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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 550

RIN 3206–AJ56

Premium Pay Limitations

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing final regulations concerning the rules governing payment of premium pay and premium pay limitations for Federal employees. The final rule implements a statute that raised the premium pay caps for most employees, permitted the use of an annual cap instead of a biweekly cap in additional circumstances, and made certain other changes.

DATES: Effective October 18, 2004.

FOR FURTHER INFORMATION CONTACT: Vicki Draper by phone at (202) 606–2858; by fax at (202) 606–0824; or by e-mail at *pay-performance-policy@opm.gov.*

SUPPLEMENTARY INFORMATION: On April 19, 2002, the Office of Personnel Management (OPM) published interim regulations (67 FR 19319) to implement the new premium pay limitations established by section 1114 of the National Defense Authorization Act for Fiscal Year 2002 (Pub. L. 107–107, December 28, 2001). Section 1114 amended 5 U.S.C. 5547, which establishes biweekly or annual limitations on the premium pay that a covered Federal employee may receive.

By law, the section 1114 amendments became effective on the first day of the first pay period beginning on or after the 120th day following enactment. The 120th day fell on Saturday, April 27, 2002. Since most biweekly pay periods for Federal employees begin on a Sunday, these provisions began to apply on either April 28 or May 5, 2002, depending on the employing agency's payroll cycle.

The 60-day comment period ended on June 18, 2002. We received comments from three Federal agencies.

Applying the Annual Premium Pay Cap

One agency expressed concern that the exact method of applying the annual premium pay cap is not clearly described in the current regulations and that certain interpretations could result in significant administrative burdens. The agency observed that an employee may be employed in multiple locality pay areas over the course of a year. Thus, if the annual cap is based on the last applicable locality pay area in a calendar year, an agency might have to correct payments made in past pay periods. The agency pointed out that the administrative burden would be even greater in cases where an employee transfers to a different agency and payroll provider. The agency recommended that OPM address these issues in regulations. It specifically requested that, in cases where an employee moves from one agency or activity to another, OPM not require the losing agency or activity to recompute the employee's premium pay entitlements based on changes in the applicable GS–15 maximum rate after the employee's departure.

While we understand the agency's concerns about administrative burdens, the law expressly provides that the annual premium pay cap must be applied to an entire calendar year and that it is based on the applicable rates in effect at the end of the calendar year. A geographic move to an area with different pay rates can raise or lower an employee's aggregate basic pay and the end-of-year annual cap on premium pay. In turn, a change in aggregate basic pay or the end-of-year cap can change retroactively the date on which an employee reached the annual premium pay cap. In some cases, an agency may have to recompute retroactively the amount of premium pay owed for one or more pay periods.

In certain cases where an employee transfers to a different agency, the former agency may need to provide the new agency with information on basic pay and premium pay received by the employee in the current calendar year through the date of transfer. In some cases, the new agency may need to provide information to the former agency regarding an employee's aggregate basic pay and end-of-year cap. Each agency is responsible for proper application of the annual cap for the pay periods during which it employed the employee. Agencies cannot avoid certain administrative burdens based on the express statutory language in 5 U.S.C. 5547(b)(2), and we cannot change the regulations without a legislative amendment to reduce or eliminate these administrative burdens.

We note that § 550.106(e) provides that an agency may defer—until the end of the calendar year—payment of additional premium pay owed an employee who is subject to an annual cap. Thus, while some of the administrative burdens associated with applying the annual cap remain, an agency may be able to avoid the burden of collecting an overpayment in some cases.

Emergency and Mission-Critical Work Determinations

Under § 550.106(b)(1), the head of an agency or designee is authorized to make determinations concerning mission-critical work in order to apply the annual cap provisions of § 550.107(c) instead of the biweekly cap provisions in § 550.105(a). An agency commented that some readers have interpreted § 550.106(b)(1) to mean that a new written delegation of authority is required to cover a mission-critical work determination. The commenter recommended clarification that this phrase was not intended to require an agency head to generate new written delegations of authority.

It is not our intent to mandate or require a new written delegation of authority to cover mission-critical work determinations. If an agency head has provided a broad delegation of authority that covers a variety of actions and that delegation can be interpreted to encompass the action of making a mission-critical work determination, a new delegation is not required.

Another agency was concerned that § 550.106(a) and (b) might be interpreted to require agencies to make emergency and mission-critical work determinations for each pay period, which would be administratively burdensome. The agency suggested that OPM clarify that these determinations could be made for a situation or event.

The regulations do not require that separate emergency and mission-critical determinations be made for each pay period. The reference to "any pay period" at the beginning of § 550.106(a) and (b) simply means that premium pay is subject to an annual cap instead of the biweekly cap for all pay periods during which the emergency or mission-critical work determination is in effect. Each agency should maintain appropriate documentation to show which pay periods are covered by a determination for each affected employee. The agency must either (1) at the outset, prospectively set a specified period of time during which the determination will be in effect, or (2) leave the ending date open-ended at the outset and then, at the appropriate time, take formal action to terminate the determination as of a specific date.

We have received questions regarding what happens when the emergency or mission-critical work determination is terminated before the end of the calendar year. As provided in 5 U.S.C. 5547(b) and § 550.106(c), the annual cap applies to the entire calendar year. Even if an employee is again placed under a biweekly cap before the end of the calendar year (because the emergency or mission-critical work conditions are no longer in effect), the employee would still remain subject to the annual cap for the duration of the calendar year. Thus, we are adding a new paragraph (g) to § 550.106 to state more clearly that an employee remains subject to the annual cap through the remainder of the calendar year and thus could be covered simultaneously by both the biweekly cap and the annual cap.

Deferred Payments

One agency commenter was concerned that § 550.106(e) might be interpreted as requiring an agency to defer until the end of the calendar year payment of *all* additional premium pay resulting from application of an annual cap. The commenter recommended revising the regulations to read, "an agency may defer payment of *some or all* of the additional premium pay." The intent of the regulation was to provide agencies with broad authority to defer whatever amount of additional premium pay they determined to be appropriate. (In fact, an agency may even decide to release deferred monies to the employee well before the end of the calendar year if it determines this to be appropriate.) Accordingly, we are revising § 550.106(e) as recommended by the commenter.

Calculation of Biweekly Cap

An agency commenter stated that the calculations used to determine the biweekly cap are not clearly stated in §§ 550.105 and 550.107. The commenter suggested clarifying the calculations to be used in determining the biweekly cap. We calculate the biweekly premium pay cap for each locality pay area and publish this calculation in our annual publication of the Salary Table Book. We also post the biweekly premium pay cap for each locality pay area on our Web site. The premium pay caps can be accessed on our Web site at *http://www.opm.gov/oca/pay/HTML/factindx.asp*. In response to this comment, we are adding a new paragraph (d) to § 550.105 that explains how biweekly rates are computed, consistent with the requirements of 5 U.S.C. 5504. Also, we are adding a paragraph in § 550.107 that refers to § 550.105(d).

Other Comments

An agency commenter recommended replacing the term "paycheck" in § 550.106(d)(3) with the term "salary payment," since most employees are paid by direct deposit. We adopted this suggestion.

An agency commenter suggested including a statement in the regulations that "pursuant to section 118 of the Omnibus Consolidated and Emergency Supplemental Appropriations for Fiscal Year 2001, the biweekly cap does not apply to premium pay for protective services authorized under 18 U.S.C. 3056(a)." (Section 118 provides for use of a special annual cap. This provision applies mainly to Secret Service agents.) We agree that the regular biweekly and annual premium pay caps do not apply to employees performing such protective services. Thus, we are adding a new paragraph (e) to § 550.105 to acknowledge that, notwithstanding the provisions in § 550.105, premium pay for protective services authorized by 18 U.S.C. 3056(a) is subject to the requirements in section 118 of the Treasury and General Government Appropriations Act of 2001 (as enacted into law by section 1(3) of Pub. L. 106–554).

An agency questioned why the special rules in § 550.107 (dealing with use of a biweekly cap for certain types of premium payments for employees otherwise under an annual cap) apply to non-law enforcement officers who are receiving annual premium pay for administratively uncontrollable overtime (AUO) work. The agency noted that AUO pay is retirement-creditable for law enforcement officers only and that one of the rationales given for continued use of a biweekly cap was the retirement creditability of the types of payments listed in § 550.107. The interim regulations offered another rationale for the special treatment of AUO pay and other listed premium payments. These payments are intended to be stable salary supplements that employees can count on from pay period to pay period. Placing AUO pay under the annual cap provisions could result in loss of this salary supplement during the latter part of the calendar year. This rationale applies equally to non-law enforcement officers. Therefore, we believe it is appropriate that AUO pay be included under the special rules in § 550.107 regardless of the type of employee receiving it.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal agencies and employees.

E.O. 12866, Regulatory Review

The Office of Management and Budget has reviewed this rule in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 550

Administrative practice and procedure, Claims, Government employees, Wages.

Office of Personnel Management.

Kay Coles James,

Director.

■ Accordingly, the interim rule amending part 550 of title 5 of the Code of Federal Regulations, which was published at 67 FR 19319 on April 19, 2002, is adopted as final with the following changes:

PART 550—PAY ADMINISTRATION (GENERAL)

Subpart A—Premium Pay

■ 1. The authority citation for subpart A of part 550 is revised to read as follows:

Authority: 5 U.S.C. 5304 note, 5305 note, 5504(c), 5541(2)(iv), 5545a(h)(2)(B) and (i), 5547(b) and (c), 5548, and 6101(c); sections 407 and 2316 of Pub. L. 105–277, 112 Stat. 2681–101 and 2681–828 (5 U.S.C. 5545a); E.O. 12748, 3 CFR, 1992 Comp., p. 316.

■ 2. In § 550.105, a new paragraph (d) and (e) are added to read as follows:

§ 550.105 Biweekly maximum earnings limitation.

* * * * *

(d) The biweekly rates of pay for the GS–15 maximum rate and for level V of

the Executive Schedule are computed as follows:

(1) Compute an hourly rate by dividing the applicable published annual rate of basic pay by 2,087 hours and rounding the result to the nearest cent.

(2) Compute the biweekly rate by multiplying the hourly rate from paragraph (d)(1) of this section by 80 hours.

(e) Notwithstanding any other provision in this section, premium pay for protective services authorized by 18 U.S.C. 3056(a) is subject to the requirements in section 118 of the Treasury and General Government Appropriations Act of 2001 (as enacted into law by section 1(3) of Public Law 106–554).

■ 3. In § 550.106, paragraphs (d)(3) and (e) are revised and a new paragraph (g) is added to read as follows:

§ 550.106 Annual maximum earnings limitation.

* * * * *

(d) * * *

(3) Compute an annual rate of pay by multiplying the biweekly rate from paragraph (d)(2) of this section by the number of pay periods for which a salary payment is issued in the given calendar year under the agency's payroll cycle (*i.e.*, either 26 or 27 pay periods).

(e) An agency may defer payment of some or all of the additional premium pay owed an employee as a result of the annual limitation until the end of the calendar year.

* * * * *

(g) If an agency determines that the emergency or mission-critical work conditions are no longer in effect for an employee, it must resume application of the biweekly limitation. However, any premium pay the employee receives during the remainder of the calendar year is also subject to the annual limitation (as applied to any given pay period as described in paragraph (c) of this section).

■ 4. In § 550.107, paragraph (d) is redesignated as paragraph (e) and a new paragraph (d) is added to read as follows:

§ 550.107 Premium payments capped on a biweekly basis when an annual limitation otherwise applies.

* * * * *

(d) The biweekly rates under paragraph (c) of this section are computed as provided in § 550.105(d).

* * * * *

[FR Doc. 04–20952 Filed 9–16–04; 8:45 am]
BILLING CODE 6325–39–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–40–AD; Amendment 39–13795; AD 2004–19–04]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company 120, 140, 140A, 150, F150, 170, 172, F172, FR172, P172D, 175, 177, 180, 182, 185, A185E, 190, 195, 206, P206, U206, TP206, TU206, 207, T207, 210, T210, 336, 337, and T337 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA adopts a new airworthiness directive (AD) that will supersede AD 86–26–04, which applies to certain Cessna Aircraft Company (Cessna) 120, 140, 140A, 150, F150, 170, 172, F172, FR172, P172D, 175, 177, 180, 182, 185, A185E, 190, 195, 205, 205A, 206, P206, P206E, TP206A, TU206, TU206E, U206, U206E, 207, T207, 210, T210, 336, 337, and T337 series airplanes. AD 86–26–04 currently requires you to inspect and, if necessary, modify the pilot/co-pilot upper shoulder harness adjusters that have certain Cessna accessory kits incorporated. This AD is the result of reports that additional airplanes have the same unsafe condition and the manufacturer revised the service information to add these airplanes and correct the part number of the shoulder harness adjusters. Consequently, this AD retains the actions of 86–26–04, adds additional airplanes to the applicability section of this AD, and incorporates the revised service information. We are issuing this AD to prevent slippage of the pilot/co-pilot shoulder harness, which could result in failure of the shoulder harness to maintain proper belt length adjustment and tension. Such failure could result in pilot/co-pilot injury.

DATES: This AD becomes effective on November 1, 2004.

As of November 1, 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 The Cessna Aircraft Company, Product Support P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517–5800; facsimile: (316) 942–9006.

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–40–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: Gary D. Park, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4123; facsimile: (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Discussion

What is the background of the subject matter? Cessna designed add-on shoulder harness assembly accessory kits for the pilot/co-pilot seats for certain Cessna airplanes. These shoulder harness assemblies incorporate a retainer spring in the adjuster on the upper and lower shoulder harness. The retainer spring may have been inadvertently installed on the belt friction pin. This installation of the spring in the upper shoulder harness adjuster will not allow the belt webbing to lock in place.

This caused us to issue AD 86–26–04, Amendment 39–5503 (52 FR 520, January 7, 1987). AD 86–26–04 currently requires the following on certain Cessna 120, 140, 140A, 150, F150, 170, 172, F172, FR172, P172D, 175, 177, 180, 182, 185, A185E, 190, 195, 205, 205A, 206, P206, P206E, TP206A, TU206, TU206E, U206, U206E, 207, T207, 210, T210, 336, 337, and T337 series airplanes:

—Inspecting the upper shoulder harness adjuster for the presence of a retainer spring;

—If a retainer spring is found, removing the retainer spring; and

—Stamping out the –401 identification number.

What has happened since AD 86–26–04 to initiate this action? We have received reports that additional airplanes have the same unsafe condition. Cessna has revised the related service information to include these additional airplanes.

Cessna also revised the service information to correct the reference to the part number (P/N) of the shoulder harness adjusters. The P/N is referenced as 44030–401 in Cessna Single Engine Service Bulletin SEB86–8 and Cessna Multi-engine Service Bulletin MEB86–22, both dated November 21, 1986. The correct P/N is 443030–401.

What is the potential impact if FAA took no action? If not corrected, the shoulder harness could fail to maintain proper belt length adjustment and

tension. Such failure could result in pilot/co-pilot injury.

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 certain Cessna Models 120, 140, 140A, 150, F150, 170, 172, F172, FR172, P172D, 175, 177, 180, 182, 185, A185E, 190, 195, 206, P206, U206, TP206, TU206, 207, T207, 210, T210, 336, 337, and T337 series airplanes. This proposal was published in the **Federal Register** as a supplemental notice of proposed rulemaking (NPRM) on February 27, 2004 (69 FR 9277). The supplemental NPRM proposed to supersede AD 86–26–04 with a new AD that would require you to:

—Inspect the upper shoulder harness adjuster for the presence of a retainer spring;

—If a retainer spring is found, remove the retainer spring; and

—Stamp out the –401 identification number.

Was the public invited to comment? The FAA encouraged interested persons to participate in the making of this amendment. The following presents the comment received on the proposal and FAA's response to the comment:

Comment Issue: Clarify Whether Retainer Springs, Part Number (P/N) 443030–401, Used in Cessna Service Kits Are Affected by This AD

What is the commenter's concern? The commenter states that there is confusion about whether retainer springs, P/N 443030–401, used in Cessna service kits are affected by this AD. The commenter states that the service kits are different and unrelated to the shoulder harness assembly accessory kits referenced in the AD. The commenter believes this is confusing and may result in a mechanic cutting the spring on the service kit adjusters in an effort to comply with this AD.

The commenter wants us to put a note in the AD to clarify that Cessna service kits that incorporate the use of P/N 443030–401 are not affected by this AD.

What is FAA's response to the concern? We concur with the commenter and will add a paragraph in the AD for clarification. We will change the final rule AD action based on this comment.

Conclusion

What is FAA's final determination on this issue? We carefully reviewed all available information related to the subject presented above and determined that air safety and the public interest require the adoption of the rule as proposed except for the changes discussed above and minor editorial corrections. We have determined that these changes and minor corrections:

—Provide 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 75,329 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:

Labor cost	Parts cost	Total cost airplane	Total cost on U.S. operators
1 workhour × $65 per hour = $65	No parts required	$65	$65 × 75,329 = $4,896,385.

We estimate the following costs to accomplish any necessary modification that will be required based on the results of this inspection. We have no way of determining the number of airplanes that may need this modification:

Labor cost	Parts cost	Total cost per airplane
1 workhour × $65 per hour = $65	No parts required	$65

What is the difference between the cost impact of this AD and the cost impact of AD 86–26–04? The difference is the addition of 26 airplanes to the applicability section of this AD. There is no difference in cost to perform the inspection and the modification.

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–40–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. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 86–26–04, Amendment 39–5503 (52 FR 520, January 7, 1987), and by adding a new AD to read as follows:

2004–19–04 Cessna Aircraft Company: Amendment 39–13795; Docket No. 2003–CE–40–AD; Supersedes AD 86–26–04, Amendment 39–5503.

When Does This AD Become Effective?

(a) This AD becomes effective on November 1, 2004.

What Other ADs Are Affected by This Action?

(b) This AD supersedes AD 86–26–04, Amendment 39–5503.

What Airplanes Are Affected by This AD?

(c) This AD affects the following airplane models and serial numbers that are certificated in any category and incorporate one of the Cessna accessory kits specified in paragraph (d) of this AD.

Model	Serial number
(1) 120	8000 through 15075.
(2) 140	8000 through 15075.
(3) 140A	15200 through 15724.
(4) 150	617, 17001 through 17999, and 59001 through 59018.
(5) 150A	628 and 15059019 through 15059350.
(6) 150B	15059351 through 15059700.
(7) 150C	15059701 through 15060087.
(8) 150D	15060088 through 15060772.
(9) 150E	644 and 15060773 through 15061532.
(10) 150F	15061533 through 15064532.
(11) 150G	15064533 through 15064969 and 15064971 through 15067198.
(12) 150H	649 and 15067199 through 15069308.
(13) 150J	15069309 through 15071128.
(14) 150K	15071129 through 15072003.
(15) 170	18000 through 18729.
(16) 170A	18730 through 19400 and 19402 through 20266.
(17) 170B	20267 through 20999 and 25000 through 27169.
(18) 172	610, 612, 615, 28000 through 29999, 36000 through 36999, and 46001 through 46754.
(19) 172A	622, 625, and 46755 through 47746.
(20) 172B	630 and 17247747 through 17248734.
(21) 172C	17248735 through 17249544.
(22) 172D	17249545 through 17250572.
(23) 172E	639 and 17250573 through 17251822.
(24) 172F	17251823 through 17253392.
(25) 172G	17253393 through 17254892.
(26) 172H	638, 17254893 through 17256492, and 17256494 through 17256512.
(27) 172I	17256513 through 17257161.
(28) 172K	17257162 through 17258486 and 17258487 through 17259223.
(29) P172D	P17257120 through P17257188.
(30) 175	626, 640, 28700A, and 55001 through 56238.
(31) 175A	619 and 56239 through 56777.
(32) 175B	17556778 through 17557002.
(33) 175C	17557003 through 17557119.
(34) 177	661, 17700001, and 17700003 through 17701164.
(35) 177A	17701165 through 17701370.
(36) 177B	17701371 through 17701471 and 17701473 through 17701530.
(37) 180	604, 614, 30000 through 32661.
(38) 180A	32662 through 32999 and 50001 through 50355.
(39) 180B	50356 through 50661.
(40) 180C	624 and 50662 through 50911.
(41) 180D	18050912 through 18051063.
(42) 180E	18051064 through 18051183.
(43) 180F	18051184 through 18051312.
(44) 180G	18051313 through 18051445.
(45) 180H	18051446 through 18052175.
(46) 182	613 and 33000 through 33842.
(47) 182A	33843 through 34753, 34755 through 34999, and 51001 through 51556.
(48) 182B	34754, 51557 through 51622, and 51624 through 52358.
(49) 182C	631 and 52359 through 53007.
(50) 182D	51623 and 18253008 through 18253598.
(51) 182E	18253599 through 18254423.
(52) 182F	18254424 through 18255058.
(53) 182G	18255059 through 18255844.
(54) 182H	634 and 18255846 through 18256684.
(55) 182J	18256685 through 18257625.
(56) 182K	18255845, 18257626 through 18257698, and 18257700 through 18258505.
(57) 182L	18258506 through 18259305.
(58) 182M	662, 18257699, and 18259306 through 18260055.

Model	Serial number
(59) 182N	18260056 through 18260445.
(60) 185	632 and 185–0001 through 185–0237.
(61) 185A	185–0238 through 185–0512.
(62) 185B	185–0513 through 185–0653.
(63) 185C	185–0654 through 185–0776.
(64) 185D	185–0777 through 185–0967.
(65) 185E	185–0968 through 185–1149.
(66) A185E	185–0968 through 185–1599 and 18501600 through 18501832.
(67) 190	7001 through 7999 and 16000 through 16183.
(68) 195	7001 through 7999 and 16000 through 16183.
(69) 206	206–0001 through 206–0275.
(70) P206	P206–0001 through P206–0160.
(71) P206A	P206–0161 through P206–0306.
(72) P206B	P206–0307 through P206–0419.
(73) P206C	P206–0420 through P206–0519.
(74) P206D	P206–0520 through P206–0603.
(75) P206E	P20600604 through P20600647.
(76) U206	U206–0276 through U206–0437.
(77) U206A	U206–0438 through U206–0656.
(78) U206B	U206–0657 through U206–0914.
(79) U206C	U206–0915 through U206–1234.
(80) U206D	U206–1235 through U206–1444 and U20601445 through U20601587.
(81) TP206A	P206–0161 through P206–0306.
(82) TP206B	P206–0307 through P206–0419.
(83) TP206C	P206–0420 through P206–0519.
(84) TP206D	P206–0520 through P206–0603.
(85) TP206E	P20600604 through P20600647.
(86) TU206A	U206–0487 through U206–0656.
(87) TU206B	U206–0657 through U206–0914.
(88) TU206C	U206–0915 through U206–1234.
(89) TU206D	U206–1235 through U206–1444 and U20601445 through U20601587.
(90) 207	20700001 through 20700190.
(91) T207	20700001 through 20700190.
(92) 210	618 and 57001 through 57575.
(93) 210–5 (205)	641, 648, and 205–0001 through 205–0480.
(94) 210–5 (205A)	205–0481 through 205–0577.
(95) 210A	616 and 21057576 through 21057840.
(96) 210B	21057841 through 21058085.
(97) 210C	21058086 through 21058139 and 21058141 through 21058220.
(98) 210D	21058221 through 21058510.
(99) 210E	21058511 through 21058715.
(100) 210F	21058716 through 21058818.
(101) 210G	21058819 through 21058936.
(102) 210H	21058937 through 21059061.
(103) 210J	21059062 through 21059199.
(104) 210K	21059200 through 21059351.
(105) T210F	T210–0001 through T210–0197.
(106) T210G	T210–0198 through T210–0307.
(107) T210H	T210–0308 through T210–0392.
(108) T210J	T210–0393 through T210–0454.
(109) T210K	21059200 through 21059351.
(110) F150G	F150–0068 through F150–0219.
(111) F150H	F150–0220 through F150–0389.
(112) F150J	F150–0390 through F150–0529.
(113) F150K	F15000530 through F15000658.
(114) F172D	F172–0001 through F172–0018.
(115) F172E	F172–0019 through F172–0085.
(116) F172F	F172–0086 through F172–0179.
(117) F172G	F172–0180 through F172–0319.
(118) F172H	F172–0320 through F172–0654 and F17200655 through F17200754.
(119) FR172E	FR17200001 through FR17200060.
(120) FR172F	FR17200061 through FR17200145.
(121) FR172G	FR17200146 through FR17200225.
(122) 336	633, 636, and 336–0001 through 336–0195.
(123) 337	647 and 337–0002 through 337–0239.
(124) 337A	337–0240 through 337–0305, 337–0307 through 337–0469, and 337–0471 through 337–0525.
(125) 337B	656, 337–0001, 337–0470, 337–0526 through 337–0568, and 337–0570 through 337–0755.
(126) 337C	337–0756 through 337–0978.
(127) 337D	337–0979 through 337–1193.
(128) 337E	33701194 through 33701316.
(129) T337B	337–0001, 337–0470, 337–0526 through 337–0568, and 37–0570 through 337–0755.
(130) T337C	337–0756 through 337–0978.
(131) T337D	337–0979 through 337–1193.
(132) T337E	33701194 through 33701316.

What Cessna Accessory Kits Are Affected by This AD?

(d) The following is a list of the affected Cessna accessory kits:

CESSNA ACCESSORY KIT
AK140–10
AK150–7
AK150–121
AK170–10
AK177–10
AK182–75
AK195–10
AK210–77
AK210–93
AK210–171
AK210–172
AK210–173
AK210–174
AK336–32
AK336–36
AK336–103

Note: Retainer springs, part number (P/N) 443030–401, used in Cessna service kits are not affected by this AD.

What Is the Unsafe Condition Presented in This AD?

(e) The actions specified in this AD are intended to prevent slippage of the pilot/co-pilot shoulder harness, which could result in failure of the shoulder harness to maintain proper belt length adjustment and tension. This failure could result in pilot/co-pilot injury.

What Must I Do To Address This Problem?

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

Actions	Compliance	Procedures
(1) Inspect only the upper shoulder harness adjuster (part number (P/N) 443030–401) for the presence of a retainer spring.	Within the next 25 hours time-in-service (TIS) after November 1, 2004 (the effective date of this AD).	Follow Cessna Single Engine Service Bulletin SEB86–8, Revision 1, and Cessna Multi-engine Service Bulletin MEB86–22, Revision 1, both dated July 28, 2003.
(2) If a retainer spring is found during the inspection of the upper shoulder harness adjuster (P/N 443030–401) required in paragraph (f)(1) of this AD: (i) Remove the spring by cutting each side; and (ii) stamp out the –401 identification number.	Prior to further flight after the inspection required in paragraph (f)(1) of this AD.	Follow Cessna Single Engine Service Bulletin SEB86–8, Revision 1, and Cessna Multi-engine Service Bulletin MEB86–22, Revision 1, both dated July 28, 2003.
(3) If a retainer spring is not found during the inspection of the upper shoulder harness adjuster (P/N 443030–401) required in paragraph (f)(1) of this AD, make an entry in the airplane log book showing compliance with this AD.	Prior to further flight after the inspection required in paragraph (f)(1) of this AD.	Follow Cessna Single Engine Service Bulletin SEB86–8, Revision 1, and Cessna Multi-engine Service Bulletin MEB86–22, Revision 1, both dated July 28, 2003.
(4) Only incorporate Cessna Accessory Kits identified in paragraph (d) of this AD that have been inspected and modified in accordance with paragraphs (f)(1), (f)(2), (f)(2)(i), and (f)(2)(ii) of this AD.	As of November 1, 2004 (the effective date of this AD).	Follow Cessna Single Engine Service Bulletin SEB86–8, Revision 1, and Cessna Multi-engine Service bulletin MEB86–22, Revision 1, both dated July 28, 2003.

(g) If you did the actions of this AD using Cessna Single Engine Service Bulletin SEB86–8 and Cessna Multi-engine Service Bulletin MEB86–22, both dated November 21, 1986, no further action is required as long as you used shoulder harness adjuster, P/N 443030–401.

May I Request an Alternative Method of Compliance?

(h) 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, Wichita Aircraft Certification Office (ACO), FAA. For information on any already approved alternative methods of compliance, contact Gary D. Park, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4123; facsimile: (316) 946–4107.

Does This AD Incorporate Any Material by Reference?

(i) You must do the actions required by this AD following the instructions in Cessna Single Engine Service Bulletin SEB86–8, Revision 1, and Cessna Multi-engine Service Bulletin MEB86–22, Revision 1, both dated July 28, 2003. 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 Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517–5800; facsimile: (316) 942–9006. 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.

Issued in Kansas City, Missouri, on September 8, 2004.

Dorenda D. Baker,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–20774 Filed 9–16–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–18818; Airspace Docket No. 04–ACE–44]

Modification of Class E Airspace; Fremont, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends title 14 Code of Federal Regulations, part 71 (14 CFR 71) by revising Class E airspace at Fremont, NE. A review of controlled airspace for Fremont Municipal Airport revealed it does not comply with the criteria for 700 feet above ground level (AGL) airspace required for diverse departures. The review also identified discrepancies in the legal description for the Fremont, NE Class E airspace area. The area is modified and enlarged to conform to the criteria in FAA Orders.

DATES: This direct final rule is effective on 0901 UTC, January 20, 2005. Comments for inclusion in the Rules Docket must be received on or before October 26, 2004.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2004–18818/ Airspace Docket No. 04–ACE–44, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 modifies the Class E airspace area extending upward from 700 feet above the surface at Fremont, NE. An examination of controlled airspace for Fremeont Municipal Airport revealed it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2E, Procedures for Handling Airspace Matters. The criteria in FAA Order 7400.2E for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the airport reference point to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. The examination also identified discrepancies in the Fremont, NE Class E airspace legal description. This amendment expands the airspace area from a 7-mile radius to a 7.6-mile radius of Fremont Municipal Airport, corrects format errors in the legal description and brings the legal description of the Fremont, NE Class E airspace area into compliance with FAA Order 7400.2E. This area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2004–18818/Airspace Docket No. 04–ACE–44." The postcard will be date/time stamped and returned to the commenter.

Agency Findings

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.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, 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.

List of Subjects in 14 CFR Part 71

Airspace, incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

* * * * *

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

* * * * *

ACE NE E5 Fremont, NE

Fremont Municipal Airport, NE
(Lat. 41°26′57″ N., long. 96°31′13″ W.)

That airspace extending upward from 700 feet above the surface within a 7.6-mile radius of Fremont Municipal Airport.

* * * * *

Issued in Kansas City, MO, on September 8, 2004.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 04–21010 Filed 9–16–04; 8:45 am]

BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

RIN 3038—AB64

Minimum Financial and Related Reporting Requirements for Futures Commission Merchants and Introducing Brokers; Correction

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects typographical errors in a final rule that was published in the **Federal Register** on August 12, 2004. This document also corrects the inadvertent omission of technical corrections that were described in the preamble of the published document but which were not included in the amendatory language of the final rule.

DATES: Effective as of September 30, 2004.

FOR FURTHER INFORMATION CONTACT: Thelma Diaz, Special Counsel, at (202) 418–5137, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Electronic mail: *tdiaz@cftc.gov.*

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** of August 12, 2004 (69 FR 49784), the Commodity Futures Trading Commission ("Commission") announced amendments to Commission rules relating to the minimum financial and related reporting requirements for futures commission merchants and introducing brokers. As discussed in the preamble, at page 49791, footnote 36, the amendments included technical corrections to revise references to "1.17(a)(1)(ii)" to read "1.17(a)(1)(iii)" within Rules 1.10(j)(8) and 1.17(a)(2), in order to reflect prior Commission rulemaking that had redesignated Rule 1.17(a)(1)(ii). However, these technical corrections were inadvertently omitted from the amendatory language in the published document, and the amendatory language also contained typographical errors. This document corrects both the omission and the typographical errors in the published document.

■ In FR Doc. 04–18349, appearing at pages 49784 through 49800 in the **Federal Register** of Thursday, August 12, 2004, the following corrections are made:

PART 1—[Corrected]

■ 1. On page 49795, in the second column, in amendatory instruction Number 2, beginning in the second line, the language that reads "(e), and (f)" is corrected to read "(e), (f), and (j)(8)(ii)(A)".

§ 1.10 [Corrected]

■ 2. On page 49795, in the third column, in § 1.10, in paragraph (c)(3), seventh line, the phrase "a registrant" in corrected to read "an applicant".

■ 3. On page 49797, in the first column, in § 1.10, in paragraph (f)(1)(ii)(B), in the last line of the paragraph, the phrase subparagraph (f)(1(ii) is corrected to read as "paragraph (f)(1)(ii)".

■ 4. On page 49797, in the first column, in § 1.10, after the five asterisks that follow paragraph (f)(2)(ii), and before amendatory instruction Number 3, the section is corrected by adding the following:

(j) * * *

(8) * * *

(ii)(A) Notwithstanding the provisions of paragraph (j)(8)(i) of this section or of § 1.17(a), an introducing broker that is a party to a guarantee agreement that has been terminated in accordance with the provisions of paragraph (j)(5)(ii) of this section shall not be deemed to be in violation of the minimum adjusted net capital requirement of § 1.17(a)(1)(iii) or (a)(2) for 30 days following such termination. Such an introducing broker must cease doing business as an introducing broker on or after the effective date of such termination, and may not resume doing business as an introducing broker unless and until it files a new agreement or either:

* * * * *

§ 1.16 [Corrected]

■ 5. On page 49798, following the second column, in amendatory instruction Number 4, the section heading "§ 11.16 Qualifications and reports of accountants" is corrected to read as "§ 1.16 Qualifications and reports of accountants".

■ 6. On page 49799, in the first column, in amendatory instruction Number 5, the second line, the language that reads "paragraphs (a)(1)(i)(B) and (b)(4)" is corrected to read as "paragraph (a)(1)(i)(B), the first sentence of paragraph (a)(2)(ii), and paragraph (b)(4)".

§ 1.17 [Corrected]

■ 7. On page 49799, in the first column, in § 1.17, after the five asterisks that follow paragraph (a)(1)(i)(B)(*2*), and before paragraph (b), the section is corrected by adding the following:

(2) * * *

(ii) The minimum requirements of paragraph (a)(1)(iii) of this section shall not be applicable to an introducing broker which elects to meet the alternative adjusted net capital requirement for introducing brokers by operation pursuant to a guarantee agreement which meets the requirements set forth in § 1.10(j). * * *

* * * * *

Issued in Washington, DC, on September 13, 2004, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 04–21021 Filed 9–16–04; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–04–158]

RIN 1625–AA08

Special Local Regulations for Marine Events; Patapsco River, Inner Harbor, Baltimore, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary special local regulations during the "Catholic Charities Dragon Boat Races," a marine event to be held September 18, 2004, on the waters of the Patapsco River, Inner Harbor, Baltimore, MD. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to temporarily restrict vessel traffic in a portion of the Inner Harbor during the event.

