- Ball bearings from France, DOC Case No. A–427–801, 67 FR 55780 (Aug. 30, 2002);
- Ball bearings from Italy, DOC Case No. A–425–801, 67 FR 55780 (Aug. 30, 2002);
- Ball bearings from the United Kingdom, DOC Case No. A–412–801 (Aug. 30, 2002).

In its request for the establishment of a panel, the EC alleges that the United

[1] For purposes of this notice, the description of the measures and claims raised by the EC is based on the so-called "corrected version" of the EC's panel request, which is available on the WTO website's document distribution facility as document "WT/DS294/7/Rev1."

[2] For the precise EC description of these determinations and notices, including the dates of publication in the **Federal Register**, see Annex I of the EC's request for the establishment of a panel. WT/DS294/7/Rev1. In this regard, the EC's reference to "ITC Case No. A–" is incorrect. The proper citation is "ITC Inv. No. 731–TA–." Thus, for example, the reference to "ITC Case No. A–903" should be "ITC Inv. No. 731–TA–903."

[3] For the precise EC description of these final results, see Annex II of the EC's request for the establishment of a panel. WT/DS294/7/Revl.

States has acted inconsistently with Articles 1, 2.1, 2.4, 2.4.2, 3 (including Articles 3.1, 3.2 and 3.5, 5.8, 9.1, 9.3, 9.5, 11 (including Articles 11.2 and 11.3) and 18.4 of the AD Agreement, Articles VI:1 and VI:2 of the GATT 1994, and Article XVI:4 of the WTO Agreement.

With respect to the claims of WTO-inconsistency, the EC request for the establishment of a panel refers to the following:

- In new investigations,
- With respect to both the EC's "as such" and "as applied" claims, the comparison of export prices and normal values on a weighted average to weighted average basis, without any offset for instances of non-dumping, results in the calculation of a dumping margin and amount of dumping in excess of the actual dumping practiced by the companies concerned;
- With respect to the EC's "as applied" claims, the comparison described in the preceding paragraph results in the erroneous inclusion of imports from certain companies as "dumped imports" for purposes of determining injury and causation;
- In reviews, with respect to both the EC's "as such" and "as applied" claims, the comparison of export prices and normal values on a weighted average to transaction basis, without any offset for instances of non-dumping, results in the calculation of a dumping margin and the collection of an amount of antidumping duties in excess of the actual dumping practiced by the companies concerned.

Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in this dispute. Persons submitting comments may either send one copy by fax to Sandy McKinzy at (202) 395–3640, or transmit a copy electronically to *FR0080@ustr.gov*, with "Dumping Margin Offset (DS294)" in the subject line. For documents sent by fax, USTR requests that the submitter provide a confirmation copy electronically. USTR encourages the submission of documents in Adobe PDF format, as attachments to an electronic mail. Interested persons who make submissions by electronic mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly marked "BUSINESS CONFIDENTIAL" at the top and bottom of the cover page and each succeeding page of the submission.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitting person believes that information or advice may quality as such, the submitting person—

(1) Must so designate the information or advice;

(2) Must clearly mark the material as "SUBMITTED IN CONFIDENCE" at the top and bottom of the cover page and each succeeding page of the submission; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room, which is located at 1724 F Street, NW., Washington, DC 20508. The public file will include non-confidential comments received by USTR from the public with respect to the dispute; if a dispute settlement panel is convened, the U.S. submissions to that panel, the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the panel; and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket No. WT/DS–294, Dumping Margin Offset (DS294)) may be made by calling the USTR Reading Room at (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

Daniel E. Brinza,

Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 04–4657 Filed 3–2–04; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket Number NHTSA–2004–17170]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before May 3, 2004.

ADDRESSES: Comments must refer to the docket notice numbers cited at the beginning of this notice and be submitted to Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Please identify the proposed collection of information for which a comment is provided, by referencing its OMB clearance Number. It is requested, but not required, that 2 copies of the comment be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Complete copies of each request for collection of information may be obtained at no charge from Mr. Samuel Daniel, Jr., NHTSA 400 Seventh Street, SW., Room 5313, NVS–122, Washington, DC 20590. Telephone number is (202) 366–4921, fax number is (202) 366–4329. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations

describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) 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;

(ii) 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;

(iii) How to enhance the quality, utility, and clarity of the information to be collected;

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collections of information:

Title: 49 CFR 571.116, Motor Vehicle Brake Fluids.

OMB Number: 2127—0521.

Type of Request: Extension of a currently approved collection.

Abstract: Federal Motor Vehicle Safety Standard No. 116, "Motor Vehicle Brake Fluid," specifies performance and design requirements for motor vehicle brake fluids and hydraulic system mineral oils. Section 5.2.2 specifies labeling requirements for manufacturers and packagers of brake fluids as well as packagers of hydraulic system mineral oils. The information on the label of a container of motor vehicle brake fluid or hydraulic system mineral oil is necessary to insure: the contents of the container are clearly stated; these fluids are used for their intended purpose only; and the containers are properly disposed of when empty. Improper use or storage of these fluids could have dire safety consequences for the operators of vehicles or equipment in which they are used.

Affected Public: Business or other for profit organizations.

Estimated Total Annual Burden: 7000 hours.

Estimated Number of Respondents: 200.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued on: February 27, 2004.

Claude H. Harris,

Director, Office of Crash Avoidance Standards.

[FR Doc. 04–4770 Filed 3–2–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket Number NHTSA–2004–17067]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for public comment on an extension of a currently approved collection.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatements of previously approved collections.

This document describes one collection of information for which NHTSA intends to seek OMB approval.

EFFECTIVE DATE: Comments must be received on or before May 3, 2004.

ADDRESSES: Comments must refer to the docket notice number cited at the beginning of this notice and be submitted to U.S. Department of Transportation Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Please identify the proposed collection of information for which a comment is provided, by referencing its OMB Control Number. It is requested, but not required, that 2 copies of the comments be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Complete copies of each request for collection of information may be obtained at no charge from Ms. Henrietta L. Spinner, NHTSA, 400 Seventh Street, SW., Room 5320, NVS–132, Washington, DC 20590. Ms. Spinner's telephone number is (202) 366–0846. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8 (d)), an agency must ask for public comment on the following:

(i) 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;

(ii) 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;

(iii) How to enhance the quality, utility, and clarity of the information to be collected; and

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks public comments on the following proposed collection of information:

Title: 49 CFR 537—Automotive Fuel Economy Reports.

OMB Control Number: 2127–0019.

Affected Public: Business or other for-profit.

Form Number: This collection of information uses no standard form.

Abstract: Section 32907 of Chapter 329 of Title 49 of the United States Code requires each automobile manufacturer (other than those low volume manufacturers which were granted an alternative fuel economy standard under section 32902 (d)) to submit semi-annual reports to the agency relating to that manufacturer's efforts to comply with average fuel economy standards. One report is due during the 30-day period preceding the beginning of each model year (the "pre-model year report") and the other is due during the

30-day period beginning on the 180th day of the model year (the "mid-model year report").

Section 32907 (a)(1) of Chapter 329 provides that each report must contain a statement as to whether the manufacturer will comply with average fuel economy standards for that year, a plan describing the steps the manufacturer took or will take to comply with the standards, and any other information the agency may require. Whenever a manufacturer determines that a plan it has submitted in one of its reports is no longer adequate to assure compliance, it must submit a revised plan.

Estimated Annual Burden: 3,300 hours.

Number of Respondents: 17.*

*Note: NHTSA anticipates a total of 40 responses may be filed by the 17 respondents, which most respondents will respond semiannually; however, a few respondents may respond thrice with amendments.

Issued on: February 27, 2004.

Claude H. Harris,

Director, Office of Crash Avoidance Standards.

[FR Doc. 04–4771 Filed 3–2–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34443]

Timber Rock Railroad, Inc.—Lease Exemption—The Burlington Northern and Santa Fe Railway Company

Timber Rock Railroad, Inc. (TRRR), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to lease from The Burlington Northern and Santa Fe Railway Company (BNSF) 29.2 miles of rail line located between milepost 51.0 near Kirbyville, TX, and milepost 21.8, near Silsbee, TX. TRRR will also acquire 0.8 miles of incidental overhead trackage rights over BNSF's rail line between milepost 21.8 and milepost 21.0 near Silsbee, for the purpose of interchanging traffic with BNSF. TRRR will be the operator of the property.[1]

TRRR certifies that its projected revenues as a result of this transaction will not result in its becoming a Class II or Class I rail carrier, and further certifies that its projected annual revenues will not exceed $5 million.

[1] BNSF will retain the right to operate certain overhead trains over the line being leased to TRRR.

The transaction was scheduled to be consummated on or shortly after February 16, 2004.

If the 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 does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34443, 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, Ball Janik LLP, Suite 225,,1455 F Street, NW., Washington, DC 20005.

Board decisions and notices are available on our Web site at "*www.stb.dot.gov*".

Decided: February 25, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–4591 Filed 3–2–04; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8833

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8833, Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b).

DATES: Written comments should be received on or before May 3, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *Carol.A.Savage@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b).

OMB Number: 1545–1354.

Form Number: Form 8833.

Abstract: Taxpayers who are required by Internal Revenue Code section 6114 to disclose a treaty-based return position use Form 8833 to disclose that position. The form may also be used to make the treaty-based return position disclosure required by regulation § 301.770(b)–7(b) for "dual resident" taxpayers.

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 and individuals or households.

Estimated Number of Respondents: 6,000.

Estimated Time Per Respondent: 6 Hours, 25 minutes.

Estimated Total Annual Burden Hours: 38,460.

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: February 26, 2004.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–4739 Filed 3–2–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[CO–24–95 and CO–11–91]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning existing final regulations, CO–24–95 (TD 8660), Consolidated Groups—Intercompany Transactions and Related Rules, and CO–11–91 (TD 8597), Consolidated Groups and Controlled Groups—Intercompany Transactions and Related Rules (§ 1.1502–13).

DATES: Written comments should be received on or before May 3, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: CO–24–95, Consolidated Groups—Intercompany Transactions and Related Rules, and CO–11–91, Consolidated Groups and Controlled Groups—Intercompany Transactions and Related Rules.

OMB Number: 1545–1433.

Regulation Project Numbers: CO–11–91 and CO–24–95.

Abstract: The regulations require common parents that make elections under regulation section 1.1502–13 to provide certain information. The information will be used to identify and assure that the amount, location, timing and attributes of intercompany transactions and corresponding items are properly maintained.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of OMB approval.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 2,200.

Estimated Time Per Respondent: 29 minutes.

Estimated Total Annual Burden Hours: 1,050.

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: February 26, 2004.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–4740 Filed 3–2–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[INTL–870–89]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking, INTL–870–89, Earnings Stripping (Section 163(j)).

DATES: Written comments should be received on or before May 3, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Earnings Stripping (Section 163(j)).

OMB Number: 1545–1255.

Regulation Project Number: INTL–870–89.

Abstract: Internal Revenue Code section 163(j) concerns the limitation on the deduction for certain interest paid by a corporation to a related person. This provision generally does not apply to an interest expense arising in a taxable year in which the payer corporation's debt-equity ratio is 1.5 to 1 or less. Regulation section § 1.163(j)-5(d) provides a special rule for adjusting the basis of assets acquired in a qualified stock purchase. This rule allows the taxpayer, in computing its debt-equity ratio, to elect to write off the basis of the stock of the acquired corporation over a fixed stock write-off period, instead of using the adjusted

basis of the assets of the acquired corporation.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 2,300.

Estimated Time Per Respondent: 31 minutes.

Estimated Total Annual Burden Hours: 1,196.

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: February 26, 2004.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–4741 Filed 3–2–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–106917–99]

Proposed Collection; Comment Request For Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–106917–99 (TD 8996), Changes in Accounting Periods (§§ 1.441–2, 1.442–1, and 1.1378–1).