DATES: This rule is effective from 6:30 a.m. to 6:30 p.m. on September 18, 2004.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket CGD05–04–158 and are available for inspection or copying at Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, 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 Section, at (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) and (d)(3) the Coast Guard finds that good cause exists for not publishing an NPRM and making it effective less than 30 days after publishing in the **Federal Register.** Publishing an NPRM and waiting 30 days for it to be effective would be impracticable and contrary to the public interest as immediate action is necessary to protect event participants from the substantial dangers posed by vessels operating near the competition. For this reason, a temporary special local regulation is necessary to provide for the safety of life at sea during the event. In addition, advance notifications will be made via the Local Notice to Mariners, marine information broadcasts, and area newspapers.

Background and Purpose

On September 18, 2004, Associated Catholic Charities, Inc. will sponsor Dragon Boat Races in the Inner Harbor. The event will consist of 40 teams rowing Chinese Dragon Boats in heats of 2 to 4 boats for a distance of 400 meters. Due to the need for vessel control during the event, the Coast Guard will temporarily restrict vessel traffic in the event area to provide for the safety of participants, spectators and other transiting vessels.

Discussion of Rule

The Coast Guard is establishing special local regulations on specified waters of the Patapsco River, Inner Harbor, Baltimore, MD. The regulations will be in effect from 6:30 a.m. to 6:30 p.m. on September 18, 2004. The effect will be to restrict general navigation in the regulated area during the event. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area. Vessel traffic will be allowed to transit the regulated area at slow speed between heats, when the Coast Guard Patrol Commander determines it is safe to do so. These regulations are needed to control vessel traffic during the event to enhance the safety of participants, spectators and transiting vessels.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 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 rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Although this rule prevents traffic from transiting a portion of the Inner Harbor during the event, the effect of this rule will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers so mariners can adjust their plans accordingly. In addition, vessel traffic will be allowed to transit the regulated area at slow speed between heats, when the Coast Guard Patrol Commander determines it is safe to do so.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we 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 may be small entities: the owners or operators of vessels intending to transit or anchor in the effected portions of the Inner Harbor during the event.

Although this regulation prevents traffic from transiting a portion of the Inner Harbor during the event, the effect of this regulation will not be significant because of the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers so mariners can adjust their plans accordingly. In addition, vessel traffic will be allowed to transit the regulated area at slow speeds between heats, when the Coast Guard Patrol Commander determines it is safe to do so.

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 rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses 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 Regulatory 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 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 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 rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will 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

We have 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 concern 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 would not have a substantial and 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 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.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, 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 those sections. Under figure 2–1, paragraph (34)(h), of the Instruction, an "Environmental Analysis Check List" and a "Categorical Exclusion Determination" are not required for this rule.

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 amends 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. Add temporary § 100.35–T05–158 to read as follows:

§ 100.35–T05–158 Patapsco River, Inner Harbor, Baltimore, MD.

(a) *Regulated area.* The regulated area is established for the waters of the Inner Harbor from shoreline to shoreline, bounded on the east by a line drawn along longitude 076°36′ 30″ West. All coordinates reference Datum NAD 1983.

(b) *Definitions.* (1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Activities Baltimore.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Activities Baltimore with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(c) *Special local regulations.* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area shall:

(i) Stop the vessel immediately when directed to do so by any Official Patrol.

(ii) Proceed as directed by any Official Patrol.

(d) *Effective period.* This section will be effective from 6:30 a.m. to 6:30 p.m. on September 18, 2004.

Dated: September 2, 2004.

Ben R. Thomason, III,

Captain, U.S. Coast Guard, Acting Commander, Fifth Coast Guard District.

[FR Doc. 04–20928 Filed 9–16–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–04–165]

RIN 1625–AA08

Special Local Regulations for Marine Events; Norfolk Harbor, Elizabeth River, Norfolk and Portsmouth, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of implementation of regulation.

SUMMARY: The Coast Guard is implementing the special local regulations at 33 CFR 100.501 during the "Chesapeake Bay Workboat Races" to be held September 19, 2004, on the waters of the Elizabeth River between Norfolk and Portsmouth, Virginia. These special local regulations are necessary to control vessel traffic due to the confined nature of the waterway and expected vessel congestion during the marine event. The effect will be to restrict general navigation in the regulated area for the safety of participants, spectators and other vessels transiting the event area.

DATES: *Enforcement Dates:* 33 CFR 100.501 will be enforced from 1:30 p.m. to 4:30 p.m. on September 19, 2004.

FOR FURTHER INFORMATION CONTACT: S.L. Phillips, Project Manager, Commander, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, VA 23704, (757) 398–6204.

SUPPLEMENTARY INFORMATION: Norfolk Festevents will sponsor the "Chesapeake Bay Workboat Races" on the waters of the Elizabeth River on September 19, 2004. Approximately 25 traditional Chesapeake Bay deadrise workboats will race along an oval course in the Norfolk Harbor. A fleet of spectator vessels is expected. Therefore,

to ensure the safety of participants, spectators, and transiting vessels, 33 CFR 100.501 will be enforced for the duration of the event. Under the provisions of 33 CFR 100.501, a vessel may not enter the regulated area unless it receives permission from the Coast Guard Patrol Commander. Vessel traffic will be allowed to transit the regulated area as the race progresses, when the Patrol Commander determines it is safe to do so.

In addition to this notice, the maritime community will be provided extensive advance notification via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly.

Dated: September 1, 2004.

Sally Brice-O'Hara,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 04–20926 Filed 9–16–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 110 and 165

[CGD05–04–172]

RIN 1625–AA00
RIN 1625-AA01

Anchorage Grounds and Safety Zone; Delaware Bay and River

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the Delaware Bay and River around the Weeks Dredge and Barge 312 and is placing additional requirements on vessels in Anchorage 6 off Deepwater Point, Anchorage 7 off Marcus Hook, and Anchorage 9 near the entrance to Mantua Creek. The Army Corps of Engineers dredges parts of the Delaware River including the Marcus Hook Range Ship Channel to maintain congressionally authorized depths. These regulations will help ensure the safety of vessels transiting the channel as well as vessels engaged in dredging operations.

DATES: This rule is effective from September 15, 2004, to December 31, 2004.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD05–04–172 and are available for inspection or copying at Coast Guard Marine Safety Office Philadelphia, One Washington Avenue, Philadelphia, Pennsylvania 19147, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Kevin Sligh or Lieutenant Junior Grade Toussaint Alston, Coast Guard Marine Safety Office Philadelphia, at (215) 271–4889.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) and (d)(3), the Coast Guard finds that good cause exists for not publishing a NPRM and for making this regulation effective less than 30 days after publication in the **Federal Register**. Allowing for a comment period is impracticable and contrary to public interest, since immediate action is needed to protect mariners against potential hazards associated with dredging operations in the Marcus Hook Range Ship Channel and to modify the anchorage regulations to facilitate vessel traffic. However, advance notification will be made to affected mariners via marine information broadcasts.

Background and Purpose

The U.S. Army Corps of Engineers (USACE) conducts dredging operations on the Delaware River in the vicinity of the Marcus Hook Range Ship Channel to maintain the 40-foot project depth.

To reduce the hazards associated with dredging the channel, vessel traffic that would normally transit through the Marcus Hook Range Ship Channel will be diverted through part of Anchorage 7 off Marcus Hook ("Anchorage 7") during the dredging operations. Therefore, additional requirements and restrictions on the use of Anchorage 7 are necessary. For the protection of mariners transiting in the vicinity of dredging operations, the Coast Guard is also establishing a safety zone around the dredging vessels, Weeks Dredge and Barge 312. The safety zone is intended to protect mariners from the potential hazards associated with dredging operations and equipment.

Discussion of Temporary Final Rule

Currently paragraph (b)(2) of 33 CFR 110.157 allows vessels to anchor for up to 48 hours in the anchorage grounds listed in Section 110.157(a), which includes Anchorage 7. However, because of the temporary re-routing of vessel traffic through Anchorage 7, the Coast Guard is adding a paragraph (b)(11) in 33 CFR 110.157 to provide additional requirements and restrictions on vessels using Anchorage 7. During the effective period, vessels desiring to use Anchorage 7 must obtain permission from the Captain of the Port Philadelphia. Vessels should seek this permission at least 24 hours in advance. The Captain of the Port will permit only one vessel at a time to anchor in Anchorage 7 and will grant permission on a "first come, first served" basis. A vessel will be directed to a location within Anchorage 7 where it may anchor and will not be permitted to remain in Anchorage 7 for more than 12 hours.

Any vessel that is arriving from or departing for sea requiring an examination by the public health service, customs or immigration authorities will be directed to an anchorage for the required inspection by the Captain of the Port on a case by case basis.

When Anchorage 7 is occupied, the Coast Guard expects that vessels normally permitted to anchor in Anchorage 7 will use Anchorage 6 off Deepwater Point ("Anchorage 6") or Anchorage 9 near the entrance to Mantua Creek ("Anchorage 9"), because they are the closest anchorage grounds to Anchorage 7. To control access to Anchorage 7, the Coast Guard is requiring a vessel desiring to anchor in Anchorage 7 obtain advance permission from the Captain of the Port. The Captain of the Port may be contacted by telephone at (215) 271–4807 or via VHF marine band radio, channels 13 and 16. To control access to Anchorages 6 and 9, the Coast Guard is requiring any vessel 700 feet or greater in length to obtain advance permission from the Captain of the Port before anchoring. The Coast Guard is also concerned that the holding ground in Anchorages 6 and 9 is not as solid as it is in Anchorage 7. Therefore, a vessel 700 to 750 feet in length is required to have one tug standing alongside while at anchor and a vessel over 750 feet in length must have two tugs standing alongside. The tug must be of sufficient size and horsepower to prevent an anchored vessel from swinging into the channel.

The Coast Guard is also establishing a safety zone within a 150-yard radius of the dredging operations being conducted in the Marcus Hook Range Ship Channel in the vicinity of Anchorage 7, by the Weeks Dredge Barge 312. The safety zone is intended to protect mariners transiting the area from the potential hazards associated with dredging operations. Vessels transiting the Marcus Hook Range Ship Channel will have to divert from the main ship channel through Anchorage 7

and must operate at the minimum safe speed necessary to maintain steerage and reduce wake. No vessel may enter the safety zone unless permission is received from the Captain of the Port.

Regulatory Evaluation

This temporary rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 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 rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Although this regulation requires certain vessels to have one or two tugs alongside while at anchor, the requirement only applies to vessels 700 feet or greater in length that choose to anchor in Anchorages 6 and 9. Alternate anchorage grounds such as Anchorage A (Breakwater) and Anchorage 1 (Big Stone) in Delaware Bay, are reasonably close and generally available. Vessels anchoring in Anchorages A and 1 are not required to have tugs alongside, except when specifically directed to do so by the Captain of the Port because of a specific hazardous condition. Furthermore, few vessels 700 feet or greater are expected to enter the port during the effective period. The majority of vessels expected to anchor are less than 700 feet and thus will not be required to have tugs alongside.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have 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. This rule's greatest impact is on vessels greater than 700 feet in length, which choose to anchor in Anchorages 6 and 9. This rule will have virtually no impact on any small entities. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this will not have a significant impact on a substantial number of small entities.

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 rule so that they can better evaluate its effects on them and participate in the rulemaking.

Small businesses 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 Regulatory 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 Guards, call 1–888–REG–FAIR (1–888–743–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

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

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 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 rule would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will 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

We have 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 will not create an environmental risk to health or risk to safety that might 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 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 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.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) 42 U.S.C. 4321–43701, 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)(f) and (g) of the Instruction from further environmental documentation.

List of Subjects

33 CFR Part 110

Anchorage grounds.

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 parts 110 and 165 as follows:

PART 110—ANCHORAGE REGULATIONS

■ 1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; Department of Homeland Security Delegation No. 0170.1 and 33 CFR 1.05–1(g).

■ 2. From September 15, 2004, until December 31, 2004, amend § 110.157 by adding paragraph (b)(11), to read as follows:

§ 110.157 Delaware Bay and River.

* * * * *

(b) * * *

(11) From September 15, 2004, until December 31, 2004, additional requirements and restrictions in this paragraph for the use of anchorages defined in paragraphs (a)(7), (a)(8), and (a)(10) of this section apply.

(i) Before anchoring in Anchorage 7 off Marcus Hook, as described in paragraph (a)(8) of this section, a vessel must first obtain permission from the Captain of the Port, Philadelphia. Vessels should seek this permission at least 24 hours in advance of arrival. Permission to anchor will be granted on a "first-come, first-served" basis. The Captain of the Port, Philadelphia will allow only one vessel at a time to be at anchor in Anchorage 7, and no vessel may remain within Anchorage 7 for more than 12 hours. Any vessel that is arriving from or departing for sea that requires an examination by the public health service, customs or immigration authorities will be directed to an anchorage for the required inspection by the Captain of the Port on a case-by-case basis.

(ii) For Anchorage 6 off Deepwater Point, as described in paragraph (a)(7) of this section, and Anchorage 9 as described in paragraph (a)(10) of this section.

(A) Any vessel 700 feet or greater in length requesting anchorage must obtain permission from the Captain of the Port, Philadelphia, Pennsylvania. Vessels should seek this permission at least 24 hours in advance.

(B) Any vessel from 700 to 750 feet in length must have one tug alongside at all times while the vessel is at anchor.

(C) Any vessel greater than 750 feet in length must have two tugs alongside at all times while the vessel is at anchor.

(D) The Master, owner or operator of a vessel at anchor must ensure that any tug required by this section is of sufficient horsepower to assist with necessary maneuvers to keep the vessel clear of the navigation channel.

(iii) As used in this section, *Captain of the Port* means the Captain of the Port, Philadelphia, Pennsylvania or any Coast Guard commissioned, warrant, or petty officer authorized to act on his behalf. The Captain of the Port may be contacted by telephone at (215) 271–4807 or via VHF marine band radio, channels 13 and 16.

* * * * *

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 3. 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

■ 4. From September 15, 2004, until December 31, 2004, add temporary § 165.T05–172 to read as follows:

§ 165.T05–172 Safety Zone; Delaware River.

(a) *Definition.* As used in this section, *Captain of the Port* means the Commanding Officer of the Coast Guard Marine Safety Office/Group Philadelphia or any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port to act on his behalf. The Captain of the Port may be contacted by telephone at (215) 271–4807 or via VHF marine band radio, channels 13 and 16.

(b) *Location.* The following area is a safety zone: All waters located within a 150-yard radius arc centered on the dredging operation and barge, conducting dredging operations in or near the Marcus Hook Range Ship Channel in the vicinity of Anchorage 7.

(c) *Effective period.* This section is effective from September 15, 2004, until December 31, 2004.

(d) *Regulations.*

(1) All persons are required to comply with the general regulations governing safety zones in 33 CFR 165.23 of this part.

(2) All Coast Guard vessels enforcing this safety zone or watch officers aboard the Dredge and Barge can be contacted on VHF marine band radio, channels 13 and 16. The Captain of the Port can be contacted at (215) 271–4807.

Dated: September 2, 2004.

Ben Thomason, III,

Captain, U.S. Coast Guard, Acting Commander, Fifth Coast Guard District.

[FR Doc. 04–20925 Filed 9–16–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD01–04–099]

RIN 1625–AA00

Safety Zone; Wiscasset, ME, Demolition of Maine Yankee Former Containment Building

AGENCY: Coast Guard, DHS.

ACTION: Temporary Final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone around the former Maine Yankee Nuclear Power Plant during the demolition of the containment building. This safety zone is needed to protect persons, facilities, vessels and others in the maritime community from the safety hazards associated with the demolition of a large building by controlled implosion. Entry into this safety zone is prohibited unless authorized by the Captain of the Port, Portland, Maine.

DATES: This rule is effective from 12:01 a.m. e.d.t. on September 3, 2004, through 11:59 p.m. e.d.t. on September 30, 2004.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket are part of

docket CGD01–04–099 and are available for inspection or copying at Marine Safety Office Portland, 27 Pearl Street, Portland, ME 04101 between the hours of 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ensign J. B. Bleacher, Port Operations Department, Marine Safety Office Portland at (207) 780–3251.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On August 23, 2004, we published a notice of proposed rulemaking (NPRM) entitled Safety Zone; Wiscasset, Maine, Demolition of Maine Yankee former containment building, in the **Federal Register** (69 FR 51785). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

Under 5 U.S.C. 533 (d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Any delay in implementing this rule would be contrary to the public interest due to the risks inherent in the demolition of a large building by controlled implosion.

Background and Purpose

On July 20, 2004 representatives of Maine Yankee Nuclear Power Plant ("Maine Yankee") presented the Coast Guard with plans for the demolition of a former containment building. Maine Yankee plans to use controlled explosive charges to bring down the containment building. The tentative date for this operation is September 17, 2004, but may be changed earlier or later, due to weather, winds, or other unforeseen changes in project scheduling. This safety zone will remain in effect approximately one hour before and one hour after the scheduled demolition. Due to hazards associated with the demolition of a large building, this temporary safety zone will be needed to ensure the safety of the maritime community and workers involved with the project during all portions of this evolution.

Discussion of Comments and Changes

We did not receive any comments on this rulemaking.

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).

We expect the economic impact of this rule to be so minimal that a full regulatory evaluation under paragraph 10e of the regulatory policies and procedures of DHS is unnecessary. The effect of this regulation will not be significant for several reasons: There will be impact on the navigational channel for only a minimal amount of time, there will be ample space for vessels to navigate around the zone, and broadcast notifications will be made to the maritime community advising them of the boundaries of the zone before and during its effective periods.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have 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 may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in this safety zone during this demolition event. However, this rule will not have a significant economic impact on a substantial number of small entities due to the minimal time that vessels will be restricted from the area, the ample space available for vessels to maneuver and navigate around the zone, and advance notifications will be made to the local community by marine information broadcasts.

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 rule so that they can better evaluate its effects on them and participate in the rulemaking process. 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 Ensign J. B. Bleacher, Marine Safety Office Portland, at (207) 780–3251.

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

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 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 rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under the 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 the litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have 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 create 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

We have 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. 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.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management system practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, 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)(g), of the Instruction, from further environmental documentation.

A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" will be 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. Add temporary § 165.T01–099 to read as follows:

§ 165.T01–099 Safety Zone; Wiscasset, Maine, Demolition of Maine Yankee former containment building.

(a) *Location.* The following area is a safety zone: All navigable waters within 1000-feet around the former Maine Yankee containment building from a point located at Latitude 43°57′00″ N, Longitude 069°41′42″ W (NAD 83).

(b) *Effective date.* This rule is effective from 12:01 a.m. EDT on September 3, 2004 to 11:59 p.m. e.d.t. on September 30, 2004.

(c) *Regulations.* (1) In accordance with the general regulations contained in § 165.23 of this part, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port (COTP) Portland, Maine or his designated representative.

(2) All persons and vessels shall comply with the instructions of the COTP, or the designated on-scene U.S. Coast Guard representative. Designated U.S. Coast Guard representatives include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, State, and Federal law enforcement vessels. Emergency response vessels are authorized to move within the zone, but must abide by restrictions imposed by the COTP or his designated representative. Upon being hailed by U.S. Coast Guard personnel or a U.S. Coast Guard Vessel, via siren, radio, flashing light, or other means, those hailed shall proceed as directed.

(3) Entry or movement within this zone is prohibited unless authorized by the Captain of the Port, Portland, Maine.

Dated: September 2, 2004.

Gregory D. Case,

Lieutenant Commander, U.S. Coast Guard, Acting Captain of the Port, Portland, Maine.

[FR Doc. 04–20927 Filed 9–16–04; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[OAR–2003–0083; FRL–7815–3]

Air Quality Designations and Classifications for the 8-Hour Ozone National Ambient Air Quality Standards; Las Vegas, NV Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule finalizes the boundaries for the portion of Clark County, Nevada that is designated nonattainment for the 8-hour ozone national ambient air quality standard and designates the remaining portions of Clark County, including portions of the Moapa River Indian Reservation and the Fort Mojave Indian Reservation, as attainment for the 8-hour ozone standard. In a final rule published April 30, 2004, EPA had previously announced that all of Clark County would be designated nonattainment for the standard. EPA subsequently deferred the effective date of that designation to provide the State, affected Tribes, and EPA time to determine whether an adjustment to the boundaries of the Las Vegas nonattainment area was appropriate. Based on additional analyses submitted by the State and the Moapa Band of Paiutes, we conclude that the boundary of the Las Vegas nonattainment area should be adjusted. Through this notice we are revising the designations for Clark County to reflect these adjustments. The revised designation defines a smaller nonattainment area around the City of Las Vegas and designates the remainder of Clark County with the rest of the State as "unclassifiable/attainment."

EFFECTIVE DATE: This final rule is effective on September 13, 2004.

ADDRESSES: The EPA has established dockets for this action under Docket ID No. OAR–2003–0083 (Designations). All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, *i.e.*, Confidential

Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Office of Air and Radiation Docket and Information Center is (202) 566–1742. In addition, we have placed a copy of the rule and a variety of materials regarding designations on EPA's designation Web site at: *http://www.epa.gov/oar/oaqps/glo/designations* and on the Tribal Web site at: *http://www.epa.gov/air/tribal.* In addition, the public may inspect the rule and technical support at the following locations:

U.S. Environmental Protection Agency, Region IX, Air Division, Planning Office, 75 Hawthorne Street, San Francisco, California 94105.

FOR FURTHER INFORMATION CONTACT: John J. Kelly, Planning Office, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California 94105. The telephone number is (415) 947–4151. Mr. Kelly can also be reached via electronic mail at *kelly.johnj@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What Action Is EPA Taking Today?

EPA is announcing and promulgating revised designations for areas within Clark County, Nevada with respect to attainment or nonattainment of the 8-hour ozone National Ambient Air Quality Standard (NAAQS). This action modifies the designation for Clark County announced in our final 8-hour ozone designations rule published April 30, 2004. 69 FR 23858. In that final rule we designated all of Clark County as nonattainment for the 8-hour ozone NAAQS and provided the designation would be effective June 15, 2004. *See* 69 FR at 23919–20 (revising 40 CFR 81.329). We subsequently deferred the effective date for the Clark County designation until September 13, 2004 to allow further consideration of the appropriate nonattainment boundary. 69 FR 34076 (June 18, 2004). With today's action, we are designating a portion of Clark County as nonattainment for the 8-hour ozone NAAQS and the remainder of the County with the rest of the State as "unclassifiable/attainment." The effective date of this designation is September 13, 2004.

II. What Is the Background for This Action?

On April 15, 2004, the EPA Administrator signed a final rule announcing designations under the 8-hour ozone NAAQS. 69 FR 23875 (April 30, 2004). In that action we designated Clark County as nonattainment and provided that this designation would become effective on June 15, 2004.

Following that notice, the State submitted additional information explaining that the boundaries of the area to be designated nonattainment should be reconsidered because of the unique circumstances that prevented the State from being able to evaluate the appropriate boundaries and submit an informed recommendation to EPA prior to the April 15, 2004 final 8-hour ozone designations. Letter from Allen Biaggi, Administrator, Nevada Division of Environmental Protection, to Michael O. Leavitt, Administrator, U.S. Environmental Protection Agency (June 9, 2004).[1] In the June 9, 2004 letter the State explained that it did not have time to make an appropriate recommendation regarding the boundaries of the nonattainment area in Clark County because it was not discovered until late February 2004 that any portion of Nevada would be designated nonattainment.

Based on the unusual history of the Clark County designation[2] and the subsequent information provided by the State, we concluded that the relevant factors for defining a nonattainment area might support a different boundary recommendation than the one originally submitted by the State and that a deferral of the effective date for the designation was reasonable to allow the State, Tribes, and EPA time to determine whether such an adjustment was reasonable. 69 FR at 34076.

Following EPA's decision to defer the effective date, EPA has worked closely with the State, County and Tribes to collect additional information and analyze the appropriate boundaries for the nonattainment area surrounding Las Vegas. We have received boundary recommendations with detailed information and analysis from the Nevada Division of Environmental Protection (NDEP or State) and from the Moapa Band of Paiutes (Moapa or Tribe).[3] Our analysis of these submittals is described in the Technical Support Document (TSD) for today's action and is summarized below. All of these submittals along with our TSD are available in the docket.

III. What Are the Statutory Requirements for Designating Areas and What Is EPA's Policy and Guidance for Determining Nonattainment Boundaries for the 8-Hour Ozone NAAQS?

This section describes the statutory definition of nonattainment and EPA's guidance for determining air quality attainment and nonattainment areas for the 8-hour ozone NAAQS. In March 2000[4] and July 2000[5] we issued guidance on how to determine the boundaries for nonattainment areas. In that guidance, we rely on the CAA definition of a nonattainment area in section 107(d)(1)(A)(i) as an area that is violating an ambient standard or is contributing to a nearby area that is violating the standard. If an area meets this definition, EPA is obligated to designate the area as nonattainment.

In making designations and classifications, we use the most recent three years of monitoring data (*i.e.*, 2001–2003), although other relevant years of data may be used in certain circumstances.[6] We treat data recorded by an ozone air quality monitor as representative of the air quality throughout the area in which the monitor is located and generally use the county as the basic jurisdictional unit in determining the extent of the area represented by the monitoring data. As a result, we typically designate the entire county and any nearby contributing area as nonattainment if an ozone monitor was measuring a violation of the standard based on the 2001–2003 data.

For violating monitors located in a Metropolitan Statistical Area (MSA) or Consolidated Metropolitan Statistical Area (CMSA), however, we typically designate the entire MSA or CMSA as nonattainment. Section 107(d)(4) of the Clean Air Act established the MSA or

[1] This letter supplements an earlier letter dated May 21, 2004, from Governor Kenny C. Guinn to Administrator Leavitt.

[2] For a detailed discussion on this history, *see* our June 18, 2004 deferral notice at 69 FR 34076.

[3] Although we did not receive submittals from the other Tribes in Clark County, we consulted with them by phone to determine the appropriate designation of their lands.

[4] Memorandum from John S. Seitz, "Boundary Guidance on Air Quality Designations for the 8-Hour Ozone National Ambient Air Quality Standards" (March 28, 2002).

[5] Memorandum from John S. Seitz, "Guidance on 8-Hour Ozone Designations for Indian Tribes" (July 18, 2000).

[6] To determine whether an area is attaining the 8-hour ozone NAAQS, EPA considers the most recent three consecutive years of data in accordance with 40 CFR part 50, appendix I.

CMSA as the presumptive boundary for nonattainment areas when we promulgated our designation actions in 1991 for the 1-hour ozone standard. In our guidance on determining nonattainment area boundaries for the 8-hour ozone standard, we advised States that if a violating monitor is located in an MSA or CMSA (as defined by the Office of Management and Budget (OMB) in 1999), the larger of the 1-hour ozone nonattainment area or the MSA or CMSA should be considered in determining the boundary of a nonattainment area.[7] The MSA or CMSA defined by OMB generally shares economic, transportation, population, and other linkages that are similar to air quality related factors that produce ozone pollution. EPA concluded that using the MSA or CMSA as the presumptive boundary "best ensure[s] public health protection from the adverse effects of ozone pollution caused by population density, traffic and commuting patterns, commercial development, and area growth." Memorandum from John S. Seitz, "Boundary Guidance on Air Quality Designations for the 8-Hour Ozone National Ambient Air Quality Standards" (March 28, 2002). This boundary, however, is only presumptive; a State may propose area boundaries smaller or larger than the presumptive area, and EPA will consider alternative boundary recommendations on a case-by-case basis to assesswhether the recommendation is consistent with section 107(d)(1) of the Act. [8] *Id.*

Our guidance identifies the factors to be considered in making and assessing a recommendation to designate an area other than the presumptive area. The factors can be used to justify including additional counties, excluding counties within the presumptive area, or, as is the case for the Las Vegas area, defining an area that is less than the full county. The factors were compiled based on our experience in designating areas for the ozone standard in March 1978 and November 1991 and by looking to the CAA, section 107(d)(4), which states that the Administrator and the Governor shall consider factors such as population density, traffic congestion, commercial development, industrial development, meteorological conditions, and pollution transport. State and local agencies also had extensive input into compiling the factors.

The factors are:

(1) Emissions and air quality in adjacent areas (including adjacent MSAs and CMSAs),

(2) Population density and degree of urbanization including commercial development (significant difference from surrounding areas),

(3) Monitoring data representing ozone concentrations in local areas and larger areas (urban or regional scale),

(4) Location of emission sources (emission sources and nearby receptors should generally be included in the same nonattainment area),

(5) Traffic and commuting patterns,

(6) Expected growth (including extent, pattern, and rate of growth),

(7) Meteorology (weather/transport patterns),

(8) Geography/topography (mountain ranges or other air basin boundaries),

(9) Jurisdictional boundaries (*e.g.*, counties, air districts, existing 1-hour nonattainment areas, Reservations, etc.),

(10) Level of control of emission sources, and

(11) Regional emissions reductions (*e.g.*, NO_X State Implementation Plan (SIP) Call or other enforceable regional strategies).[9]

IV. What Are the Nonattainment Boundaries Within Clark County and How Do These Comport With EPA Policy and Guidance?

A. Initial Designation of Clark County

In July 2003, the State submitted its recommended designations for the 8-hour ozone designations. *See* Letter from Allen Biaggi, Administrator, Nevada Division of Environmental Protection to Wayne Nastri, Regional Administrator, U.S. EPA, Region IX (July 10, 2003). Based on the monitoring data provided by the State for the period of 2000 through 2002, the State concluded that all monitors within the State were showing compliance with the 8-hour ozone NAAQS. On December 3, 2003, EPA agreed with the State's recommendation not to designate any Nevada area as nonattainment for the 8-hour ozone standard. *See* Letter from Wayne Nastri, Regional Administrator, U.S. EPA, Region IX, to Hon. Kenny C. Guinn, Governor of Nevada (December 3, 2004). In that letter EPA noted that the final designation determination would be based on monitoring data and design values for the period 2001 through 2003, but that based on our preliminary review of the air quality monitoring data for the 2003 ozone season, there were no areas in Nevada violating the 8-hour ozone standard. *Id.*

In mid-February 2004, EPA discovered that the July 10, 2003 recommendation from the State had failed to include complete monitoring data for 2001. This overlooked data, in combination with the new 2003 data, resulted in a 2001–2003 design value over the applicable standard at one of the monitors (Joe Neal) in the Las Vegas area of Clark County. EPA contacted the State and described that, by default, the MSA that included Clark and Nye Counties in Nevada and Mohave County in Arizona should be recommended for designation as nonattainment.

Arizona and Nevada were able to prepare an analysis that supported the exclusion of Nye and Mohave Counties from the nonattainment area. *See* Letter from Allen Biaggi, Administrator, Nevada Division of Environmental Protection, to Wayne Nastri, Regional Administrator, U.S. EPA, Region IX (April 12, 2004) (transmitting NDEP's report entitled "Nevada Air Quality Designations and Boundary Recommendations for the 8-Hour Ozone National Ambient Air Quality Standard" (March 26, 2004)); Letter from Stephen A. Owens, Director, Arizona Department of Environmental Quality, to Wayne Nastri, Regional Administrator, U.S. EPA, Region IX (March 26, 2004) (transmitting report entitled "Arizona Boundary Recommendations for the 8-Hour Ozone National Ambient Air Quality Standard" (March 26, 2004)). As a result, three days before the EPA deadline for making designations, the State recommended that Clark County be designated nonattainment.[10] Id.

[7] These same presumptions generally apply to the designation of Indian country. Thus, if the Indian country has a violating monitor or even if there is no air quality monitor but the area is located within an MSA or CMSA with a violating monitor, it will be presumed to be nonattainment. *See* Memorandum from John S. Seitz, "Guidance on 8-Hour Ozone Designations for Indian Tribes" (July 18, 2000).

[8] For Indian country, a Tribe may, but is not required to, submit a recommendation on the designation boundaries. In cases where Tribes do not make designation recommendations, EPA, in consultation with the Tribes, will promulgate the designation it determines is appropriate. "It is Agency policy that EPA '* * * in keeping with the Federal trust responsibility, will assure that tribal concerns and interests are considered whenever EPA's action and/or decisions may affect reservation environments.' (EPA 1984 Indian Policy)." Memorandum from John S. Seitz, "Guidance on 8-Hour Ozone Designations for Indian Tribes" (July 18, 2000).

[9] *See* Memorandum from John S. Seitz, "Boundary Guidance on Air Quality Designations for the 8-Hour Ozone National Ambient Air Quality Standards" (March 28, 2002).

[10] As the State subsequently claimed, had NDEP and Clark County discovered earlier that the County should be designated nonattainment, it would have further analyzed the appropriate boundaries for the nonattainment are within the 8000-square mile County. Given the late discovery, however, the State and county could not provide the necessary analysis and defaulted to the County boundaries. *See* 69 FR 34076 (June 18, 2004) (Deferring effective date to allow for additional anlaysis of appropriate boundary).

EPA's April 30, 2004 final rule announcing the 8-hour ozone designations for the country designated all of Clark County as nonattainment and the rest of State as "unclassifiable/attainment." 69 FR 23858, 23919–20 (April 30, 2004).

B. Revised Boundary Recommendation for the Las Vegas Nonattainment Area

On August 2, 2004, the State submitted a revised recommendation for the boundary of the nonattainment area surrounding Las Vegas. Letter from Leo Drozdoff, Acting Administrator, NDEP, to Wayne Nastri, Regional Administrator. U.S. EPA, Region IX. Based on an analysis of the 11 factors outlined in EPA's guidance, the State recommended that the following hydrographic areas [11] within Clark County be designated nonattainment: Ivanpah Valley (hydrographic areas 164A, 164B, 165 and 166), Eldorado Valley (hydrographic area 167), Las Vegas Valley (hydrographic area 212), Colorado River Valley (hydrographic area 213), Paiute Valley (hydrographic area 214), Apex Valley (hydrographic areas 216 and 217), and a portion of Moapa Valley (hydrographic area 218).[12] The State recommended that the remainder of the County be designated "unclassifiable/attainment" because these areas:

- Are sparsely populated, containing less than two percent of the County population;
- Were not found to impact the recommended nonattainment area;
- Contain insignificant point and mobile sources of emissions;
- Are separated geographically and topographically from the recommended nonattainment area; and
- Are expected to have low regional ozone levels based on monitoring data.

The areas recommended as part of the nonattainment area contain all of the monitors reading elevated ozone concentrations, all of the major transportation corridors, nearly all of the major sources of ozone precursors in the County, and the vast majority of the County's population. The State considered likely transport of emissions in and out of the Las Vegas Valley and recommended including all areas with sources that may contribute to violations of the 8-hour standard in Las Vegas as well as surrounding areas that may be impacted by emissions from sources in and around Las Vegas.

C. Designation Recommendation for the Moapa River Reservation

We also received recommendations from the Moapa Band of Paiutes regarding designation of the Moapa River Indian Reservation located within Clark County, northeast of Las Vegas. Letter from Philbert Swain, Chairman, to John Kelly, U.S. EPA, Region IX (July 30, 2004); Letter from Thomas R. Wood, Stoel Rives, to Paul Cort, U.S. EPA, Region IX (Aug. 19, 2004) (transmitting supplement to the July 30, 2004 analysis). The Reservation overlaps with the hydrographic areas recommended as nonattainment by the State (Apex and Moapa Valleys), but the Tribe recommended designating the Reservation as attainment because:

- Emissions at the Reservation do not significantly impact local air quality;
- Emissions do not contribute to nonattainment in the Las Vegas Valley; and
- The area lacks any economic integration with Las Vegas.