DATES: Written comments should be received on or before May 3, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Changes in Accounting Periods.

OMB Number: 1545–1748.

Regulation Project Number: REG–106917–99.

Abstract: Section 1.441–2(b)(1) requires certain taxpayers to file statements on their federal income tax returns to notify the Commissioner of the taxpayers' election to adopt a 52–53-week taxable year. Section 1.442–1(b)(4) provides that certain taxpayers must establish books and records that clearly reflect income for the short period involved when changing their taxable year to a fiscal taxable year. Section 1.442–1(d) requires a newly married husband or wife to file a statement with their short period return when changing to the other spouse's taxable year.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and individual.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 500.

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: February 26, 2004.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–4742 Filed 3–2–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8821

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent

burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8821, Tax Information Authorization.

DATES: Written comments should be received on or before May 3, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Tax Information Authorization.

OMB Number: 1545–1165.

Form Number: 8821.

Abstract: Form 8821 is used to appoint someone to receive or inspect certain tax information. The information on the form is used to identify appointees and to ensure that confidential tax information is not divulged to unauthorized persons.

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: Individuals or households, business or other for-profit organizations, not for profit institutions, and farms.

Estimated Number of Respondents: 210,450.

Estimated Time Per Respondent: 1 hour, 3 minutes.

Estimated Total Annual Burden Hours: 210,450.

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: February 26, 2004.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–4743 Filed 3–2–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[INTL–955–86]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, INTL–955–86 (TD 8350), Requirements For Investments to Qualify Under Section 936(d)(4) As Investments in Qualified Carribean Basin Countries (§ 1.936–10(c)).

DATES: Written comments should be received on or before May 3, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *Carol.A.Savage@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Requirements For Investments to Qualify Under Section 936(d)(4) As Investments in Qualified Carribean Basin Countries.

OMB Number: 1545–1138.

Regulation Project Number: INTL–955–86.

Abstract: This regulation relates to the requirements that must be met for an investment to qualify under Internal Revenue code section 936(d)(4) as an investment in qualified Caribbean Basin countries. Income that is qualified possession source investment income is entitled to a quasi-tax exemption by reason of the U.S. possessions tax credit under Code section 936(a) and substantial tax exemptions in Puerto Rico. Code section 936(d)(4)(C) places certification requirements on the recipient of the investment and the qualified financial institution; and recordkeeping requirements on the financial institution and the recipient of the investment funds to enable the IRS to verify that the investment funds are being used properly and in accordance with the Caribbean Basin Economic Recovery Act.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Recordkeepers: 50.

Estimated Time Per Recordkeeper: 30 hours.

Estimated Total Annual Recordkeeping Hours: 1,500.

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: February 26, 2004.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–4759 Filed 3–2–04; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register
Vol. 69, No. 42
Wednesday, March 3, 2004

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–61–001]

El Paso Natural Gas Company; Notice of Compliance Filing

February 18, 2004.

Correction

In notice document E4–359 beginning on page 8395 in the issue of Tuesday, February 24, 2004, make the following correction:

On page 8395, in the third column, the docket number should read as set forth above.

[FR Doc. E4–359 Filed 3–2–04; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Correction

In notice document 04–3507 appearing on page 7768 in the issue of Thursday, February 19, 2004, make the following correction:

On page 7768, in the third column, the 23rd line should read, "*Date:* March 15-16, 2004."

[FR Doc. C4–3507 Filed 3–2–04; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–16984; Airspace Docket No. 04–ACE–2]

Modification of Class E Airspace; Clinton, MO

Correction

In rule document 04–4186 beginning on page 8556 in the issue of Wednesday, February 25, 2004, make the following correction:

On page 8556, in the third column, under **DATES**, in the fourth line, "March 20, 2004" should read, "March 30, 2004."

[FR Doc. C4–4186 Filed 3–2–04; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Wednesday,
March 3, 2004

Part II

Department of Housing and Urban Development

24 CFR Part 200

Changes in Maximum Mortgage Limits for Multifamily Housing; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 200

[Docket No. FR–4913–F–01]

RIN 2502–AI19

Changes in Maximum Mortgage Limits for Multifamily Housing

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule conforms HUD's regulations to a recent statutory increase in the amount by which HUD may increase the dollar amount limitations on insured mortgages for multifamily housing.

DATES: *Effective Date:* April 2, 2004.

FOR FURTHER INFORMATION CONTACT: Roger Kramer, Office of Housing, Technical Support Division, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone (202) 708–2866. This is not a toll-free number. Persons with hearing or speech impairments may access these numbers toll-free through TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Background

Title II of the National Housing Act (12 U.S.C. 1707 *et seq.*) authorizes the Secretary to make exceptions to the maximum mortgage amounts in certain Federal Housing Administration (FHA) multifamily mortgage insurance programs. Until recently, Title II provided for exceptions in amounts of up to a 110 percent increase on a geographical basis and up to a 140 percent increase on a project-by-project basis. For example, section 207(c)(3) of the National Housing Act, after listing the maximum mortgage limits for the program, stated that:

> [T]he Secretary may, by regulation, increase any of the foregoing dollar amount limitations contained in this paragraph by not to exceed 110 percent in any geographical area where the Secretary finds that cost levels so require and not to exceed 140 percent where the Secretary determines it necessary on a project-by-project basis. * * *

(12 U.S.C. 1713(c)(3)). Similar language provided the same exceptions to maximum mortgage limits in other FHA multifamily insurance programs. (*See* 12 U.S.C. 1715e(b)(2)(B)(i), 1715k(d)(3)(B)(iii)(II), 1715l(d)(3)(ii)(II), 1715l(d)(4)(ii)(II), 1715v(c)(2)(B), and 1715y(e)(3)(B).)

Section 200.15 of HUD's regulations (24 CFR 200.15) provides that the FHA Commissioner, acting under authority delegated by the Secretary, may increase the dollar amount limitations specified in law for insured mortgages "(a) By not to exceed 110 percent in any geographic area in which the Commissioner finds that cost levels so require; and (b) By not to exceed 140 percent where the Commissioner determines it necessary on a project-by-project basis."

Section 302(b) of the FHA Multifamily Loan Limit Adjustment Act of 2003 (Pub. L. 108–186, approved December 16, 2003) (the Act) revises the statutory exceptions to maximum mortgage amounts for the FHA multifamily housing programs listed in that section. Section 302(b) substitutes 140 percent for the 110 percent exception for any geographical area, and substitutes 170 percent for 140 percent as the maximum exception allowed for a specific project. The statutory revision now allows the Secretary to grant exceptions to maximum mortgage limits for certain multifamily housing programs (1) up to 140 percent in geographical areas where cost levels so require, and (2) up to 170 percent where necessary on a project-by-project basis.

This Final Rule

This final rule conforms HUD's regulation at 24 CFR 200.15 to the recent statutory changes made by section 302(b) of the Act. Because HUD is simply adopting the new statutory limits without change in order to conform its regulation to current law and is not exercising any regulatory discretion, public comment is unnecessary.

Findings and Certifications

Justification for Direct Final Rulemaking

In general, the Department publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking, 24 CFR part 10. However, part 10 does provide for exceptions from that general rule where the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is "impracticable, unnecessary, or contrary to the public interest" (24 CFR 10.1). In this case, public comment is unnecessary because HUD is only conforming its current rule to statutory change. HUD is not exercising its administrative discretion in this matter. Therefore, there would be no purpose served by accepting public comments on this rule.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this rule, and in so doing certified that this rule will not have a significant economic impact on a substantial number of small entities. This rule imposes no new obligation of any kind, but only raises the maximum mortgage limits for insured mortgages in HUD multifamily programs by percentage amounts.

Environmental Impact

This final rule is a statutorily required or discretionary establishment and review of loan limits, which does not constitute a development decision that affects the physical condition of specific project areas and building sites. Accordingly, under 24 CFR 50.19(c)(6), this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts state law, unless the relevant requirements of section 6 of the Executive Order are met. This final rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This final rule does not impose any federal mandates on any state, local, or tribal government, or on the private sector, within the meaning of UMRA.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers applicable to this rule are 14.112, 14.126, 14.127, 14.134, 14.135, 14.138, 14.139, and 14.155.

List of Subjects in Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Home

improvement, Housing standards, Lead poisoning, Loan programs—housing and community development, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

■ For the reasons stated in the preamble, HUD amends 24 CFR 200.15 as follows:

PART 200—INTRODUCTION TO FHA PROGRAMS

■ 1. The authority citation for part 200 continues to read as follows:

Authority: 12 U.S.C. 1702–1715z–21; 42 U.S.C. 3535d.

■ 2. Revise § 200.15 to read as follows:

§ 200.15 Maximum mortgage.

Mortgages must not exceed either the statutory dollar amount or loan ratio limitations established by the section of the Act under which the mortgage is insured, except that the Commissioner may increase the dollar amount limitations:

(a) By not to exceed 140 percent, in any geographical area in which the Commissioner finds that cost levels so require; and

(b) By not to exceed 140 percent, or 170 percent in high-cost areas, where the Commissioner determines it necessary on a project-by-project basis.

Dated: February 24, 2004.

John C. Weicher,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 04–4649 Filed 3–2–04; 8:45 am]

BILLING CODE 4210–27–P

Federal Register

Wednesday,
March 3, 2004

Part III

Department of Education

Migrant Education Program (MEP) Consortium Incentive Grant Program; Notices

DEPARTMENT OF EDUCATION

RIN 1810–ZA08

Migrant Education Program Consortium Incentive Grant Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice of final requirements.

SUMMARY: The Assistant Secretary for Elementary and Secondary Education announces final requirements under the Migrant Education Program Consortium Incentive Grant Program. The Assistant Secretary establishes these requirements for competitions in fiscal year (FY) 2004 and later years. The Department intends that these requirements will promote the participation of State educational agencies in high-quality consortia.

EFFECTIVE DATE: These requirements are effective April 2, 2004.

FOR FURTHER INFORMATION CONTACT: Elsa Chagolla, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E257, FOB–6, Washington, DC 20202–6135. Telephone: (202) 260–2823, or via Internet: *elsa.chagolla@ed.gov.*

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 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:

Background

The Migrant Education Program (MEP), authorized by Title I, Part C of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001, is a State-operated and State-administered formula grant program. The MEP provides assistance to State educational agencies (SEAs) to support high-quality and comprehensive educational programs that provide migratory children appropriate educational and supportive services to address their special needs in a coordinated and efficient manner, and to give migratory children the opportunity to meet the same challenging State academic content and student academic achievement standards that all children are expected to meet.

Section 1308(d) of the ESEA authorizes the Secretary to "reserve not more than $3,000,000 to award grants of not more than $250,000 on a competitive basis to State educational agencies that propose a consortium arrangement with another State or other appropriate entity that the Secretary determines, pursuant to criteria that the Secretary shall establish, will improve the delivery of services to migratory children whose education is interrupted." Through this program, the Department provides financial incentives to SEAs to participate in high-quality consortia that improve the interstate or intrastate coordination of migrant education programs by addressing key needs of migratory children who have their education interrupted.

We published a notice of proposed requirements for this program in the **Federal Register** on Friday, July 11, 2003 (68 FR 41323) that discussed, and invited public comment on, proposed procedures to award consortium incentive grants in FY 2003 and subsequent years.

Analysis of Comments and Changes

In response to our invitation in the notice of proposed requirements, four parties submitted a total of eight comments on the proposed requirements. An analysis of the comments and of any changes in the requirements since the publication of the notice of proposed requirements is provided in an appendix at the end of this notice of final requirements.

This notice of final requirements contains six significant changes from the notice of proposed requirements. Specifically:

(1) The *Application Requirements* have been revised to require that, to be funded, an applicant must explain how the proposed consortium will improve interstate or intrastate coordination of migrant education programs.