D. Designation of Other Reservations Within Clark County

Two other reservations are within the area recommended by the State as the nonattainment area. Specifically, in addition to the Moapa River Indian Reservation of the Moapa Band of Paiutes described above, the area includes the reservation lands of the Las Vegas Paiute and a small portion of the Fort Mojave Indian Reservation of the Fort Mojave Indian Tribe. We did not receive recommendations from the Las Vegas Paiute or the Fort Mojave Tribes, so we have prepared an independent assessment in accordance with our guidance and consulted with the Tribes to promulgate designations for these Reservations.

E. Summary of Final Designations

EPA agrees with the recommendation of the State to narrow the nonattainment designation for the Las Vegas area to the portion of Clark County defined by hydrographic areas 164A, 164B, 165, 166, 167, 212, 213, 214, 216, 217 and 218.[13] We therefore will designate the remainder of the County, as we have designated the rest of the State, as "unclassifiable/attainment" for the 8-hour ozone NAAQS.

The State has taken a broad and conservative approach in defining the portions of the 8,000-square mile County that cause of contribute to violations of the standard in the Las Vegas Valley. These areas include all portions of the County having any elevated concentrations of ozone and nearly every major source in the County. The areas recommended as part of the nonattainment area include 98 percent of the population and all of the urbanized and projected growth areas within the County. Finally, the area recommended for nonattainment includes the major traffic and commuting corridors within the County.

We also agree that the remainder of the County is reasonably excluded from the nonattainment area. It is primarily public land, with few sources, and no urbanization or likelihood of growth. Air quality in these surrounding areas is not impaired with respect to the 8-hour ozone NAAQS and there is no likelihood of contribution to the ozone problem in the Las Vegas area due to the lack of emission sources, geographical barriers and prevailing weather patterns.[14]

The area recommended by the State for nonattainment overlaps with the reservation land of three Tribes: the Moapa Band of Paiutes, located in Moapa Valley northeast of Las Vegas; the Las Vegas Band of Paiutes, located within the Las Vegas Valley; and the Fort Mojave Indian Tribe, located at the southern tip of the County near the Arizona and California state lines. As noted above, we received a designation recommendation from the Moapa Band of Paiutes that argued for designating the Reservation in Moapa Valley as attainment. We consulted with the other Tribes but did not receive formal recommendations.

In accordance with our trust responsibilities for these Tribes, we independently evaluated whether these areas should be included or excluded

[11] A hydrographic area is a natural or manmade stream drainage area or basin. These geographic areas are delineated by the Nevada Division of Water Resources and have long been used by the State and EPA for defining and designating air basins within the State. *See* 67 FR 12474 (March 19, 2002). A map of these areas is included in the State's August 2, 2004 submittal, which can be found in the docket.

[12] The TSD contains a map showing these hydrographic areas and the boundary of the nonattainment area, as well as our review of the State's analysis.

[13] As described above, portions of the Moapa River Indian Reservation and the Fort Mojave Indian Reservation are located within the hydrographic basins the State recommended EPA use to define the nonattainment area. The State's August 2, 2004 submittal, however, expressly "excludes the Las Vegas Paiute Tribal Community, and the Moapa Band of the Paiute Tribal Land" from the recommended nonattainment area. The State's recommendation is silent with respect to the Fort Mojave Indian Reservation. EPA interprets the State's submittal to leave the designation recommendations and decisions for all Tribal lands within the County to EPA and the respective Tribes. As such, we have independently assessed the proper designations for these areas and presume that it is fair to say that we "agree" with the recommendation of the State independent of the designations for the Tribal areas.

[14] For a more detailed discussion of the 11 factors supporting exclusion of these areas, *see* the TSD for today's action.

from the nonattainment area within Clark County. We concluded that the Las Vegas Paiute land, given its location within the Las Vegas Valley, its meteorologic and economic integration with Las Vegas, and the impact on air quality within the Reservation due to emissions from Las Vegas, should be included in the Las Vegas 8-hour ozone nonattainment area. The other Tribal areas, however, are reasonably excluded.[15]

The Moapa Band of Paiutes provided significant information demonstrating that: (1) The Reservation is sufficiently removed from the sources of emissions in and around Las Vegas such that air quality in the Reservation has not been adversely impacted, (2) the area is not economically integrated with the growth of the Las Vegas area, and (3) emissions from sources within the tribal area do not contribute to air quality problems in or around Las Vegas due to prevailing wind patterns. For these reasons, we agree the Moapa River Indian Reservation should be excluded from the Las Vegas 8-hour ozone nonattainment area.

The Fort Mojave Reservation is also reasonably excluded from the Las Vegas 8-hour ozone nonattainment area. The Reservation is located approximately 80 miles from the Las Vegas area in an upwind direction. Monitors located in this portion of the State have not measured elevated ozone concentrations. There is no likelihood of economic integration with Las Vegas and the Reservation does not have sources that contribute to nonattainment in the Las Vegas area.

V. What Action Is EPA Taking To Designate These Portions of Clark County?

We are revising 40 CFR 81.329 to specify the revised boundaries of the nonattainment area within Clark County, Nevada. As explained above, the Las Vegas nonattainment area will include hydrographic areas 164A, 164B, 165, 166, 167, 212, 213, 214, 216, 217, and 218. From this area we are excluding that portion within the Moapa River Indian Reservation and the Fort Mojave Indian Reservation. The remainder of Clark County, along with these reservations, will be included with the rest of the State as "unclassifiable/attainment." EPA is making this change without notice and comment in accordance with section 107(d)(2) of the Clean Air Act, which exempts the promulgation of these designations from the notice and comment provisions of the Administrative Procedure Act.

The effective date for these designations codified in 40 CFR 81.329 will be September 13, 2004. Section 553(d) of the Administrative Procedure Act generally provides that rulemakings shall not be effective less than 30 days after publication except where a substantive rule relieves a restriction or where the agency finds good cause for an earlier date. 5 U.S.C. 553(d)(1) and (3). Without expediting the effective date for today's action, all of Clark County would be designated nonattainment effective September 13, 2004. This designation could create significant confusion and potential substantive obligations for portions of Clark County that are being removed from the nonattainment area in today's action. Even in the areas of Clark County that continue to be considered nonattainment in today's action, having two effective dates will create confusion regarding deadlines for submittals and may serve only to delay requirements for planning. The effective date for today's action is therefore justified under the APA because: (1) It relieves a restriction by narrowing the boundaries of the Las Vegas nonattainment area that would otherwise become effective on September 13, 2004; and (2) it is in the public interest to avoid confusion and delay associated with overlapping designations and effective dates.

As noted in our June 18, 2004 deferral action (69 FR 34076), we do not intend to extend the deadline for state implementation plan submission for the Las Vegas nonattainment area. EPA will address this deadline in a subsequent action but believes it is reasonable to require submission according to the same schedule to which the area would be subject without the deferred effective date. Likewise, the time by which attainment occurs should not be affected by the deferral.

VI. Final Action

The EPA is revising the 8-hour ozone designations for Clark County, Nevada. We are defining new boundaries for the Las Vegas nonattainment area and including the remaining portions of the County with the rest of the State as "unclassifiable/attainment." We are amending 40 CFR 81.329 to reflect these revised designations.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and, therefore, subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Pursuant to the terms of Executive Order 12866, it has been determined that this rule is not a "significant regulatory action" because none of the above factors applies. As such, this final rule was not formally submitted to OMB for review.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* This rule revises the nonattainment designations for Clark County, Nevada that were promulgated on April 15, 2004. The present final rule does not establish any new information collection burden apart from that required by law. 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. 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

[15] A fuller analysis of the 11 factors for excluding these areas is provided in the TSD for this action.

EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's final rule on small entities, small entity is defined as: (1) A small business that is a small industrial entity as defined in the U.S. Small Business Administration (SBA) size standards (see 13 CFR part 121); (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. This rule revises the boundaries of the Las Vegas 8-hour ozone nonattainment area in Clark County, Nevada. The revision narrows the boundaries of the nonattainment area and will not impose any new requirements on small entities. After considering the economic impacts of today's final rule on small entities, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements. Today's final action does not include a Federal mandate within the meaning of UMRA that may result in expenditures of $100 million or more in any one year by either State, local, or Tribal governments in the aggregate or to the private sector, and therefore, is not subject to the requirements of sections 202 and 205 of the UMRA. It does not create any additional requirements beyond those of the 8-hour NAAQS for ozone (62 FR 38894; July 18, 1997), therefore, no UMRA analysis is needed. In this rule, EPA is narrowing the definition of the Las Vegas nonattainment area in Clark County, Nevada. No new controls will be imposed as a result of this action. Thus, this Federal action will not impose mandates that will require expenditures of $100 million or more in the aggregate in any one year.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The CAA establishes the scheme whereby States take the lead in developing plans to meet the NAAQS. This rule will not modify the relationship of the States and EPA for purposes of developing programs to implement the NAAQS. Thus, Executive Order 13132 does not apply to this rule.

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

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This final rule does not have "Tribal implications" as specified in Executive Order 13175. This rule concerns the classification and designation of areas as attainment or nonattainment for the 8-hour ozone standard. The CAA provides for States to develop plans to regulate emissions of air pollutants within their jurisdictions. The TAR gives Tribes the opportunity to develop and implement CAA programs such as programs to attain and maintain the 8-hour ozone NAAQS, but it leaves to the discretion of the Tribe whether to develop these programs and which programs, or appropriate elements of a program, they will adopt.

This final rule does not have Tribal implications as defined by Executive Order 13175. It does not have a substantial direct effect on one or more Indian Tribes, since no Tribe has implemented a CAA program to attain the 8-hour ozone NAAQS at this time. Furthermore, this rule does not affect the relationship or distribution of power and responsibilities between the Federal government and Indian Tribes. The CAA and the TAR establish the relationship of the Federal government and Tribes in developing plans to attain the NAAQS, and this rule does nothing to modify that relationship. Because this rule does not have Tribal implications, Executive Order 13175 does not apply.

Although Executive Order 13175 does not apply to this rule, EPA did conduct outreach with Tribal representatives regarding the designations. These discussions informed EPA about key Tribal concerns regarding designations as the rule was under development.

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

Executive Order 13045: "Protection of Children From Environmental Health and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. The final rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health risks or safety risks addressed by this rule present a disproportionate risk to children. Nonetheless, we have evaluated the environmental health or safety effects of the 8-hour ozone NAAQS on children. The results of this risk assessment are contained in the National Ambient Air Quality Standards for Ozone, Final Rule (62 FR 38855–38896, July 18, 1997; specifically, 62 FR 38854, 62 FR 38860 and 62 FR 38865).

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

This rule is not subject to Executive Order 13211, "Actions That Significantly Affect Energy Supply, Distribution, or Use," (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866. Information on the methodology and data regarding the assessment of potential energy impacts is found in Chapter 6 of U.S. EPA 2002, Cost, Emission Reduction, Energy, and Economic Impact Assessment of the Proposed Rule Establishing the Implementation Framework for the 8-Hour, 0.08 ppm Ozone National Ambient Air Quality Standard, prepared by the Innovative Strategies and Economics Group, Office of Air Quality Planning and Standards, Research Triangle Park, NC, April 24, 2003.

I. National Technology Transfer Advancement Act

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

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States on or before the effective date of this rule. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective September 13, 2004.

K. Judicial Review

Section 307(b)(1) of the CAA indicates which Federal Courts of Appeal have venue for petitions of review of final actions by EPA. This section provides, in part, that petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit (i) When the agency action consists of "nationally applicable regulations promulgated, or final actions taken, by the Administrator," or (ii) when such action is locally or regionally applicable, if "such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination." The rule designating areas for the 8-hour ozone standard was "nationally applicable" within the meaning of section 307(b)(1) since it established designations for all areas of the United States for the 8-hour ozone NAAQS. Since today's final action revises one of the designations made in that nationwide rulemaking, any petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit. At the core of the designations rulemaking is EPA's interpretation of the definition of nonattainment under section 107(d)(1) of the CAA. In determining which areas should be designated nonattainment (or conversely, should be designated "unclassifiable/attainment"), EPA used a set of 11 factors that it applied consistently across the United States. For the same reasons, the Administrator also determined that the final designations are of nationwide scope and effect for purposes of section 307(b)(1). This is particularly appropriate because in the report on the 1977 Amendments that revised section 307(b)(1) of the CAA, Congress noted that the Administrator's determination that an action is of "nationwide scope or effect" would be appropriate for any action that has "scope or effect beyond a single judicial circuit." H.R. Rep. No. 95–294 at 323, 324, reprinted in 1977 U.S.C.C.A.N. 1402–03. Here, the scope and effect of the designations rulemaking extend to numerous judicial circuits since the designations apply to all areas of the country. In these circumstances, section 307(b)(1) and its legislative history calls for the Administrator to find the rule to be of "nationwide scope or effect" and for venue to be in the D.C. Circuit. Thus, any petitions for review of this final action must be filed in the Court of Appeals for the District of Columbia Circuit within 60 days from the date final action is published in the **Federal Register**.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: September 10, 2004.

Michael O. Leavitt,

Administrator.

■ For the reasons set forth in the preamble, 40 CFR part 81 is amended as follows:

PART 81—[AMENDED]

■ 1. The authority citation for part 81 continues to read as follows:

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

Subpart C—[AMENDED]

■ 2. In § 81.329, the table entitled "Nevada-Ozone (8-Hour Standard)" is revised to read as follows:

§ 81.329 Nevada.

* * * * *

NEVADA—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Las Vegas, NV:				
Clark County (part)	(2)	Nonattainment	(2)	Subpart 1.
That portion of Clark County that lies in hydrographic areas 164A, 164B, 165, 166, 167, 212, 213, 214, 216, 217, and 218 but excluding the Moapa River Indian Reservation and the Fort Mojave Indian Reservation.[b]				
Rest of State		Unclassifiable/Attainment.		
Carson City				
Churchill County				
Clark County				
(part) remainder				
Douglas County				
Elko County				
Esmeralda County				
Eureka County				
Humboldt County				
Lander County				
Lincoln County				
Lyon County				
Mineral County				
Nye County				
Pershing County				
Storey County				
Washoe County (Reno Area)				
White Pine County				

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[b] The use of reservation boundaries for this designation is for purposes of CAA planning only and is not intended to be a federal determination of the exact boundaries of the reservations. Nor does the specific listing of the Tribes in this table confer, deny or withdraw Federal recognition of any of the Tribes listed or not listed.
[1] This date is June 15, 2004, unless otherwise noted.
[2] The effective date is September 13, 2004.

* * * * *

[FR Doc. 04–20973 Filed 9–16–04; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2004–0155; FRL–7368–1]

Dinotefuran; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for combined residues of dinotefuran *N*-methyl-*N'*-nitro-*N''*-[(tetrahydro-3-furanyl)methyl)]guanidine and its metabolites DN [1-methy-3-(tetrahydro-3-furylmethyl)]guanidine and UF [1-methyl-3-(tetrahydro-3-furylmethyl)urea], expressed as dinotefuran in or on vegetable, leafy, except Brassica, group 4. Mitsui Chemicals, Inc. requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective September 17, 2004. Objections and requests for hearings must be received on or before November 16, 2004.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION.** EPA has established a docket for this action under Docket ID number OPP–2004–0155. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket*. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Rita Kumar, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460–0001; telephone number: (703) 308–8291; e-mail address: *kumar.rita@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

- Crop production (NAICS 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS 32532), e.g., agricultural workers; commercial applicators; farmers;

greenhouse, nursery, and floriculture workers; residential users.

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

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

In addition to using EDOCKET *(http://www.epa.gov/edocket/)*, you may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/*. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at *http://www.epa.gpo/opptsfrs/home/guidelin.htm/*.

II. Background and Statutory Findings

In the **Federal Register** of July 2, 2003 (FR 39547) (FRL–7312–8), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 2F6427) by Mitsui Chemicals, Inc., Chiyoda-ku, Tokyo, Japan. That notice included a summary of the petition prepared by Mitsui Chemicals, Inc., the registrant. One comment was received from a private citizen, in support of this notice.

The petition requested that 40 CFR 180.603 be amended by establishing a tolerance for combined residues of the insecticide dinotefuran, *N*-methyl-*N'*-nitro-*N'*-[(tetrahydro-3-furanyl)methyl)]guanidine and its metabolites DN [1-methyl-3-(tetrahydro-3-furylmethyl)]guanidine and UF [1-methyl-3-(tetrahydro-3-furylmethyl)urea], expressed as dinotefuran, in or on vegetable, leafy, except Brassica, group 4 at 5.0 parts per million (ppm).

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

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

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA, for a tolerance for combined residues of dinotefuran, *N*-methyl-*N'*-nitro-*N'*-[(tetrahydro-3-furanyl)methyl)]guanidine and its metabolites DN [1-methyl-3-(tetrahydro-3-furylmethyl)]guanidine and UF [1-methyl-3-(tetrahydro-3-furylmethyl)urea] expressed as dinotefuran on vegetable, leafy, except Brassica, group 4 at 5.0 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

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

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY

Guideline No.	Study Type	Results
870.3100	90–Day oral toxicity in rats	NOAEL: 38/384 male and female (M/F) milligrams/kilogram/day (mg/kg/day) LOAEL: 384 M mg/kg/day based on adrenal histopathology; 1,871 F mg/kg/day based on decreased body weight/body weight gain, changes in hematology/clinical chemistry, changes in organ weights, and adrenal histopathology
870.3100	90–Day oral toxicity in mice	NOAEL: 4,442/5,414 M/F mg/kg/day LOAEL: 10,635/11,560 M/F mg/kg/day, based on decreased body weight, body weight gain
870.3150	90–Day oral toxicity in dogs	NOAEL: 307/not determined M/F mg/kg/day LOAEL: 862 M mg/kg/day, based on body weight gain, hemorrhagic lymph nodes; <59 F, based on decreased body weight, body weight gain

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

Guideline No.	Study Type	Results
870.3200	28–Day dermal toxicity (rats)	*Systemic* NOAEL: 1,000 mg/kg/day LOAEL: not determined (no effects seen) *Dermal* NOAEL: 1,000 M, ≤200 F mg/kg/day LOAEL: not determined/ ≤1,000 M/F mg/kg/day based on lack of effects in males, increase in acanthosis/ hyperkeratosis in high dose females (lower doses not evaluated histopathologically)
870.3465	28–Day inhalation toxicity (rat)	NOAEL: < 0.22 M mg/L, 0.22 F mg/ LOAEL: decreased body weight gain, food consumption M; increased clinical signs (protruding eyes) F
870.3700	Prenatal developmental toxicity study (rats)	*Maternal* NOAEL: 300 mg/kg/day LOAEL: 1,000 mg/kg/day based on body weight gain and food consumption *Developmental* NOAEL: 1,000 mg/kg/day LOAEL: not determined (no effects seen)
870.3700	Prenatal developmental toxicity study (rabbits)	*Maternal* NOAEL: 52 mg/kg/day LOAEL: 125 mg/kg/day based on body weight gains, food consumption, and necropsy findings *Developmental* NOAEL: 300 mg/kg/day LOAEL: > 300 mg/kg/day (no effects seen)
870.3800	Reproduction and fertility effects (rats)	*Parental/systemic* NOAEL: 241/268 M/F mg/kg/day LOAEL: 822/907 M/F mg/kg/day, based on decreased food consumption, weight gain in males, soft feces in females, and decreased spleen weights in both sexes *Reproductive (tentative)* NOAEL: 241/268 M/F mg/kg/day LOAEL: 822/907 M/F mg/kg/day, based on decreased uterine weights and microscopic alterations in the uterus and vagina of F_0 females, decreased numbers of primordial follicles in F_1 females, altered estrous cyclicity in F_0 and F_1 females, increase in abnormal sperm morphology in F_0 and F_1 males, decreased testicular sperm count in F_0 males, and decreased in sperm motility in F_1 males *Developmental* NOAEL: 241/268 M/F mg/kg/day LOAEL: 822–935/907–1,005 M/F mg/kg/day based on decreased body weights, body weight gains, and spleen weights in F and F_2 males and females, decreased thymus weights in F_2 males and females, and decreased forelimb grip strength (F_1 males) or hindlimb grip strength (F_1 females)
870.4100	Chronic toxicity (rats)	See 870.4300 Combined chronic toxicity/carcinogenicity (rats)
870.4100	Chronic toxicity (dogs)	NOAEL: <20/22 M/F mg/kg/day LOAEL: 20/108 M/F mg/kg/day based on decreased thymus weight, decreased food efficiency, body weight, and body weight gain in females, decreased thymus weight in males
870.4200	Carcinogenicity (rats)	See 870.4300 Combined chronic toxicity/carcinogenicity (rats)

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

Guideline No.	Study Type	Results
870.4200	Carcinogenicity (mice)	NOAEL: <3 M, <4 F mg/kg/day LOAEL: 3/4 M/F mg/kg/day based on decreased spleen weights at week 79 terminal sacrifice in males and increased ovarian weights at week 53 in females
870.4300	Combined chronic toxicity/carcinogenicity (rats)	NOAEL: 99.7/127.3 M/F mg/kg/day LOAEL: 991/1,332 M/F mg/kg/day based on decreased body weight gain, food efficiency in females, increased incidences of kidney pelvic mineralization and ulceration in males
870.5100	Bacterial reverse mutation test	*Negative*, ± S9 up to 16,000 µg/plate
870.5100	Bacterial reverse mutation test	*Negative*, ± S9 up to limit dose of 5,000 µg/plate
870.5300	*In vitro* mammalian cell gene mutation test	*Negative*, ± S9 up to 2,002 µg/mL (Mouse lymphoma L5178Y cells)
870.5375	*In vitro* mammalian chromosome aberration test	*Negative* for clastogenic/aneugenic activity up to 2,000 µg/mL (CHL/IU cells)
870.5395	*In vivo* mammalian cytogenics-micronucleus assay	*Negative* at oral doses up to 1,080 mg/kg/day for 2 days
870.6200	Acute neurotoxicity screening battery	NOAEL: 750 M, 325 F mg/kg/day LOAEL: 1,500 M, 750 F mg/kg/day based on decreased motor activity on day 1
870.6200	Subchronic neurotoxicity screening battery	NOAEL: 33/40 M/F mg/kg/day LOAEL: 327/400 M/F mg/kg/day based on increased motor activity during week 2
870.7485	Metabolism and pharmacokinetics (rats)	Absorption was > 90% regardless of dose. The radiolabel was widely distributed through the body and was completely excreted within 168 hours of treatment. Urine was the primary elimination route, accounting for 88–99.8%. Excretion into the urine was rapid, being 84–99% complete within 24 hours of treatment. Absorption of the radioactivity was linear within the dose range of 50 and 1,000 mg/kg. Elimination of radioactivity was fast for all groups with a $T_{1/2}$ ranging from 3.64 to 15.2 hours for the low and high doses, respectively. Radioactivity was rapidly transferred from maternal blood to milk and widely distributed in the fetal tissues. The C_{max} for milk and fetal tissues was detected 0.5 hours after maternal treatment. The concentrations of radioactivity in fetal tissue and maternal milk declined quickly and were below detection limits 24 hours post-treatment. After IV or oral treatment, 75–93% of the administered radiolabeled test material, or nearly 93–97% of total urinary radiolabel, was excreted unchanged in the urine. The parent compound was also the primary component in the plasma, milk, bile, feces, and most tissues collected 4-8 hours after treatment and at both dose levels. Less than 10% of the parent compound was metabolized into numerous minor metabolites that were not well resolved by High Performance Liquid Chromotography (HPLC) or 2D-TLC. For all parameters measured in this study, no sex-related or dose-related differences or label position effects were found.

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

Guideline No.	Study Type	Results
Special study:	Neonatal rat metabolism study (12–day old rat pups)	After a single oral 50 mg/kg dose of G-^{14}C MTI-446 to 12–day old rats, absorption was high (absorption could not be adequately determined but may have approached 80%) and the radiolabel was widely distributed within the body. Approximately 32–36% of the administered dose was excreted within 4 hours of treatment. Urine was the primary elimination route as indirectly evidenced by finding high radioactive areas in the kidneys and bladder by whole body autoradiography. No areas of tissue sequestration were found and no gender-related differences were identified. The test material was essentially not metabolized, the parent compound accounting for >97% of the radiolabel in the excreta, plasma, kidneys, and stomach, and nearly 61–83% in intestines (and contents), and liver.

B. Toxicological Endpoints

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

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

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

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

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk). An example of how such a probability risk is expressed would be to describe the risk as one in one hundred thousand (1×10^{-5}), one in a million (1×10^{-6}), or one in ten million (1×10^{-7}). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a "point of departure" is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated.

A summary of the toxicological endpoints for dinotefuran used for human risk assessment is shown in following Table 2.

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR DINOTEFURAN FOR USE IN HUMAN RISK ASSESSMENT

Exposure/Scenario	Dose Used in Risk Assessment, UF	Special FQPA SF and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute dietary (General population including infants and children)	NOAEL = 125 mg/kg/day UF = 100 Acute RfD = 1.25 mg/kg/day	FQPA SF = 1 aPAD = acute RfD ÷ FQPA SF = 1.25 mg/kg/day	Developmental toxicity study in rabbits LOAEL = 300 mg/kg/day based on clinical signs in does (prone position, panting, tremor, erythema) seen following a single dose.

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR DINOTEFURAN FOR USE IN HUMAN RISK ASSESSMENT—Continued

Exposure/Scenario	Dose Used in Risk Assessment, UF	Special FQPA SF and Level of Concern for Risk Assessment	Study and Toxicological Effects
Chronic dietary (All populations)	LOAEL= 20 mg/kg/day UF = 1,000 Chronic RfD = 0.02 mg/kg/day	FQPA SF = 1 cPAD = chronic RfD ÷ FQPA SF = 0.02 mg/kg/day	Chronic toxicity study in dogs LOAEL = 20 mg/kg/day based on decreased thymus weight in males
Short-term Incidental oral (1 to 30 days)	NOAEL= 33 mg/kg/day	Residential LOC for MOE = 100 Occupational = NA	Subchronic neurotoxicity study in rats LOAEL = 327 mg/kg/day based on increased motor activity during week 2
Intermediate-term Incidental oral (1 to 6 months)	NOAEL= 22 mg/kg/day	Residential LOC for MOE =100 Occupational = NA	Chronic toxicity study in dogs LOAEL = 108 mg/kg/day based on decreased body weight and body weight gain in females
Short-term dermal (1 to 30 days)	No quantitation required	Residential LOC for MOE = NA Occupational LOC for MOE = NA	No quantitation required. No systemic toxicity was seen at the limit dose in a 28–day dermal toxicity study in which neurotoxicity was evaluated. No developmental toxicity concerns.
Intermediate-term dermal (1 to 6 months)	Oral study NOAEL = 22 mg/kg/day (dermal absorption rate = 30%)	Residential LOC for MOE =100 Occupational LOC for MOE =100	Chronic toxicity study in dogs LOAEL = 108 mg/kg/day based on decreased body weight and body weight gain in females
Long-term dermal (>6 months)	Oral study LOAEL= 20 mg/kg/day (dermal absorption rate = 30%)	Residential LOC for MOE = 1,000 Occupational LOC for MOE = 1,000	Chronic toxicity study in dogs LOAEL = 20 mg/kg/day based on decreased thymus weight in males
Short-term inhalation (1 to 30 days)	Inhalation study LOAEL = 60 mg/kg/day	Residential LOC for MOE = 1,000 Occupational LOC for MOE = 1,000	28–day inhalation toxicity study in rats LOAEL = 60 mg/kg/day based on decreased body weight gain in males
Intermediate-term inhalation (1 to 6 months)	Inhalation study LOAEL = 60 mg/kg/day	Residential LOC for MOE = 1,000 Occupational LOC for MOE = 1,000	28–day Inhalation toxicity study in rats LOAEL = 60 mg/kg/day based on decreased body weight gain in males
Long-term inhalation (<6 months)	Oral study LOAEL= 20 mg/kg/day (inhalation absorption rate = 100%)	Residential LOC for MOE = 1,000 Occupational LOC for MOE = 1,000	Chronic toxicity study in dogs LOAEL = 20 mg/kg/day based on decreased thymus weight in males
Cancer (oral, dermal, inhalation)			Not required; no evidence of carcinogenicity

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

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Currently there are no tolerances established for dinotefuran on any commodity. Risk assessments were conducted by EPA to assess dietary exposures from dinotefuran in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure.

In conducting the acute dietary risk assessment EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM-FCID™), which incorporates food consumption data as reported by respondents in the United States Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII), and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: The dietary risk analyses incorporated tolerance level residues and assumed 100% of the leafy vegetables had been treated with dinotefuran. The acute risk estimates are below the Agency's level of concern (<100% aPAD) for the general U.S. population and all population subgroups.

ii. *Chronic exposure.* In conducting the chronic dietary risk assessment EPA used the DEEM software with the FCID, which incorporates food consumption data as reported by respondents in the USDA 1994–1996 and 1998 CSFII, and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: The dietary risk analyses incorporated tolerance level residues and assumed 100% of the leafy vegetables had been treated with

dinotefuran. The chronic risk estimates are below the Agency's level of concern (<100% cPAD) for the general U.S. population and all population subgroups.

iii. *Cancer.* Dinotefuran is classified as "not likely to be a carcinogen," therefore, an exposure assessment for quantifying cancer risk was not conducted.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for dinotefuran in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of dinotefuran.

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

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

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

Based on the Index Reservoir Screening Tool (FIRST) and SCI-GROW models, the EECs of dinotefuran for acute exposures are estimated to be 75.78 parts per billion (ppb) for surface water and 5.06 ppb for ground water. The EECs for chronic exposures are estimated to be 20.97 ppb for surface water and 5.06 ppb for ground water.

3. *From non-dietary exposure.* The term "residential exposure," is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Dinotefuran is proposed to be registered for use on the following residential non-dietary sites: Professional turf management, professional ornamental production, residential indoor, lawn and garden. The risk assessment was conducted using the following residential exposure assumptions: Outdoor uses for turf farms, golf courses and residential lawns, ornamentals and vegetable gardens.

There is a potential for exposure to homeowners in residential settings during the application of products containing dinotefuran. There is also a potential for exposure from entering areas previously treated with dinotefuran such as lawns where children might play, or golf courses, home gardens that could lead to exposures for adults. As a result, risk assessments have been completed for both residential handler and post-application scenarios.

Residential handlers may be exposed dermally and by inhalation during mixing, loading and application of dinotefuran for short-term durations. However, a short-term dermal endpoint was not identified. For this reason, and because the short-term and intermediate-term inhalation endpoints are the same, intermediate-term risks are assessed for residential handlers as a screen for their potential short-term exposures. Because common toxicity endpoints were identified for both dermal and inhalation routes, a combined risk from both routes of exposure is assessed. Combined risk was estimated by calculating an aggregate risk index (ARI). All residential handler estimated exposures meet or exceed the Agency's target ARI of 1, and are therefore, not of concern.

Residential post-application exposures are assumed to be mostly of short-term duration (1 to 30 days); although intermediate-term (1 to 6 months) exposures are possible. Because there are numerous dinotefuran use products and scenarios, those scenarios assessed were chosen to cover the major residential use sites (i.e. turf, home garden etc.) and highest use rates and exposures. The margins of exposure (MOEs) for post-application exposure to dinotefuran are above the target MOE of 100, and therefore, do not exceed Agency's level of concern for the following scenarios: (1) Exposure to adults and children from turf products; and (2) exposure to adults in vegetable gardens.

The Agency combines risks resulting from exposures to individual chemicals when it is likely they can occur simultaneously based on the use pattern and the behavior associated with the exposed population. For this assessment, the Agency has added together risk values for adults applying dinotefuran to residential lawns and then being exposed to the treated lawn. For children, dermal and incidental oral exposures from activities on treated lawn were combined. These are considered to represent worst case scenarios for co-occurring residential exposures.

The risks from the combined exposures of adults applying dinotefuran to residential lawns and then being dermally exposed from post-application activities on the treated lawn do not exceed the Agency's level of concern. Children's combined risks from activities on treated lawns do not exceed the Agency's level of concern.

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

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

D. Safety Factor for Infants and Children

1. *In general.* Section 408 of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using UF (safety) in calculating a dose level that poses no appreciable risk to humans. In applying this provision, EPA either retains the default value of 10X when reliable data do not support the choice of a different factor, or, if reliable data are available, EPA uses a different additional safety factor value based on the use of traditional UFs and/or special FQPA safety factors, as appropriate.

2. *Prenatal and postnatal sensitivity.* Prenatal developmental toxicity studies in rats and rabbits provided no indication of increased susceptibility (qualitative or quantitative) of rat or rabbit fetuses to *in utero* exposure to dinotefuran. There was no indication of increased (quantitative) susceptibility in the fetuses as compared to parental animals in the two generation reproduction study. Qualitative susceptibility was observed in the reproduction study; however, the degree of concern is low because the observed effects are well characterized (decreased body weight, decreased thymus weight, and decreased grip strength) and there are clear NOAELs/LOAELs.

3. *Conclusion.* Although there is generally low concern and no residual uncertainties for pre- and/or postnatal toxicity resulting from exposure to dinotefuran, some uncertainty is raised by a deficiency in the data (lack of a NOAEL in the chronic dog study) and the need for a developmental immunotoxicity study (DIT).

The absence of a NOAEL for the chronic dog study and the need for a DIT study generate some uncertainty regarding the protectiveness of chronic regulatory endpoint and long-term level of concern. Accordingly, EPA does not have reliable data supporting adoption of a safety factor other than the default additional 10X factor as specified in FFDCA section 408(b)(2)(C). The chronic endpoint and long-term level of concern have therefore been generated using a overall safety/uncertainty factor of 1,000 (representing 100X for inter- and intra-species variation and an additional 10X pursuant to FFDCA section 408(b)(2)(C).

The Agency does not have similar concerns regarding acute, short-term, and intermediate term risk assessments. First, the absence of a NOAEL only occurred in a chronic study. Second, reliable data show that the DIT is unlikely to result in a NOAEL for acute, short-term, or intermediate term effects that is lower than the NOAELs currently being used to assess the risk from such effects. EPA has required a Developmental Immunotoxicity Study (DIT) with dinotefuran based on the changes in the thymus weight in offspring in the reproduction study and in adult rats and dogs. There is, however, little evidence to support a direct effect of dinotefuran on immune function. This is because lymphoid organ weight changes can be secondary to generalized toxicity (e.g., reductions in body weight, body weight gain, and/or food efficiency). In the reproduction study, decreased thymus weights were seen in offspring in the presence of decreased body weight only at the Limit Dose (10,000 ppm). In the 1-year dog study, decrease in thymus weight was seen in the absence of other toxicity, however, no decrease in thymus weight was seen in the subchronic study in dogs which was conducted at higher doses (i.e., the results of the 1-year study was not supported by the results of the 90-day study).

Further, the only evidence on dinotefuran's potential immunological effect is found in studies with prolonged exposure. In the reproduction study, the effect of concern [i.e, decrease in thymus weight in only one generation (F2)] was seen only following approximately 13 weeks of exposure to the parental animals at close to the Limit Dose (1,000 mg/kg). Similarly, thymus effects in the chronic dog study were only observable after long-term exposures, but were not seen in the 90-day dog study.