(2) The definition of "other appropriate entity" has been revised to include specific examples of public or private entities with which an SEA may establish a consortium.

(3) The discussion regarding grantees' submission of a first-year performance report and a second-year final evaluation report has been revised to clarify that, in these reports, grantees must address their completion of activities and attainment of objectives described in the approved consortium application, rather than describe the uses of their incentive grant funds.

(4) The discussion regarding the applicability of parts 76 and 80 of the Education Department General Administrative Regulations (EDGAR) has been revised to clarify that, while an SEA that receives incentive grant funds does not need to submit performance reports on its use of the incentive grant funds as otherwise required under § 76.720 and § 80.40(b), it must submit the financial reports regarding use of incentive grant funds required by § 76.720 and § 80.41 of EDGAR.

(5) The discussion regarding *Use of Consortium Incentive Grant Funds* has been revised to make the supplement-not-supplant provision of sections 1120A(b) and 1304(c)(2) of the ESEA apply to the use of the incentive grant funds.

(6) The discussion regarding *Amount and Duration of Incentive Grants* has been revised to explain more clearly the funding formula that the Department will use to calculate the amounts of the incentive grant awards.

With these changes, and for the reasons discussed in the notice of proposed requirements (68 FR 41323) and in the *Analysis of Comments and Changes* contained in the appendix to this notice, the Department establishes the following final definitions, requirements, criteria, and procedures to award and use consortium incentive grants in FY 2004 and subsequent years.

Definition for Eligibility To Participate in Consortium Incentive Grants

Section 1308(d) permits an SEA to enter into a consortium with another State or other appropriate entity. The Department defines the term "other appropriate entity" to mean any public or private agency or organization, such as a school district, a charter school, a nonprofit or for-profit organization, or an institution of higher education. However, under section 1308(d), only SEAs are eligible applicants to receive consortium incentive grants.

Application Requirements

An application for an incentive grant must be submitted by an SEA that will act as the "lead SEA" for the proposed consortium. To be eligible for award, this application must include—

1. The identity of the lead SEA for the consortium, and of each other SEA or entity participating in the consortium;

2. The goals and measurable outcomes of the consortium, and the activities that each participating SEA or entity in the consortium will conduct during each project year to improve the delivery of services to migratory children whose education is interrupted;

3. A concise and cogent explanation of the need for and value of the proposed consortium to each participating SEA, and of how the proposed consortium will improve interstate or intrastate coordination of migrant education programs;

4. A description of the process each participating SEA will use for evaluating its progress in achieving the measurable outcomes of the consortium; and

5. A signed statement from the Chief State School Officer (or his or her authorized representative) of each SEA that is participating in the proposed consortium of his or her SEA's commitment to implement its activities as described in the application.

Absolute Priorities

For competitions in FY 2004 and later years, the Department establishes the following seven absolute priorities that promote key national objectives of the MEP. In order for SEAs to be considered for incentive grants, a proposed consortium in which an SEA would participate must address one or more of the following absolute priorities:

1. Services designed to improve the proper and timely identification and recruitment of eligible migratory children whose education is interrupted;

2. Services designed (based on a review of scientifically based research) to improve the school readiness of pre-school-aged migratory children whose education is interrupted;

3. Services designed (based on a review of scientifically based research) to improve the reading proficiency of migratory children whose education is interrupted;

4. Services designed (based on a review of scientifically based research) to improve the mathematics proficiency of migratory children whose education is interrupted;

5. Services designed (based on a review of scientifically based research) to decrease the dropout rate of migratory students whose education is interrupted and improve their high school completion rate;

6. Services designed (based on a review of scientifically based research) to strengthen the involvement of migratory parents in the education of migratory students whose education is interrupted; and

7. Services designed (based on a review of scientifically based research) to expand access to innovative educational technologies intended to increase the academic achievement of migratory students whose education is interrupted.

Amount and Duration of Incentive Grants

An SEA that participates in a high-quality consortium, as the Department will select by use of the program's selection criteria, shall receive only one incentive grant award regardless of the number of high-quality consortia in which it participates.

In determining the amount of incentive grant awards, the Department will not use a cost analysis as described in § 75.232 of EDGAR. Rather, the Department will determine the amounts of the incentive grant awards on the basis of the following two-tiered funding formula:

The first tier consists of those SEAs participating in high-quality consortia whose MEP Basic State Formula grant allocations are $1 million or more. Each of these SEAs will, subject to the following exceptions, receive an incentive grant award of the same base amount.

The second tier consists of those SEAs participating in high-quality consortia whose MEP Basic State Formula grant allocations are $1 million or less. Each of these SEAs will, subject to the following exceptions, receive an incentive grant award that is twice the base amount.

Within each tier, awards will be of equal size, except that the amount of any SEA's incentive grant award in either tier may not exceed $250,000 (which is the statutory maximum) or the amount of its MEP Basic State Formula grant, whichever is less.

The base amount will be calculated by dividing the total amount reserved for incentive grants by the sum of the total number of SEAs participating in high-quality consortia whose MEP Basic State Formula grant allocations are greater than $1 million and two times the total number of SEAs participating in high-quality consortia whose MEP Basic State Formula grant allocations are $1 million or less.

It must be noted that, because an SEA cannot receive an incentive award that exceeds its MEP Basic State Formula grant allocation or $250,000, whichever is less, it is possible that some SEAs with MEP Basic State Formula allocations of $1 million or less will not receive an incentive grant amount that is actually twice the amount of the awards provided to SEAs whose MEP Basic State Formula allocations are greater than $1 million.

For FY 2004, the Department plans to reserve $2.5 million for consortium incentive awards. The amount reserved for awards in future years will vary and will be announced prior to any future competition. With a $2.5 million reservation of funds, the range of annual awards to SEAs participating in consortia will be between $35,738 (if all 52 SEAs receive grants under this competition) to $250,000 (the statutory maximum). Assuming the number of SEAs that receive consortium incentive grants for FY 2004 is the same as the number of SEAs that received them in FY 2002 (39), the size of an annual award will be $45,997 for SEAs whose MEP allocations are greater than $1 million, and $91,995 for SEAs whose MEP allocations are $1 million or less (and greater than $91,995). The actual size of an SEA's award will depend on the number of SEAs that participate in high-quality consortia and the size of those SEAs' MEP formula grant allocations.

Consortium incentive grants will be awarded for up to two years. (The Department will not conduct a new incentive grant competition in FY 2005; rather, it will make second-year funding available to those SEAs that receive a FY 2004 incentive award.)

In this regard, pursuant to § 75.118 and § 75.590 of EDGAR, each SEA that receives a consortium incentive grant award must submit a performance report (through the consortium's lead State) toward the end of the first project year, and a final evaluation report at the end of the second year. These reports must address the SEA's completion of activities and attainment of objectives of the approved consortium, rather than the activities supported with incentive grant funds. Eligibility of each SEA for second-year awards will depend on the information provided in the first-year performance report regarding the SEA's substantial completion of first-year consortium activities and attainment of the outcomes identified in the approved consortium application.

Selection Criteria

The Department has established selection criteria from the general criteria for competitive grants contained in § 75.210 of EDGAR to evaluate applications for the incentive grants competition. The selection criteria may be found in the application package for the FY 2004 competition. The Department will review and rank applications on the basis of how well the information provided responds to these selection criteria. However, to be funded, an application must also address one or more of the absolute priorities, and the elements described in the *Application Requirements* section of this notice.

Use of Consortium Incentive Grant Funds

An SEA may use incentive grant funds to implement the consortium or to carry out any other activities authorized under the MEP. Because the incentive grants may be used for any activities authorized under the MEP, the

supplement-not-supplant provision of section 1120A(b) and section 1304(c)(2) of the ESEA applies to the use of the incentive grant funds. Moreover, because the MEP is a formula grant program, the use and reporting of the incentive grant funds are governed by the provisions of parts 76 and 80 of EDGAR, which concern State-administered formula grant programs, rather than the provisions of part 75 of EDGAR, which concern discretionary grant programs. In this regard, an SEA receiving an incentive grant must submit the financial reports required under § 76.720 (and § 80.41) of EDGAR. However, under these requirements, an SEA does not need to submit the performance reports on the use of the incentive grant funds otherwise required under § 76.720 and § 80.40(b). Instead, information on the effects of the incentive grant funds will be gathered through the performance reporting to be required by the Department for the MEP Basic State Formula grant.

Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995 does not require you to respond to collection of information unless it displays a valid OMB control number. We display the valid OMB control number assigned to the collection of information in this final notice at the end of this notice.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document is intended to provide early notification of our specific plans and actions for this program.

Electronic Access to This Document

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(Approved by the Office of Management and Budget under control number 1810–0649)

(Catalog of Federal Domestic Assistance Number 84.144: (Migrant Education Coordination Program)

Dated: February 26, 2004.

Raymond Simon,

Assistant Secretary for Elementary and Secondary Education.

Appendix—Analysis of Comments and Changes

We group major issues according to subject. Generally, we do not address technical and other minor changes, and suggested changes the law does not authorize us to make under applicable statutory authority.

Eligibility for Consortium Incentive Grants

Comment: One commenter suggested that the notice include clarifying language that charter schools may also be an "other appropriate entity" with which an SEA may enter into a consortium. The commenter also suggested that the notice clarify that "migrant children whose education is interrupted" would include "all [such] public school students, including migrant students enrolled in charter schools."

Discussion: The Department agrees that prospective applicants would benefit from inclusion of examples of "other appropriate entities." However, we do not agree that the notice needs to further clarify the term "migrant children whose education is interrupted" since the term already clearly includes any such migrant children whether they are enrolled in public or private school or are out-of-school.

Changes: The definition of "other appropriate entity" has been revised to include examples, "such as a school district, a charter school, a nonprofit or for-profit organization, or an institution of higher education."

Application Requirements

Comment: One commenter asserted that the requirements of section 1308(a), which focus on interstate and intrastate coordination, apply to all provisions in section 1308. The commenter said that, as a result, the consortia and the incentive grants authorized under section 1308(d) must, as a matter of law, be designed to "improve the interstate and intrastate coordination among [State and local] agencies' migrant educational programs. * * *"

Discussion: The Department does not agree with the comment. Section 1308 is entitled "Coordination of Migrant Education Activities," and the provisions contained in this section all generally relate to coordination. The specific provision to which the commenter refers is in a subparagraph of section 1308(a), which itself is entitled "Improvement of Coordination." Specifically, subparagraph 1308(a)(1), entitled "In General," authorizes the Department, among other things, to award grants or contracts to various specific agencies in order to improve interstate and intrastate coordination of those agencies' migrant education programs. Neither this subparagraph (a)(1) nor the duration-of-grants provision in subparagraph (a)(2) applies to the specific authorizations and provisions contained in sections 1308(b) through (e). However, while not legally required to do so, the Department has decided that to be considered high-quality consortia selected in this competition under section 1308(d), the proposed consortia must be designed to improve the interstate or intrastate coordination of migrant education programs.

Changes: We have revised the *Application Requirements* to require that, to be funded, an applicant must explain how the proposed consortium will improve interstate and intrastate coordination of migrant education programs.

Absolute Priorities

Comment: One commenter recommended that absolute priority 1 (regarding services to improve the identification and recruitment of migratory children whose education is interrupted) must be put in place before incentive grants are provided for the other absolute priorities. The commenter also urged the Department to develop a nationwide Internet-based data management system that is accessible to all school districts and compatible with standard operating systems. The commenter stated that a system of this kind would enable school districts to access critical information on migrant children, thereby increasing the efficiency and effectiveness of the MEP and its services.

Discussion: The Department agrees that absolute priority 1 is a critical first component of any migrant education program. However, for reasons discussed in the notice of proposed requirements, absolute priorities 2 through 7 reflect areas of national significance for migrant students that warrant award of consortium incentive grants, and there is no reason to delay consortia's efforts to address these six areas while SEAs further their identification and recruitment of migrant students.

In addition, the Department agrees with the commenter that a system that facilitates the timely access to and transfer of student records can be an effective means of reducing the effects of educational disruption on migrant students. Pursuant to section 1308(b)(2), the Department is currently in the process of developing and implementing a migrant student records system for the purpose of electronically exchanging health and educational information regarding migrant children among States. Because this is a separate national initiative, the Department is not addressing it through this grant program.

Changes: None.

Comment: One commenter, believing that migrant education programs do not provide

for the dental and vision needs of migrant children, recommended that dental and vision needs be addressed as an additional priority. The commenter also recommended recognition and support of programs addressing cultural self-identification and self-esteem for migrant children.

Discussion: Dental and vision screenings, as well as activities that promote self-esteem of migrant students, are allowable services under the MEP Basic State Formula grant program to the extent that such services address needs that result from the migratory lifestyle and are educationally-related (*i.e.*, are needed to permit migrant children to function effectively in school). However, while these issues are important for migrant children, the Department does not believe that they reflect the same high level of national significance as do the seven absolute priorities established for the incentive grant competition.

Changes: None.

Reporting Requirements

Comment: One commenter asked whether a grantee must submit a final summary evaluation report at the end of the second year, or whether instead it could submit a developmental evaluation for the second year, continue its work on consortium activities (with the use of other funds) for a third year, and then submit a final summary evaluation report at the end of third year. The commenter noted that the second option would allow a longer window of time to achieve the measurable goals of the consortium.

Discussion: The Department is soliciting applications for consortia that will complete described activities in no more than two years. These applications must include objectives and measurable outcomes to be completed within the maximum two-year performance period. Participating SEAs or other entities in a consortium may continue to support and evaluate the effectiveness of consortium activities that they choose to carry out after the second year. However, participating SEAs must still provide a final report, under § 75.590 of EDGAR, that addresses their success in completing the activities and achieving the objectives and outcomes that were established in their approved consortium applications for completion within the maximum two-year performance period.

Changes: None.

Comment: None.

Discussion: In reviewing the notice, the Department noted a need to clarify the grantee reporting requirements.

Changes: The reporting requirements have been revised to clarify that:

(1) The first-year performance report and the final second-year evaluation report required under § 75.118 and § 75.590 of EDGAR concern the completion of activities of the approved consortium, rather than the use of the awarded incentive grant funds, and

(2) SEAs do not need to submit a performance report on the use of the incentive grant funds. Instead, because an SEA may use incentive grant funds for any activity authorized under the MEP, the effectiveness of the incentive grants will be measured through those performance reports required by the Department for the MEP Basic State Formula grant. However, an SEA receiving an incentive grant must submit the financial reports relating to incentive grant funds required under § 76.720 and § 80.41 of EDGAR.

Use of Consortium Incentive Grant Funds

Comment: None.

Discussion: In reviewing the notice, the Department noted that, because the incentive grants may be used for any activities authorized under the MEP, the supplement-not-supplant provision found in sections 1120A(b) and 1304(c)(2) of the ESEA should be made applicable to the consortium incentive grants.

Changes: The final requirements clarify that the supplement-not-supplant provision of sections 1120A(b) and 1304(c)(2) apply to the use of these incentive grant funds.

Amount and Duration of Incentive Grants

Comment: None.

Discussion: In reviewing the notice, the Department noted the need to explain more clearly the funding formula that it will use to calculate the incentive grant award amounts.

Changes: We have revised the final requirements to clarify the language explaining the funding formula.

[FR Doc. 04–4719 Filed 3–2–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education, Overview Information, Migrant Education Program (MEP) Consortium Incentive Grants Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2004

Catalog of Federal Domestic Assistance (CFDA) Number: 84.144.

DATES: Applications Available: March 3, 2004.

Deadline for Transmittal of Applications: May 28, 2004.

Deadline for Intergovernmental Review: May 3, 2004.

Eligible Applicants: State educational agencies (SEAs) receiving MEP Basic State Formula grants.

Estimated Available Funds: $2,500,000.

Estimated Range of Awards: $45,997–$91,995.

Estimated Average Size of Awards: $64,102.

Maximum Award: By statute, the maximum amount that we may award under this program is $250,000.

Estimated Number of Awards: 39.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 24 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the MEP Consortium Incentive Grants program is to provide incentive grants to State educational agencies (SEAs) that participate in high-quality consortia with another SEA or other appropriate entity to improve the delivery of services to migrant children whose education is interrupted. Through this program, the Department provides financial incentives to SEAs to participate in high-quality consortia that improve the intrastate and interstate coordination of migrant education programs by addressing key needs of migratory children who have their education interrupted.

Priorities: The priorities for this competition are from the notice of final requirements for this program, published elsewhere in this issue of the **Federal Register.**

Absolute Priorities: For FY 2004, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that meet one or more of these priorities.

Program Authority: 20 U.S.C. 6398(d).

Applicable Regulations: (a) The Education Department General Regulations (EDGAR) in 34 CFR parts 75 (except 75.232), 76, 77, 79, 80 (except 80.40(b)), 82, 85 and 99; and (b) the notice of final requirements published elsewhere in this issue of the **Federal Register.**

II. Award Information

Type of Award: Formula grants.

Estimated Available Funds: $2,500,000.

Estimated Range of Awards: $45,997–$91,995.

Estimated Average Size of Awards: $64,102.

Maximum Award: By statute, the maximum amount that we may award under this program is $250,000.

Estimated Number of Awards: 39.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 24 months.

III. Eligibility Information

1. *Eligible Applicants:* State educational agencies (SEAs) receiving MEP Basic State Formula grants.

2. *Cost Sharing or Matching:* This program does not involve cost sharing or matching but does involve supplement-not-supplant funding provisions. The notice of final requirements published elsewhere in this issue of the **Federal Register** makes applicable the supplement-not-supplant

provision of sections 1120A(b) and 1304(c)(2) of the ESEA.

IV. Application and Submission Information

1. *Address to Request Application Package:*

Elsa Chagolla, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E257, FOB–6, Washington, DC 20202–6135. Telephone: (202) 260–2823, or by email: *elsa.chagolla@ed.gov*.

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 this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms an applicant must submit, are in the application package for this program.

Page Limit: The application narrative (Part IV of the application) is where you, the applicant, describe the proposed consortium, including how the consortium meets the application requirements and one or more of the absolute priorities, and address the selection criteria that reviewers use to evaluate your application. You must limit Part IV to the equivalent of no more than 30 double-spaced pages, using the following standards:

- A "page" is 8.5″ × 11″, on one side only, with 1″ margins at the top, bottom and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a consistent font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).
- For charts, tables, and graphs, also use a font that is either 12-point or larger or no smaller than 10 pitch.

The page limit applies only to Part IV of the application. It does not apply to Parts I to III or Parts V to VII, or to any appendices, resumes, bibliography, or letters of support. However, an applicant must include all of the application narrative in Part IV.

Department reviewers will not read any pages of the Part IV narrative that—

- Exceed the page limit if you apply these standards, or
- Exceed the equivalent of the page limit if you apply other standards.

3. *Submission Date and Times:*

Applications Available: March 3, 2004.

Deadline for Transmittal of Applications: May 28,2004.

The dates and times for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this program.

The Department does not consider an application that does not comply with the deadline requirements. Deadline for Intergovernmental Review: May 3, 2004.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* sections in this notice.

6. *Other Submission Requirements:* Instructions and requirements for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this program.

V. Application Review Information

Selection Criteria: The selection criteria for this program are in the application package.

VI. Award Administration Information

1. *Award Notices:* If a consortium application is successful, the Department will send the applicant a Grant Award Notice (GAN). The Department will also notify Congress regarding these grant awards. The Department may also notify successful applicants informally.

If an application is not evaluated or not selected for funding, the Department will notify the applicant(s).

1. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

2. *Reporting:* Grant recipients under this program must submit the annual and final performance and financial reports specified in the notice of final requirements for this grant program published elsewhere in this issue of the **Federal Register**.

3. *Performance Measures:* Currently, the Government Performance and Results Act (GPRA) indicators established by the Department for the Migrant Education Program, of which the Consortium Incentive Grants are a component, are that an increasing number of states will show:

(1) increasing percentages of migrant students at the elementary school level who meet or exceed the proficient level on state assessments in reading.

(2) increasing percentages of migrant students at the middle school level who meet or exceed the proficient level on state assessments in reading.

(3) increasing percentages of migrant students at the elementary school level who meet or exceed the proficient level on state assessments in mathematics.

(4) increasing percentages of migrant students at the middle school level who meet or exceed the proficient level on state assessments in mathematics.

(5) decreasing percentages of migrant students who dropout from secondary school (grades 7–12).

(6) increasing percentages of migrant students who graduate from high school.

The Department will be collecting data from States on these performance measures.

VII. Agency Contacts

FOR FURTHER INFORMATION CONTACT: Elsa Chagolla, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E257, FOB–6, Washington, DC 20202–6135. Telephone: (202) 260–2823, or by e-mail: *elsa.chagolla@ed.gov*.

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 this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister*.

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.

You may also view this document in text at the following site: *http://www.ed.gov/about/offices/list/oese/ome/index.html.*

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.*

Dated: February 26, 2004.

Raymond Simon,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 04–4720 Filed 3–2–04; 8:45 am]

BILLING CODE 4000–01–P

Federal Register

Wednesday,
March 3, 2004

Part IV

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Parts 23 and 52
Federal Acquisition Regulation; Hazardous Material Safety Data; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 23 and 52

[FAR Case 1998–020]

RIN 9000–AJ21

Federal Acquisition Regulation; Hazardous Material Safety Data

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to revise policies and procedures for contractor submission of Material Safety Data Sheets (MSDSs).

DATES: Interested parties should submit comments in writing on or before May 3, 2004, to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to: General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW., Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to: *farcase.1998–020@gsa.gov.*

Please submit comments only and cite FAR case 1998–020 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Laura Smith, Procurement Analyst, (202) 208–7279. Please cite FAR case 1998–020.

SUPPLEMENTARY INFORMATION:

A. Background

This rule revises the policies and procedures for the submission of material safety data sheets (MSDS) by government contractors who provide hazardous materials to the government. Because this rule differs significantly from the proposed rule that was published in the **Federal Register** at 67 FR 632, January 4, 2002, it is being published as a second proposed rule. The differences between the two proposed rules are as follows:

- FAR 23.301(a)(3). This second proposed rule adds a website where contractors can obtain a copy of Federal Standard No. 313 (FED–STD 313). (*See* comment #2e.)
- FAR 23.301(b)(2). The Councils have revised FAR 23.301(b)(2) of the proposed rule (1) to indicate that the information listed is not all-inclusive, and (2) to better describe the type of information.
- FAR 52.223–3(a) and (c): This second proposed rule adds the requirement that contractors must comply with certain changes to the Occupational Safety and Health Administration's (OSHA) Hazard Communication Standard (HCS) that occur after contract award. (*See* comment #2b.)

The first proposed rule required that once the contractor had submitted an MSDS, the contractor was only required to revise the MSDS if the composition of the hazardous material changed, and the change rendered the MSDS incomplete or inaccurate.

This second proposed rule adds a second condition for when the contractor must submit a revised MSDS. The contractor also must submit a revised MSDS if the contractor "has knowledge, or reasonably should have knowledge, of * * * New information on the health hazards of a chemical or ways to protect the employee that renders the MSDS incomplete or inaccurate."

The Councils have made several editorial changes.

Seven respondents submitted comments on the proposed rule. A discussion of their comments is provided below:

1. FAR Definition of Hazardous Material

a. *Comment:* The rule is correct by having the FAR definition for "hazardous" match the definition in FED–STD 313.