Finally, it is clear that DIT study, which is performed in the rat, will have to be conducted at high doses (close to the Limit Dose) to elicit a potential single dose effect and this will result in a potential NOAEL higher than that currently used for various risk assessments. As noted, in the rat reproduction study, effects only occurred at doses close to the Limit Dose (1,000 mg/kg/day). The Limit Dose is the maximum dose recommended for testing in the Series 870 Health Effects Harmonized Test Guidelines; toxic effects occurring only at or near the Limit Dose are of less concern for human health since they may be specifically related to the high dose exposure and may not occur at the much lower doses to which humans are exposed. Additionally, in the acute neurotoxicity study in the rat, the LOAEL was 750 mg/kg/day in females and 1,500 mg/kg/day in males based on reductions in motor activity indicating that high doses are required to elicit Dinotefuran-induced toxicity in rats.

The NOAELs in the critical studies selected for acute dietary (125 mg/kg/day), short term incidental oral (33 mg/kg/day), and intermediate term incidental oral and dermal (22 mg/kg/day) exposure scenarios are lower than the offspring NOAEL (241 mg/kg/day) in the reproduction study. Therefore, EPA is confident that the doses selected for these risk assessments will address the concerns for the thymus weight changes seen in the offspring in the reproduction study and will not underestimate the potential risk from exposure to dinotefuran.

The Agency believes there are reliable data showing that the regulatory endpoints are protective of children despite the need for a developmental neuorotoxicity study. Developmental neurotoxicity data received and reviewed for other compounds in this chemical class (neonicotinoids) including thiacloprid, clothianidin, and imidacloprid, indicate that the results of the required DNT study will not likely impact the regulatory doses selected for dinotefuran.

In addition, the acute and chronic dietary food exposure assessment utilized proposed tolerance level residues and 100% crop treated information for all commodities. By using these screening-level assessments, acute and chronic exposure/risks will not be underestimated. Furthermore, the dietary drinking water assessment (Tier 1 estimates) uses values generated by models and associated modeling parameters which are designed to provide conservative, health protective, high-end estimates of water concentrations. Finally, the residential assessment for children's postapplication exposures is based upon

maximum application rates in conjunction with chemical-specific study data and are not expected to underestimate risk.

E. Aggregate Risks and Determination of Safety

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

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

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

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to dinotefuran will occupy 0.68% of the aPAD for the U.S. population, 0.76% of the aPAD for females 13 years and older, 0.21% of the aPAD for infants <1 year old, and 0.76% of the aPAD for children 3 to 5 years old. In addition, there is potential for acute dietary exposure to dinotefuran in drinking water. After calculating DWLOCs and comparing them to the EECs for surface water and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in the following Table 3.

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

Population/Subgroup	aPAD (mg/kg/day)	% aPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Acute DWLOC (ppb)
U.S. population	1.25	0.68	75.78	5.06	43,000
All infants (< 1 year old)	1.25	0.21	75.78	5.06	12,000
Children (3-5 years old)	1.25	0.76	75.78	5.06	12,000
Females (13-49 years old)	1.25	0.76	75.78	5.06	37,000

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to dinotefuran from food will utilize 8.6% of the cPAD for the U.S. population, 4.4% of the cPAD for infants <1 year old, 8.6% of the cPAD for children 3-5 years old and 9.4% of the cPAD for females 13-49 years old. In addition, there is potential for chronic dietary exposure to dinotefuran in drinking water. After calculating DWLOCs and comparing them to the EECs for surface water and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table 4.

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

Population/Subgroup	cPAD (mg/kg/day)	%cPAD (FOOD)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. population	0.02	8.6	20.97	5.06	640
All infants (< 1 year old)	0.02	4.4	20.97	5.06	190
Children (3-5 years old)	0.02	8.6	20.97	5.06	180
Females (13-49 years old)	0.02	9.4	20.97	5.06	550

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

Dinotefuran is proposed for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term exposures. For dinotefuran, short-term and intermediate-term aggregate risk assessments based on exposure from oral, inhalation, and dermal routes were considered.

However, for short-term aggregate exposure assessment, oral and inhalation risk estimates cannot be combined due to the different bases of their endpoints; i.e., neurotoxicity for oral and decrease in body weight for inhalation. Also, because no systemic toxicity was seen at the limit dose in a 28–day dermal toxicity study, no quantification of short-term dermal risk is required. Therefore, a short-term aggregate risk assessment cannot be performed for dinotefuran. However, an intermediate-term aggregate risk assessment was performed as a screening level assessment, which will apply to short-term aggregate risk.

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

Dinotefuran is proposed for uses that could result in intermediate-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and intermediate-term exposures for dinotefuran. An intermediate-term aggregate risk assessment was performed as a screening level assessment for adults and children.

The child subgroup with the highest estimated chronic dietary exposure (children 3-5 years old) was used to calculate the intermediate-term aggregate risk, including chronic dietary (food and drinking water) and residential dermal and oral exposures. All acceptable MOEs must be identical for all MOEs to be included in the intermediate-term risk assessment. Based on the toxicity endpoint information, all acceptable MOEs are 100, and an oral endpoint for hand-to-mouth residential exposure was identified. In this case, the chronic dietary endpoint (NOAEL) was used to incorporate dietary (food and water), and residential exposures in the aggregate risk assessment. An intermediate-term residential exposure scenario was identified and includes dermal and oral exposure routes. To complete the aggregate intermediate-term exposure and risk assessment, chronic dietary (food and drinking water) and residential dermal and oral exposures must be included.

For children's combined exposure on turf, the total residential MOE was estimated to be 590. The average (chronic) dietary exposure for the highest exposed child subgroup (children 3-5 years old) was estimated to be 0.0017 mg/kg/day. The aggregate risk assessment for intermediate-term exposure to children is summarized in the following Table 5.

TABLE 5.—AGGREGATE RISK ASSESSMENT FOR INTERMEDIATE-TERM EXPOSURE OF CHILDREN TO DINOTEFURAN.

Population	NOAEL/ mg/kg/ day	Target MOE[1]	Max Exposure[2]/ mg/kg/ day	Average Food Exposure mg/kg/ day	Residential Exposure[3] mg/kg/day	Aggregate MOE (food and residential)[4]	Max Water Exposure[5] mg/kg/day	Ground Water EEC[6] µg/L	Surface Water EEC[6] µg/ L	Intermediate-Term DWLOC[7] µg/L
Children 3-5 yrs old	22	100	0.22	0.0017	0.037227	565	0.181	20.97	5.06	1,810

[1] The target MOE of 100 is based on the standard inter-species and intra-species safety factors, 10x for intra-species variability and 10x for inter-species extrapolation.
[2] Maximum exposure (mg/kg/day) = NOAEL/Target MOE.
[3] Residential exposure to children playing on treated lawns (combined dermal + oral hand-to-mouth + oral object-to-mouth + oral soil ingestion).
[4] Aggregate MOE = NOAEL/(Avg. Food Exposure + Residential Exposure).
[5] Maximum Water Exposure (mg/kg/day) = Target Maximum Exposure - (Food Exposure + Residential Exposure).
[6] The use site producing the highest level was used; i.e. turf.
[7] DWLOC (µg/L) = Maximum water exposure (mg/kg/day) x body weight (10 kg) Water exposure (1L) x 10^3 mg/µg.

Compared with the EECs, the aggregate intermediate-term DWLOC does not exceed Agency's level of concern for the subgroup population of children 3-5 years old.

For adults, the worst case intermediate-term aggregate risk assessment includes the following scenarios: (1) Dermal and inhalation exposures to residential handlers (i.e. M/L/A of liquids to lawns by hose-end sprayers); (2) dermal post-application exposures on treated lawns; and (3) oral dietary exposures (i.e. food + drinking water). Based on the toxicity endpoint information, the acceptable MOEs are not all identical. The intermediate-term inhalation endpoint has a UF/MOE of 1,000, because a NOAEL was not reached and a LOAEL was used instead, while the assessments for incorporating food, water and dermal exposures have UFs/MOEs of 100. In this case, the aggregate risk index (ARI) method was used to calculate DWLOC values for the adult aggregate intermediate-term risk assessment.

The highest estimated average (chronic) dietary exposure occurred with females 13-49 years old (i.e. 0.0019 mg/kg/day). The adult residential combined risks from dermal (ARI = 17) and inhalation (ARI = 970) exposures to residential handlers; and dermal postapplication exposures (ARI = 12) on treated lawns were assessed and combined. The aggregate risk assessment for intermediate-term exposure to adults is summarized in following Table 6.

TABLE 6.—AGGREGATE RISK ASSESSMENT FOR INTERMEDIATE-TERM EXPOSURE OF ADULTS TO DINOTEFURAN.

Polulation	Target ARI[1]	ARI Food[2]	Residential ARIs[3]			Max Water Exposure ARI[4]	Ground Water EEC[5] µg/L	Surface Water EEC[5] µg/L	Inter-mediate-Term DWLOC[6] µg/L
			Applicators		Post-application Dermal Exposure				
			Dermal Exposure	Inhalation Exposure					
Females 14-49 years old	1	116	17	970	12	1.18	20.97	5.06	5,600

[1] ARI (Aggregate Risk Index) = $MOE_{calculated}/MOE_{acceptable}$
[2] ARI_{Food} = 22 / 0.0019 / 100 = 116
[3] $ARI_{dermal} = MOE_{calculated}/100$ and, $ARI_{inhal} = MOE_{inhal}/1,000$
[4] ARI Water = 1/1/1- (1/$ARI_{Residential\ applicator\ dermal}$) + (1/$ARI_{Residential\ applicator\ inhalation}$) + (1/ARI Post-application dermal)
[5] The use site producing the highest level was used; i.e. turf.
[6] DWLOC (µg/L) = [Maximum water exposure (mg/kg/day) x body weight (60 kg)] / [Water exposure (2 L) x 10^{-3} mg/µg]; where Maximum water exposure = NOAEL (22) / ARI Water (1.18) x 100 = 0.1866 mg/kg/day.

Compared with the EEC, the aggregate intermediate-term DWLOC does not exceed Agency's level of concern for the subgroup population of females 13-49 years old.

5. *Aggregate cancer risk for U.S. population.* Dinotefuran is not expected to pose a cancer risk.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (High Performance Liquid Chromatography/Ultraviolet for the determination of residues of dinotefuran per se in lettuce, and High Performance Liquid Chromatography/Mass Spectrometry and High Performance Liquid Chromatography/Mass Spectrometry/Mass Spectrometry method for the determination of dinotefuran metabolites DN [1-methyl-3-(tetrahydro-3-furylmethyl)guanidine] and UF [1-methyl-3-(tetrahydro-3-furylmethyl)urea] in lettuce) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov.*

B. International Residue Limits

There are currently no established Codex, Canadian, or Mexican maximum residue limits for residues of dinotefuran in/on plant or livestock commodities.

V. Conclusion

Therefore, the tolerance is established for combined residues of dinotefuran, *N*-methyl-*N'*-nitro-*N*-[tetrahydro-3-furanyl)methyl]guanidine and its metabolites DN [1-methyl-3-[tetrahydro-3-furylmethyl]guanidine and UF [1-methyl-3-(tetrahydro-3-furylmethyl)urea], expressed as dinotefuran, in or on vegetable, leafy, except Brassica, group 4 at 5.0 ppm.

VI. Objections and Hearing Requests

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

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2004–0155 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 November 16, 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 (1900L), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk, Environmental Protection Agency, 1099 14th Street NW., Suite 350, Washington DC 20005, (telephone number (202) 564–6255). 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. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES.** Mail your copies, identified by docket ID number OPP–2004–0155, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide

Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

VII. Statutory and Executive Order Reviews

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

VIII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: September 9, 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 continues to read as follows:

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

■ 2. Section 180.603 is added to subpart C to read as follows:

§ 180.603 Dinotefuran; tolerances for residues.

(a) *General.* Tolerances are established for the combined residues of Dinotefuran, *N*-methyl-*N'*-nitro-*N*-(tetrahydro-3-furanyl)methyl)guanidine and its metabolites DN 1-mehyl-3-(tetrahydro-3-furylmethyl)guanidine and UF [1-methyl-3-(tetrahydro-3-furylmethyl)urea], expressed as dinotefuran.

Commodity	Parts per million
Vegetable, leafy, except Brassica, group 4	5.0

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

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 04–20981 Filed 9–16–04; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2004–0277; FRL–7679–4]

Thifensulfuron Methyl; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of thifensulfuron methyl in or on canola, seed; cotton, gin byproducts; cotton, undelinted seed; and flax, seed. E. I. DuPont de Nemours & Company requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). In addition, this regulatory action is part of the tolerancere assessment requirements of section 408 (q) of the Federal Food, Drug, and Cosmetic Act (FFDCA) 21 U. S. C. 346a (q), as amended by the Food Quality Protection Act (FQPA) of 1996. By law, EPA is required to reassess 100% of the tolerances in existence on August 2, 1996, by August 2006. This regulatory action will count for 10 reassessments toward the August 2006 deadline.

DATES: This regulation is effective September 17, 2004. Objections and requests for hearings must be received on or before November 16, 2004.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION.** EPA has established a docket for this action under Docket identification (ID) number OPP–2004–0277. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: James A. Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460–0001; telephone number: (703) 305–5697; e-mail address: *tompkins.jim@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

- Crop production (NAICS 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

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

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

In addition to using EDOCKET (*http://www.epa.gov/edocket/*), you may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.* A frequently updated electronic version of 40 CFR part 180 is available at E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/.* To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at *http://www.epa.gpo/opptsfrs/home/guidelin.htm/.*

II. Background and Statutory Findings

In the **Federal Register** of July 7, 2004 (69 FR 40920) (FRL–7364–7), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 0F6152) by E.I. DuPont de Nemours and Company, DuPont Agricultural Products, Barley Mill Plaza, Wilmington, DE 19880–0038. The petition requested that 40 CFR 180.439 be amended by establishing a tolerance for residues of the herbicide thifensulfuron methyl, (methyl-3-[[[[(4-methoxy-6-methyl-1, 3, 5, -triazin-2-yl)amino]carbonyl]amino]sulfonyl]-2-thiophenecarboxylate), in or on imazethapyr tolerant canola seed at 0.02 parts per million (ppm), cotton seed at 0.02 ppm, cotton gin trash at 0.02 ppm, and CDC triffid flax at 0.02 ppm. That notice included a summary of the petition prepared by E. I. DuPont de Nemours & Company, the registrant. There were no comments received in response to the notice of filing.

During the course of the review the Agency decided to correct the Company address and correct the listings for the commodities canola, cotton gin trash, cottonseed, and flax. The company address is changed to DuPont Crop Protection, Stine-Haskell Research Center, Newark, DE 19714. The listing of the commodities imazethapyr tolerant canola, cotton seed, cotton gin trash, and Crop Development Center (CDC) triffid flax are corrected to read canola, seed; cotton, gin byproducts; cotton, undelinted seed; and flax, seed; respectively.

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

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

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

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA, for a tolerance for residues of thifensulfuron methyl on canola, seed at 0.02 ppm; cotton, gin byproducts at 0.02 ppm; cotton, undelinted seed at 0.02 ppm; and flax, seed at 0.02 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

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

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY

Guideline No.	Study Type	Results
870.3100	90-day oral toxicity—rodents	NOAEL = 7 and 9 milligrams/kilogram/day (mg/kg/day) males and females, respectively LOAEL = 177(males) and 216(females) mg/kg/day based on decreased body weight, body weight gain and organ weight
870.3150	90-day oral toxicity—nonrodents	NOAEL = 37.5 mg/kg/day LOAEL = 187.5 mg/kg/day based on decreased body weight and actual weight in high dose males
870.3700	Prenatal developmental—rodents	Maternal NOAEL = 725 mg/kg/day Maternal LOAEL = could not be determined. No overt toxicity detected in dose tested Developmental NOAEL = 159 mg/kg/day Developmental LOAEL = 725 mg/kg/day based on decrease mean fetal body weight
870.3700	Prenatal developmental—nonrodents	Maternal NOAEL = 158 mg/kg/day Maternal LOAEL = 511 mg/kg/day based on decrease mean body weight Developmental NOAEL = 511 mg/kg/day Developmental LOAEL = could not be determined
870.3800	Reproduction and fertility effects	Parental/Systemic NOAEL = 175 (males) and 244 (females) mg/kg/day Parental/Systemic LOAEL = could not be determined Reproductive NOAEL = 180 (males) and 212 (females) highest dose tested (HDT) mg/kg/day Reproductive LOAEL = could not be determined Offspring NOAEL = 180 (males) and 212 (females) HDT mg/kg/day Offspring LOAEL = could not be determined
870.4100	Chronic toxicity—rodents	NOAEL = 20 (males) and 26 (females) mg/kg/day LOAEL = 120 (males) and 133 (females) mg/kg/day based on decreased body weight and body weight gain
870.4100	Chronic toxicity—dogs	NOAEL = 18.75 mg/kg/day LOAEL = 18.75 mg/kg/day based on increased liver weight in high dose males and increased thyroid/ parathyroid-to-body weight ratios in females at the high dose, and decreased body weight and body weight gain in females after week 22
870.4200	Carcinogenicity—rats	NOAEL = 20 (males) and 26 (females) mg/kg/da y LOAEL = 120 (males) and 133 (females) mg/kg/day based on decreased body weight and body weight gain No evidence of carcinogenicity
870.4300	Carcinogenicity—mice	NOAEL = 4.3 (females) and 979 (males) HDT mg/kg/da LOAEL = 750 mg/kg/day based on decrease in terminal body weights in the mid and high dose female mice. LOAEL could not be determined in males No evidence of carcinogenicity

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

Guideline No.	Study Type	Results
870.5100	Gene mutation	Not mutagenic with or without metabolic activation in an *in vitro* bacterial gene mutation assay using *Salmonella typhimurium*
870.5300	Cytogenetics	Not mutagenic in the *in vitro* CHO/HPRT at concentrations up to 2,712 mg/L in Chinese hamster ovary cells
870.5375	Chromosomal aberrations	Did not induce cytogenetic damage in the bone marrow cells at a dose of 5,000 mg/kg
870.7485	Metabolism and pharmacokinetics	In the rat metabolism study most of the radioactivity (triazine 2-^{14}C was recovered in the urine and feces with almost tissue and carcass accumulation of radioactivity. Of the radioactivity eliminated in the urine and feces, most was parent compound with 5 minor metabolites

B. Toxicological Endpoints

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

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

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

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

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk). An example of how such a probability risk is expressed would be to describe the risk as one in one hundred thousand (1 X 10^{-5}), one in a million (1 X 10^{-6}), or one in ten million (1 X 10^{-7}). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a "point of departure" is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated.

A summary of the toxicological endpoints for thifensulfuron methyl used for human risk assessment is shown in Table 2 of this unit:

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR THIFENSULFURON METHYL FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, Interspecies and Intraspecies and any Traditional UF	Special FQPA SF and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute Dietary (Females 13-50 years of age)	NOAEL = 158.9 mg/kg/day UF = 100 Acute RfD = 1.59 mg/kg/day	Special FQPA SF = 1X aPAD = acute RfD/ Special FQPA SF = 1.59 mg/kg/day	Developmental oral toxicity study in rats LOAEL = 725 mg/kg/day based on decreased mean fetal body weight and increase in the incidence of small renal papillae.

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR THIFENSULFURON METHYL FOR USE IN HUMAN RISK ASSESSMENT—Continued

Exposure Scenario	Dose Used in Risk Assessment, Interspecies and Intraspecies and any Traditional UF	Special FQPA SF and Level of Concern for Risk Assessment	Study and Toxicological Effects
Chronic Dietary (All populations)	NOAEL= 20 mg/kg/day UF = 100 Chronic RfD = 0.20 mg/kg/day	Special FQPA SF = 1X cPAD = chronic RfD/ Special FQPA SF = 0.20 mg/kg/day	Combined chronic/carcinogenicity oral toxicity in rats LOAEL = 120 (males) mg/kg/day based on decrease body weight and body weight gain.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.439) for the residues of thifensulfuron methyl, in or on a variety of raw agricultural commodities. Risk assessments were conducted by EPA to assess dietary exposures from thifensulfuron methyl in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one-day or single exposure.

Dietary exposure estimates were conducted using the Lifeline model (Version 2.0) which incorporates consumption data from the USDA Continuing Surveys of Food Intakes by Individuals (CSFII), 1994–1996 and 1998. The 1994–1996, 1998 data are based on reported consumption of more than 20,000 individuals over two non-consecutive survey days. Foods as consumed are linked to EPA-defined food commodities using publicly available recipe translation files (developed jointly by USDA/ARS and EPA). Lifeline models individual dietary exposures over a season by selecting a new CSFII diary each day from a set of similar individuals, based on age and season attributes. Further information regarding the Lifetime model can be found at the following web site: *http://www.LifelineTMgroup.org.*

The following assumptions were used for the acute exposure assessments: Tolerance level residues, 100% crop treated (CT), and default processing factors. Percent crop treated (PCT) or anticipated residues were not used.

ii. *Chronic exposure.* Dietary exposure estimates were conducted using the Lifeline model (Version 2.0) which incorporates consumption data from the USDA Continuing Surveys of Food Intakes by Individuals (CSFII), 1994–1996 and 1998. The 1994–1996, 1998 data are based on reported consumption of more than 20,000 individuals over two non-consecutive survey days. Foods as consumed are linked to EPA-defined food commodities using publicly available recipe translation files (developed jointly by USDA/ARS and EPA). Lifeline models individual dietary exposures over a season by selecting a new CSFII diary each day from a set of similar individuals, based on age and season attributes. The Lifeline chronic dietary exposure estimate is based on an average daily exposure from a profile of 1,000 individuals over a one year period. Further information regarding the Lifetime model can be found at the following web site: *http://www.LifelineTMgroup.org.*

The following assumptions were used for the chronic exposure assessments: Tolerance level residues, 100% crop treated (CT), and default processing factors were used. Percent crop treated (PCT) or anticipated residues were not used.

iii. *Cancer.* Thifensulfuron methyl has no carcinogenic potential. It is classified as not likely to be carcinogenic to humans based on the lack of evidence of carcinogenicity in both the rat and the mouse studies. Therefore, a cancer risk quantitative assessment was not performed.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for thifensulfuron methyl in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of thifensulfuron methyl.

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

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

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

Based on the FIRST and SCI-GROW models, the EECs of thifensulfuron methyl for acute exposures are estimated to be 0.331 to 4.358 part per billion (ppb) for surface water and 0.00002 to 0.0003 ppb for ground water. The EECs for chronic exposures are estimated to be 0.047 to .618 ppb ppb for surface water and 0.00002 to 0.0003 ppb for ground water.

3. *Non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

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

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

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

D. Safety Factor for Infants and Children

1. *In general.* Section 408 of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. In applying this provision, EPA either retains the default value of 10X when reliable data do not support the choice of a different factor, or, if reliable data are available, EPA uses a different additional safety factor value based on the use of traditional uncertainty factors and/or special FQPA safety factors, as appropriate.

2. *Prenatal and postnatal sensitivity.* The developmental rabbit and two generation reproductive toxicity studies suggest that there is no evidence of increased quantitative or qualitative susceptibility of the offspring after in utero or post-natal exposure to thifensulfuron methyl. However, the acceptable developmental toxicity study in rats revealed increased quantitative susceptibility of the fetus after in utero exposure. There are no residual uncertainties for pre and/ post natal toxicity because the developmental NOAEL serves as the basis for the acute dietary RfD. This RfD includes an uncertainty factor of 100 and adequately addresses the concern for residual uncertainty with the need for an additional FQPA factor.

3. *Conclusion.* There is a complete toxicity data base for thifensulfuron methyl and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. The impact of thifensulfuron methyl on the nervous system has not been specifically evaluated in neurotoxicity studies. However, no neuropathology or neurotoxicity was seen in either acute, subchronic, chronic, or reproductive studies, and there are no concerns from potential developmental neurotoxicity. Therefore, neurotoxicity data are not required for thifensulfuron methyl. EPA determined that the 10X SF to protect infants and children should be removed. The FQPA factor is removed because of the completeness of the toxicity and exposure database, because are no residual uncertainties for pre and/ post natal toxicity and because there are no concerns for potential developmental neurotoxicity.

E. Aggregate Risks and Determination of Safety

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

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

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

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

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO THIFENSULFURON METHYL

Population Subgroup	aPAD (mg/kg)	% aPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppt)	Acute DWLOC (ppb)
U.S. Population	0.000514	<1	4.358	.0003	5,6000
All infants (<1 year old	0.000824	<1	4.358	.0003	16,000
Children 1–2 years old	0.000959	<1	4.358	.0003	16,000
Children 37–5 years old	0.000904	<1	4.358	.0003	16,000
Females 13–59 years old	0.000487	<1	4.358	.0003	48,000

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to thifensulfuron methyl from food will utilize <1 % of the cPAD for the U.S. population, <1% of the cPAD for all infants less than 1 year old, and <1% of the cPAD for children 3–5 years old. There are no residential uses for thifensulfuron methyl that result in chronic residential exposure to thifensulfuron methyl. In addition, there is potential for chronic dietary exposure to thifensulfuron methyl in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in Table 4 of this unit:

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

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. Population	0.000203	<1	.618	.0003	7,000
All Infants <1 year old	0.000240	<1	.618	.0003	2,000
Children 1–2 years old	0.000410	<1	.618	.0003	2,000
Children 3–5 years old	0.000466	<1	.618	.0003	2,000
Females 13–49 years old	0.000206	<1	.618	.0003	6,000

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

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

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

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

5. *Aggregate cancer risk for U.S. population.* Thifensulfuron methyl has no carcinogenic potential. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology including liquid chromatography with a photoconductivity detector and high-performance liquid chromatography with UV detector (HPLC/UV) are available for enforcement of the reassessed tolerances. These methods are published in PAM II.

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

B. International Residue Limits

There are currently no Codex maximum residue limits (MRLs) for thifensulfuron methyl, therefore no questions of compatibility exist. Mexico has established tolerances on wheat and barley at 0.05 ppm. Canada has established tolerances for tomato at 0.07 ppm, flax at 0.02 ppm, and canola at 0.02 ppm. the established Mexican tolerances for wheat and barley are compatible with the reassessed tolerances on barley, grain, and wheat, grain. Canadian MRLs on flax and canola are compatible with the proposed tolerances of canola, seed and flax, seed.

C. Conditions

There are no conditions of registration for either the reassessed tolerances or the tolerances for canola, cotton, and flax.

V. Conclusion

Therefore, the tolerance is established for residues of thifensulfuron methyl,

methyl-3-[[[[(4-methoxy-6-methyl-1, 3, 5, -triazin-2-yl)amino]carbonyl]amino]sulfonyl]-2-thiophenecarboxylate, in or on canola, seed at 0.02 ppm; cotton, gin byproducts at 0.02 ppm; cotton, undelinted seed at 0.02 ppm; and flax, seed at 0.02 ppm. This action results in the reassessment of 10 tolerances as follows: barley, grain at 0.05 ppm; barley, straw at 0.1 ppm; oat grain at 0.05 ppm; oat, straw at 0.1 ppm; soybean at 0.1 ppm; wheat, grain at 0.05 ppm; wheat, straw at 0.1 ppm and also three corn tolerances (corn, field, forage at 0.1 ppm; corn, field, grain at 0.05 ppm; and corn, field, stover at 0.10 ppm) which were inadvertently removed from 40 CFR 180. 439. On May 12, 2004 (69 FR 26348) (FRL–7358–5), EPA proposed to reinstate the three corn tolerances for thifensulfuron methyl in 40 CFR 180.439. In the near future, EPA intends to publish the reinstatement of the corn tolerances for thifensulfuron methyl in the **Federal Register**.

VI. Objections and Hearing Requests

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

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2004–0277 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 November 16, 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 (1900L), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Suite 350, 1099 14th St., NW., Washington, DC 20005. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 564–6255.

2. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number OPP–2004–0277, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

VII. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between

the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: September 10, 2004.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.439 is revised to read as follows:

§ 180.439 Thifensulfuron methyl; tolerances for residues.

(a) *General.* Tolerances are established for residues of the herbicide thifensulfuron methyl (methyl-3-[[[[(4-methoxy-6-methyl-1,3,5-triazin-2-yl)amino] carbonyl] amino] sulfonyl]-2-thiophene carboxylate) in or on the following raw agricultural commodities:

Commodity	
Barley, grain	0.05
Barley, straw	0.10
Canola, seed	0.02
Cotton, gin byproducts	0.02
Cotton, undelinted seed	0.02
Flax, seed	0.02
Oat, grain	0.05
Oat, straw	0.10
Soybean	0.10
Wheat, grain	0.05
Wheat, straw	0.10

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

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 04–20983 Filed 9–16–04; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[ET Docket No. 03–201; FCC 04–165]

Unlicensed Devices and Equipment Approval

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: On September 7, 2004 (69 FR 54027), the Commission published final rules in the Report and Order, which amended the rules for unlicensed devices and equipment approval. This document contains a correction to § 2.948(a)(2), which was inadvertently published incorrectly.

DATES: Effective October 7, 2004.

FOR FURTHER INFORMATION CONTACT: Neal McNeil, Office of Engineering and Technology, (202) 418–2408, TTY (202) 418–2989, e-mail: *Neal.McNeil@fcc.gov*.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission published a document amending parts 2 and 15 of the Commission's rules in the **Federal Register** of September 7, 2004 (69 FR 54027). This document corrects the **Federal Register** as it appeared.

In FR Doc. 04–19745, published on September 7, 2004 (69 FR 54027), the Commission is correcting § 2.948(a)(2).

PART 2—[CORRECTED]

■ In rule FR Doc. 04–19745 published on September 7, 2004 (69 FR 54027) make the following correction:

■ On page 54033, in the third column correct § 2.948(a)(2) to read as follows:

§ 2.948 Description of measurement facilities.

(a) * * *

(2) If the equipment is to be authorized by the Commission under the certification procedure, the description of the measurement facilities shall be filed with the Commission's Laboratory in Columbia, Maryland. The data describing the measurement facilities need only be filed once but must be updated as changes are made to the measurement facilities or as otherwise described in this section. At least every three years, the organization responsible for filing the data with the Commission shall certify that the data on file is current. A laboratory that has been accredited in accordance with paragraph (d) of this section is not required to file a description of its facilities with the Commission's laboratory, provided the accrediting organization (or designating authority in the case of foreign laboratories) submits the following

information to the Commission's laboratory:

(i) Laboratory name, location of test site(s), mailing address and contact information;

(ii) Name of accrediting organization;

(iii) Date of expiration of accreditation;

(iv) Designation number;

(v) FCC Registration Number (FRN);

(vi) A statement as to whether or not the laboratory performs testing on a contract basis;

(vii) For laboratories outside the United States, the name of the mutual recognition agreement or arrangement under which the accreditation of the laboratory is recognized.

* * * * *

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–20906 Filed 9–16–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket Nos. 96–45, 97–21, and 02–6; FCC 04–181]

Federal-State Joint Board on Universal Service; Changes to the Board of Directors for the National Exchange Carrier Association, Inc.; and Schools and Libraries Universal Service Support Mechanism.

AGENCY: Federal Communications Commission.

ACTION: Final rule; clarification.

SUMMARY: In this document, the Commission addresses pending petitions for reconsideration filed by Sprint Corporation, United States Telecom Association, Inc., and MCI Worldcom, Inc. The Commission agrees with petitioners that the Commission should seek recovery from schools and libraries in certain instances, and therefore grants their petitions in part. The Commission resolves the limited question raised in the *Second Further Notice of Proposed Rulemaking (Second FNPRM)* in CC Docket No. 02–06 of from whom the Commission will seek recovery of schools and libraries funds disbursed in violation of the statute or a rule. The Commission modifies its requirements in this area so that recovery will be sought from whichever party or parties has committed the statutory or rule violation.

DATES: Effective September 17, 2004.

FOR FURTHER INFORMATION CONTACT: Jennifer Schneider, Attorney, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order on Reconsideration and Fourth Report and Order in CC Docket Nos. 96–45, 97–21, and 02–6 released on July 30, 2004. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC 20554.

I. Introduction

1. In this order, we address pending petitions for reconsideration filed by Sprint Corporation (Sprint), United States Telecom Association, Inc. (USTA), and MCI Worldcom, Inc. (MCI). Petitioners seek reconsideration of an order which, among other things, directed the Universal Service Administrative Company (Administrator or USAC) to cancel any funding commitments under the schools and libraries support mechanism that were made in violation of the Communications Act, as amended (the Act), and to recover from the service providers any funds that had already been distributed pursuant to an unlawful funding decision. For the reasons discussed below, we agree with petitioners that we should seek recovery from schools and libraries in certain instances, and therefore grant their petitions in part. We also resolve the limited question raised in the *Second FNPRM*, 69 FR 6181, February 10, 2004, in CC Docket No. 02–06 of from whom we will seek recovery of schools and libraries funds disbursed in violation of the statute or a rule. We modify our requirements in this area so that recovery is directed at whichever party or parties has committed the statutory or rule violation.

II. Discussion

2. Based on the more fully developed record now before us, we conclude that recovery actions should be directed to the party or parties that committed the rule or statutory violation in question. We do so recognizing that in many instances, this will likely be the school or library, rather than the service provider. We thus grant the petitions for reconsideration in part, and deny the petitions to the extent they argue that recovery should always be directed at the school or library. This revised recovery approach shall apply on a going forward basis to all matters for which USAC has not yet issued a demand letter as of the effective date of this order, and to all recovery actions currently under appeal to either USAC or this agency. We do not intend to modify any recovery action in which the service provider has satisfied the outstanding obligation or for which USAC has already issued an initial demand letter.

3. We now recognize that the beneficiary in many situations is the party in the best position to ensure compliance with the statute and our schools and libraries support mechanism rules. At the time the Commission adopted the *Commitment Adjustment Order*, USAC had been distributing funds through the schools and libraries mechanism for only one year. The Commission and USAC then faced a limited range of situations in which statutory or rule violations had occurred requiring the recovery of funds. Thus, the Commission lacked a full appreciation for the wide variety of situations that could give rise to recovery actions in which the school or library would be the party most culpable. The school or library is the entity that undertakes the various necessary steps in the application process, and receives the direct benefit of any services rendered. The school or library submits to USAC a completed FCC Form 470, setting forth its technological needs and the services for which it seeks discounts. The school or library is required to comply with the Commission's competitive bidding requirements as set forth in §§ 54.504 and 54.511(a) of our rules and related orders. The school or library is the entity that submits FCC Form 471, notifying the Administrator of the services that have been ordered, the service providers with whom it has entered into agreements, and an estimate of the funds needed to cover the discounts to be provided on eligible services.

4. To be sure, service providers have various obligations under the statute and our rules as well. Among other things, the service provider is the entity that provides the supported service, and as such, must provide the services approved for funding within the relevant funding year. The service provider is required under our rules to provide beneficiaries a choice of payment method, and, when the beneficiary has made full payment for services, to remit discount amounts to the beneficiary within twenty days of receipt of the reimbursement check. But in many situations, the service provider simply is not in a position to ensure that all applicable statutory and regulatory requirements have been met. Indeed, in many instances, a service provider may

well be totally unaware of any violation. In such cases, we are now convinced that it is both unrealistic and inequitable to seek recovery solely from the service provider.

5. We conclude that recovering disbursed funds from the party or parties that violated the statute or a Commission rule will further our goals of minimizing waste, fraud and abuse in the schools and libraries support mechanism. We are concerned that the current recovery requirements that are subject to petitions for reconsideration do not place sufficient incentive on beneficiaries to ensure compliance with all relevant statutory requirements and our implementing rules. Indeed, some parties note that under our current recovery procedures beneficiaries often do not directly bear the consequence of any failure to comply with our rules. We conclude that directing recovery actions to beneficiaries in those situations where the beneficiary bears responsibility for the rule or statutory violation will promote greater accountability and care on the part of such beneficiaries.

6. We believe that recovering disbursed funds from the party or parties that violated the statute or rule sufficiently addresses USTA's concern that our prior holding in the *Commitment Adjustment Order* was inequitable. We note, however, that contrary to USTA's claim that we had no rules providing the recovery of funds disbursed in violation of the statute or a rule, our debt collection rules have been in place for some time. And, as explained below, those rules are applicable to the situation presented here.

7. We direct USAC to make the determination, in the first instance, to whom recovery should be directed in individual cases. In determining to which party recovery should be directed, USAC shall consider which party was in a better position to prevent the statutory or rule violation, and which party committed the act or omission that forms the basis for the statutory or rule violation. For instance, the school or library is likely to be the entity that commits an act or omission that violates our competitive bidding requirements, our requirement to have necessary resources to make use of the supported services, the obligation to calculate properly the discount rate, and the obligation to pay the appropriate non-discounted share. On the other hand, the service provider is likely to be the entity that fails to deliver supported services within the relevant funding year, fails to properly bill for supported services, or delivers services that were not approved for funding under the governing FCC Form 471. We recognize that in some instances, both the beneficiary and the service provider may share responsibility for a statutory or rule violation. In such situations, USAC may initiate recovery action against both parties, and shall pursue such claims until the amount is satisfied by one of the parties. Pursuant to § 54.719(c) of the Commission's rules, any person aggrieved by the action taken by a division of the Administrator may seek review from the Commission.

8. We note that USAC's determination concerning which party should be the recipient of the demand letter does not limit the Enforcement Bureau's ability to take enforcement action for any statutory or rule violation pursuant to section 503 of the Act. Any recipient of the demand letter is obligated to repay the recovery amount by the deadlines described in the *Commitment Adjustment Implementation Order*. Failure to do so may subject such recipients to enforcement action by the Commission in addition to any collection action.

9. We also specifically address the issue of whether a service provider should be subject to a recovery action in situations where it is serving as a Good Samaritan. In light of our decision today, we anticipate that recovery would be directed in most instances to the school or library. We conclude that Good Samaritans should not be subject to recovery actions except in those situations where the Good Samaritan itself has committed the act or omission that violates our rules or the governing statute.

10. We briefly address petitioners' remaining arguments. First, USTA argues that the authorities on which the Commission relied, chiefly the *OPM* decision and the DCA, are inapplicable to the funds at issue and thus offer no support for our determination to seek repayment of funds disbursed to providers in violation of the Act. We cannot agree. The authority, as well as the responsibility, of the Government to seek repayment of wrongfully distributed funds is well established as a matter of federal law.

11. Although parties assert that the *OPM* decision is limited in its holding to funds disbursed from the general Treasury, and is therefore not relevant here because universal service funds are taken from a special fund that is not deposited in the Treasury, that is too narrow a reading of the principle found in *OPM*. Rather, the principle to be drawn from *OPM* is that the Commission cannot disburse funds in the absence of statutory authority. It is " 'central to the real meaning of the rule of law, [and] not particularly controversial' that a federal agency does not have the power to act unless Congress, by statute, has empowered it to do so." Thus, contrary to petitioners' argument, we are bound by statutory restrictions in the disbursement of the universal service fund regardless of whether such funds are drawn from the Treasury.

12. Moreover, the Commission's disbursement of funds in violation of the statute or a rule gives rise to a claim for recoupment. As the Commission stated in the *Commitment Adjustment Order*, the DCA imposes a duty on agencies to attempt to collect on such claims. Specifically, the DCA requires that "[t]he head of an executive, judicial, or legislative agency * * * shall try to collect a claim of the United States Government for money or property arising out of the activities of, or referred to, the agency." Here, we find that the disbursement of funds in violation of the statute or a rule gives rise to claims that "arise out of the activities" of the Commission, *i.e.*, the activity of ensuring that schools and libraries received discounts for telecommunications services, voice mail, Internet access, and internal connections pursuant to section 254(h). Therefore, we are obligated by law to seek recoupment of funds that were disbursed in violation of our statutory authority. In addition, parties' assertions that the collection mandate of the DCA is inapplicable to the schools and libraries universal service program because its direct application is limited to claims for money owing to the United States Treasury, is inaccurate. By its terms, the DCA is not limited to funds that are owed to the Treasury. The DCA defines "debt or claim" as funds which are "owed to the United States," not merely those which are "owed to the U.S. Treasury." In fact, the DCA defines a "claim" to include overpayments from an agency-administered program, such as the federal universal service program.

13. We therefore reject the Petitioners' argument that the authorities on which we relied in the *Commitment Adjustment Order* are inapplicable. We conclude that under these authorities, the Commission has an obligation to seek recovery of universal service funds disbursed in violation of the statute or a rule.

14. USTA argues that we unlawfully delegated our authority to recoup universal service funds disbursed in violation of the statute or a rule to the Administrator because this duty is not found in §§ 54.702 or 54.705 of the Commission's rules. We reject this

argument. The Administrator oversees the administration of the schools and libraries support mechanism, including the administration of disbursing schools and libraries funds consistent with, and under the direction of, the Commission's rules and precedent. If the Administrator allows funds to be disbursed in violation of the statute or a rule, it is within the ambit of its administration and disbursement duties to seek recoupment in the first instance. Moreover, we note that the Commission retains its authority to seek final payment of its claim. Thus, we have not unlawfully delegated the Commission's authority to seek recoupment of funds disbursed in violation of the statute or a rule.

III. Procedural Matters

A. Paperwork Reduction Act Analysis

15. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

B. Final Regulatory Flexibility Certification

16. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

17. An initial regulatory flexibility analysis (IRFA) was incorporated in the *Second FNPRM*. The Commission sought written public comment on the proposals in the *Second FNPRM*, including comment on the IRFA. No comments were received to the *Second FNPRM* or IRFA that specifically raised the issue of the impact of the proposed rules on small entities.

18. In this order, we now direct that recovery of funds disbursed to schools and libraries in violation of the Communications Act, or of a program rule, be sought from whichever party or parties have committed the violation. This has no effect on any parties who have not violated our rules, except to make more money available for them to obtain through the schools and libraries support program. It only imposes a minimal burden on small entities that have violated our rules by requiring them to return funds they received in violation of our rules. We believe that the vast majority of entities, small and large, are in compliance with our rules and thus will not be subject to efforts to any recover improperly disbursed funds.

19. Therefore, we certify that the requirements of the order will not have a significant economic impact on a substantial number of small entities.

20. In addition, the order and this final certification will be sent to the Chief Counsel for Advocacy of the SBA, and will be published in the **Federal Register.**

21. The Commission will not send a copy of this Order on Reconsideration and Fourth Report and Order pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

IV. Ordering Clauses

22. Pursuant to the authority contained in sections 1, 4(i), 4(j), and 254 of the Communications Act of 1934, as amended that this Order on Reconsideration and Fourth Report and Order in CC Docket No. 02–06 is adopted.

23. The Petitions for Reconsideration filed by MCI WorldCom, Inc., United States Telecom Association, and Sprint on November 8, 1999 are granted to the extent provided herein.

24. The terms of this Order on Reconsideration and Fourth Report and Order are effective September 17, 2004.

25. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Order on Reconsideration and Fourth Report and Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–21005 Filed 9–16–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket Nos. 90–571 and 98–67; FCC 04–137]

Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: On September 1, 2004 (69 FR 53346), the Commission published final rules in the **Federal Register**, which addressed cost recovery and other matters relating to the provision of telecommunications relay services (TRS) pursuant to Title IV of the Americans with Disabilities Act of 1990 (ADA). This document corrects § 64.604 (a)(4).

DATES: Effective October 1, 2004 except for the amendment to § 64.604 (a)(4) of the Commission's rules, which contains information collection requirements under the Paperwork Reduction Act (PRA) that are not effective until approved by Office of Management and Budget (OMB). Written comments by the public on the new and modified information collections are due November 1, 2004. The Commission will publish a document in the **Federal Register** announcing the effective date for that section.

FOR FURTHER INFORMATION CONTACT: Cheryl King, of the Consumer & Governmental Affairs Bureau at (202) 418–2284 (voice), (202) 418–0416 (TTY), or e-mail *cheryl.king@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Federal Communications Commission published a document amending part 64 in the **Federal Register** of September 1, 2004 (69 FR 53346). This document corrects the "Rule Changes" section of the **Federal Register** summary as it appeared. In rule FR Doc. 04–19955 published on September 1, 2004 (69 FR 53346), make the following correction:

PART 64—[CORRECTED]

■ On page 53351, in the third column, "§ 64.604(a)(4)" is corrected to read as follows:

§ 64.604 Mandatory minimum standards.

* * * * *

(a) * * *

(4) *Handling of emergency calls.* Providers must use a system for incoming emergency calls that, at a minimum, automatically and

immediately transfers the caller to an appropriate Public Safety Answering Point (PSAP). An appropriate PSAP is either a PSAP that the caller would have reached if he had dialed 911 directly, or a PSAP that is capable of enabling the dispatch of emergency services to the caller in an expeditious manner.

* * * * *

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–21006 Filed 9–16–04; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

48 CFR Part 207

[DFARS Case 2004–D004]

Defense Federal Acquisition Regulation Supplement; Acquisition Plans—Corrosion Prevention and Mitigation

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 1067 of the National Defense Authorization Act for Fiscal Year 2003. Section 1067 requires DoD to prevent and mitigate corrosion during the design, acquisition, and maintenance of military equipment.

EFFECTIVE DATE: September 17, 2004.

FOR FURTHER INFORMATION CONTACT: Ms. Teresa Brooks, Defense Acquisition Regulations Council, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0326; facsimile (703) 602–0350. Please cite DFARS Case 2004–D004.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends DFARS 207.105 to add corrosion prevention and mitigation to the areas that agencies must address in acquisition plans. The rule implements Section 1067 of the National Defense Authorization Act for Fiscal Year 2003 (Public Law 107–314), which requires DoD to prevent and mitigate corrosion during the design, acquisition, and maintenance of military equipment.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This rule will not have a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of DoD. Therefore, publication for public comment is not required. However, DoD will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 2004–D004.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that 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 207

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

■ Therefore, 48 CFR part 207 is amended as follows:

■ 1. The authority citation for 48 CFR part 207 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 207—ACQUISITION PLANNING

■ 2. Section 207.105 is amended in paragraph (b)(13)(ii) by adding a second sentence to read as follows:

207.105 Contents of written acquisition plans.

* * * * *

(b) * * *

(13) * * *

(ii) * * * Also discuss corrosion prevention and mitigation plans.

* * * * *

[FR Doc. 04–21019 Filed 9–16–04; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Parts 207 and 219

[DFARS Case 2003–D109]

Defense Federal Acquisition Regulation Supplement; Consolidation of Contract Requirements

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 801 of the National Defense Authorization Act for Fiscal Year 2004. Section 801 places restrictions on the consolidation of two or more requirements of a DoD department, agency, or activity into a single solicitation and contract.

DATES: *Effective date:* September 17, 2004.

Comment date: Comments on the interim rule should be submitted to the address shown below on or before November 16, 2004, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2003–D109, using any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Defense Acquisition Regulations Web site: *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm*. Follow the instructions for submitting comments.
- E-mail: *dfars@osd.mil*. Include DFARS Case 2003–D109 in the subject line of the message.
- Fax: Primary: (703) 602–7887; Alternate: (703) 602–0350.
- Mail: Defense Acquisition Regulations Council, Attn: Ms. Donna Hairston-Benford, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.
- Hand Delivery/Courier: Defense Acquisition Regulations Council, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

All comments received will be posted to *http://emissary.acq.osd.mil/dar/dfars.nsf*.

FOR FURTHER INFORMATION CONTACT: Ms. Donna Hairston-Benford, (703) 602–0289.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule amends DFARS Parts 207 and 219 to implement Section 801 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136). Section 801 adds 10 U.S.C. 2382, which places restrictions on the use of an acquisition strategy that includes a consolidation of contract requirements with a total value exceeding $5,000,000.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This rule is expected to have a beneficial impact on small business concerns. An initial regulatory flexibility analysis has been prepared

consistent with 5 U.S.C. 603. The analysis is summarized as follows:

This interim rule amends the DFARS to implement Section 801 of the National Defense Authorization Act for Fiscal Year 2004. Section 801 adds 10 U.S.C. 2382, which places restrictions on the consolidation of two or more requirements of a DoD department, agency, or activity into a single solicitation and contract, when the total value of the requirements exceeds $5,000,000. The objective of the rule is to ensure that decisions regarding consolidation of contract requirements are made with a view toward providing small business concerns with appropriate opportunities to participate in DoD procurements as prime contractors and subcontractors. The rule does not duplicate, overlap, or conflict with any other Federal rules. DoD considers the restrictions on consolidation of contract requirements to be separate and distinct from the restrictions on contract bundling specified in the Federal Acquisition Regulation. There are no significant alternatives that would accomplish the objectives of 10 U.S.C. 2382. The impact on small entities is expected to be positive.

A copy of the analysis may be obtained from the point of contact specified herein. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2003–D109.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements Section 801 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136). Section 801 provides that a DoD department, agency, or activity may not execute an acquisition strategy that includes a consolidation of contract requirements with a total value exceeding $5,000,000, unless the senior procurement executive concerned conducts market research, identifies any alternative contracting approaches that would involve a lesser degree of consolidation, and determines that the consolidation is necessary and justified. Comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Parts 207 and 219

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

■ Therefore, 48 CFR parts 207 and 219 are amended as follows:

■ 1. The authority citation for 48 CFR parts 207 and 219 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 207—ACQUISITION PLANNING

■ 2. Sections 207.170 through 207.170–3 are added to read as follows:

207.170 Consolidation of contract requirements.

207.170–1 Scope.

This section implements 10 U.S.C. 2382.

207.170–2 Definitions.

As used in this section—

Consolidation of contract requirements means the use of a solicitation to obtain offers for a single contract or a multiple award contract to satisfy two or more requirements of a department, agency, or activity for supplies or services that previously have been provided to, or performed for, that department, agency, or activity under two or more separate contracts lower in cost than the total cost of the contract for which the offers are solicited.

Multiple award contract means—

(1) A multiple award schedule issued by the General Services Administration as described in FAR Subpart 8.4;

(2) A multiple award task order or delivery order contract issued in accordance with FAR Subpart 16.5; or

(3) Any other indefinite-delivery, indefinite-quantity contract that an agency enters into with two or more sources for the same line item under the same solicitation.

207.170–3 Policy and procedures.

(a) Agencies shall not consolidate contract requirements with a total value exceeding $5,000,000 unless the acquisition strategy includes—

(1) The results of market research;

(2) Identification of any alternative contracting approaches that would involve a lesser degree of consolidation; and

(3) A determination by the senior procurement executive that the consolidation is necessary and justified.

(i) Market research may indicate that consolidation of contract requirements is necessary and justified if the benefits of the acquisition strategy substantially exceed the benefits of each of the possible alternative contracting approaches. Benefits include costs and, regardless of whether quantifiable in dollar amounts—

(A) Quality;

(B) Acquisition cycle;

(C) Terms and conditions; and

(D) Any other benefit.

(ii) Savings in administrative or personnel costs alone do not constitute a sufficient justification for a consolidation of contract requirements unless the total amount of the cost savings is expected to be substantial in relation to the total cost of the procurement.

(b) Include the determination made in accordance with paragraph (a)(3) of this section in the contract file.

PART 219—SMALL BUSINESS PROGRAMS

■ 3. Section 219.201 is amended by adding paragraph (d)(11) to read as follows:

219.201 General policy.

* * * * *

(d) * * *

(11) Also conduct annual reviews to assess—

(A) The extent of consolidation of contract requirements that has occurred (see 207.170); and

(B) The impact of those consolidations on the availability of small business concerns to participate in procurements as both contractors and subcontractors.

* * * * *

[FR Doc. 04–21017 Filed 9–16–04; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Parts 209, 217, and 246

[DFARS Case 2003–D101]

Defense Federal Acquisition Regulation Supplement; Quality Control of Aviation Critical Safety Items and Related Services

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 802 of the National Defense Authorization Act for Fiscal Year 2004. Section 802 requires DoD to establish a quality control policy for the procurement of aviation critical safety items and the modification, repair, and overhaul of those items.

DATES: *Effective date:* September 17, 2004.

Comment date: Comments on the interim rule should be submitted to the address shown below on or before November 16, 2004, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2003–D101, using any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Defense Acquisition Regulations Web Site: *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm*. Follow the instructions for submitting comments.
- E-mail: *dfars@osd.mil*. Include DFARS Case 2003–D101 in the subject line of the message.
- Fax: Primary: (703) 602–7887; Alternate: (703) 602–0350.
- Mail: Defense Acquisition Regulations Council, Attn: Ms. Teresa Brooks, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.
- Hand Delivery/Courier: Defense Acquisition Regulations Council, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

All comments received will be posted to *http://emissary.acq.osd.mil/dar/dfars.nsf*.

FOR FURTHER INFORMATION CONTACT: Ms. Teresa Brooks, (703) 602–0326.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule amends DFARS Parts 209, 217, and 246 to implement Section 802 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136). Section 802 requires DoD to prescribe in regulations a quality control policy for the procurement of aviation critical safety items and the modification, repair, and overhaul of those items. This interim rule—

- Identifies the responsibilities of the head of the design control activity for quality control of aviation critical safety items and related services; and
- Specifies that DoD may enter into a contract for the procurement, modification, repair, or overhaul of an aviation critical safety item only with a source approved by the head of the design control activity.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this 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 primarily relates to internal DoD responsibilities for ensuring quality control in the procurement of aviation critical safety items and related services. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2003–D101.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements Section 802 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136). Section 802 requires DoD to prescribe in regulations a quality control policy for the procurement of aviation critical safety items and the modification, repair, and overhaul of those items. Section 802 became effective upon enactment on November 24, 2003. Comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Parts 209, 217, and 246

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

■ Therefore, 48 CFR parts 209, 217, and 246 are amended as follows:

■ 1. The authority citation for 48 CFR parts 209, 217, and 246 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 209—CONTRACTOR QUALIFICATIONS

■ 2. Sections 209.270 through 209.270–4 are added to read as follows:

209.270 Aviation critical safety items.

209.270–1 Scope.

This section—

(a) Implements Section 802 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136); and

(b) Prescribes policy and procedures for qualification requirements in the procurement of aviation critical safety items and the modification, repair, and overhaul of those items.

209.270–2 Definitions.

As used in this section—

Aviation critical safety item means a part, an assembly, installation equipment, launch equipment, recovery equipment, or support equipment for an aircraft or aviation weapon system if the part, assembly, or equipment contains a characteristic any failure, malfunction, or absence of which could cause—

(1) A catastrophic or critical failure resulting in the loss of or serious damage to the aircraft or weapon system;

(2) An unacceptable risk of personal injury or loss of life; or

(3) An uncommanded engine shutdown that jeopardizes safety.

Design control activity means the systems command of a military department that is specifically responsible for ensuring the air worthiness of an aviation system or equipment in which an aviation critical safety item is to be used.

209.270–3 Policy.

(a) The head of the contracting activity for an aviation critical safety item may enter into a contract for the procurement, modification, repair, or overhaul of such an item only with a source approved by the head of the design control activity.

(b) The approval authorities specified in this section apply instead of those otherwise specified in FAR 9.202(a)(1), 9.202(c), or 9.206–1(c), for the procurement, modification, repair, and overhaul of aviation critical safety items.

209.270–4 Procedures.

For items identified as aviation critical safety items—

(a) The head of the design control activity shall—

(1) Approve qualification requirements in accordance with procedures established by the design control activity; and

(2) Qualify and identify aviation critical safety item suppliers and products.

(b) The contracting officer shall—

(1) Ensure that the head of the design control activity has determined that a prospective contractor or its product meets or can meet the established qualification standards before the date specified for award of the contract;

(2) Refer any offers received from an unapproved source to the head of the design control activity for approval. The head of the design control activity will determine whether the offeror or its product meets or can meet the established qualification standards before the date specified for award of the contract; and

(3) Refer any requests for qualification to the design control activity.

(c) See 246.407 (S–70) and 246.504 for quality assurance requirements.

PART 217—SPECIAL CONTRACTING METHODS

■ 3. Section 217.7501 is amended in paragraph (b)(2) by adding a third sentence to read as follows:

217.7501 General.

* * * * *

(b) * * *

(2) * * * See 209.270 for requirements applicable to replenishment parts for aviation critical safety items.

* * * * *

PART 246—QUALITY ASSURANCE

■ 4. Section 246.407 is amended by adding, after paragraph (f)(iii), a new paragraph (S–70) to read as follows:

246.407 Nonconforming supplies or services.

* * * * *

(S–70) The head of the design control activity is the approval authority for acceptance of any nonconforming aviation critical safety items or nonconforming modification, repair, or overhaul of such items (see 209.270).

■ 5. Subpart 246.5 is added to read as follows:

Subpart 246.5—Acceptance

Sec.

246.504 Certificate of conformance.

246.504 Certificate of conformance.

Before authorizing a certificate of conformance for aviation critical safety items, obtain the concurrence of the head of the design control activity (see 209.270).

[FR Doc. 04–21014 Filed 9–16–04; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Parts 225 and 252

[DFARS Case 2003–D099]

Defense Federal Acquisition Regulation Supplement; Berry Amendment Changes

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has adopted as final, without change, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Sections 826 and 827 of the National Defense Authorization Act for Fiscal Year 2004. Sections 826 and 827 provide exceptions to the domestic source requirements of the Berry Amendment. Section 826 applies to the acquisition of food, specialty metals, and hand or measuring tools needed to support contingency operations or to fulfill other urgent requirements. Section 827 applies to the acquisition of waste and byproducts of cotton or wool fiber for use in the production of propellants and explosives.

EFFECTIVE DATE: September 17, 2004.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations Council, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0328; facsimile (703) 602–0350. Please cite DFARS Case 2003–D099.

SUPPLEMENTARY INFORMATION:

A. Background

DoD published an interim rule at 69 FR 26508 on May 13, 2004, to implement Sections 826 and 827 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136). The rule amended DFARS 225.7002–2 and 252.225–7012 to provide new exceptions to the domestic source requirements of the Berry Amendment (10 U.S.C. 2533a), as authorized by Sections 826 and 827 of Public Law 108–136. DoD received no comments on the interim rule. Therefore, DoD has adopted the interim rule as a final rule without change.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not 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 exceptions to domestic source requirements authorized by the rule are limited to acquisitions of (1) Food, specialty metals, and hand or measuring tools needed to support contingency operations or to fulfill other urgent requirements; and (2) waste and byproducts of cotton or wool fiber for use in the production of propellants and explosives.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

Interim Rule Adopted as Final Without Change

■ Accordingly, the interim rule amending 48 CFR parts 225 and 252, which was published at 69 FR 26508 on May 13, 2004, is adopted as a final rule without change.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 04–21020 Filed 9–16–04; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Parts 226 and 252

[DFARS Case 2002–D033]

Defense Federal Acquisition Regulation Supplement; Indian Incentive Program

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has adopted as final, with changes, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement DoD Appropriations Act provisions pertaining to the Indian Incentive Program. The Program permits incentive payments to contractors, and subcontractors at any tier, that use Indian organizations, Indian-owned economic enterprises, and Native Hawaiian small business concerns as subcontractors.

EFFECTIVE DATE: September 17, 2004.

FOR FURTHER INFORMATION CONTACT: Ms. Donna Hairston-Benford, Defense Acquisition Regulations Council, OUSD (AT&L)DPAP(DAR),IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0289; facsimile (703) 602–0350. Please cite DFARS Case 2002–D033.

SUPPLEMENTARY INFORMATION:

A. Background

DoD published an interim rule at 68 FR 56561 on October 1, 2003, to implement Section 8021 of the DoD Appropriations Act for Fiscal Year 2003 (Public Law 107–248). Section 8021 revised the criteria for application of the Indian Incentive Program by establishing a >$500,000 threshold for contracts and subcontracts under which incentives may be paid; by authorizing incentive payments for subcontracts awarded to Native Hawaiian small business concerns; and by adding contracts and subcontracts for commercial items to the Program. Section 8021 of the DoD Appropriations Act for Fiscal Year 2004 (Public Law 108–87) and Section 8021 of the DoD Appropriations Act for Fiscal Year 2005 (Public Law 108–287) contain similar provisions.

Fourteen sources submitted comments on the interim rule. A discussion of the comments is provided below. Differences between the interim and final rules are addressed in the response to Comments 1 and 6.

1. *Comment:* Revise requirements for use of the Indian incentive clause at DFARS 252.226–7001, to require inclusion of the clause in all contracts and subcontracts exceeding $500,000, instead of the present requirement for inclusion of the clause in contracts and subcontracts exceeding $500,000 when "subcontracting opportunities may exist." This change would eliminate the possibility that a subcontracting opportunity might be overlooked.

DoD Response: Concur. The recommended change has been made in the final rule at 226.104 and 252.226–7001(g).

2. *Comment:* The rule should include the statutory requirement for inclusion of the incentive clause in subcontracts exceeding $500,000 at any tier.

DoD Response: The rule requires inclusion of the clause, including the flowdown requirement, in all subcontracts exceeding $500,000. This covers all subcontracts exceeding $500,000 at all tiers.

3. *Comment:* The $500,000 threshold for inclusion of the incentive clause in contracts and subcontracts is restrictive and should be lowered to $100,000 or less.

DoD Response: Do not concur. The $500,000 threshold is consistent with the Appropriations Act provisions.

4. *Comment:* With regard to the requirement for subcontracted commercial items to be produced or manufactured in whole or in part by a Native firm, the phrase "produced or manufactured in whole or in part" should be clarified. Solutions offered were: Use of the manufacturing standards established by the North American Industry Classification System (NAICS) codes; use of a percentage such as that contained in the nonmanufacturer rule at FAR 19.102(f)(2); or a reference to the Small Business Administration regulations at 13 CFR 121.406.

DoD Response: Do not concur. Placing such a restriction on the eligibility of a subcontract awarded to a Native firm would be without statutory basis.

5. *Comment:* Can an Indian business provide a non-commercial item as a reseller for the actual manufacturer?

DoD Response: Neither the Appropriations Act provisions nor the DFARS rule place any manufacturing conditions on non-commercial items subcontracted under the Program.

6. *Comment:* The rule should clarify that Alaska Native Corporations are eligible for participation in Program.

DoD Response: The rule already provides for participation of Alaska Native Corporations, through the definitions of "Indian" and "Indian-owned economic enterprise" in the clause at 252.226–7001. Minor changes have been made to the definition of "Indian" to clarify this point.

7. *Comment:* Are businesses owned by individual Federally recognized American Indians eligible for participation in the Program, as well as those businesses owned by Federally recognized tribes and organizations?

DoD Response: Yes. The definitions at 252.226–7001 provide for participation by Indian-owned businesses that are individually owned or tribally owned.

8. *Comment:* The Indian Incentive Program should also be applied to DoD Family Housing Privatization contracts. Presently, the incentive clause cannot be included in these contracts, because the privatization contracts are not considered DoD contracts.

DoD Response: This comment is outside the scope of the DFARS rule. Therefore, no change has been made to the rule as a result of this comment.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This rule may 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.* DoD has prepared a final regulatory flexibility analysis. A copy of the analysis may be obtained from the point of contact specified herein. The analysis is summarized as follows:

This rule amends the DFARS to implement Section 8021 of the DoD Appropriations Act for Fiscal Year 2003 (Public Law 107–248), Section 8021 of the DoD Appropriations Act for Fiscal Year 2004 (Public Law 108–87), and Section 8021 of the DoD Appropriations Act for Fiscal Year 2005 (Public Law 108–287) pertaining to the Indian Incentive Program. The Program permits incentive payments to contractors, and subcontractors at any tier, that use Indian organizations, Indian-owned economic enterprises, and Native Hawaiian small business concerns as subcontractors. DoD received no comments on the initial regulatory flexibility analysis. However, as a result of comments received on the interim rule, the final rule includes a change that prescribes use of the Indian incentive clause at DFARS 252.226–7001 in all contracts and subcontracts exceeding $500,000, rather than in only those exceeding $500,000 for which subcontracting opportunities are deemed to exist at the time of award of the contract or subcontract. The rule requires that maximum practicable opportunity be provided for Indian organizations, Indian-owned economic enterprises, and Native Hawaiian small business concerns to receive subcontract awards; and provides that a contractor or subcontractor that awards a subcontract to such an entity may receive an incentive payment of 5 percent of the amount of the subcontract. There are no practical alternatives that would accomplish the objectives of the applicable statutes.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 226 and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

■ Accordingly, the interim rule amending 48 CFR parts 226 and 252, which was published at 68 FR 56561 on October 1, 2003, is adopted as a final rule with the following changes:

■ 1. The authority citation for 48 CFR parts 226 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 226—OTHER SOCIOECONOMIC PROGRAMS

226.104 [Amended]

■ 2. Section 226.104 is amended by removing the phrase "for which subcontracting opportunities may exist".

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Section 252.212–7001 is amended as follows:

■ a. By revising the clause date to read "(SEP 2004)"; and

■ b. In paragraph (b) by revising entry "252.226–7001" to read as follows:

252.212–7001 Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items.

* * * * *

(b) * * *

____252.226–7001 Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns (SEP 2004) (Section 8021 of Public Law 107–248 and similar sections in subsequent DoD appropriations acts).

* * * * *

■ 4. Section 252.226–7001 is amended as follows:

■ a. By revising the clause date to read "(SEP 2004)";

■ b. In paragraph (a) by revising the definition of "Indian"; and

■ c. By revising paragraph (g) to read as follows:

252.226–7001 Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns.

* * * * *

(a) * * *

Indian means—

(1) Any person who is a member of any Indian tribe, band, group, pueblo, or community that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs (BIA) in accordance with 25 U.S.C. 1452(c); and

(2) Any "Native" as defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*).

* * * * *

(g) The Contractor shall insert the substance of this clause, including this paragraph (g), in all subcontracts exceeding $500,000.

[FR Doc. 04–21015 Filed 9–16–04; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Part 237

[DFARS Case 2003–D103]

Defense Federal Acquisition Regulation Supplement; Personal Services Contracts

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Sections 721 and 841 of the National Defense Authorization Act for Fiscal Year 2004. Section 721 provides permanent authority for DoD to enter into personal services contracts for health care at locations outside of DoD medical treatment facilities. Section 841 adds authority for DoD to enter into contracts for personal services that are to be performed outside the United States or that directly support the mission of a DoD intelligence or counter-intelligence organization or the special operations command.

DATES: *Effective date:* September 17, 2004.

Comment date: Comments on the interim rule should be submitted to the address shown below on or before November 16, 2004, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2003–D103, using any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Defense Acquisition Regulations Web site: *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm*. Follow the instructions for submitting comments.
- E-mail: *dfars@osd.mil*. Include DFARS Case 2003–D103 in the subject line of the message.
- Fax: Primary: (703) 602–7887; Alternate: (703) 602–0350.
- Mail: Defense Acquisition Regulations Council, Attn: Ms. Teresa Brooks, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.
- Hand Delivery/Courier: Defense Acquisition Regulations Council, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

All comments received will be posted to *http://emissary.acq.osd.mil/dar/dfars.nsf*.

FOR FURTHER INFORMATION CONTACT: Ms. Teresa Brooks, (703) 602–0326.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule amends DFARS Subpart 237.1 to implement Sections 721 and 841 of the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136).

Section 721 amends 10 U.S.C. 1091(a)(2) to provide permanent authority for DoD to enter into personal services contracts for health care at locations outside of DoD medical treatment facilities (such as military entrance processing stations). The law previously provided for this authority to expire on December 31, 2003.

Section 841 amends 10 U.S.C. 129b to add authority for DoD to enter into contracts for personal services that (1) are to be provided by individuals outside the United States to support DoD activities and programs outside the United States; (2) directly support the mission of a DoD intelligence or counter-intelligence organization; or (3) directly support the mission of the DoD special operations command. This authority applies if the services to be procured are urgent or unique and would not be practical to obtain by other means.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this 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 application of the rule is limited to personal services contracts for (1) health care at locations outside of DoD medical treatment facilities, or (2) urgent or unique services that are to be performed outside the United States, or are in direct support of intelligence missions, when it would not be practical for DoD to obtain these services by other means. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2003–D103.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements Sections 721 and 841 of the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136). Section 721 provides permanent authority for DoD to enter into personal services contracts for health care at locations outside of DoD medical treatment facilities. Section 841 adds authority for DoD to enter into contracts for urgent or unique personal services that (1) are to be provided by individuals outside the United States to support DoD activities and programs outside the United States; (2) directly support the mission of a DoD intelligence or counter-intelligence organization; or (3) directly support the mission of the DoD special operations command. Sections 721 and 841 became effective upon enactment on November 24, 2003. Comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Part 237

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

■ Therefore, 48 CFR part 237 is amended as follows:

■ 1. The authority citation for 48 CFR part 237 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 237—SERVICE CONTRACTING

■ 2. Section 237.104 is amended as follows:

■ a. In paragraph (b)(i) introductory text, in the first sentence, by removing "Public Law 101–165, section 9002" and adding in its place "10 U.S.C. 129b";

■ b. In paragraph (b)(ii)(A)*(1)* by removing "and";

■ c. By redesignating paragraph (b)(ii)(A)*(2)* as paragraph (b)(ii)(A)*(3)*;

■ d. By adding a new paragraph (b)(ii)(A)*(2)*;

■ e. By revising paragraph (b)(ii)(C); and

■ f. By adding paragraphs (b)(iii) and (b)(iv) to read as follows:

237.104 Personal services contracts.

(b) * * *

(ii) * * *

(A) * * *

(2) Health care services at locations outside of medical treatment facilities (such as the provision of medical screening examinations at military entrance processing stations); and

* * * * *

(C) Approval requirements for—

(1) Direct health care personal services contracts (see paragraphs (b)(ii)(A)*(1)* and *(2)* of this section) and a pay cap are in DoDI 6025.5, Personal Services Contracts for Health Care Providers.

(i) A request to enter into a personal services contract for direct health care services must be approved by the commander of the medical/dental treatment facility where the services will be performed.

(ii) A request to enter into a personal services contract for a location outside of a medical treatment facility must be approved by the chief of the medical facility who is responsible for the area in which the services will be performed.