Councils' Response: Concur.

b. *Comment:* The Councils should "adopt for government use the existing commercial approach to hazard communication that has developed under the Federal Hazard Communication. If a particular program had additional requirements, those needs would be addressed by the Request for Proposal and subsequent negotiations. This ensures that program needs are met without any unnecessary burden being placed on the contractor." In other words, the definition of "hazardous material" should be limited to the definition of "hazardous chemical" as defined in OSHA's HCS, 29 CFR 1910.1200, so that contractors only routinely have to comply with the regulation that is used in the commercial sector, *i.e.*, OSHA's HCS. To comply with other government regulations would be an unnecessary burden on contractors.

Councils' Response: Do not concur. It is also necessary for contractors to comply with the other documents cited in FED–STD 313 that regulate hazardous material. FAR 52.223–3(a) of the proposed rule states that a hazardous material is any material defined as hazardous in FED–STD 313. The definition of "hazardous material" in FED–STD 313 is broader than the definition in OSHA's HCS. Paragraph 3.2 of FED–STD 313 indicates that an item or chemical is hazardous if it falls within one of the following four categories:

1. Health or physical hazard that is regulated by OSHA under 29 CFR 1910.1200.

2. Environmental hazard that is regulated by the Environment Protection Agency (EPA) under 40 CFR 302 and 40 CFR 372.

3. When being transported or moved, is a risk to public safety or an environmental hazard that is regulated by the Department of Transportation (DoT) under 49 CFR 100–180 or certain other organizations.

4. Special nuclear source, by-product material, or radioactive and regulated by the Department of Energy (DoE) under 10 CFR or by certain other organizations.

Information is needed on an item that is hazardous during any period of its life cycle. OSHA's HCS addresses chemicals that are hazardous only during "normal use" of the chemical. Thus, it would be appropriate to limit FED–STD 313 to the requirements of OSHA's HCS if the government were only concerned with the safety and health of employees during the "normal use" of the hazardous chemical in the workplace. However, the government is responsible for managing an item throughout the item's life cycle. This may include storage of the item for extended periods of time, transporting the item, and eventual disposal of the item. To manage the item appropriately, the government must obtain health and safety information if the item exhibits a hazardous nature during any period of its life cycle, not only during the period of "normal use." Therefore, it is appropriate and administratively more efficient to include all the regulatory requirements for hazardous materials in one document (FED–STD 313) rather than address and "negotiate" these requirements separately with each procurement.

The Councils also question the argument that the broader definition places an unnecessary burden on the contractor. The regulations cited in FED–STD 313 that apply to government contractors also apply to contractors in the commercial sector. FED–STD 313 is simply the means used to convey these regulatory requirements to contractors under government contracts.

c. *Comment:* The statement at FAR 23.300(b)(2)(ii) and elsewhere seems "to negate the OSHA "article" rule * * *. The words seem to imply if an element of an article * * * has a "hazardous nature" an MSDS must be provided. This would be a great burden on manufacturers." The OSHA definition of articles or its equivalent should be incorporated into the FAR to clarify that if an item is an "article" as defined in OSHA's HCS, an MSDS is not required.

Councils' Response: Do not concur. Under OSHA's HCS (29 CFR 1910.1200(c)), items which are not hazardous during "normal use" are termed "articles" and are exempt from the requirements for submission of MSDSs. In contrast, the proposed rule (at FAR 23.300(b)(2) and elsewhere) states that if an item is hazardous during any point in the life cycle of the item (*e.g.*, disposal or storage), not just during the period of "normal use," an MSDS is required. Therefore, even though an item may be deemed an "article" and not be hazardous under the criteria of OSHA regulations, the same item may be deemed hazardous under other agency regulations cited in FED–STD 313 (*e.g.*, EPA, DoT, etc.).

d. *Comment:* The rule should expand the coverage at FAR 23.300(b) and elsewhere relating to the language "hazardous materials are expected to be delivered under the contract or incorporated into end items," specifically in the areas of carcinogenic and environmental pollutants (*i.e.*, Cadmium and Hexavalent Chromium).

Councils' Response: Do not agree. Since no language was provided by the respondent, the Councils are not clear as to what specific issue is being raised. The plating of many weapon systems does contain cadmium and chromium. While these chemicals are not hazardous during normal use, they become hazardous if the plated part is stripped and re-plated. If the respondent is implying that the rule should be revised to ensure that these chemicals are included in the definition of hazardous material during the de-plating process, the Councils believe that the existing definition for hazardous material in FED–STD 313 and the language in the proposed rule (FAR 23.300(b)(2), FAR 23.303(b)(1)(ii), FAR 52.223–XX(b)(1)(ii)(B), and FAR 52.223–3(b)(1)(ii)(B)) cover this situation.

2. FED–STD No. 313

a. *Comment:* Agree with the government's clarification that the universe of hazardous materials subject to this standard are those materials defined as hazardous at the time of award and that the rule eliminates the "automatic inclusion of future revisions of FED–STD 313 into a contract without an equitable adjustment * * *."

Councils' Response: Partially concur. The definition of hazardous material is in FED–STD 313, and includes references to various agency regulations, *e.g.*, OSHA, EPA, DoT, DoE, etc. The Councils agree that, during contract performance, contractors should comply with the version of FED–STD 313 that is in effect at a fixed point in time, *i.e.*, contract award. However, the Councils believe that contractors should comply with certain changes to OSHA's HCS which is cited in FED–STD 313, even if the change occurs after contract award, for the reasons cited in Councils' response to comment #2b.

For the reasons cited below, the Councils do not think it is equitable for the Contractor to comply with the provision re: automatic inclusion of future FED–STD 313 revisions for the reasons cited below.

1. Hard to quantify future changes to FED–STD 313. The current FAR at 52.223–3(a) indicates that the contractor would have to comply with any revised FED–STD 313 without equitable adjustment. This provision appears to impose an undue risk on the contractor since future changes may be hard to predict and quantify during negotiations of the original contract price. Therefore, the proposed rule revised FAR 52.223–3(a) to state that the contractor would be required to comply with FED–STD 313 that is in effect at the time of contract award. Should there be a change to FED–STD 313 subsequent to contract award, the contracting officer would modify the contract with appropriate consideration.

2. Changes to FED–STD 313 not published for public comment. Changes to FED–STD 313 are currently not published in the **Federal Register** to provide the general public the opportunity to comment, although draft changes are circulated to selected interested parties.

b. *Comment:* If the automatic inclusion of future FED–STD 313 revisions into a contract is removed, "contractors at government work sites where hazardous materials are in use would not have to concern themselves with any changes to FED–STD 313, no matter how important those changes could be to the protection of workers, property and the environment at that work site."

Councils' Response: Partially concur. The Councils do not think it is equitable for the Contractor to comply with all changes to FED–STD 313 that occur after award for the reasons cited in Councils' response to comment #2(a). On the other hand, it is particularly important that the Government require Contractors to comply with changes to OSHA's HCS because (1) approximately 80 percent of hazardous materials fall within the scope of OSHA's HCS; and (2) the government must obtain current information via MSDSs for the safety and health of government employees in the workplace and to fulfill its obligations under certain statutory and Executive order mandates as they relate to the HCS. 29 U.S.C. 668(a) requires Federal agencies "to establish and maintain an effective and comprehensive occupational safety and health program consistent with the standards. * * *" Executive Order 12196, Occupational safety and health programs for Federal employees, October 1, 1980, further requires all Federal agencies to comply with all OSHA standards, including the HCS.

The Deputy Associate Solicitor of Occupational Safety and Health concluded in a 1985 opinion that private sector entities are not required to supply MSDSs to Federal agencies, only to other private sector entities. The same conclusion was reached upon an examination of the applicable regulations and laws. The HCS at 29 CFR 1910.1200(g)(6) and (7) states that it is the responsibility of chemical manufacturers, importers, and distributors to provide MSDSs to employers. The government is specifically excluded from the definition of employer in the enabling legislation (Occupational Safety and Health Act, 29 U.S.C. 651, *et seq.*): "The term "employer" means a person engaged in a business affecting commerce who has employees, but does not include the United States * * *" (29 U.S.C. 652(5)).

Therefore, to comply with the requirements of the HCS as do employers in the private sector, the government must have the same access to information (MSDSs) as private sector employers directly regulated under OSHA's HCS. To facilitate government compliance, the Councils revised FAR 52.223–3(a) and (c) to accommodate certain changes to OSHA's HCS that may occur after contract award. This change to the rule, while substantive

and requiring public comment, should not be viewed as major by industry since (1) contractors now must comply with this requirement in the private sector, and (2) for pricing purposes, in contrast to changes to the entire FED–STD 313, contractors should have earlier insight into changes contemplated by OSHA during its rule-making process.

c. *Comment:* A new subpart under FAR 23.302 should be added "to require the contracting officer to keep abreast of changes to FED–STD 313 and modify the contract, as appropriate, to address any definitional changes."

Councils Response: Do not concur. The functional community, not the contracting officer, should be responsible for monitoring FED–STD 313 changes since they have the technical expertise and the internal management system to detect changes although historically changes to FED–STD 313 are infrequent.

d. *Comment:* FAR 23.301(a)(2) should be changed to read "Established additional information on the MSDS required by the Government" to clarify that FED–STD 313 does not establish the requirement for MSDSs, but asks for additional information that is required by EPA, DoT, and others."

Councils' Response: Do not concur. The Councils recognize that the regulatory agencies are the original source for the information requirements, but FED–STD 313 does establish the MSDS requirement for Government contracts.

e. *Comment:* The rule should be revised to indicate where the reader can obtain FED–STD 313.

Councils' Response: Concur. The proposed rule had removed the address where FED–STD 313 could be purchased. The Councils have added a website at FAR 23.301(a)(3) where individuals can obtain a free electronic copy.

3. MSDSs/Updated List

a. *Comment:* The requirement at FAR 23.302 for the apparently successful offeror or quoter to submit MSDSs to the contracting officer (CO) should be changed to require two copies, "one to the PCO for file (or ACO) and one for the safety officer," to preclude the CO from having to copy and redistribute. For the same reason, the respondent suggests that two copies of the updated list be provided.

Councils' Response: Do not concur. The Councils do not recommend any change because "safety officer" is not always the terminology used for the central point of contact but differs among agencies; requiring one extra copy would increase the paperwork burden unnecessarily on contractors, including small businesses; the Councils are not aware of any internal problems with the current procedure; and agencies can always supplement the FAR coverage if they deem it appropriate.

b. *Comment:* The requirement at FAR 52.223–XX(c) to submit MSDSs prior to award should be changed to "within X days after award." Otherwise, contract award may be held up. Given the "uncertainties in final materials for developmental programs, it will be very difficult, if not impossible," to require a vendor to submit MSDSs prior to contract award.

Councils' Response: Do not concur. This is not a new requirement since it is located in the current FAR at 52.223–3(d). The Councils concluded that there should be no changes after examining the historical basis for this requirement. The FAR originally had required the contractor to submit MSDSs after contract award but at least 5 days before delivery of the hazardous material. Because the contractor was permitted to provide them after award, certain government users were not always obtaining the information timely or at all, as noted in the DoD IG Audit Report No. 83–137, Hazardous and Toxic Materials in the Department of Defense, dated June 3, 1983. To alleviate this problem, DAR Case 1986–002, Safety and Occupational and Health provisions, revised the wording to require that the apparently successful offeror submit the MSDSs prior to contract award.

The Councils recognize that there may be situations, especially when subcontractors are involved, when the contractor cannot determine prior to contract award if the deliverable will be hazardous or contain hazardous material. FAR 52.223–3(c)(2) of the proposed rule allows for this situation by indicating that the contractor may submit an MSDS after award if the contractor later determines that any other hazardous material will be delivered under the contract.

c. *Comment:* A significant problem with the proposed FAR revision is its expansion to situations where original equipment and parts manufacturers will be required to prepare, rather than pass on, MSDSs * * * the expertise of some contractors does not reside in the preparation of the MSDSs.

Councils' Response: Do not concur. The preparer of the MSDS is the manufacturer or importer of the hazardous material. If the prime contractor will obtain hazardous material from a subcontractor, then the prime contractor is responsible for flowing down this technical requirement to the subcontractor.

The Councils recognize that there may be situations when non-hazardous chemicals obtained from subcontractors take on different chemical characteristics when mixed during the performance period of the prime contract. In this situation, the prime contractor is responsible for preparing the MSDS, not only because the information is needed for the safety and health of its employees in the workplace, but also because the information is required by regulatory agencies. The FAR and FED–STD 313 are only a means used to enforce the same regulatory requirements on contractors under Government contracts that are imposed on private sector contracts.

d. *Comment:* When the prime contractor obtains the MSDSs from a subcontractor, the subcontractor who manufactures the hazardous material should be responsible for the accuracy of the MSDS, not the prime contractor. In addition, the contractor delivering the aircraft has no way of knowing what specific formulations are used by the many subtier suppliers. Suppliers are free to switch among the qualified products at any time. The contractor will now be required to have the subcontractor submit an MSDS with each part, and, quite possibly, different MSDSs for the same spare part over the life of the program, imposing significant costs and burdens on the subcontractor.

Councils' Response: Partially concur. The Councils concur that the preparer of the MSDS, who may or may not be the contractor furnishing the material to the government, is responsible for the accuracy of the technical data in the MSDS. This is currently stated in paragraph 3.3 of FED–STD 313.

The Councils also agree that one stock number may have multiple products, each with a different MSDS, and, therefore a different package of MSDSs may be required for each individual aircraft or other end item. The Councils view the administration effort to keep track of this effort as a contractor management issue with any associated costs being passed on to the Government.

e. *Comment:* "The proposed rule could be read to require updates * * * of all hazardous materials information previously provided to the government customer at the time of initial award for the entire period of the contract performance, often many years."

Councils' Response: Partially concur. FAR 52.223–3(c)(1) of the proposed rule states:

The Contractor shall "(1) Promptly notify and submit a revised MSDS to the Contracting Officer whenever there is a change in the composition of an item(s) that renders incomplete or inaccurate any MSDS previously submitted * * *."

The issue centers on the situation when the subcontractor, not the prime contractor, is the manufacturer of the hazardous material, and therefore the subcontractor is the preparer of the MSDS. The prime contractor is concerned that, based on the above language, after submission of the MSDS to the government, the prime contractor is responsible for submitting a revision should new health hazard information necessitate a change to the MSDS. The problem is when the prime contract continues for some time after the subcontract is completed. In this situation, the prime contractor may not become aware of a change. The Councils believe that the respondent has a valid point.

Based on an historical examination of FED–STD 313, the Committee concluded that the intent of the language in the FAR (and FED–STD 313) was to reflect the requirement of OSHA' HCS (29 CFR 1910.1200(g)(6) and (7)), *i.e.*, preparer only provides a revised MSDS upon subsequent shipments. Therefore, if the preparer found new health hazard information after supplying the material, no action from the preparer is required for already delivered quantities, but the preparer would need to include the new information in a revised MSDS for any future deliveries. If, however, the preparer supplied the wrong information, then the preparer has the responsibility to correct that. The prime contractor, in turn, would need to furnish a revised MSDS to the Government if the prime contractor receives one from the preparer.

The Councils recommend revising FAR 52.232–3(c)(1) to indicate that the contractor shall submit a revised MSDS only if the "contractor has knowledge, or reasonably should have knowledge, of" certain information that would render the MSDS incomplete or inaccurate.

f. *Comment:* The government should accept electronic versions of MSDSs as an acceptable substitute for paper MSDSs.

Councils' Response: Partially concur. The FAR currently provides that any written information can be provided electronically (see FAR 2.101 definition of "In writing," "writing," or "written"). Paragraph 4.2.3.3 of FED–STD 313 states that "electronic transmission of the MSDSs may be accepted, depending on the receiving agencies capabilities." However, the government is not ready at this time to accept electronic versions of MSDSs directly into the MSDS repository (Hazardous Material Information System (HMIS)) for hazardous materials procured by certain Federal agencies, including DoD and GSA. Currently, government personnel re-key, from a paper copy of the MSDS, the required data elements into a standard format. The HMIS program office is currently revising the HMIS so that the system will be able to accept and validate MSDSs electronically. The HMIS program office is currently requesting input from both the government and industry in developing a MSDS standard in eXtensible Markup Language (XML). Once this system is in place, revisions to the FAR will be considered. Go to *https://www.denix.osd.mil/denis/Public/Library/MSDS/HMIS/hmis.html* for more information on the initiative to develop an MSDS XML standard.

4. Liability/Proprietary Data/Patent Rights

a. *Comment:* Agrees with deleting FAR 52.223–3(f) relating to liability.

Councils' Response: Concur. Paragraph (f), as presently written in the FAR, and as suggested by one of the respondents, expressly shifts liability from the government to the contractor when the government acts or fails to act. For instance, it appears that under the current FAR coverage, the contractor could be liable for an injury from a hazardous material provided under contract with an MSDS, because the government failed to act, and did not pass on the MSDS information to an employee. The Councils concluded that this interpretation of increased contractor liability and responsibility for acts or failure to act by the government was not intended, and the paragraph should be removed. The rule does not eliminate the contractor's responsibility or associated liability to comply with statutes, codes, ordinances and regulations, and all other normal responsibilities under the contract. The change to this contract clause also does not relieve the contractor of liability for any of the contractor's acts or omissions.

b. *Comment:* Do not advocate diluting the importance of this provision (FAR 52.223–3(f)) in our contracts. Suggest the following language:

"Neither the requirements of this clause nor any act or failure to act by the government shall relieve the contractor of any responsibility or liability for the safety of the government personnel (civilian and military), the environment, contractor, or subcontractor personnel or property."

Councils' Response: Do not concur. *See* the Councils' response to comment #4a.

c. *Comment:* Paragraph (f) should not be deleted since it placed responsibility or liability upon the contractor * * * if those responsibilities are not addressed elsewhere, they should be addressed in 52.223–3. The following language is suggested:

"If any act or failure to act by the government results in the contractor being unable to comply with the requirements of this clause, then the contractor shall be relieved of any responsibility or liability for the safety of government, contractor, or subcontractor personnel or property."

Councils' Response: Do not concur for the reasons cited in the Councils' response to comment 4a. The Councils also do not agree with adding the suggested language. First, there are remedies in the contract for situations when government action or inaction results in the contractor being unable to comply with the contract. Second, the words offered could be misinterpreted as suggesting that action or inaction by the government relieves the contractor of all responsibility or liability under the contract.

d. *Comment:* FAR policy for proprietary and trade secret information should be conformed to other Federal regulations.

Councils' Response: Partially concur. No specifics were provided. The Councils concur that FAR policy should be consistent with other regulations but the Councils also believe that this issue has already been addressed in the proposed rule by the language added at FAR 23.301(c).

e. *Comment:* The rule should be changed to state "that any items given that have patent or protected data be recognized as so (sic) and given protection so that it is not given out under a FOIA request. Without such protection, the clause would contradict FAR part 27.1 and would leave the government liable for violation of patent or data rights."

Councils' Response: Do not concur. The Councils are not clear as to what concerns are being raised by the respondent but the rule is consistent with the FAR (including FAR 27.1), OSHA and EPA regulations, and the Freedom of Information Act. FAR 23.301(c) of the rule provides policy as to the treatment of trade secrets, etc., especially in times of emergency when limited release of the data is required.

5. Other Comments

a. *Comment:* The FAR and DFARS coverage "should be coordinated and be the same since the DFARS does not currently modify the FAR where MSDS is furnished."

Councils' Response: Partially concur. The respondent did not provide specifics as to how the DFARS should be modified. The Councils do not agree that the DFARS coverage should be the same as the FAR, but do agree that if DoD needs to further supplement the FAR relating to MSDSs, a separate DFARS case will be opened.

b. *Comment:* In FAR 23.302, the phrase "The contracting officer must * * *" should be changed to "The contracting officer shall * * *."

Councils' Response: Concur.

c. *Comment:* The phrase "even if the contractor is not the actual manufacturer" should be deleted at 52.223-XX(c)(1) and 52.223–3(c)(2). It "is not needed based on the prior part of each sentence."

Councils' Response: Do not concur. The sentence in the contract clause states that the contractor must submit a MSDS if any material to be delivered under this contract is hazardous, even if the Contractor is not the actual manufacturer. This phrase is in the current FAR at 52.232–3(d). When the proposed rule established a separate solicitation provision at FAR 52.223–XX, the phrase was retained in both the new solicitation provision and the contract clause at FAR 52.223–3. The prime contractor is responsible for all the requirements in the contract. In the situations where a subcontractor is the actual manufacturer, and therefore preparer of the MSDS, the prime contractor is responsible for flowing down the requirement to the subcontractor. Although this phrase may not be necessary, it is not incorrect. The Councils have decided to retain the phrase after examining its historical basis. The phrase was added under DAR Case 1986–002 to emphasize this basic concept because at that time government personnel were experiencing difficulty in obtaining the MSDS, especially when a subcontractor was the manufacturer of the hazardous material. Removing this phrase at this point may be erroneously perceived as a change in policy.

d. *Comment:* The following paragraph FAR 23.301(b)(2)(iv) should be added to the language in the proposed rule:

(iv) "Proper disposal of hazardous materials (waste) to protect our environment."

Councils' Response: Do not concur. The concept that MSDSs are required for proper disposal of hazardous materials is already covered under FAR 23.301(b)(1) of the proposed rule.

This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule simply provides additional guidance on the current requirement at FAR subpart 23.3 and the FAR clause at 52.223–3 for contractors to submit MSDSs if they provide hazardous materials to the Government. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR parts 23 and 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 1998–020), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104–13) applies because the proposed rule contains information collection requirements. Accordingly, the FAR Secretariat has submitted a request for approval of a new information collection requirement concerning OMB Control Number 9000–00XX, FAR case 1998–020, Hazardous Material Safety Data, to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

Annual Reporting Burden

We estimate the annual total burden hours as follows:

Burden hours associated with the requirements of FAR 52.223-XX, Hazardous Materials. The provision requires all offerors to identify and list all hazardous materials that it would deliver under the contract meeting the stated criteria, but would require MSDSs only from the apparently successful offeror. For the majority of respondents, the information required is associated with the OSHA regulations and, therefore, will be readily available and not need to be compiled.

Respondents: 37,000.

Responses per respondent: 1.56.

Total annual responses: 57,860.

Preparation hours per response: .255.

Total response burden hours: 14,773.

Burden hours associated with the requirements of FAR 52.223–3, Hazardous Materials Identification and Material Safety Data. This clause requires the contractor to notify and submit revised MSDSs whenever a change in the composition of an item renders incomplete or inaccurate previously submitted MSDSs. For civilian agencies, additional copies are required in advance or with each shipment or in or on each shipping container. This second proposed rule requires the contractor to submit a new or revised MSDS if (1) there are changes to the OSHA definition of Hazardous Chemical that occur after contract award, or (2) The contractor has knowledge or reasonably should have knowledge of new information that renders the MSDS incomplete or inaccurate. Again, for the majority of respondents, the information required will be readily available and would not need to be compiled and much of the burden is associated primarily with the additional copies of MSDSs.

Respondents: 10,000 (subset of total respondents identified above).

Responses per respondent: 22.

Total annual responses: 220,000.

Preparation hours per response: .05.

Total response burden hours: 11,000.

D. Request for Comments Regarding Paperwork Burden

Submit comments, including suggestions for reducing this burden, not later than May 3, 2004, to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, Washington, DC 20405.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Requesters may obtain a copy of the justification from the General Services

Administration, FAR Secretariat (MVA), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control Number 9000–00XX, FAR Case 1998–020, Hazardous Material Safety Data, in all correspondence.