(2) Services of clinical counselors, family advocacy program staff, and victim's services representatives (see paragraph (b)(ii)(A)*(3)* of this section), shall be in accordance with agency procedures.

* * * * *

(iii) (A) In accordance with 10 U.S.C. 129b(d), an agency may enter into a personal services contract if—

(1) The personal services—

(i) Are to be provided by individuals outside the United States, regardless of their nationality;

(ii) Directly support the mission of a defense intelligence component or counter-intelligence organization of DoD; or

(iii) Directly support the mission of the special operations command of DoD; and

(2) The head of the contracting activity provides written approval for the proposed contract. The approval shall include a determination that addresses the following:

(i) The services to be procured are urgent or unique;

(ii) It would not be practical to obtain such services by other means; and

(iii) For acquisition of services in accordance with paragraph (b)(iii)(A)*(1)(i)* of this section, the services to be acquired are necessary and appropriate for supporting DoD activities and programs outside the United States.

(B) The contracting officer shall ensure that the applicable requirements of paragraph (b)(iii)(A)*(2)* of this section have been satisfied and shall include the approval documentation in the contract file.

(iv) The requirements of 5 U.S.C. 3109, Employment of Experts and Consultants; Temporary or Intermittent, do not apply to contracts entered into in accordance with paragraph (b)(iii) of this section.

* * * * *

[FR Doc. 04–21018 Filed 9–16–04; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Part 252

[DFARS Case 2003–D098]

Defense Federal Acquisition Regulation Supplement; Definition of Terrorist Country

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to remove Iraq from the list of terrorist countries subject to a prohibition on DoD contract awards. This change is a result of the President's May 7, 2003, determination to suspend sanctions against Iraq.

EFFECTIVE DATE: September 17, 2004.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations Council, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0328; facsimile (703) 602–0350. Please cite DFARS Case 2003–D098.

SUPPLEMENTARY INFORMATION:

A. Background

The provision at DFARS 252.209–7001, Disclosure of Ownership or Control by the Government of a Terrorist Country, implements 10 U.S.C. 2327, which prohibits DoD from entering into a contract with a firm that is owned or controlled by the government of a country that has repeatedly provided support for acts of international terrorism. This final rule amends the provision at DFARS 252.209–7001 to remove Iraq from the list of countries subject to the prohibition. This change is a result of the President's May 7, 2003, determination to suspend all sanctions against Iraq that apply to countries that have supported terrorism (Presidential Determination 2003–23, 68 FR 26459, May 16, 2003).

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This rule will not have a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of DoD. Therefore, publication for public comment is not required. However, DoD will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 2003–D098.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that 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 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

■ Therefore, 48 CFR part 252 is amended as follows:

■ 1. The authority citation for 48 CFR part 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 2. Section 252.209–7001 is amended by revising the clause date and the last sentence of paragraph (a)(2) to read as follows:

252.209–7001 Disclosure of Ownership or Control by the Government of a Terrorist Country.

* * * * *

Disclosure of Ownership or Control by the Government of a Terrorist Country (SEP 2004)

(a) * * *

(2) * * * As of the date of this provision, terrorist countries subject to this provision include: Cuba, Iran, Libya, North Korea, Sudan, and Syria.

* * * * *

[FR Doc. 04–21016 Filed 9–16–04; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA 1998–4367]

RIN 2127–AH92

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Withdrawal of rulemaking.

SUMMARY: In 1998, the Japan Auto Parts Industries Association (JAPIA) petitioned for NHTSA to amend the Federal motor vehicle lighting standard to eliminate an existing requirement that the upper beam light source be no higher than the lower beam light source for motorcycle headlighting systems, and also to permit multiple lower beam light sources and multiple upper beam light sources within a single motorcycle headlamp (total of four light sources). After requesting additional information in support of the petition, NHTSA granted the JAPIA petition on May 21, 2001. For reasons discussed in this document, the agency is withdrawing this rulemaking.

FOR FURTHER INFORMATION CONTACT: The following persons at the NHTSA, 400 7th Street, SW., Washington, DC 20590.

For non-legal issues, you may call Mr. Kenneth O. Hardie, Office of Crash Avoidance Standards (Telephone: 202–366–6987) (Fax: 202–493–2739).

For legal issues, you may call Mr. George Feygin, Office of Chief Counsel (Telephone: 202–366–2992) (Fax: 202–366–3820).

SUPPLEMENTARY INFORMATION:

I. Background

Paragraph S7.9 of Federal Motor Vehicle Safety Standard (FMVSS) No. 108, *Lamps, Reflective Devices, and Associated Equipment,* specifies the requirements for motorcycle headlighting systems. Paragraph S7.9.6 specifies location requirements for motorcycle headlamps. S7.9.6.2(a) applies to motorcycles equipped with headlighting systems consisting of one headlamp; S7.9.6.2(b) applies to motorcycles equipped with headlighting systems consisting of two headlamps, each of which provides both an upper and lower beam; S7.9.6.2(c) applies to motorcycles equipped with headlighting systems consisting of two headlamps, one of which provides an upper beam and one of which provides a lower beam. For headlighting systems covered by subparagraphs (a) and (c), the upper beam light source is not permitted to be higher than the lower beam light source. Paragraph (b) is silent as to the upper beam light source location.

In a petition dated October 13, 1998, JAPIA asked NHTSA to eliminate the restriction on upper beam light source location in S7.9.6.2(a) and S7.9.6.2(c) to allow the upper beam light source to be mounted above the lower beam light source.[1] Additionally, JAPIA asked NHTSA to permit a motorcycle headlighting system consisting of a single headlamp (S7.9.6.2(a)) to contain two upper beam and two lower beam light sources for a total of four distinct light sources in a single headlamp. For headlighting systems consisting of two headlamps, the petition asked the agency to instead allow for four distinct headlamps, two of which would provide the upper beam, and the other two the lower beam.

In support of its first request, JAPIA stated that the restriction on the location of upper beam light source relative to the location of lower beam light source is not necessary because headlamps must be located at least 22 inches above the road surface and not more than 54 inches above the road surface. JAPIA stated that the upper beam light source would not present any visibility or

[1] To examine the JAPIA petition, please go to *http://dms.dot.gov/* (Docket No. NHTSA–1998–4367–18).

conspicuity concerns anywhere within that location range. The petition further stated that the Economic Commission for Europe (ECE) lighting regulations [2] do not restrict location of the upper beam light source and that elimination of this restriction would facilitate international harmonization.

In support of its second request, JAPIA stated that the European Economic Community requirements in 93/92/EEC [3] allow for installation of four independent headlamps on motorcycles. Again, JAPIA stated that allowing this in the United States would facilitate international harmonization because it would allow for common design of headlamp systems in Europe and U.S.

We granted JAPIA's petition by letter dated May 21, 2001. The agency did not issue a notice of proposed rulemaking or any other rulemaking document subsequent to the granting of the petition.

II. Reason for Withdrawal

After careful consideration, NHTSA has decided to withdraw this rulemaking.

The requirement that upper beam light sources be no higher than lower beam light sources is a longstanding one and applies across vehicle types. The purpose of the requirement is to help (for any particular vehicle design) ensure good visibility while driving with the lower beams. Generally, drivers can see further when the lower beam light sources are mounted higher. If a manufacturer selects a design in which upper and lower beam light sources are at different heights, the requirement ensures that the lower beam lights are mounted at the higher height, thereby providing slightly better visibility.

While we continue to believe that it might be appropriate at some point to consider changing the existing requirement, we have decided, on further consideration, that such a change should not be undertaken without additional analysis and research related to visibility and glare. Given the complexity of the issues involved, however, and considering agency priorities and allocation of limited resources available to best carry out the agency's safety mission, NHTSA has decided not to pursue further rulemaking on this issue at this time.

As to JAPIA's request to allow multiple lower and upper beam light sources within a single headlamp, that issue was resolved in an interpretation letter sent by the agency to Mr. Mills of Triumph Motorcycles on May 24, 2002.[4]

For the reasons discussed above, NHTSA is withdrawing the rulemaking on the JAPIA petition.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

Issued: September 13, 2004.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 04–21012 Filed 9–16–04; 8:45 am]

BILLING CODE 4910–59–P

[2] *See* ECE Reg. 53 (October 1, 2002): *http://www.unece.org/trans/main/wp29/wp29regs/53rv1e.pdf.*

[3] *See http://europa.eu.int/comm/enterprise/automotive/directives/motos/dir93_92_cee.html.*

[4] *http://www.nhtsa.dot.gov/cars/rules/interps/files/24157.ztv.html.*

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AT32

Migratory Bird Hunting: Approval of Tungsten-Bronze Shot as Nontoxic for Hunting Waterfowl and Coots

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule; clarification.

SUMMARY: The purpose of this document is to clarify a point made in a recently published final rule. We have become aware that some language in the preamble to that rule could be confusing or misleading. This document does not change the rule in any way; it merely provides further information about a particular issue in the rule's preamble.

FOR FURTHER INFORMATION CONTACT: Dr. George T. Allen, Wildlife Biologist, U.S. Fish and Wildlife Service; telephone (703) 358–1825.

SUPPLEMENTARY INFORMATION: In response to our March 15, 2004, notice (69 FR 12105) proposing to approve the International Nontoxic Composite Corporation's (INC) tungsten-bronze shot as nontoxic for hunting waterfowl and coots, a commenter asked that we identify the sectional density of the shot. In the preamble to the August 9, 2004, final rule (69 FR 48163), we responded to that comment and noted that the sectional density of a sample provided to us was 11.68 grams per cubic centimeter (g/cc). We did not intend that this would be a limitation or condition of approval, as sectional density is not a factor that we consider with respect to approvals. The approval was based on the percent composition, as stated in 50 CFR 20.21. We understand that INC intends to produce the shot at a sectional density of approximately 12.1 g/cc, as noted in INC's application for approval of tungsten-bronze shot as nontoxic.

Dated: August 30, 2004.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 04–20923 Filed 9–16–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 32

RIN 1018–AT40

2004–2005 Refuge-Specific Hunting and Sport Fishing Regulations; Corrections

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Correcting amendments.

SUMMARY: The Fish and Wildlife Service published a document in the **Federal Register** on September 8, 2004 (69 FR 54350), revising 50 CFR part 32. This document related to the addition of refuges and wetland management districts to the list of areas open for hunting and/or sport fishing programs and increased the activities available at other refuges. We also developed pertinent refuge-specific regulations for those activities and amended certain regulations on other refuges that pertain to migratory game bird hunting, upland game hunting, big game hunting, and sport fishing for the 2004–2005 season. This document corrects the final regulations by revising 50 CFR part 32.

DATES: Effective August 31, 2004.

FOR FURTHER INFORMATION CONTACT: Leslie Marler, (703) 358–2397.

SUPPLEMENTARY INFORMATION: Most corrections are sequential numbering errors and are enumerated in the regulatory text section below. One correction removes the listing of Devils Lake Wetland Management District from the State of South Dakota (50 CFR 32.71).

List of Subjects in 50 CFR Part 32

Fishing, Hunting, Reporting and recordkeeping requirements, Wildlife, Wildlife refuges.

■ Accordingly, 50 CFR part 32 is corrected by making the following correcting amendments:

PART 32—HUNTING AND FISHING

■ 1. The authority citation for part 32 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd–668ee, and 715i.

§ 32.20 [Amended]

■ 2. Amend § 32.20 Alabama by redesignating paragraphs D.5. and D.6. as paragraphs D.4. and D.5. respectively of Eufaula National Wildlife Refuge.

§ 32.23 [Amended]

■ 3. Amend § 32.23 Arkansas by redesignating paragraphs C.20., C.21., and C.22. as paragraphs C.19., C.20., and C.21. respectively of Cache River National Wildlife Refuge.

§ 32.32 [Amended]

■ 4. Amend § 32.32 Illinois by redesignating the second paragraph A.3. and paragraphs A.4., A.5., and A.6. as paragraphs A.4., A.5., A.6., and A.7. respectively of Cypress Creek National Wildlife Refuge.

§ 32.36 [Amended]

■ 5. Amend § 32.36 Kentucky by redesignating paragraph A.8. as paragraph A.6. of Reelfoot National Wildlife Refuge.

§ 32.37 [Amended]

■ 6. Amend § 32.37 Louisiana by redesignating paragraphs D.8. and D.9. as paragraphs D.7. and D.8. respectively of Lake Ophelia National Wildlife Refuge.

§ 32.43 [Amended]

■ 7. Amend § 32.43 Mississippi by:
■ a. Redesignating paragraphs A.15., A.16., A.17., A.18., and A.19. as paragraphs A.14., A.15., A.16., A.17., and A.18. respectively of Hillside National Wildlife Refuge;
■ b. Redesignating paragraph C.24. as paragraph C.23. of Panther Swamp National Wildlife Refuge; and
■ c. Redesignating paragraphs A.11., A.12., A.13., and A.14. as paragraphs A.10., A.11., A.12, and A.13. of Yazoo National Wildlife Refuge.

§ 32.60 [Amended]

■ 8. Amend § 32.60 South Carolina by redesignating paragraphs C.14., C.15., C.16., and C.17. as paragraphs C.13., C.14., C.15., and C.16. respectively of ACE Basin National Wildlife Refuge

§ 32.61 [Amended]

■ 9. Amend § 32.61 South Dakota by removing the listing of Devils Lake Wetland Management District.

§ 32.63 [Amended]

■ 10. Amend § 32.63 Texas by redesignating paragraphs A.8., A.9., A.10., A.11., A.12., A.13., and A.14. as paragraphs A.9., A.10., A.11., A.12., A.13., A.14., and A.15. respectively of McFaddin National Wildlife Refuge.

Dated: September 14, 2004.

Susan Wilkinson,

Alternate Fish and Wildlife Service Federal Register Liaison.

[FR Doc. 04–20995 Filed 9–16–04; 8:45 am]
BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No.031124287–4060–02; I.D. 091304C]

Fisheries of the Exclusive Economic Zone Off Alaska; Non-Community Development Quota Trawl Gear in the Chum Salmon Savings Area of the Bering Sea and Aleutian Islands Management Area

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting fishing with Non-Community Development Quota (CDQ) trawl gear in the Chum Salmon Savings Area of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary because the 2004 non-CDQ limit of non-chinook salmon for vessels using trawl gear in the Catcher Vessel Operation Area (CVOA) has been reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 14, 2004, until 1200 hrs, A.l.t., October 14, 2004.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

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

The 2004 limit of non-chinook salmon caught by vessels using trawl gear in the CVOA is 42,000 animals (§ 679.21(e)(7)(vii)). Regulations at § 679.21(e)(1)(i) allocate 7.5 percent of this amount, 3,150 animals, to the groundfish CDQ program as prohibited species quota reserve leaving 38,850 animals for the non-CDQ fishery. The CVOA is defined as that part of the BSAI that is south of 56°00′ N. lat. and between 163°00′ W. long. and 167°30′ W. long. (Figure 2 to 50 CFR part 679).

In accordance with § 679.21(e)(7)(vii), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2004 non-CDQ limit of non-chinook salmon caught by vessels using trawl gear in the CVOA has been reached. Consequently, the Regional Administrator is prohibiting fishing with non-CDQ trawl gear in the Chum Salmon Savings Area defined at Figure 9 to 50 CFR part 679.

As of August 11, 2004, 0 mt of the non-chinook salmon CDQ reserve has been caught by vessels using trawl gear in the CVOA. Therefore, CDQ participants are not yet prohibited from fishing with trawl gear in the Chum Salmon Savings Area.

Classification

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

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

This action is required by § 679.21 and is exempt from review under Executive Order 12866.

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

Dated: September 14, 2004.

Alan D. Risenhoover,

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

[FR Doc. 04–21001 Filed 9–14–04; 2:52 pm]
BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 69, No. 180
Friday, September 17, 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.

FEDERAL RESERVE SYSTEM

12 CFR Part 205

[Regulation E; Docket No. R–1210]

Electronic Fund Transfers

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule; official staff interpretation.

SUMMARY: The Board is publishing for comment a proposal to amend Regulation E, which implements the Electronic Fund Transfer Act. The proposal would also revise the official staff commentary to the regulation. The commentary interprets the requirements of Regulation E to facilitate compliance primarily by financial institutions that offer electronic fund transfer services to consumers.

Proposed revisions to the regulation would address its coverage of electronic check conversion services and those providing the services. Among other things, persons, such as merchants and other payees, that make electronic check conversion services available to consumers would have to obtain a consumer's authorization for the electronic fund transfer. In addition, the regulation would be revised to provide that payroll card accounts established directly or indirectly by an employer on behalf of a consumer for the purpose of providing salary, wages, or other employee compensation on a recurring basis are accounts covered by Regulation E. Proposed commentary revisions would provide guidance on preauthorized transfers, additional electronic check conversion issues, error resolution, and other matters.

DATES: Comments must be received on or before November 19, 2004.

ADDRESSES: Comments, which should refer to Docket No. R–1210, may be mailed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Because paper mail in the Washington area and at the Board of Governors is subject to delay, please consider submitting your comments by e-mail to *regs.comments@federalreserve.gov*, or faxing them to the Office of the Secretary at 202–452–3819 or 202–452–3102. Members of the public may inspect comments in room MP–500 in the Board's Martin Building between 9 a.m. and 5 p.m. on weekdays pursuant to section 261.12, except as provided in section 261.14, of the Board's Rules Regarding the Availability of Information, 12 CFR 261.12 and 261.14.

FOR FURTHER INFORMATION CONTACT: Ky Tran-Trong, Senior Attorney, or Daniel G. Lonergan, David A. Stein, Natalie E. Taylor or John C. Wood, Counsels, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452–2412 or (202) 452–3667. For users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

The Electronic Fund Transfer Act (EFTA) (15 U.S.C. 1693 *et seq.*), enacted in 1978, provides a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund transfer (EFT) systems. The EFTA is implemented by the Board's Regulation E (12 CFR part 205). Examples of types of transfers covered by the act and regulation include transfers initiated through an automated teller machine (ATM), point-of-sale (POS) terminal, automated clearinghouse (ACH), telephone bill-payment plan, or remote banking service. The act and regulation require disclosure of terms and conditions of an EFT service; documentation of electronic transfers by means of terminal receipts and periodic account activity statements; limitations on consumer liability for unauthorized transfers; procedures for error resolution; and certain rights related to preauthorized EFTs. Further, the act and regulation also prescribe restrictions on the unsolicited issuance of ATM cards and other access devices.

The Official Staff Commentary (12 CFR part 205 (Supp. I)) is designed to facilitate compliance and provide protection from liability under sections 915 and 916 of the EFTA for financial institutions and persons subject to the Act. 15 U.S.C. 1593m(d)(1). The commentary is updated periodically, as necessary, to address significant questions that arise.

II. Summary of Proposed Revisions

Electronic Check Conversion

In an electronic check conversion (or "ECK") transaction, a consumer provides a check to a payee and information from the check is used to initiate a one-time EFT from the consumer's account. Specifically, the payee electronically scans and captures the MICR-encoding on the check for the routing, account, and serial numbers, and enters the amount to be debited from the consumer's asset account. The EFTA expressly provides that transactions originated by check, draft, or similar paper instrument are not governed by the Act. In response to an industry request that the Board clarify EFTA coverage of ECK transactions, the Board's March 2001 amendments to the Official Staff Commentary to Regulation E established a bright-line test for the regulation's coverage of these transactions. *See* 66 FR 15187 (March 16, 2001).

The staff commentary provides that electronic check conversion transactions are covered by the EFTA and Regulation E if the consumer authorizes the transaction as an EFT. This is the case regardless of whether the check conversion occurs at point-of-sale ("POS") or in an accounts receivable conversion ("ARC") transaction where the consumer mails a fully completed and signed check to the payee that is converted to an EFT. The commentary provides that a consumer authorizes an EFT if notice that the transaction will be processed as an EFT is provided to the consumer and the consumer completes the transaction.

Since issuing the March 2001 commentary update, several issues have arisen relating to electronic check conversion transactions in general, and ARC transactions in particular. Concerns have been raised about the uniformity and adequacy of some of the notices provided to consumers about ECK transactions. Some in the industry would like the flexibility to obtain a consumer's authorization to process a transaction as an EFT or as a check. Board staff also has received inquiries from financial institutions and other

industry participants concerning their obligations under Regulation E in connection with ECK services. For example, merchants and other payees have inquired whether a single authorization is sufficient to convert multiple checks submitted as payment after receiving an invoice or during an individual billing cycle, in the case of a credit card bill, for example. Banks and credit unions have asked about the extent of their disclosure obligations to both existing and new consumers about the addition of ECK services to the terms of consumer accounts.

Proposed revisions to the regulation would address its coverage of electronic check conversion services and those providing the services. The proposal would provide additional guidance regarding the rights, liabilities, and responsibilities of parties engaged in ECK transactions. First, the regulation would be revised to include the guidance on Regulation E coverage of ECK transactions currently contained in the commentary. Where a check, draft, or similar paper instrument is used as a source of information to initiate a one-time EFT from the consumer's account, that transaction is not deemed to be a transfer originated by check, and thus is covered by Regulation E. Second, pursuant to its authority under section 904(d) of the EFTA, the Board would require persons, such as merchants and other payees, that make ECK services available to consumers to obtain a consumer's authorization for the electronic transfer. (*See* §§ 205.3(a) and (b)(2); comment 3(b)(2)–1.) This requirement would enable the Board to promote consistency in the notice provided to consumers by merchants and other payees.

Generally, a notice about authorizing an ECK transaction would have to be provided for each transaction. The notice can be a generic statement posted on a sign or a written statement at POS, or provided on or with a billing statement or invoice, and must be clear and conspicuous. The regulation would also provide that obtaining authorization from a consumer holding the account on which a check will be converted is sufficient to convert multiple checks submitted as payment for a particular invoice or during an individual billing cycle.

To help consumers understand the nature of an ECK transaction, the regulation would require persons initiating an EFT using information from a consumer's check to provide notice to the consumer that when the transaction is processed as an EFT, funds may be debited from the consumer's account quickly. In addition, as applicable, the person initiating the EFT would be required to notify the consumer that the consumer's check will not be returned by the consumer's financial institution.

Proposed model clauses would be provided to protect merchants and other payees from liability under Sections 915 and 916 of the EFTA, if the payee uses these clauses accurately to reflect its services. (*See* Appendix A, Model Clauses in A–6.)

A proposed revision to the commentary would explain that a payee may use the consumer's check as a source document for an ECK transaction or to process a check transaction, if the payee obtains the consumer's authorization. (*See* comment 3(b)(2)–2.) The commentary would also clarify that electronic check conversion transactions are a new type of transfer requiring new disclosures to the consumer to the extent applicable. (*See* comments 7(b)–4 and 7(c)–1.) Model clauses for initial disclosures would be revised to reflect that one-time EFTs may be made from a consumer's account using information from the consumer's check and to instruct consumers to notify their account-holding institutions when an unauthorized EFT has occurred using information from their check. (*See* Appendix A, Model Clauses in A–2.)

Payroll Cards

A majority of all employees in the United States have their pay deposited directly into an account at a financial institution. Some employees that still receive their pay by paper check may not have any account relationship with a financial institution. Payroll cards have become increasingly popular with some employers as a way to reduce payroll check processing costs and more economically pay employees who lack checking accounts. Typically, an employer (or a third party acting on behalf of the employer) will establish an account at a depository institution in which employees' salaries are periodically deposited and held on their behalf. Employees are issued a card that they can use to access their funds electronically to obtain cash at an ATM or make purchases at a POS location.

The regulation would be revised to provide that a "payroll card account," directly or indirectly established by an employer on behalf of a consumer to which EFTs of the consumer's wages, salary, or other employee compensation are made on a recurring basis, is an "account" covered by Regulation E. This account would be subject to the regulation whether the account is operated or managed by the employer, a third-party payroll processor, or a depository institution. This does not include a card used for a one-time EFT of a salary-related payment, such as a bonus, or a card used solely to disburse non-salary-related payments, such as a petty cash or a travel per diem card. Of course, one-time payments and any other transfer of funds to or from a payroll card account established by an employer for the purpose of receiving EFTs of wages, salaries, or other employee compensation on a recurring basis would be covered by the act and regulation, even if the particular transfer itself does not represent wages, salary, or other employee compensation. (*See* § 205.2(b)(3); comment 2(b)–2.)

Issuance of Access Devices

In March 2003, the Board revised the official staff commentary to Regulation Z (Truth in Lending) to provide an exception to the "one-for-one" rule, which generally provides that a creditor may not issue more than one credit card as a renewal of, or substitute for, an accepted card. The revision allows creditors to replace an accepted credit card with more than one renewal or substitute card, subject to certain conditions. (*See* comment § 226.12(a)(2)–6 to Regulation Z.)

Under Regulation E, a proposed commentary revision would clarify that a financial institution may issue a supplemental access device in conjunction with the issuance of a renewal or substitute access device, subject to the conditions set forth in § 205.5(b) for unsolicited access devices, including the requirement that the device be unvalidated. (*See* comment 5(b)–5.) The general one-for-one rule in comment 5(a)(2)–1 would be retained, but with a cross-reference to proposed comment 5(b)–5.

Error Resolution

Section 205.11(c)(4) provides that a financial institution may satisfy its obligation to investigate an alleged error by reviewing its own records if the alleged error concerns a transfer to or from a third party and there is no agreement between the institution and the third party for the type of EFT involved. The proposal would provide additional guidance by revising the commentary to state that, under these circumstances, the financial institution would not satisfy its error resolution obligations by merely reviewing the payment instructions, for example, if there is additional information within the institution's own records that would assist in resolving the alleged error. (*See* comment 11(c)(4)–5.)

Preauthorized Transfers

Section 205.10(b) requires that recurring electronic debits from a consumer's account be authorized "only by a writing signed or similarly authenticated by the consumer." The March 2001 commentary update clarified that the writing and signature requirements of this section could be satisfied by complying with the Electronic Signatures in Global and National Commerce Act (E-Sign Act), 15 U.S.C. 7001 *et seq.* (*See* comment 10(b)–5.)

The commentary provides that a tape recording of a telephone conversation with a consumer who agrees to preauthorized debits does not constitute written authorization under § 205.10(b). (*See* comment 10(b)–3.) That interpretation would be withdrawn to address industry concerns that the existing guidance may conflict with the E-Sign Act.

Consumers sometimes authorize third-party payees, by telephone or on-line, to submit recurring charges against a credit card account. If the consumer indicates use of a credit card account when in fact a debit card is being used, the payee does not violate the requirement to obtain a written authorization if the failure to obtain the authorization was not intentional and resulted from a bona fide error, and if the payee maintains procedures reasonably adapted to avoid any such error. The commentary would be revised to clarify that a merchant asking the consumer to specify whether a card to be used for the authorization is a debit card or is a credit card, using those terms, is a reasonable procedure. (*See* comment 10(b)–7.)

Section 205.10(c) requires a financial institution to honor a consumer's oral stop-payment order for a preauthorized transfer from his or her account if it is made at least three business days before a scheduled debit. The commentary would be revised to clarify that an institution that does not have the capability of blocking a preauthorized debit from being posted to the consumer's account (for example, when debits are made on a real-time system), may instead use a third party to block the transfer(s), as long as the recurring debits are in fact stopped. (*See* comments 10(c)–2 and –3.)

Section 205.10(d) requires a consumer's financial institution (or a designated payee) to send written notice to the consumer at least 10 days before the scheduled date of a preauthorized EFT from the consumer's account when the EFT will vary in amount from the previous transfer, or from the preauthorized amount. The commentary would be revised to permit institutions to provide consumers with a range of varying amounts for transfers of funds, in lieu of providing notice with each varying transfer, when crediting preauthorized transfers of interest (for example, for a consumer's certificate of deposit account) to an account of the consumer held at a different financial institution. (*See* comment 10(d)(2)–2.)

Disclosures at Automated Teller Machines

Section 205.16 provides that an ATM operator that imposes a fee on a consumer for initiating an EFT or balance inquiry must post notices at ATMs that a fee *will* be imposed. The commentary to § 205.16 would be revised to clarify that if there are circumstances in which an ATM fee will not be charged for a particular transaction, ATM operators may disclose on the ATM signage that a fee *may* be imposed. (*See* comment 16(b)(1)–1.)

III. Section-by-Section Analysis of the Proposed Revisions

Section 205.2 Definitions

2(b) Account

Proposed § 205.2(b)(3) would provide that the term "account" includes a "payroll card account" directly or indirectly established by an employer on behalf of a consumer to which EFTs of the consumer's wages, salary, or other employee compensation are made on a recurring basis. A payroll card account would be subject to the regulation whether the account is operated or managed by the employer, a third-party payroll processor, or a depository institution.

In 1994, the Board revised Regulation E to cover certain electronic benefit transfer programs ("EBT programs") established by the federal government in which welfare and similar government benefits were distributed to recipients electronically. These programs, which typically allow access to benefits through the use of debit cards at ATMs and POS locations, are subject to the requirements of the regulation, with some exceptions. In the preamble to the final rule, the Board stated that, notwithstanding the modified applicability of Regulation E to EBT programs, military and private sector employers who make salary and other payments available through systems permitting ATM access "remain fully covered by Regulation E." 59 FR 10678, 10680 (March 7, 1994).

In 1996, the Board issued a proposed rule that would have covered certain stored-value products under Regulation E.[1] Congress imposed a moratorium on Board action and directed the Board to conduct a study on whether application of the provisions of the regulation would adversely affect the cost, development, and operation of stored-value products. The report concluded that full Regulation E coverage of stored-value products would likely impose substantial operating and opportunity costs of compliance. The Board noted that given the limited experience at that time it was difficult to predict whether the benefits to consumers from any particular provision of Regulation E would outweigh the corresponding costs of compliance.[2] The 1996 proposal was never finalized. In light of the increased usage of payroll cards today and the other reasons discussed more fully below, the regulation would be revised to cover these products under Regulation E.

Coverage of EFT services under the EFTA and Regulation E hinges upon whether a transaction involves an EFT to or from a consumer's account. Section 903(2) of the EFTA defines an "account" as "a demand deposit, savings deposit, or other asset account * * * as described in regulations of the Board, established primarily for personal, family, or household purposes." The definition is broad and is not limited to traditional checking and savings accounts.[3] The Board possesses broad authority under section 904(d) of the EFTA to determine coverage when EFT services are offered by entities other than traditional financial institutions. Moreover, Congress has clearly enunciated its expectation that the Board continue to examine new and developing EFT services to assure that the EFTA's basic protections continue to apply.[4]

Payroll cards have become increasingly popular with some employers, financial institutions, and payroll services providers. A payroll card account holds a consumer's wages, salary, or other recurring compensation payments—assets that the consumer is able to access and spend with a device that provides the functionality of a debit

[1] 61 FR 19696 (May 2, 1996).

[2] Report to the Congress on the Application of the Electronic Fund Transfer Act to Electronic Stored-Value Products (March 1997).

[3] The EFTA's legislative history evidences a clear Congressional intent that the definition of "account" be broad, so as to ensure that "all persons who offer equivalent EFT services involving any type of asset account are subject to the same standards and consumers owning such accounts are assured of uniform protection." S. Rep. No. 915, 95th Cong., 2d Sess. 9 (1978).

[4] *See id.*; S. Rep. No. 1273, 95th Cong., 2d Sess. 9–10, 25–26 (1978).

card. Typically, an employer, in conjunction with a bank, will provide an employee a plastic card with a magnetic stripe that accesses an account assigned to the individual employee. The employer will then credit this account with value each payday instead of providing the employee with a paper check (or making a direct deposit of salary to the employee's checking account). The employee-consumer can use the card assigned to the account to access his or her funds at an ATM and make purchases at POS. Some payroll card products provide the consumer with the ability to get cash back at POS, and offer such features as convenience checks and electronic bill payment. In some cases, these products may be covered by deposit insurance. These products are also actively marketed to employers and service providers as particularly effective means of providing wages to the millions of individuals who lack a traditional banking relationship. Payroll card products are, in effect, designed, implemented, and marketed as substitutes for traditional checking accounts at a financial institution.

The broad combination of characteristics of payroll card accounts has led the Board to conclude that payroll card accounts are appropriately classified as accounts. Much like the EBT products that fall within Regulation E's coverage, payroll card products are assigned to an identifiable consumer, represent a stream of payments to a consumer (which may be a primary source of the consumer's income or assets), are replenished on a recurring basis and can be used in multiple locations for multiple purposes, and utilize the same kinds of access devices, electronic terminals, and networks as do other EFT services. Payroll card products may even offer a broader level of functionality with respect to possible types of transactions than do EBT products. In addition, the design and market of payroll card products has positioned them as substitutes for traditional checking accounts and as a potential mechanism for holding the primary financial assets for an increasing number of Americans who are "unbanked."

The Board believes that it is appropriate to apply the Regulation E provisions, such as initial disclosures, periodic statements, error resolution procedures, and other consumer protections, to consumers who receive their salaries through payroll card accounts, which in many cases will constitute the bulk of the consumer's income. The Board believes that the benefits to consumers in covering payroll card accounts under Regulation E outweigh the incremental costs that would be imposed on the institutions that offer these accounts.

Under proposed § 205.2(b)(3), the regulation would apply to any EFT to or from payroll card accounts established directly or indirectly by an employer on behalf of an employee for the purpose of receiving transfers of the employee's wages, salary, or other compensation made on a recurring basis, whether the payroll card product is operated or managed by the employer, a third-party payroll processor, or a depository institution. The definition generally includes a payroll card account that represents the means by which the employer regularly pays the employee's salary or other form of compensation, and would include, for example, card accounts for seasonal workers or employees that are paid on a commission basis. Payroll card accounts would be covered by the regulation whether the funds are held in individual employee accounts or in a pooled account, with "subaccounts" maintained by a depository institution (or by a third party) that enable a determination of the amounts of money owed to particular employees. The proposed revision is not intended to address the definition of "account" for purposes of any other statute or regulation.

The Board is limiting the scope of this proposal to payroll card products only. For example, the characteristics of payroll card accounts described above would not apply to a prepaid "gift" card issued by a merchant that can be used to purchase items in the merchant's store. In addition, as explained in proposed comment 2(b)–2, the regulation would not cover a card to which only one-time transfers of salary-related payments are made (*e.g.*, to pay a bonus), or a card exclusively used to disburse non-salary-related payments, such as a petty cash or travel per diem card. A one-time bonus payment, a payment to reimburse travel expenses, or any other transfer of funds (*e.g.*, if a consumer is permitted to add his or her own funds), however, would be covered to the extent that the funds are transferred to or from the employee's payroll card account. Current comment 2(b)–2 would be redesignated as comment 2(b)–3.

Regulation E defines the term "financial institution" to include any person that directly or indirectly holds an account belonging to a consumer or that issues an access device to a consumer and agrees with a consumer to provide EFT services. One or more parties involved in offering payroll card accounts may meet the definition of a "financial institution" under the regulation—whether it be the employer, a financial institution, or other third party involved in the transfer of funds to the account or in the issuance of the card. For example, if an employer, by agreement, issues a payroll card to a consumer and opens an account at a bank into which the employer deposits the consumer's wages and from which the consumer can access funds by using the card, then both the employer and the bank would qualify as a financial institution with respect to that consumer's payroll card account. Existing regulatory language under § 205.4(e) addresses the regulatory framework for financial institutions that provide EFT services jointly. The parties may contract among themselves to comply with the regulation. For purposes of the access device issuance rule in § 205.5, a payroll card would be considered a solicited access device so long as a consumer must elect to have his or her salary credited to a payroll card account.