List of Subjects in 48 CFR Parts 23 and 52

Government procurement.

Dated: February 27, 2004.

Laura Auletta,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose that 48 CFR parts 23 and 52 be amended as below:

1. The authority citation for 48 CFR parts 23 and 52 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 23—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

2. Revise subpart 23.3, consisting of sections 23.300 through 23.303, to read as follows:

Subpart 23.3—Hazardous Material Identification and Material Safety Data

Sec.

23.300 Scope of subpart.

This subpart—

(a) Prescribes policies and procedures for acquisitions, other than for ammunition and explosives, that require the furnishing of data involving hazardous materials as defined in Federal Standard No. 313, Material Safety Data, Transportation Data and Disposal Data for Hazardous Materials Furnished to Government Activities; and

(b) Applies if hazardous material is expected to be—

(1) Delivered under the contract; or

(2)(i) Incorporated into end items to be delivered under the contract; and

(ii) Incorporation into the end items does not eliminate their hazardous nature throughout the life cycle of the end items.

(c) Agencies may prescribe special procedures for ammunition and explosives.

23.301 General.

(a) Federal Standard No. 313, issued and maintained by GSA—

(1) Includes criteria for identification of hazardous materials; and

(2) Establishes requirements for the preparation and submission of Material Safety Data Sheets (MSDSs) by contractors that provide hazardous materials to the Government; and

(3) Can be obtained via the Internet at: *http://www.dsp.dla.mil* under "Online Specs." Select "Quick Search" and enter FED-STD for "Document ID" and 313 for "Document Number.".

(b) Agencies must obtain MSDSs on hazardous materials delivered under Government contracts to—

(1) Provide for safe handling, storage, use, transportation, and environmentally acceptable disposal of hazardous materials; and

(2) Apprise employees, in accordance with regulations issued by the Occupational Safety and Health Administration (OSHA), of information, such as—

(i) All hazards to which they may be exposed;

(ii) Signs and symptoms of exposure and appropriate emergency treatment; and

(iii) Proper conditions and appropriate protective measures for safe use and handling.

(c) OSHA Standards (29 CFR 1910.1200) or Environmental Protection Agency regulations (40 CFR part 350), as applicable, provide policy when the MSDS indicates that the specific chemical identity of the hazardous material is being withheld as a trade secret.

23.302 Procedures.

The contracting officer shall—

(a) Require the apparently successful offeror or quoter to submit MSDSs before contract award; and

(b) Provide the safety officer or other designated individual with a copy of all MSDSs received.

23.303 Solicitation provision and contract clause.

(a) Insert the provision at 52.223–XX, Hazardous Materials, in solicitations that include the clause at 52.223–3, Hazardous Material Identification and Material Safety Data.

(b)(1) Insert the clause at 52.223–3, Hazardous Material Identification and Material Safety Data, in solicitations and contracts if the contract will require the delivery of—

(i) A hazardous material; or

(ii) An end item that includes a hazardous material that does not lose its hazardous nature throughout the life cycle of the end item.

(2) If the agency awarding the contract is not the Department of Defense, use the clause with its Alternate I.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Add section 52.223–XX to read as follows:

52.223–XX Hazardous Materials.

As prescribed in 23.303(a), insert the following provision:

Hazardous Materials (Date)

(a) *Definition. Hazardous material,* as used in this provision, means any material defined as hazardous in the version of Federal Standard No. 313, Material Safety Data, Transportation Data and Disposal Data for Hazardous Materials Furnished to Government Activities, in effect on the date of issuance of the solicitation.

(b) The offeror or quoter shall—

(1) Submit a list of hazardous materials to be—

(i) Delivered under the contract; or

(ii)(A) Incorporated into end items to be delivered under the contract; and

(B) Incorporation into the end items does not eliminate their hazardous nature throughout the life cycle of the end items; and

(2) Properly identify the hazardous materials and include any applicable identification numbers, such as the National Stock Numbers or the Special Item Numbers.

Hazardous Materials (If none, insert "None")	Identification Nos.
.....	.....
.....	.....
.....	.....

(c) *Material Safety Data Sheets.* (1) The apparently successful offeror or quoter shall submit on or before the date specified by the Contracting Officer a Material Safety Data Sheet (MSDS) meeting the requirements of the version of Federal Standard No. 313 in effect on the date of issuance of the solicitation, for all hazardous materials identified in paragraph (b) of this provision, even if the apparently successful offeror or quoter is not the actual manufacturer.

(2) Failure to submit the MSDS prior to award may result in the apparently successful offeror or quoter being considered nonresponsible.

(End of provision)

4. Revise section 52.223–3 to read as follows:

52.223–3 Hazardous Material Identification and Material Safety Data.

As prescribed in 23.303(b)(1), insert the following clause:

Hazardous Material Identification and Material Safety Data (Date)

(a) *Definition. Hazardous material,* as used in this clause, means any material defined as hazardous in the version of Federal Standard No. 313, Material Safety Data, Transportation Data and Disposal Data for Hazardous Materials Furnished to Government Act, in effect at the time of award of the contract, except that when the term in Federal Standard No. 313 references a chemical

defined by the Occupational, Safety and Health Administration (OSHA) as hazardous in 29 CFR 1910.1200, Hazard communication, the term includes any changes to the OSHA regulation definition that occur after contract award.

(b) *Hazardous material identification.* The Contractor shall—

(1) Update the list of hazardous materials provided under FAR 52.223–XX, Hazardous Materials. This list must be updated during performance of the contract whenever the Contractor determines that any other hazardous material will be—

(i) Delivered under the contract; or

(ii)(A) Incorporated into an end item to be delivered under the contract; and

(B) Incorporation into the end item does not eliminate its hazardous nature throughout the life cycle of the end item; and

(2) Provide the updated list to the Contracting Officer.

(c) *Material Safety Data Sheets (MSDSs).* The Contractor shall—

(1) For any MSDS previously submitted under FAR 52.223–XX or this clause, promptly notify and submit a revised MSDS to the Contracting Officer whenever the Contractor has knowledge, or reasonably should have knowledge, of—

(i) New information on the health hazards of a chemical or ways to protect the employee that renders the MSDS incomplete or inaccurate; or

(ii) A change in the composition of an item(s) that renders the MSDS incomplete or inaccurate.

(2) Submit an MSDS if the Contractor determines that any other material to be delivered under this contract is hazardous, even if the Contractor is not the actual manufacturer;

(3) MSDSs available to the Government when using any hazardous materials in areas where Government employees may be exposed, including MSDSs for hazardous materials not included on the list of hazardous materials (see paragraph (b)(1) of this clause).

(d) The requirements of this clause shall not relieve the Contractor from complying with applicable Federal, State, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) concerning hazardous material.

(End of clause)

Alternate I (Date). As prescribed in 23.303(b)(2), add the following paragraph (e) to the basic clause:

(e) The Contractor shall—

(1) For items that are shipped to consignees identified by mailing address as agency depots, distribution centers, or customer supply centers, place one copy of the MSDS in—

(i) Each shipping container; or

(ii) A weather resistant envelope affixed to the outside of each shipping container; and

(2) For other consignees—

(i) Include a copy of the MSDS with the packing list or other suitable shipping document accompanying each shipment; or

(ii) If authorized in writing by the Contracting Officer, transmit the MSDSs to consignees in advance of shipment.

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Part V

Department of Housing and Urban Development

24 CFR Parts 5 and 570
Equal Participation of Faith-Based Organizations; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5 and 570

[Docket No. FR–4881–P–01]

RIN 2501–AD03

Equal Participation of Faith-Based Organizations

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement executive branch policy that, within the framework of constitutional church-state guidelines, faith-based organizations should be able to compete on an equal footing with other organizations for Federal funding. Executive Order 13279, entitled "Equal Protection of the Laws for Faith-Based and Community Organizations," establishes fundamental principles and policymaking criteria to guide Federal agencies in formulating and developing policies that have implications for faith-based and community organizations to ensure the equal protection of the laws for these organizations in federally-assisted social service programs. Consistent with the Executive Order, this proposed rule describes HUD's policy for the participation of faith-based organizations in HUD programs and activities. In addition, this proposed rule would amend the regulations for the State Community Development Block Grant (CDBG) program to clarify that the requirements contained in HUD's September 30, 2003, final rule regarding the equal participation of faith-based organizations in certain HUD programs apply to the State CDBG program. HUD supports the participation of faith-based organizations in its programs.

DATES: *Comment Due Date:* May 3, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Ryan Streeter, Director, Center for Faith-Based and Community Initiatives, Department of Housing and Urban Development, Room 10184, 451 Seventh Street, SW., Washington, DC 20410–0001; telephone (202) 708–2404 (this is not a toll-free number). Hearing-or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

On December 12, 2002, President George W. Bush signed Executive Order 13279, entitled "Equal Protection of the Laws for Faith-Based and Community Organizations," published in the **Federal Register** on December 16, 2002, at 67 FR 77141. The Executive Order establishes fundamental principles and policymaking criteria to guide executive branch agencies in formulating and developing policies that have implications for faith-based and community organizations to ensure the equal protection of the laws for these organizations in programs receiving Federal financial assistance.

Executive Order 13279 is part of the Administration's broader faith-based and community initiative. President Bush has directed the executive branch agencies, including HUD, to take steps to ensure that Federal policy and programs are fully open to faith-based and community organizations in a manner that is consistent with the Constitution. The Administration believes that all eligible organizations, including faith-based organizations, should be able to participate in Federal programs and activities and compete, where required, for Federal financial assistance on an equal footing.

HUD recognizes that faith-based organizations are important contributors to HUD's mission of assisting low-income families to obtain housing and revitalizing distressed communities. These organizations frequently have the necessary experience to administer assistance to beneficiaries under HUD programs. Consistent with the President's Executive Order 13198 (Agency Responsibilities with Respect to Faith-Based and Community Initiatives), issued January 31, 2001, at 66 FR 8497, HUD undertook a comprehensive review of its program requirements and regulations, particularly those that would be expected to attract the interest and participation of nonprofit organizations.

In response to the directive of Executive Order 13198, HUD identified regulations for eight programs administered by HUD's Office of Community Planning and Development (CPD) that imposed (or appeared to impose) barriers to participation of faith-based organizations in these programs. On January 6, 2003 (68 FR 648), HUD published a proposed rule to eliminate these barriers and to ensure that these HUD programs are open to all qualified organizations, regardless of their religious character. After a period of public comment, HUD finalized this rule on September 30, 2003 (68 FR 56396).

II. This Proposed Rule

Consistent with Executive Order 13279, this proposed rule describes HUD's policy for the equal participation of faith-based organizations in HUD's programs and activities. The proposed rule would add a new § 5.109 to HUD's regulations in 24 CFR part 5, subpart A. The regulations in subpart A of part 5 contain the definitions and Federal requirements generally applicable to all of HUD's programs. By placing the requirements of the Executive Order in those HUD regulations that contain across-the-board requirements, HUD is ensuring the broadest application of the faith-based requirements of Executive Order 13279.

The equal participation policies and requirements contained in § 5.109 would be generally applicable to faith-based organizations, which are referred to in the rule text as "religious organizations," in all HUD programs and activities. More specific policies and requirements regarding the participation of faith-based organizations in individual HUD programs may be provided in the regulations for those programs. The policies and requirements contained in proposed § 5.109 are similar, and in many cases identical, to those contained in HUD's September 30, 2003, rule for several of its Community Planning and Development programs.

Two of the HUD programs that will be affected by the proposed regulatory changes are the Section 202 Supportive Housing for the Elderly Program and the Section 811 Supportive Housing for Persons with Disabilities Program. The regulations for these programs are located in 24 CFR part 891. Specifically, the equal participation requirements contained in this proposed rule would permit faith-based organizations to take part in these programs as project owners. This is a change from the existing procedures governing these two programs, which prohibit a project owner from having a religious purpose in its articles of incorporation.

This proposed rule would not apply to HUD's Native American housing programs. HUD has determined that making the policies and procedures

contained in this proposed rule applicable to its Native American programs requires prior consultation with Indian tribal governments in accordance with Executive Order 13175 (entitled "Consultation and Coordination with Indian Tribal Governments"). The Executive Order requires Federal departments and agencies, to the greatest extent practicable and permitted by law, to consult with tribal governments prior to taking actions that have substantial direct effects on federally recognized tribal governments. HUD will consult with Indian tribal governments regarding the applicability of this proposed rule to its Native American housing programs and may initiate additional rulemaking addressing the equal participation of faith-based organizations in these programs based on the outcome of the consultation.

The specific policies and requirements that would be codified by this proposed rule are as follows:

1. *Equal participation of faith-based organizations in HUD programs and activities.* This proposed rule clarifies that faith-based organizations are eligible, on the same basis as any other organization, to participate in HUD's programs and activities. The phrase "participate in HUD's programs and activities" and its variants are used in this rule to mean the full range of HUD programs and activities, including programs that make funds available through contracts, grants, cooperative agreements, or other instruments for eligible goods, services, and activities, and programs that do not make funds available, but involve other forms of benefit or resources. For example, certain Federal Housing Administration (FHA) programs do not provide funds, but make mortgage insurance or foreclosed properties available to qualifying organizations. Neither the Federal Government, nor a State or local government, nor any other entity that administers any HUD program or activity shall discriminate against an organization on the basis of the organization's religious character or affiliation. Nothing in the rule would preclude those administering Department-funded programs from accommodating religious organizations in a manner consistent with the Establishment Clause.

2. *Inherently religious activities.* Organizations that receive direct HUD funds [1] under a HUD program or activity may not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services funded under the HUD program or activity. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs, activities, or services supported by direct HUD funds, and participation must be voluntary for the beneficiaries of these programs, activities, or services.

3. *Independence of faith-based organizations.* Proposed § 5.109 would clarify that a faith-based organization that participates in a HUD program or activity will retain its independence from Federal, State, and local governments, and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that it does not engage in any inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services supported by direct HUD funds. Among other things, faith-based organizations may use space in their facilities to provide services under a HUD program, without removing religious art, icons, scriptures, or other religious symbols. In addition, a faith-based organization participating in a HUD program retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members, and otherwise govern itself on a religious basis and include religious references in its organization's mission statements and other governing documents.

4. *Exemption from Title VII employment discrimination requirements.* This proposed rule clarifies that a faith-based organization's exemption from the Federal prohibition on employment discrimination on the basis of religion, set forth in section 702(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–1), is not forfeited when the organization participates in a HUD program. Some HUD programs, however, contain independent statutory provisions that impose certain nondiscrimination requirements on all grantees. Accordingly, grantees should consult with the appropriate Department program office to determine the scope of any applicable requirements.

5. *Nondiscrimination requirements.* This proposed rule clarifies that an organization that receives direct HUD funds shall not, in providing program assistance, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief. Organizations participating in HUD programs and activities must also comply with any other applicable fair housing and nondiscrimination requirements.

6. *Acquisition, construction, and rehabilitation of structures.* HUD funds may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for inherently religious activities. HUD funds may be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under a HUD program or activity. Where a structure is used for both eligible and inherently religious activities, HUD funds may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to the HUD program or activity. Sanctuaries, chapels, and other rooms that a HUD-funded religious congregation uses as its principal place of worship, however, are ineligible for HUD-funded improvements. Disposition of real property after use for the authorized purpose, or any change in use of the property for the authorized purpose, is subject to government-wide regulations governing real property disposition (*see, e.g.*, 24 CFR parts 84 and 85).

7. *Commingling of Federal and State and local funds.* This proposed rule clarifies that if a State or local government voluntarily contributes its own funds to supplement federally funded activities, the State or local government has the option to segregate the Federal funds or commingle them. However, if the funds are commingled, the requirements of proposed § 5.109 will apply to all of the commingled funds. If a State or local government is required to contribute matching funds to supplement a federally funded activity, the matching funds are considered commingled with the Federal assistance and therefore subject to the requirements of proposed § 5.109. Some HUD program requirements govern any project or activity assisted under those programs. Accordingly, grantees should consult with the appropriate HUD

[1] As used in this proposed rule, the term "direct HUD funds" refers to direct funding within the meaning of the Establishment Clause of the First Amendment. For example, direct HUD funding may mean that the government or an intermediate organization with similar duties as a governmental entity under a particular HUD program selects an organization and purchases the needed services straight from the organization (e.g., via a contract or cooperative agreement). In contrast, indirect funding scenarios may place the choice of service provider in the hands of a beneficiary, and then pay for the cost of that service through a voucher, certificate, or other similar means of payment.

program office to determine the scope of applicable requirements.

III. Conforming Change to State CDBG Program Regulations

As noted above in this preamble, on September 30, 2003, HUD published a final rule revising the regulations for eight of its CPD programs to remove barriers to the participation of faith-based organizations in these programs. Among the regulations amended by the final rule were those for the Community Development Block Grants (CDBG) Program at 24 CFR part 570 (*see* § 570.200(j)). Since publication of the September 30, 2003, final rule, however, questions have arisen regarding the applicability of the regulatory amendments to the State CDBG Program codified in subpart I of the part 570 regulations (§§ 570.480–570.497). Section 570.480 of those regulations provides that "[o]ther subparts of part 570 are not applicable to the State CDBG Program, except as expressly provided otherwise." The September 30, 2003, final rule did not revise the subpart I regulations to reference the applicability of amended § 570.200(j). This proposed rule would clarify that the amendments made by HUD's September 30, 2003, final rule apply to the State CDBG Program by adding a new § 570.480(e) expressly providing that faith-based organizations are eligible to participate under the program as provided in § 570.200(j).

IV. Findings and Certifications

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 (entitled "Regulatory Planning and Review"). OMB determined that this rule is a "significant regulatory action" as defined in section 3(f) of the Order (although not an economically significant action, as provided under section 3(f)(1) of the Order). Any changes made to the rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the Regulations Division, Room 10276, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this proposed rule and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. The proposed rule would not impose any new costs, or modify existing costs, applicable to HUD grantees. Rather, the purpose of the proposed rule is to ensure the equal participation of faith-based organizations (irrespective of size) in HUD's programs. Notwithstanding HUD's determination that this rule will not have a significant economic effect on a substantial number of small entities, HUD specifically invites comments regarding less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Environmental Impact

This proposed rule sets forth nondiscrimination standards. Accordingly, under 24 CFR 50.19(c)(3), this proposed rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4332).

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1531–1538) establishes requirements for federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This proposed rule does not impose any Federal mandate on State, local, or tribal government or the private sector within the meaning of UMRA.

Executive Order 13132, Federalism

Executive Order 13132, Federalism, requires that Federal agencies consult with State and local governments in the development of regulatory policies with federalism implications. Consistent with Executive Order 13132, HUD specifically solicits comment from State and local government officials on this proposed rule.

Catalog of Federal Domestic Assistance Numbers

The proposed regulatory amendments contained in this proposed rule would apply to all HUD assistance programs for which faith-based organizations are eligible to participate. The Catalog of Federal Domestic Assistance number for a particular HUD program may be found on the CFDA Web site at *http://www.cfda.gov.*

List of Subjects

24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Drug abuse, Drug traffic control, Grant programs—housing and community development, Grant programs—Indians, Individuals with disabilities, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 570

Administrative practice and procedure, American Samoa, Community development block grants, Grant programs-education, Grant programs-housing and community development, Guam, Indians, Loan programs-housing and community development, Low and moderate income housing, Northern Mariana Islands, Pacific Islands Trust Territory, Puerto Rico, Reporting and recordkeeping requirements, Student aid, Virgin Islands.

Accordingly, for the reasons described in the preamble, HUD proposes to amend 24 CFR parts 5 and 570 as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

1. The authority citation for 24 CFR part 5 continues to read as follows:

Authority: 42 U.S.C. 3535(d), unless otherwise noted.

2. Add § 5.109 to read as follows:

§ 5.109 Equal participation of religious organizations in HUD programs and activities.

(a) *Purpose.* Consistent with Executive Order 13279 (issued on December 12, 2002), entitled "Equal Protection of the Laws for Faith-Based and Community Organizations," this section describes HUD's policy for the equal participation of religious organizations in HUD's programs and activities. The equal participation policies and requirements contained in this section are generally applicable to religious organizations in all HUD programs and activities. More specific policies and requirements regarding the participation of religious organizations in individual HUD programs may be provided in the regulations for those programs.

(b) *Equal participation of religious organizations in HUD programs and activities.* Religious organizations are eligible, on the same basis as any other organization, to participate in HUD's programs and activities. Neither the Federal Government, nor a State or local government, nor any other entity that administers any HUD program or activity shall discriminate against an organization on the basis of the organization's religious character or affiliation.

(c) *Inherently religious activities.* Organizations that receive direct HUD

funds under a HUD program or activity may not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services funded under a HUD program or activity. If an organization conducts such inherently religious activities, the inherently religious activities must be offered separately, in time or location, from the programs, activities, or services supported by direct HUD funds and participation must be voluntary for the beneficiaries of the programs, activities or services provided under the HUD program.

(d) *Independence of religious organizations.* A religious organization that participates in a HUD program or activity will retain its independence from Federal, State, and local governments, and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that it does not engage in any inherently religious activities, such as worship, religious instruction, or proselytization as part of the programs or services supported by direct HUD funds. Among other things, religious organizations may use space in their facilities to provide services under a HUD program without removing religious art, icons, scriptures, or other religious symbols. In addition, a religious organization participating in a HUD program retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

(e) *Exemption from Title VII employment discrimination requirements.* A religious organization's exemption from the Federal prohibition on employment discrimination on the basis of religion, set forth in section 702(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–1), is not forfeited when the organization participates in a HUD program. Some HUD programs, however, contain independent statutory provisions that impose certain nondiscrimination requirements on all grantees. Accordingly, grantees should consult with the appropriate HUD program office to determine the scope of applicable requirements.

(f) *Nondiscrimination requirements.* An organization that receives direct HUD funds shall not, in providing program assistance, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.

(g) *Acquisition, construction, and rehabilitation of structures.* HUD funds may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for inherently religious activities. HUD funds may be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under a HUD program or activity. Where a structure is used for both eligible and inherently religious activities, HUD funds may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to the HUD program or activity. Sanctuaries, chapels, and other rooms that a HUD-funded religious congregation uses as its principal place of worship, however, are ineligible for HUD-funded improvements. Disposition of real property after use for the authorized purpose, or any change in use of the property from the authorized purpose, is subject to government-wide regulations governing real property disposition (*see, e.g.*, 24 CFR parts 84 and 85).

(h) *Commingling of Federal and State and local funds.* If a State or local government voluntarily contributes its own funds to supplement federally funded activities, the State or local government has the option to segregate the Federal funds or commingle them. However, if the funds are commingled, the requirements of this section apply to all of the commingled funds. Further, if a State or local government is required to contribute matching funds to supplement a federally funded activity, the matching funds are considered commingled with the Federal assistance and therefore subject to the requirements of this section. Some HUD programs requirements govern any project or activity assisted under those programs. Accordingly, grantees should consult with the appropriate HUD program office to determine the scope of applicable requirements.

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

3. The authority citation for 24 CFR part 570 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 5301–5320.

4. Add § 570.480(e) to read as follows:

§ 570.480 General.

* * * * *

(e) Religious organizations are eligible to participate under the State CDBG Program as provided in § 570.200(j).

Dated: February 13, 2004.

Alphonso Jackson,

Acting Secretary.

[FR Doc. 04–4811 Filed 3–2–04; 8:45 am]

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