A review of several current payroll card products, their disclosures, and their promotional materials indicates that, while some issuers are already generally compliant with the regulation's requirements, others are providing only partial Regulation E disclosures, or an incomplete level of protection with respect to error resolution, liability for loss, and other provisions. Some product providers may believe that certain payroll cards are not covered by the regulation due to the characteristics of their particular payroll card program, or because a "traditional" bank account may not be established by a consumer. If the proposal is finalized, financial institutions will be given time to make the necessary changes for compliance with the regulation. To the extent disclosures are needed to bring existing accounts into compliance, disclosures would have to be provided to employee-consumers, such as error-resolution notices. Comment is solicited on whether six months following adoption of final rules is sufficient to enable financial institutions to implement the necessary changes to comply with the regulation.

In many cases, payroll card products may also carry deposit insurance. The Federal Deposit Insurance Commission currently is considering the circumstances under which funds underlying stored-value cards would be considered "deposits". Comment is solicited on whether Regulation E coverage should be determined by whether a payroll card account holds

consumer funds that qualify as eligible "deposits" for purposes of section 3(l) of the Federal Deposit Insurance Act.[5]

Section 205.3 Coverage

3(a) General

Section 205.3(a) would be revised to provide that proposed § 205.3(b)(2), discussed below, applies to persons.

3(b) Electronic Fund Transfer

New comment 3(b)–3 would replace current comment 3(b)–3 to clarify that an electronic debit from a consumer's account to collect a fee for insufficient funds when an EFT or a check is returned unpaid is covered by Regulation E, and must be authorized by the consumer. (The re-designation of current comment 3(b)–3 to proposed comment 3(b)(2)–1 is discussed below.)

Electronic Check Conversion

In electronic check conversion transactions, a consumer provides a check to enable a merchant or other payee to capture the routing, account, and serial numbers to initiate a one-time EFT from the consumer's account. The EFTA excludes from coverage any transaction "originated by check, draft, or similar paper instrument." 15 U.S.C. 1693a. In response to an industry request, the Board updated the commentary in March 2001 (66 FR 15187) to clarify, among other things, that electronic check conversion transactions are covered by Regulation E. This is the case whether the consumer's check is blank, partially completed, or fully completed and signed; whether the check is presented to a merchant at POS or is mailed to a payee or lockbox and later converted to an EFT; or whether the check is retained by the consumer, the merchant or other payee, or the payee's financial institution. (*See* comment 3(b)–1(v).)

Coverage of these transactions is predicated on the use of the consumer's check as a source of information by a merchant or other payee to initiate a one-time EFT from the consumer's account using information from the check. The consumer must authorize the transfer. The commentary provides that in electronic check conversion transactions, a consumer authorizes a one-time EFT when the consumer receives notice that the transaction will be processed as an EFT, and goes forward with the transaction by providing a check to a merchant or other payee for the MICR encoding. (This guidance is in comment 3(b)–3, which would be revised and re-designated as comment 3(b)(2)–1.) As further stated in the supplemental information to the March 2001 update, a transaction in which a check is used as a source document to initiate an EFT is deemed *not* to be originated by check.

Proposed revisions to the regulation would address its coverage of electronic check conversion services and those providing the services. The proposed rule would provide additional guidance regarding the rights, liabilities, and responsibilities of parties engaged in ECK transactions. Section 205.3(b)(2) would be added to include the guidance on Regulation E coverage of ECK transactions currently contained in the commentary, with some revisions. Where a check, draft, or similar paper instrument is used as a source of information to initiate a one-time EFT from the consumer's account, that transaction is covered by Regulation E, and is deemed not to be a transfer originated by check. (*See* § 205.3(b)(2)(i) and comment 3(b)(2)–1.)

Currently, a merchant or other payee that engages in electronic check conversion transactions is not covered by Regulation E, because it does not meet the definition of "financial institution," if the merchant or other payee does not directly or indirectly hold a consumer's account, or issue an access device and agree to provide EFT services. The Board acknowledged in the preamble to the March 2001 commentary update that a merchant or other payee is in the best position to provide notice to a consumer for the purpose of obtaining authorization of an ECK transaction, but the Board deemed it unnecessary to bring these persons within the coverage of the regulation, stating its belief and expectation that merchants or other payees would provide consumers with the necessary notice.[6] The Board cautioned, however, that if it found that consumers were not receiving proper notice in connection with ECK transactions, it would consider exercising its authority under section 904(d) of the EFTA to require compliance by merchants and other payees.[7]

Since issuing the 2001 commentary revisions, concerns have been raised about the uniformity and adequacy of some of the notices to consumers about electronic check conversion transactions. Some notices are difficult to comprehend. The terminology used to describe electronic check conversion is not uniform. And some notices are not readily noticeable to consumers.

To assure consistency and clarity of disclosures, the Board believes that all parties engaged in electronic check conversion transactions should be subject to Regulation E for the limited purpose of obtaining authorizations for electronic check conversion transactions. Accordingly, the Board proposes to exercise its authority under section 904(d) of the EFTA to require persons, such as merchants and other payees, that initiate a one-time EFT using information from the consumer's check, draft or similar paper instrument, to provide notice to obtain a consumer's authorization for the transfer. Section 205.3(a) would be revised and § 205.3(b)(2)(ii) would be added to reflect this requirement. Persons subject to the proposed requirement in § 205.3(b)(2)(ii) would include financial institutions to the extent that they initiate an EFT using information from a consumer's check.

Generally, a notice about authorizing an ECK transaction would have to be provided for each transaction. The notice can be a generic statement posted on a sign or a written statement at POS, or provided on or with a billing statement or invoice, and must be clear and conspicuous. At POS, a written signed authorization may be viewed as a more effective means than signage for informing consumers that their checks are being converted. Comment is solicited on whether merchants or other payees should be required to obtain the consumer's written signed authorization to convert checks received at POS.

For ARC transactions, obtaining a single authorization from a consumer holding an account is sufficient to convert multiple checks submitted as payment after receiving an invoice or during a single billing cycle. (*See* § 205.3(b)(2)(ii).) For example, if several roommates each write a check in payment of a shared utility bill, authorization from the person whose name is on the utility account constitutes authorization to convert all the checks submitted in payment of that bill.

[5] See Definition of "Deposit"; Stored Value Cards, 69 FR 20558 (April 16, 2004).

[6] At that time, and currently, NACHA, the national association that establishes the standards, rules, and procedures for the ACH system, requires merchants to obtain a written signed or similarly authenticated authorization from the consumer for ECK transactions from a consumer's account. The authorization must be readily identifiable as an authorization and must clearly and conspicuously state its terms. NACHA's signed authorization requirement does not apply to checks mailed to a payee or placed in a payee s dropbox.

[7] Section 904(d)(1) of the EFTA provides that [i]f electronic fund transfer services are made available to consumers by a person other than a financial institution holding a consumer s account, the Board shall by regulation assure that the disclosures, protections, responsibilities, and remedies created by [the EFTA] are made applicable to such persons and services.

Consistent with the EFTA's purpose to enable consumers to understand their rights, liabilities and responsibilities in EFT systems, and given the unique characteristics of ECK transactions, the Board believes it is appropriate to provide consumers with additional information to help them understand the nature of an ECK transaction. Section 205.3(b)(2)(iii), as proposed, would require persons initiating an EFT using information from a consumer's check to provide notice that when the transaction is processed as an EFT, funds may be debited from the consumer's account quickly. In addition, the person initiating the EFT would also be required to notify the consumer that the consumer's check will not be returned by the consumer's financial institution, except that this additional notice need not be provided by a merchant that returns the consumer's check at POS. (*See also* comment 3(b)(2)–3, discussed below.)

Proposed model clauses would be provided to protect merchants and other payees from liability under Sections 915 and 916 of the EFTA, if the payee uses these clauses accurately to reflect its services. (*See* Appendix A, Model Clauses in A–6.)

Current comment 3(b)–3 states that in electronic check conversion transactions, a consumer authorizes a one-time EFT when the consumer receives notice that the transaction will be processed as an EFT, and goes forward with the transaction. This comment would be re-designated as comment 3(b)(2)–1, and a technical revision would be made. The phrase "completes the transaction" would be replaced with "goes forward with the transaction" to clarify that it is not necessary for a transaction to clear or settle, for example, in order for authorization to occur.

Proposed comment 3(b)(2)–2 would provide that a payee may obtain the consumer's authorization to use information from his or her check to initiate an EFT or, alternatively, to process a check. A proposed model clause in Appendix A–6 provides a sample authorization. Currently, if a payee obtains a consumer's authorization to initiate an EFT using the information from a check, the consumer cannot also authorize the same document to be processed as a check. Coverage of ECK transactions would continue to be predicated on the consumer's authorization to allow the merchant or other payee to process a check as a source document to initiate an ECK transaction. But the interpretation would be revised to facilitate payments and to give payees the most flexibility in determining how best to process payments.

In some cases, due to processing or other technical errors, the MICR-encoding from the consumer's check cannot be verified by the consumer's financial institution and, thus, the EFT cannot be made. The payee would be able to use the original check or create a "substitute check," discussed below, from the original check to process a payment. In other cases, some merchants or other payees may find it more efficient to process "local" or "on-us" items as check—rather than electronic check conversion—transactions. In addition, some have asked the Board to permit, with the consumer's authorization, checks that may be used as source documents for ECK transactions to be used to create substitute checks as defined under Regulation CC, which implements the Check Clearing for the 21st Century Act (Check 21).[8] These entities would like the flexibility to test various payment mechanisms to determine what form of electronic payment processing will be most efficient and cost effective.

If it chooses, a payee may specify the circumstances under which a check may not be used to initiate an EFT. A model clause is contained in proposed Appendix A–6 for that purpose. A payee might list the circumstances on or with a billing statement or invoice, or may provide the information through a toll-free telephone number. A payee could also provide the information through a website.

Electronic check conversion transactions present a unique type of EFT that does not neatly fit within the existing scheme for EFTs covered by Regulation E, in that a consumer's check is being used to initiate an EFT. A consumer may write and mail a fully completed check for payment, in the case of an ARC transaction, or provide a check at POS, and through the consumer's authorization, the transaction will be processed as an EFT.

Generally, coverage of a transaction under the EFTA and Regulation E is determined by how a transaction is originated, not how it is carried out. And generally, consumers specifically instruct financial institutions or persons to debit or credit their accounts through EFTs. By allowing payees to obtain a consumer's authorization to use information from a check to initiate an EFT or, alternatively, to process a transaction as a check, the consumer does not know whether his or her rights will be governed by check law or Regulation E until the consumer receives a periodic account activity statement identifying the transaction as a check transaction or as an EFT.[9] Therefore, comment is solicited on whether a disclosure stating that a consumer authorizes an EFT, or in the alternative, a check transaction, may result in any consumer harm or create any other risks. In particular, comment is solicited on whether payees that obtain alternative authorization should be required to specify the circumstances under which a check that can be used to initiate an EFT will be processed as a check.

Consumer education about ECK transactions and other electronic payments is critical as some consumers have been confused about how these transactions work and what happens to their check when it is converted to an EFT. The Board has published in English and Spanish a pamphlet about ECK transactions titled "When Is Your Check Not A Check? Electronic Check Conversion," that it plans to update in the near future.

Proposed comment 3(b)(2)–3 would provide the guidance above that a payee initiating an EFT at POS would not be required to notify a consumer that the consumer's check will not be returned by the consumer's financial institution, if the payee returns the consumer's check to the consumer.

Proposed comment 3(b)(2)–4 would provide further guidance about authorization of an ECK transaction when multiple checks are offered as payment on a bill. A single authorization by a consumer holding an account is sufficient to convert multiple checks submitted as payment after receiving an invoice or during a single billing cycle, for example, in the case of a credit card account. Where an accountholder receives notice of check conversion and mails multiple checks to make a payment owed during a single billing cycle, it is reasonable to apply the ECK authorization notice to all checks provided—regardless of whether the checks are mailed within the same envelope or mailed separately during the billing cycle. Also, where an accountholder receives notice of check conversion and someone other than the accountholder, or in addition to the accountholder, provides a check to make a payment owed during the billing cycle, notice of check conversion to the accountholder is imputed as notice to those persons.

[8] 12 U.S.C. 5001–5018, enacted on October 28, 2003, takes effect on October 28, 2004.

[9] Under both check law and the EFTA, a consumer generally is not liable for unauthorized transactions, although the EFTA provides specific timeframes and procedures for asserting and resolving errors for EFTs.

As noted above, model clauses are provided in proposed Appendix A–6 to protect merchants and other payees from liability under Sections 915 and 916 of the EFTA if such clauses are used properly to accurately reflect the merchant or other payee's practices. A merchant or other payee should construct a notice that best describes its individual practices. For example, for ARC transactions, a payee that opts to convert checks only in certain instances would generally provide notice that the customer authorizes the payee to use the check either to process an EFT or to process a check. In contrast, if a payee opts to convert all checks received by mail, the payee would provide notice to its customers stating that when the customer provides a check as payment, the customer authorizes the check to be used to make an EFT from the customer's account. Whether the payee in an ARC transaction intends to convert checks received in certain instances, or in all instances, the payee would be required to notify its customer that where the customer's check is converted, funds may be debited from the customer's account quickly, and that the customer will not receive his or her check back from the customer's financial institution. Similarly, to the extent that the payee intends to collect a fee for insufficient funds electronically, that fact must also be included on the notice.

Where a merchant or other payee initiates an EFT in error, the transaction would not be covered by Regulation E where the transaction does not meet the definition of an EFT. For example, if a merchant or other payee uses information from a consumer's money order mailed in by a consumer or from a convenience check tied to a line of credit to initiate an EFT, the transaction is not covered by Regulation E because there is no transfer of funds from a consumer account. Rather, the funds are transferred from an account held by the issuer of the money order or are extensions of credit. The transaction would be considered to have originated by check, even where notice has been provided that the transaction will be processed as an EFT.

3(c) Exclusions From Coverage

Comment 3(c)(1)–1 would be revised to clarify that a consumer authorizes a merchant or other payee to electronically debit a fee for insufficient funds from the consumer's account when the consumer goes forward with the transaction after receiving notice that the fee will be collected electronically.

Section 205.5 Issuance of Access Devices

Section 911 of the EFTA, which is implemented by § 205.5 of Regulation E, generally prohibits financial institutions from issuing debit cards or other access devices except (1) in response to requests or applications or (2) as renewals or substitutes for previously accepted access devices. Existing comment 5(a)(2)–1 provides that, in general, a financial institution may not issue more than one access device as a renewal of or substitute for an accepted device (the "one-for-one rule"). These provisions were modeled on provisions in the Truth in Lending Act (TILA), Regulation Z, and its commentary that imposed similar restrictions on issuance of credit cards. (*See* TILA section 132; Regulation Z § 226.12(a); comment 12(a)(2)–5.)

In March 2003, the Board revised the Regulation Z Staff Commentary to provide an exception from the one-for-one rule to allow creditors to replace an accepted credit card with more than one replacement card, subject to certain conditions. (*See* comment 226.12(a)(2)–6.) Some industry representatives asked the Board to revise the Regulation E Staff Commentary to allow a financial institution, in connection with the renewal of or substitution for a previously accepted access device, to issue a supplemental access device to a consumer without complying with § 205.5(b). Section 205.5(b) requires, among other things, that any access device issued on an unsolicited basis be unvalidated at the time of issuance. Proposed comment 5(b)–5 would clarify that financial institutions may issue more than one access device during the renewal or substitution of a previously accepted access device, provided they comply with the conditions set forth in § 205.5(b) for the additional unsolicited devices. The general one-for-one rule in comment 5(a)(2)–1, however, would be retained, but a cross-reference to proposed comment 5(b)–5 would be added.

Unlike credit cards, a consumer's own funds are at risk of loss or theft in the event of unauthorized use of a debit card or other access device. The potential for unauthorized use may increase if cards are intercepted in the mail, and consumers are unaware that they may be receiving multiple cards as replacements for an existing access device. The validation requirement of § 205.5(b) avoids or limits monetary losses from the theft of debit cards sent through the mail. Although there would be no increase in a consumer's liability where multiple access devices are issued, asserting a claim of unauthorized use can be inconvenient and time-consuming, and, at least temporarily, the consumer may be out of needed funds. Therefore, the consumer protection afforded by the one-for-one rule and the validation requirements of § 205.5(b) would appear to outweigh more flexibility in the one-for-one rule to parallel the credit card provisions.

Section 205.7 Initial Disclosures

7(a) Timing of Disclosures

Electronic check conversion transactions are a new type of transfer requiring new disclosures. (*See* discussion below under proposed § 205.7(c).) Comment 7(a)–1 would be revised to provide that an institution may choose to provide early disclosures about electronic check conversion transactions. (*See also* comment 7(a)–2, permitting an institution that has not received advance notice of a third party transfer to provide required disclosures as soon as reasonably possible after the first transfer.)

7(b) Content of Disclosures

Proposed comment 7(b)(4)–4 would require financial institutions to list electronic check conversion transactions among the types of transfers that a consumer can make. (*See* Appendix A, Model Clauses in A–2.)

7(c) Addition of Electronic Fund Transfer Services

Under the proposal, the general rule in comment 7(a)–4 would be moved to the regulation under new proposed § 205.7(c) for consistency with other regulations. Comment 7(a)–4 provides that if an EFT service is added to a consumer's account and is subject to terms and conditions different from those described in the initial disclosures, disclosures for the new service are required.

Following publication of the March 2001 commentary relating to ECK transactions, there was some industry uncertainty about the extent of an account-holding institution's disclosure obligations to new and existing consumers regarding ECK transactions. New comment 7(c)–1 would provide that ECK transactions are a new type of transfer requiring new disclosures to the consumer to the extent applicable. In this specific case, new disclosures would be necessary because a consumer's check can be used differently than in the past, in that information from the check can be used to initiate EFTs. (*See also* comment 7(b)(4)–4.) If finalized, financial institutions would be given sufficient

time to amend their disclosures if necessary.

Model clauses for initial disclosures in Appendix A of the regulation would be revised (1) to reflect that one-time EFTs are a new type of transfer that may be made from a consumer's account using information from the consumer's check and (2) to instruct consumers to notify their account-holding institutions when an unauthorized EFT has occurred using information from their check. (*See* Appendix A, Model Clauses in A–2.) Comment is solicited on whether six months is sufficient time following adoption of the final rule to enable financial institutions to revise their disclosures to comply with the rule.

Section 205.10 Preauthorized Transfers

10(b) Written Authorization for Preauthorized Transfers From Consumer's Account

Under § 205.10(b), preauthorized EFTs from a consumer's account may be authorized only by a writing signed or similarly authenticated by the consumer. Currently, under comment 10(b)–3, an institution does not obtain written authorization for purposes of this provision by tape recording a telephone conversation with a consumer who agrees to recurring debits. In light of the E-Sign Act, this interpretation would be withdrawn.

Comment 10(b)–3 was adopted before the enactment of the E-Sign Act, which provides that, in general, electronic records and electronic signatures satisfy any legal requirements for traditional written records and signatures. Some have suggested that, given the E-Sign Act's broad definitions of "electronic record" and "electronic signature," a tape recorded authorization, or certain types of tape recorded authorizations, for preauthorized debits might be deemed to satisfy the Regulation E signed or similarly authenticated written authorization requirements.

Because the Board's authority to interpret the E-Sign Act is extremely limited, comment 10(b)–3 as amended would not address how the E-Sign Act should be interpreted in this regard. If, under the E-Sign Act, a tape recorded authorization, or certain types of tape recorded authorizations, were properly determined by the person obtaining the authorization to constitute a written and signed (or similarly authenticated) authorization, then the authorization would satisfy the Regulation E requirements.

Institutions should be aware, however, that to satisfy the requirements of § 205.10(b) of Regulation E, an authorization, whether in paper or electronic form, must meet certain requirements. For example, the authorization must be readily identifiable as such to the consumer, and the terms of the preauthorized debits to be authorized must be clear and readily understandable to the consumer. (*See* comment 10(b)–6.)

Comment 10(b)–7 discusses authorizations for recurring payments obtained by telephone or on-line, and states that the payee's failure to obtain written authorization is not a violation if the failure was not intentional and resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid any such error. For example, an error might occur where the consumer indicates that a credit card (for which no written authorization would be required) is being used for the authorization, when in fact the card is a debit card.

Given the recent growth of debit card usage, concerns have been expressed by retail and other industry groups about what would constitute procedures reasonably adapted to avoid error where a telemarketer seeks to obtain a consumer's authorization for recurring payments for goods or services (*e.g.*, magazine subscriptions), using the consumer's credit or debit card. In the past, with relatively few debit cards in use compared to credit cards, it may have been reasonable for payees to use procedures not involving questions specifically referring to debit cards. Currently, however, between one-third and one-half of transactions where card numbers are used for payment authorizations may relate to debit cards. Therefore, reasonable procedures should include interaction with the consumer specifically designed to elicit information about whether a debit card is involved. Language would be added to comment 10(b)–7 to state that procedures reasonably adapted to avoid error will vary with the circumstances. The comment would also state that asking the consumer to specify whether the card to be used for the authorization is a debit card or is a credit card, using those terms, is a reasonable procedure.

Language would also be added to provide an example of a payee learning after the transaction occurred that the card used was a debit card: the consumer bringing the matter to the payee's attention. For example, the consumer may call the merchant to assert a complaint about use of a debit card without written authorization.

A related issue concerning reasonable procedures to avoid error under comment 10(b)–7 has arisen following the settlement of litigation between a group of merchants and Visa and MasterCard, commonly referred to as the "Wal-Mart" settlement. *See In Re Visa Check/Mastermoney Antitrust Litigation*, No. CV–96–5238 (E.D.N.Y.). Under the terms of the settlement, Visa and MasterCard agreed to make available to merchants lists of credit and debit card Bank Identification Numbers referred to as "BIN tables." Because the BIN tables indicate whether a given card number relates to a credit card or to a debit card, questions have been raised about whether comment 10(b)–7 would require merchants to obtain and use the tables to verify that a card involved in a telephone authorization is a credit card or a debit card as a procedure "reasonably adapted" to avoid the error of accepting a debit card number.

To the extent that BIN tables are not available to merchants in an on-line, real-time form, it would likely be burdensome for merchants to be required to verify card numbers presented by consumers against the BIN tables. The verification could not occur during the telephone conversation between the merchant and the consumer, but instead would have to take place later; if the merchant then learned that the card used was a debit card rather than a credit card, the transaction would have to be unwound. Besides increasing merchant expense, unwinding the transaction might not be a result sought by the consumer, assuming the consumer had entered into the authorization with full knowledge of the terms and conditions. Accordingly, merchants are not required to obtain or consult BIN tables to maintain procedures reasonably adapted to avoid error. Similarly, merchants would not be required to check card numbers already on file against BIN tables. If in the future, however, the BIN tables become reasonably available to merchants in real-time, on-line form, this interpretation may need to be modified.

10(c) Consumer's Right to Stop Payment

Proposed comment 10(c)–3 would be added to address procedures for stopping recurring debits in systems involving real-time processing, such as debit card systems. In real-time systems, the account-holding institution may not be able to block a payment from being posted to the consumer's account because the posting occurs almost immediately after the transaction has been approved, thus not allowing the institution sufficient time to identify payments against which stop-payment orders have been entered. The Board has

been asked how the account-holding institution can comply with the stop payment requirements of Regulation E in these circumstances. Proposed comment 10(c)–3 states that the institution need not have the capability to block recurring payments, and may instead use a third party to block the transfer(s), as long as such payments are in fact stopped. Comment 10(c)–2 would be revised to cross-reference the new proposed guidance.

10(d) Notice of Transfers Varying in Amount

When a preauthorized EFT from a consumer's account will vary in amount from the previous transfer, or from the preauthorized amount, § 205.10(d) requires the designated payee or the consumer's financial institution to send written notice of the amount and date of the transfer at least 10 days before the scheduled date of the transfer. Paragraph 10(d)(2) permits the payee or the institution to give the consumer the option of receiving notice only when a transfer falls outside a specified range of amounts or only when a transfer differs from the most recent transfer by more than an agreed-upon amount.

Some financial institutions have suggested that while the notice requirement is appropriate where consumer funds are transferred to a third party, it should not apply when the transfer is between accounts owned by the same consumer, even when the accounts are held at different financial institutions. (Preauthorized transfers between accounts of the same consumer held at the *same* institution qualify for the intra-institutional exclusion from coverage in § 205.3(c)(5)). These institutions assert that the advance notice requirement is particularly burdensome for financial institutions that offer certificate of deposit (CD) products that allow customers to set up preauthorized transfers of interest from the CD account to another account of the consumer held at a different institution. For such products, monthly interest payments might vary solely because of the different number of days in each month, yet such variance would require the institution to send the consumer advance notice in each instance before transferring the funds.

Given the express language in section 907(b) of the EFTA, it is not appropriate to remove the notice requirement entirely. Nevertheless, to require that a notice be provided with each varying transfer where the transfer is between accounts owned by the same consumer provides little benefit to the consumer while imposing unnecessary costs on the financial institution making the transfer. Thus, to provide additional flexibility, new proposed comment 10(d)(2)–2 would provide that a financial institution need not give the consumer the option of receiving notice before providing a consumer a range of varying amounts for transfers of funds to an account of the consumer held at another financial institution. The additional flexibility would also apply to transfers to or from a jointly-held account where the consumer is one of the joint account holders. Institutions must continue to provide consumers with the option to receive notice of all varying preauthorized debits to the consumer's account where the funds are transferred to something other than an account of the consumer held at another institution.

Section 205.11 Procedures for Resolving Errors

11(b) Notice of Error From Consumer

Section 205.11 sets forth procedures for resolving errors, including the time limits within which an investigation must be concluded, a requirement to provisionally credit a consumer's account if the investigation cannot be completed within ten business days after the consumer's notice of error, and a reporting requirement to notify the consumer of the results of the investigation. The time limits and procedures required under § 205.11 are triggered by the consumer's notice of error when it is received in a timely manner, or "no later than 60 days after the institution sends the periodic statement or provides the passbook documentation * * * on which the alleged error is first reflected." (*See* § 205.11(b).)

Inquiries have been made about the extent of the scope of a financial institution's investigation when a consumer provides a notice of error more than 60 days after the institution has sent the periodic statement that first reflected the alleged error. Proposed comment 11(b)–7 would provide that where the consumer fails to provide the institution with timely notice, the institution need not comply with the requirements of the section. Where the error involves an unauthorized EFT, however, liability for the unauthorized transfer may not be imposed on the consumer unless the institution satisfies the requirements in § 205.6.

11(c) Time Limits and Extent of Investigation

Paragraph 11(c)(4)—Investigation

Section 205.11(c)(4) permits an institution to limit the investigation of an alleged error to "a review of its own records" where the allegation pertains to a transfer to or from a third party with whom the institution has no agreement for the type of EFT involved. This is commonly referred to as the "four walls" rule. Comment 11(c)(4)–4 provides that a financial institution does not have an agreement solely because it participates in transactions that occur under the federal recurring payments programs or that are cleared through an ACH or similar arrangement for the clearing and settlement of fund transfers generally, or because it agrees to be bound by the rules of such an arrangement.

Proposed comment 11(c)(4)–5 would be added to provide that an institution's "own records" may include any information available within the institution that could be used to determine whether an error has occurred. Thus, for ACH, electronic check conversion, and other transactions, for example, a review of an institution's "own records" should not be confined to a review of the payment instructions when other information within the institution's "four walls" could also be reviewed.

The "four walls" rule was adopted when most third party transfers involved preauthorized credits to a consumer's account to pay salary or other compensation, or preauthorized debits from a consumer's account to pay a particular utility or other payee. In the absence of an agreement between the financial institution and the third party, it seemed reasonable to allow an institution to limit its investigation to the institution's own records. *See* 45 FR 8248 (February 6, 1980).

Historically, the alleged errors often pertained to the amount of the transfer; thus, an institution would likely have very limited information—such as the ACH payment instructions—for purposes of conducting its investigation. The "four walls" approach sought to strike an appropriate balance between an institution's statutory obligation to investigate errors and the institution's practical ability to resolve the alleged errors based on the limited information available to the institution.

The increasing use of ACH as a means to effectuate a wide variety of third party transfers (in addition to preauthorized transfers) expands the types of errors that consumers may assert beyond what was contemplated when the "four walls" rule was adopted over twenty years ago. For example, the ACH network can be used to process electronic check conversion transactions, whereby information from a consumer's blank, partially completed, or fully completed check is used to

initiate a one-time ACH debit from the consumer's account at POS or via a lockbox. Similarly, a merchant may use the ACH network in an on-line or telephone transaction to initiate an EFT from a consumer's account using the consumer's checking account number. In these cases, consumers can be expected to assert errors concerning authorizations and the type of transfers, in addition to errors regarding the amounts of the resulting ACH debits. The risk that a consumer's check(s) or checking account number could be used in a fraudulent manner to complete an ACH transfer from the consumer's account was not contemplated when the "four walls" analysis was adopted, since the typical ACH transfer then involved a preauthorized transfer to or from a known party.

Today, where a consumer believes that the transaction was unauthorized, for example, where the consumer's checks are stolen and used fraudulently to initiate EFTs from the consumer's account, information such as the location of the payee, the particular number of the check (to determine if it is notably out of order), or prior consumer account transactions with the same payee—all of which would be within the institution's own records—could be relevant to the investigation. In that case, a review of the ACH transfer instructions, without more, does not constitute a sufficient investigation under the rule.

Because the nature of a consumer's allegation of error can vary, the necessary inquiries to be made by an institution must vary. In each case, an institution should use any relevant information available within its own records for purposes of determining whether an error occurred. Proposed comment 11(c)(4)–5 provides this guidance.

The "four walls" rule may lead to somewhat arbitrary outcomes with respect to an institution's error resolution responsibilities for similar transactions solely as a result of the networks on which the transactions are processed. For instance, check conversion transactions may also be accomplished by means other than ACH, such as via a debit card network. In those circumstances, the account-holding institution is required to look beyond its own records to investigate asserted errors, as the network rules would likely constitute an agreement under § 205.11(c)(4). Similarly, in an on-line or telephone transaction, a consumer may choose to pay for a purchase by providing either his or her debit card number or his or her checking account number. If the consumer later asserts an error in connection with the transaction, the scope of the account-holding institution's investigation will depend on the payment mechanism utilized by the consumer, despite the fact that in both cases, the consumer intended to pay for the transaction via an EFT debit to his or her bank account.

In light of new uses of the ACH to effectuate transfers to and from consumer accounts, in addition to soliciting specific comments on proposed comment 11(c)(4)–5, comment is solicited on whether there are circumstances in which the "four walls" rule should not apply.

Section 205.16 Disclosures at Automated Teller Machines

Section 205.16 requires an automated teller machine operator that imposes a fee on a consumer for initiating an electronic fund transfer or a balance inquiry to provide notice to the consumer that a fee will be imposed for providing the EFT service or balance inquiry and to disclose the amount of the fee. Notice of the imposition of the fee must be provided in a prominent and conspicuous location on or at the ATM. The operator must also provide notice that the fee will be charged and the amount of the fee either on the screen of the ATM or by providing it on paper, before the consumer is committed to paying a fee.

Several large institutions have asked whether it is permissible under the rule to provide notice on the ATM that a fee "may be" charged for providing EFT services, because many ATM operators, particularly those owned or operated by banks, may only apply ATM surcharges to some categories of their ATM users, but not others. For example, an ATM operator might not charge a fee to cardholders whose cards are issued by the operator, cardholders of foreign banks, and cardholders whose card issuer has entered into a special contractual relationship with the ATM operator with respect to surcharges. Also, an ATM operator might charge a fee for cash withdrawals, but not for balance inquiries. As a result, a disclosure on the ATM that a fee "will" be imposed in all instances could be overbroad and misleading with respect to consumers who would not be assessed a fee for usage of the ATM.

Under section 904(d)(3)(A) of the EFTA and § 205.16(b)(1), an ATM operator must provide notice that a fee will be imposed only if a fee is, in fact, imposed. A strict requirement to post a notice that a fee will be imposed in all instances could result in an inaccurate disclosure of the ATM operators' surcharge practices. Accordingly, comment 205.16(b)(1)-1 would be revised to clarify that if there are circumstances in which an ATM surcharge will not be charged for a particular transaction, ATM operators may disclose on the ATM signage that a fee may be imposed or may specify the type of EFTs or consumers for which a fee is imposed. ATM operators that charge a fee in all instances would still be required to disclose that a fee will be charged for the transaction. Of course, before an ATM operator can impose an ATM fee on a consumer for initiating an electronic fund transfer or a balance inquiry, the ATM operator must provide to the consumer, notice either on-screen or via paper receipt, that an ATM fee will be imposed and the amount of the fee, and the consumer must elect to continue the transaction or inquiry after receiving such notice.

Appendix A—Model Disclosure Clauses and Forms

A–2—Model Clauses for Initial Disclosures

Model clauses for initial disclosures contained in Appendix A (Form A–2) would be revised to provide disclosures about electronic check conversion transactions. In particular, model clauses (a) and (b) would be revised to instruct consumers to notify their account-holding institution when unauthorized EFTs have been made without the consumer's permission using information from their checks. The discussion on the applicable liability limits remains generally unchanged, however, because the first two tiers of liability do not apply to unauthorized transfers made without an access device (for example, those made using information from a check to initiate a one-time ACH debit). (*See* comments 2(a)–2, 6(b)(3)–1.)

Model clause (d) also would be revised to list as a new type of transfer one-time electronic fund transfers made from a consumer account using information from the consumer's check. (*See* comment 7(b)(4)–4.)

A–3—Model Forms for Error-Resolution Notice

Paragraph (b) of Model Form A–3 would be restored after its inadvertent deletion following publication of the March 2001 interim final rule establishing uniform standards for the electronic delivery of disclosures required by the EFTA and Regulation E. 66 FR 17786 (April 4, 2001). No changes are intended by the reinsertion of paragraph (b). Paragraph (a) is reprinted for convenience.

A–6—Model Clauses for Authorizing One-Time Electronic Fund Transfer Using Information From a Check (§ 205.3(b)(2))

Proposed Model Form A–6 would be added to provide model clauses for the authorization requirements of proposed § 205.3(b)(2) for a person that initiates an EFT using information from a consumer's check. Consistent with comment 2 for Appendix A, the use of appropriate clauses in making disclosures will provide protection from liability under sections 915 and 916 of the EFTA provided the clauses accurately reflect the institution's EFT services. The Board request comment on whether it should retain all three of the proposed model clauses.

IV. Form of Comment Letters

Comment letters should refer to Docket No. R–1210 and, when possible, should use a standard typeface with a font size of 10 or 12; this will enable the Board to convert text submitted in paper form to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Comments may be mailed electronically to *regs.comments@federalreserve.gov.*

V. Solicitation of Comments Regarding the Use of "Plain Language"

Section 722 of the Gramm-Leach-Bliley Act of 1999 requires the Board to use "plain language" in all proposed and final rules published after January 1, 2000. The Board invites comments on whether the proposed rules are clearly stated and effectively organized, and how the Board might make the proposed text easier to understand.

VI. Initial Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act, the Board has reviewed the proposed amendments to Regulation E. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

1. *Statement of the objectives of the proposal.* The Board is proposing revisions to Regulation E to require a person initiating an EFT using information from a consumer's check to obtain the consumer's authorization. This requirement would enable the Board to promote consistency in the notice provided to consumers by merchants and other payees.

The Board is also proposing in the regulation that payroll card accounts directly or indirectly established by an employer on behalf of a consumer to which EFTs of the consumer's wages, salary, or other employee compensation are made on a recurring basis are "accounts" subject to Regulation E. Additional guidance would be provided in the staff commentary about a financial institution's error resolution obligations for certain transactions, and to clarify financial institution and merchant responsibilities for preauthorized transfers from consumer accounts.

The EFTA was enacted to provide a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund transfer systems. The primary objective of the EFTA is the provision of individual consumer rights. 15 U.S.C. 1693. The EFTA and Regulation E require disclosure of terms and conditions of an EFT service; documentation of electronic transfers by means of terminal receipts and periodic statements; limitations on consumer liability for unauthorized transfers; procedures for error resolution; and certain rights related to preauthorized EFTs. The act and regulation also prescribe restrictions on the unsolicited issuance of ATM cards and other access devices. The EFTA authorizes the Board to prescribe regulations to carry out the purpose and provisions of the statute. 15 U.S.C. 1693b(a). The act expressly states that the Board's regulations may contain "such classifications, differentiations, or other provisions, * * * as, in the judgment of the Board, are necessary or proper to carry out the purposes of [the act], to prevent circumvention or evasion [of the act], or to facilitate compliance [with the act]." 15 U.S.C. 1693b(c). The act also states that "[i]f electronic fund transfer services are made available to consumers by a person other than a financial institution holding a consumer's account, the Board shall by regulation assure that the disclosures, protections, responsibilities, and remedies created by [the act] are made applicable to such persons and services." 15 U.S.C. 1693b(d). The Board believes that the proposed revisions to Regulation E discussed above are within the Congress' broad grant of authority to the Board to adopt provisions that carry out the purposes of the statute.

2. *Small entities affected by the proposal.* The number of small entities affected by this proposal is unknown. Merchants or other payees that initiate one-time EFTs from a consumer's account using information from the consumer's check would be required under the regulation to obtain the consumer's authorization for the transfers. Account-holding institutions would be required under the regulation to disclose to their consumers that electronic check conversion transactions are a new type of transfer that can be made from a consumer's account. In addition, employers, payroll services providers and depository institutions would be required to comply with the Board's Regulation E to the extent that they are engaged in providing payroll card products to employee-consumers.

The Board believes small merchants and other payees that engage in check conversion transactions are currently providing notices to obtain electronic check conversion transactions. These notices would have to be reviewed, and perhaps revised. In addition, small financial institutions may need to review their initial disclosures, and perhaps revise them to reflect that electronic check conversion transactions are a new type of transfer that can be made from a consumer's account. For payroll card products, the Board believes that small employers, payroll services providers, and depository institutions that provide such products are currently providing account-opening disclosures for those accounts, and may be providing some form of periodic disclosures. These disclosures will have to be reviewed to ensure that they are in compliance with Regulation E, and perhaps revised.

3. *Other Federal rules.* The Board believes no federal rules duplicate, overlap, or conflict with the proposed revisions to Regulation E.

4. *Significant alternatives to the proposed revisions.* The Board welcomes comment on any significant alternatives that would minimize the impact of the proposed rule on small entities.

VII. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget (OMB). The proposed rule contains requirements subject to the PRA. The collection of information that is required by this proposed rule is found in 12 CFR 205.2(b)(3), 205.3(b)(2) and 205.7. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The OMB control number is 7100–0200. This information is required to obtain a benefit for consumers and is mandatory (15 U.S.C. 1693 *et seq.*). The respondents/recordkeepers are for-profit

financial institutions, including small businesses. Institutions are required to retain records for 24 months.

All financial institutions subject to Regulation E, of which there are approximately 19,300, are considered respondents for the purposes of the PRA and may be required to provide notice to accountholders that electronic check conversion (ECK) transactions are a new type of transfer that may be made from a consumer's account under § 205.7. In addition, all persons, such as merchants and other payees, that engage in ECK transactions, of which there are approximately 11,900, potentially are affected by this collection of information, because these merchants and payees may be required to obtain a consumer's authorization for the electronic transfer under § 205.3(b)(2). Furthermore, all financial institutions involved in providing payroll card accounts to consumers (*i.e.*, employers, payroll card servicers, and depository institutions), of which there are approximately 2,000, potentially are affected by this collection of information because these institutions may be required to provide initial disclosures, periodic statements, error resolution procedures, and other consumer protections, to consumers who receive their salaries through payroll card accounts as defined in § 205.2(b)(3).

The following estimates represent an average across all respondents and reflect variations between institutions based on their size, complexity, and practices. The other federal agencies are responsible for estimating and reporting to OMB the total paperwork burden for the institutions for which they have administrative enforcement authority. They may, but are not required to, use the Federal Reserve's burden estimates.

The first disclosure requirement, described in § 205.7, is the initial disclosure that a financial institution would provide to their accountholders reflecting that ECK transactions are a new type of transfer that can be made from a consumer's account. The Federal Reserve estimates that each of the 1,289 institutions, for which the Federal Reserve has administrative enforcement authority (collectively referred to in the following paragraphs as "respondents regulated by the Federal Reserve") would be required to provide a revised initial disclosure to their accountholders. Currently, all respondents regulated by the Federal Reserve are required to provide a disclosure of basic terms, costs, and rights relating to EFT services under Regulation E. The Federal Reserve estimates that it will take financial institutions, on average, 8 hours (1 business day) to reprogram and update systems to include the new notice requirement relating to ECK transactions; therefore, the Federal Reserve estimates that the total annual burden for respondents regulated by the Federal Reserve is 10,312 hours. The proposed revisions to Regulation E would provide institutions with model clauses for the initial disclosure requirement for ECK transactions (provided in Appendix A) that they may use to comply with the notice requirement. The total estimated annual burden for all other financial institutions subject to Regulation E providing initial disclosures would be approximately 144,088 hours, using the same burden methodology as above.

The second disclosure requirement, described in § 205.3(b)(2), is required when persons, such as merchants and other payees, engage in ECK transactions. Under the proposed rule, merchants and payees would be required to provide notice to obtain a consumer's authorization for the one-time EFT in the form of a written disclosure. The Federal Reserve estimates that of the 1,289 respondents regulated by the Federal Reserve that are required to comply with Regulation E, approximately 10 originate ECK transactions. The Federal Reserve estimates that it will take each respondent, on average, 8 hours (1 business day) to reprogram and update their systems to include the new notice requirement relating to ECK transactions; therefore, the Federal Reserve estimates that the total annual burden is 80 hours. The proposed revisions to Regulation E would provide institutions with model clauses (provided in Appendix A) for the new disclosure requirement. Using the Federal Reserve's methodology, the total annual burden for all other merchants and payees engaging in ECK transactions is 95,200 hours.

The third set of disclosure obligations is required when one or more parties that meet the definition of "financial institution" is involved in offering payroll card accounts as defined in § 205.2(b)(3)—whether the financial institution is an employer, a depository institution, or other third party involved in holding the payroll card account or in the issuance of a payroll card. Such entities would be required to fully comply with Regulation E, and provide disclosure of basic terms, costs, and rights relating to electronic fund transfer services in connection with the payroll card account. The parties may contract among themselves to comply with the regulation by providing one set of disclosures. Certain information must be disclosed to consumers, including: initial and updated EFT terms, transaction information, periodic statements of activity, the consumer's potential liability for unauthorized transfers, and error resolution rights and procedures. The Federal Reserve estimates that of the 1,289 respondents regulated by the Federal Reserve that are required to comply with Regulation E, approximately 5 participate in payroll card programs. The Federal Reserve estimates that each respondent will take, on average, 1.5 minutes to prepare and distribute the initial disclosure to the payroll card account holders. The Federal Reserve also estimates that each respondent will take, on average, 7 hours to prepare and distribute periodic statements. Finally, the Federal Reserve estimates that each respondent will take, on average 30 minutes for error resolution procedures. The total annual burden for respondents regulated by the Federal Reserve for all of these disclosures is estimated to be 1,065 hours. Using the Federal Reserve's methodology, the total annual burden for all other institutions offering payroll card services would be approximately 20,500 hours. The disclosures are standardized and machine-generated and do not substantively change from one individual account to another; thus, the average time for providing the disclosure to all consumers should be small.

The Federal Reserve's current annual burden for Regulation E disclosures is estimated to be 48,868 hours. The proposed rule would increase the total burden under Regulation E for all respondents regulated by the Federal Reserve by 11,457 hours, from 48,868 to 60,325 hours. Using the methodology explained above, the proposed rule would increase total burden under Regulation E for all other potentially affected entities by approximately 259,788 hours.

Because the records would be maintained at state member banks and the notices are not provided to the Federal Reserve, no issue of confidentiality arises under the Freedom of Information Act.

Comments are invited on: a. whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility; b. the accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the cost of compliance; c. ways to enhance the quality, utility, and clarity of the information to be collected; and d. ways to minimize the

burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology. Comments on the collection of information should be sent to Cynthia Ayouch, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 41, Board of Governors of the Federal Reserve System, Washington, DC 20551, with copies of such comments sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0200), Washington, DC 20503.

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed changes to the text of the regulation and staff commentary. New language is shown inside bold-faced arrows, while language that would be deleted is set off with bold-faced brackets. Comments are numbered to comply with **Federal Register** publication rules.

List of Subjects in 12 CFR Part 205

Consumer protection, Electronic fund transfers, Federal Reserve System, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR part 205 and the Official Staff Commentary, as follows:

PART 205—ELECTRONIC FUND TRANSFERS (REGULATION E)

1. The authority citation for part 205 would continue to read as follows:

Authority: 15 U.S.C. 1693b.

2. Section 205.2 would be amended by adding a new paragraph (b)(3) as follows:

§ 205.2 Definitions

* * * * *

(b)(1) *Account* means * * *

►(3) The term includes a "payroll card account" directly or indirectly established by an employer on behalf of a consumer to which electronic fund transfers of the consumer s wages, salary, or other employee compensation are made on a recurring basis, whether the account is operated or managed by the employer, a third-party payroll processor, or a depository institution.◄

* * * * *

3. Section 205.3 would be amended by revising paragraphs (a) and (b) as follows:

§ 205.3 Coverage

(a) *General.* This part applies to any electronic fund transfer that authorizes a financial institution to debit or credit a consumer's account. Generally, this part applies to financial institutions. For purposes of §§ ►205.3(b)(2),◄ 205.10(b), (d), and (e) and 205.13, this part applies to any person.

(b) *Electronic fund transfer.* ►(1) *Definition.*◄ The term electronic fund transfer that authorizes a financial institution to debit or credit a consumer's account. Generally, this part applies to financial institutions. The term includes, but is not limited to—

[(1)]►(i)◄ point-of-sale transfers;

[(2)]►(ii)◄ automated teller machine transfers;

[(3)]►(iii)◄ direct deposits or withdrawals of funds;

[(4)]►(iv)◄ transfers initiated by telephone; and

[(5)]►(v)◄ transfers resulting from debit card transactions, whether or not initiated through an electronic terminal.

►(2) *Electronic fund transfer using information from a check.* (i) This part applies where a check, draft, or similar paper instrument is used as a source of information to initiate a one-time electronic fund transfer from a consumer's account. The consumer must authorize the transfer.

(ii) The person that initiates a transfer shall provide notice to obtain a consumer's authorization for each transfer. Obtaining authorization from a consumer holding the account from which a check may be converted constitutes authorization for all checks provided for a single payment or invoice.

(iii) The person that initiates a transfer shall also provide notice to the consumer at the same time it provides the notice required under paragraph (b)(2)(ii) of this section that when a check is used to initiate an electronic fund transfer, funds may be debited from the consumer's account quickly, and, as applicable, that the consumer's check will not be returned by the financial institution holding the consumer's account.◄

* * * * *

4. Section 205.7 would be amended by adding a new paragraph (c) as follows:

§ 205.7 Initial disclosures

* * * * *

►(c) *Addition of electronic fund transfer services.* If an electronic fund transfer service is added to a consumer's account and is subject to terms and conditions different from those described in the initial disclosures, disclosures for the new service are required.◄

5. In Appendix A to Part 205,

a. In A–2 MODEL CLAUSES FOR INITIAL DISCLOSURES (§ 205.7(b)), paragraphs (a), (b) and (d) would be revised;

b. In A–3 MODEL FORMS FOR ERROR RESOLUTION NOTICE (§§ 205.7(b)(10) and 205.8(b)), paragraph (a) is republished, and paragraph (b) would be revised;

c. Appendix A–6 MODEL CLAUSES FOR AUTHORIZING ONE-TIME ELECTRONIC FUND TRANSFER USING INFORMATION FROM A CHECK (§ 205.3(b)(2)) would be added.

Appendix A to Part 205—Model Disclosure Clauses and Forms

* * * * *

A–2—Model Clauses for Initial Disclosures (§ 205.7(b))

(a) *Consumer Liability (§ 205.7(b)(1)).*

(Tell us AT ONCE if you believe your [card] [code] has been lost or stolen►, or if you believe that an electronic fund transfer has been made without your permission using information from your check◄. Telephoning is the best way of keeping your possible losses down. You could lose all the money in your account (plus your maximum overdraft line of credit). If you tell us within 2 business days ►after you learn of the loss or theft of your [card] [code]◄, you can lose no more than $50 if someone used your [card] [code] without your permission.) [(If you believe your [card] [code] has been lost or stolen, and you tell us within 2 business days after you learn of the loss or theft, you can lose no more than $50 if someone used your [card] [code] without your permission.)]

If you do NOT tell us within 2 business days after you learn of the loss or theft of your [card] [code], and we can prove we could have stopped someone from using your [card] [code] without your permission if you had told us, you could lose as much as $500.

Also, if your statement shows transfers that you did not make, ►including those made by card, code or other means,◄ tell us at once. If you do not tell us within 60 days after the statement was mailed to you, you may not get back any money you lost after the 60 days if we can prove that we could have stopped someone from taking the money if you had told us in time. If a good reason (such as a long trip or a hospital stay) kept you from telling us, we will extend the time periods.

(b) *Contact in event of unauthorized transfer (§ 205.7(b)(2)).* If you believe your [card] [code] has been lost or stolen[or that someone has transferred or may transfer money from your account without your permission], call:

[Telephone number]

or write:

[Name of person or office to be notified]

[Address]

►You should also call or write to the number or address listed above if you believe a transfer has been made using the information from your check without your permission.◄

* * * * *

(d) *Transfer types and limitations (§ 205.7(b)(4))*—(1) *Account access.* You may use your [card][code] to:

(i) Withdraw cash from your [checking] [or] [savings] account.

(ii) Make deposits to your [checking] [or] [savings] account.

(iii) Transfer funds between your checking and savings accounts whenever you request.

(iv) Pay for purchases at places that have agreed to accept the [card] [code].

(v) Pay bills directly [by telephone] from your [checking] [or] [savings] account in the amounts and on the days you request.

Some of these services may not be available at all terminals.

►(2) *Electronic check conversion.* You may authorize a merchant or other payee to make a one-time electronic payment from your checking account using information from your check to: (i) Pay for purchases; or (ii) Pay bills.◄

[(2)] ►(3)◄ *Limitations on frequency of transfers.*—(i) You may make only [insert number, *e.g.*, 3] cash withdrawals from our terminals each [insert time period, *e.g.*, week].

(ii) You can use your telephone bill-payment service to pay [insert number] bills each [insert time period] [telephone call].

(iii) You can use our point-of-sale transfer service for [insert number] transactions each [insert time period].

(iv) For security reasons, there are limits on the number of transfers you can make using our [terminals] [telephone bill-payment service] [point-of-sale transfer service].

[(3)] ►(4)◄ *Limitations on dollar amounts of transfers*—(i) You may withdraw up to [insert dollar amount] from our terminals each [insert time period] time you use the [card] [code].

(ii) You may buy up to [insert dollar amount] worth of goods or services each [insert time period] time you use the [card] [code] in our point-of-sale transfer service.

* * * * *

A–3 Model Forms for Error Resolution Notice (§§ 205.7(b)(10) and 205.8(b))

(a) *Initial and annual error resolution notice (§§ 205.7(b)(10) and 205.8(b)).*

In Case of Errors or Questions About Your Electronic Transfers Telephone us at [insert telephone number] Write us at [insert address] [or E-mail us at [insert electronic mail address]] as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transfer listed on the statement or receipt. We must hear from you no later than 60 days after we sent the FIRST statement on which the problem or error appeared.

(1) Tell us your name and account number (if any).

(2) Describe the error or the transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.

(3) Tell us the dollar amount of the suspected error.

If you tell us orally, we may require that you send us your complaint or question in writing within 10 business days.

We will determine whether an error occurred within 10 business days after we hear from you and will correct any error promptly. If we need more time, however, we may take up to 45 days to investigate your complaint or question. If we decide to do this, we will credit your account within 10 business days for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and we do not receive it within 10 business days, we may not credit your account.

For errors involving new accounts, point-of-sale, or foreign-initiated transactions, we may take up to 90 days to investigate your complaint or question. For new accounts, we may take up to 20 business days to credit your account for the amount you think is in error.

We will tell you the results within three business days after completing our investigation. If we decide that there was no error, we will send you a written explanation. You may ask for copies of the documents that we used in our investigation.

►(b) *Error resolution notice on periodic statements (§ 205.8(b)).*

In Case of Errors or Questions About Your Electronic Transfers Telephone us at [insert telephone number] or Write us at [insert address] as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transfer on the statement or receipt. We must hear from you no later than 60 days after we sent you the FIRST statement on which the error or problem appeared.

(1) Tell us your name and account number (if any).

(2) Describe the error or the transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.

(3) Tell us the dollar amount of the suspected error.

We will investigate your complaint and will correct any error promptly. If we take more than 10 business days to do this, we will credit your account for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation.◄

* * * * *

►A–6—Model Clauses for Authorizing One-Time Electronic Fund Transfer Using Information From a Check (§ 205.3(b)(2))

(a)—Sample Notice About Electronic Check Conversion

When you provide a check, you authorize us either to use information from your check to make a one-tiine electronic fund transfer from your account or to process this transaction as a check. When we use your check to make an electronic fund transfer, funds may be withdrawn from your account [quickly/ as soon as the same day we receive your payment][, and you will not receive your check back from your financial institution.]

[If there are insufficient funds in your account, you authorize us to charge a fee of $**, and collect that amount through an electronic fund transfer from your account.]

(b)—Optional Notice Where Checks Are Converted

When you provide a check, you authorize us to use information from your check to make a one-time electronic fund transfer from your account. When we use your check to make an electronic fund transfer, funds may be withdrawn from your account [quickly/ as soon as the same day we receive your payment] [, and you will not receive your check back from your financial institution.]

[If there are insufficient funds in your account, you authorize us to charge a fee of $**, and collect that amount through an electronic fund transfer from your account.]

(c)—Optional Notice Where Checks Would Not Be Converted Under Specified Circumstances

When you provide a check, you authorize us to use information from your check to make a one-time electronic fund transfer from your account. In certain circumstances, we may process your payment as a check. [*Specify circumstances.*] When we use your check to make an electronic fund transfer, funds may be withdrawn from your account [quickly/ as soon as the same day we receive your payment] [, and you will not receive your check back from your financial institution.]

[If there are insufficient funds in your account, you authorize us to charge a fee of $**, and collect that amount through an electronic fund transfer from your account.]◄

6. In Supplement I to Part 205, the following amendments would be made:

a. Under *Section 205.2—Definitions,* under *2(b) Account,* paragraph 2. would be redesignated as paragraph 3. and a new paragraph 2. would be added;

b. Under *Section 205.3—Coverage,* under *3(b) Electronic Fund Transfer,* paragraph 3. would be revised;

c. Under *Section 205.3—Coverage,* under *3(b) Electronic Fund Transfer,* a new heading "Paragraph 3(b)(2)—Electronic Fund Transfer Using Information From a Check" would be added, and paragraphs 1. through 4. would be added;

d. Under *Section 205.3—Coverage,* under *3(c) Exclusions from coverage,* under heading Paragraph 3(c)(1)—Checks, paragraph 1. would be revised;

e. Under *Section 205.5—Issuance of Access Devices,* under *5(a) Solicited Issuance,* under Paragraph 5(a)(2), paragraph 1. would be revised;

f. Under *Section 205.5—Issuance of Access Devices,* under *5(b) Unsolicited Issuance,* paragraph 5. would be added;

g. Under *Section 205.7—Initial Disclosures,* under *7(a) Timing of Disclosures,* paragraph 1. would be revised, and paragraph 4. would be removed and reserved;

h. Under *Section 205.7—Initial Disclosures,* under *7(b) Content of Disclosures,* under Paragraph 7(b)(4)—Types of Transfers; Limitations, paragraph 4. would be added;

i. Under *Section 205.7—Initial Disclosures,* a new heading "*7(c)*

Addition of EFT Services" would be added, and paragraph 1. would be added;

j. Under *Section 205.10—Preauthorized Transfers,* under *10(b) Written Authorization for Preauthorized Transfers from Consumer's Acccount,* paragraphs 3. and 7. would be revised;

k. Under *Section 205.10—Preauthorized Transfers,* under *10(c) Consumer's Right to Stop Payment,* paragraph 2. would be revised, and paragraph 3. would be added;

l. Under *Section 205.10—Preauthorized Transfers,* under *10(d) Notice of Transfers Varying in Amount,* under Paragraph 10(d)(2)—Range, paragraph 2. would be added;

m. Under *Section 205.11—Procedures for Resolving Errors,* under *11(b) Notice of Error from Consumer,* under Paragraph 11(b)(1)—Timing; Contents, paragraph 7. would be added;

n. Under *Section 205.11—Procedures for Resolving Errors,* under *11(c) Time Limits and Extent of Investigation,* under Paragraph 11(c)(4)—Investigation, paragraph 5. would be added; and

o. Under *Section 205.16—Disclosures at Automated Teller Machines,* under *16(b) General,* under Paragraph 16(b)(1), paragraph 1. would be revised.

Supplement I to Part 205—Official Staff Interpretations

* * * * *

Section 205.2—Definitions

2(b) Consumer Asset Account

* * * * *

►2. *One-time EFT of salary-related payments.* The term payroll card account does not include a card used for a one-time EFT of a salary-related payment, such as a bonus, or a card used solely to disburse non-salary-related payments, such as a petty cash or a travel per diem card. To the extent that one-time EFTs of salary-related payments and any other EFTs are transferred to or from a payroll card account, these transfers would be covered by the act and regulation, even if the particular transfer itself does not represent wages, salary, or other employee compensation.◄

[2.] ►3.◄ * * *

* * * * *

Section 205.3—Coverage

* * * * *

3(b) Electronic Fund Transfer

* * * * *

[3. *Authorization of one-time EFT initiated using MICR encoding on a check.* A consumer authorizes a one-time EFT (in providing a check to a merchant or other payee for the MICR encoding), where the consumer receives notice that the transaction will be processed as an EFT and completes the transaction. Examples of notice include, but are not limited to, signage at POS and written statements.]

►3. *NSF fees.* If an EFT or a check is returned unpaid due to insufficient funds in a consumer s account, an EFT from the consumer s account to pay a NSF fee charged is covered by Regulation E and, therefore, must be authorized by the consumer.◄

►Paragraph 3(b)(2)—Electronic Fund Transfer Using Information From a Check.

1. *Authorization of one-time EFT initiated using MICR encoding on a check.* A consumer authorizes a one-time EFT (in providing a check to a merchant or other payee for the MICR encoding, that is, the routing number of the financial institution, the consumer's account number and the serial number), where the consumer receives notice that the transaction will be processed as an EFT and goes forward with the transaction. These transactions are not transfers originated by check. Examples of notice include, but are not limited to, signage at POS and individual written statements provided to consumers. (See model clauses in Appendix A–6.)

2. *Authorization to process a transaction as an EFT or as a check.* If a payee obtains a consumer's authorization to use a check solely as a source document to initiate an EFT, the payee cannot process the transaction as a check. In order to process the transaction as an EFT or alternatively as a check, the payee must obtain the consumer's clear authorization to do so. A payee may specify the circumstances under which a check may not be converted to an EFT. (*See* model clauses in Appendix A–6.)

3. *When checks are returned at POS.* A payee initiating an EFT that returns a consumer's check to the consumer at POS need not notify the consumer that the check will not be returned by the consumer's financial institution.

4. *Multiple payments/multiple consumers.* If a merchant or other payee will use information from a consumer's check to initiate an EFT from the consumer's account, notice to a consumer holding the account that a check provided as payment during a single billing cycle or after receiving an invoice will be processed as a one-time EFT constitutes notice for all checks provided for the billing cycle or invoice—whether from the consumer or someone else.◄

* * * * *

3(c) Exclusions From Coverage

Paragraph 3(c)(1)—Checks

1. *Re-presented checks.* The electronic re-presentment of a returned check is not covered by Regulation E because the transaction originated by check. Regulation E does apply, however, to any fee authorized by the consumer to be debited electronically from the consumer's account because the check was returned for insufficient funds. Authorization occurs where the consumer has received notice that a fee imposed for returned checks will be debited electronically from the consumer's account[.] ►and goes forward with the transaction.◄

* * * * *

Section 205.5—Issuance of Access Devices

* * * * *

5(a) Solicited Issuance

* * * * *

Paragraph 5(a)(2)

1. *One-for-one rule.* In issuing a renewal or substitute access device, [a financial institution may not provide additional devices.] ►only one renewal or substitute device may replace a previously issued device.◄ For example, only one new card and PIN may replace a card and PIN previously issued. ►A financial institution, however, may provide additional devices at the time it issues the renewal or substitute access device, provided it complies with § 205.5(b). (See comment 5(b)–5.)◄ * * *

* * * * *

5(b) Unsolicited Issuance

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►5. *Additional access devices in a renewal or substitution.* This regulation does not prohibit a financial institution from replacing an accepted access device with more than one access device during the renewal or substitution of a previously issued device, provided that any additional access device is not validated at the time it is issued, and the institution complies with the other requirements of § 205.5(b).◄

* * * * *

Section 205.7—Initial Disclosures

7(a) Timing of Disclosures

1. *Early disclosures.* Disclosures given by a financial institution earlier than the regulation requires (for example, when the consumer opens a checking account) need not be repeated when the consumer later enters into an agreement with a third party to initiate preauthorized transfers to or from the consumer's account, unless the terms and conditions differ from those that the institution previously disclosed. ►The same applies with regard to disclosures about one-time EFTs from a consumer s account initiated using information from the consumer's check.◄ On the other hand, if an agreement is directly between the consumer and the account-holding institution, disclosures must be given in close proximity to the event requiring disclosure, for example, when the consumer contracts for a new service.

* * * * *

[4. *Addition of EFT services.* If an EFT service is added to a consumer's account and is subject to terms and conditions different from those described in the initial disclosures, disclosures for the new service are required. The disclosures must be provided when the consumer contracts for the new service or before the first EFT is made using the new service.]

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7(b) Content of Disclosures

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Paragraph 7(b)(4)—Types of Transfers; Limitations

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►4. *One-time EFTs initiated using information from a check.* Financial institutions are required to list one-time EFTs

initiated using information from a consumer's check among the types of transfers that a consumer can make. (*See* Appendix A–2.)◄

* * * * *

7(c) Addition of Electronic Fund Transfer Services

►1. *Addition of electronic check conversion services.* One-time EFTs initiated using information from a consumer s check are a new type of transfer requiring new disclosures, as applicable. (*See* Appendix A–2.)◄

* * * * *

Section 205.10—Preauthorized Transfers

* * * * *

10(b) Written Authorization for Preauthorized Transfers From Consumer's Account

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3. *Written authorization for preauthorized transfers.* The requirement that preauthorized EFTs be authorized by the consumer "only by a writing" cannot be met by a payee's signing a written authorization on the consumer's behalf with only an oral authorization from the consumer.[A tape recording of a telephone conversation with a consumer who agrees to preauthorized debits also does not constitute written authorization for purposes of this provision.]

* * * * *

7. *Bona fide error.* Consumers sometimes authorize third-party payees, by telephone or on-line, to submit recurring charges against a credit card account. If the consumer indicates use of a credit card account when in fact a debit card is being used, the payee does not violate the requirement to obtain a written authorization if the failure to obtain written authorization was not intentional and resulted from a bona fide error, and if the payee maintains procedures reasonably adapted to avoid any such error. ►Procedures reasonably adapted to avoid error will depend upon the circumstances. Generally, requesting the consumer to specify whether the card to be used for the authorization is a debit card or is a credit card, using those terms, is a reasonable procedure. Where the consumer has indicated that the card is a credit card (or that the card is not a debit card), however, the payee may rely on the consumer's assertion without seeking further information about the type of card.◄ If the payee is unable to determine, at the time of the authorization, whether a credit or debit card number is involved, and later finds that the card used is a debit card ►(for example, because the consumer brings the matter to the payee's attention)◄, the payee must obtain a written and signed or (where appropriate) a similarly authenticated authorization as soon as reasonably possible, or cease debiting the consumer's account.

10(c) Consumer's Right To Stop Payment

* * * * *

2. *Revocation of authorization.* Once a financial institution has been notified that the consumer's authorization is no longer valid, it must block all future payments for the particular debit transmitted by the designated payee-originator. ►(However, refer to comment 10(c)-3.)◄ The institution may not wait for the payee-originator to terminate the automatic debits. The institution may confirm that the consumer has informed the payee-originator of the revocation (for example, by requiring a copy of the consumer's revocation as written confirmation to be provided within 14 days of an oral notification). If the institution does not receive the required written confirmation within the 14-day period, it may honor subsequent debits to the account.

►3. *Alternative procedure for real-time processing.* If an institution does not have the capability to block a preauthorized debit from being posted to the consumer's account-as in the case of a preauthorized debit made through a debit card network or other real-time system, for example "the institution may instead comply with the stop-payment requirements by using a third party to block the transfer(s), as long as the recurring debits are in fact stopped. If in a particular instance, however, the debit is not stopped, the consumer's institution would not be in compliance with Regulation E in that instance.◄

10(d) Notice of Transfers Varying in Amount

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Paragraph 10(d)(2)—Range

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►2. *Transfers to an account of the consumer held at another institution.* A financial institution that elects to offer the consumer a specified range for debits to an account of the consumer need not obtain the consumer's consent to provide the specified range in lieu of the notice of transfers varying in amount if the funds are transferred and credited to an account of the consumer held at another financial institution. The range, however, must be an acceptable range that could be anticipated by the consumer, and the institution must notify the consumer of the range.◄

* * * * *

Section 205.11—Procedures for Resolving Errors

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11(b) Notice of Error From Consumer

Paragraph 11(b)(1)—Timing; Contents

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►7. *Effect of late notice.* An institution is not required to comply with the requirements of this section for any notice of error from the consumer that is received by the institution later than 60 days from the date on which the periodic statement first reflecting the error is sent. Where the consumer's assertion of error involves an unauthorized EFT, however, the institution must comply with § 205.6 before it may impose any liability on the consumer.◄

* * * * *

11(c) Time Limits and Extent of Investigation

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Paragraph 11(c)(4) Investigation

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►5. *No EFT agreement.* When there is no agreement between the institution and the third party for the type of EFT involved, the financial institution must review all information within the institution s own records relevant to resolving the consumer's particular claim. For example, a financial institution may not limit its investigation to the payment instructions where additional information within its own records could be dispositive on a consumer's claim.◄

* * * * *

Section 205.16—Disclosures at Automated Teller Machines

16(b) General

Paragraph 16(b)(1)

1. *Specific notices.* An ATM operator that imposes a fee for a specific type of transaction such as ►for◄ a cash withdrawal, but not ►for◄ a balance inquiry, ►or imposes a fee only on some customers, such as those using cards issued by institutions other than the ATM operator,◄ may provide a general [statement] ►notice◄ on or at the ATM machine◄ that a fee [will] ►may◄ be imposed for providing EFT services or may specify the type of EFT► or consumers◄ for which a fee is imposed.► If, however, a fee will be imposed in all instances, the notice must state that a fee will be imposed.◄

* * * * *

By order of the Board of Governors of the Federal Reserve System, September 13, 2004.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 04–20939 Filed 9–16–04; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP San Francisco Bay 04–003]

RIN 1625–AA87

Security Zones; Monterey Bay and Humboldt Bay, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish permanent moving and fixed security zones extending 100 yards in the U.S. navigable waters around and under all cruise ships, tankers, and High Interest Vessels (HIVs) that enter, are moored or anchored in, or depart from the designated waters of Monterey Bay or Humboldt Bay, California. These security zones are needed for national security reasons to protect the public and ports of Monterey Bay and Humboldt Bay from potential subversive acts. Entry into these security zones would be prohibited, unless specifically authorized by the Captain of the Port

San Francisco Bay, or his designated representative.

DATES: Comments and related material must reach the Coast Guard on or before November 16, 2004.

ADDRESSES: You may mail comments and related material to the Waterways Management Branch, U.S. Coast Guard Marine Safety Office San Francisco Bay, Coast Guard Island, Alameda, California 94501. The Waterways Management Branch 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 Waterways Management Branch between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Doug Ebbers, Waterways Management Branch, U.S. Coast Guard Marine Safety Office San Francisco Bay, (510) 437–2770.

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 (COTP San Francisco Bay 04–003), 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 that your submission 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 Waterways Management Branch at the address 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 separate notice in the **Federal Register.**

Background and Purpose

Since the September 11, 2001 terrorist attacks on the World Trade Center in New York, the Pentagon in Arlington, Virginia and Flight 93, the Federal Bureau of Investigation (FBI) has issued several warnings concerning the potential for additional terrorist attacks within the United States. In addition, the ongoing hostilities in Afghanistan and the conflict in Iraq have made it prudent for U.S. ports to be on a higher state of alert because Al-Qaeda and other organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

The threat of maritime attacks is real as evidenced by the attack on the USS COLE and the subsequent attack in October 2002 against a tank vessel off the coast of Yemen. These threats manifest a continuing threat to U.S. assets as described in the President's finding in Executive Order 13273 of August 21, 2002 (67 FR 56215, September 3, 2002) that the security of the U.S. is endangered by the September 11, 2001 attacks and that such aggression continues to endanger the international relations of the United States. See also Continuation of the National Emergency with Respect to Certain Terrorist Attacks (67 FR 58317, September 13, 2002), and Continuation of the National Emergency with Respect to Persons Who Commit, Threaten To Commit, Or Support Terrorism (67 FR 59447, September 20, 2002). The U.S. Maritime Administration (MARAD) in Advisory 02–07 advised U.S. shipping interests to maintain a heightened status of alert against possible terrorist attacks. MARAD more recently issued Advisory 03–05 informing operators of maritime interests of increased threat possibilities to vessels and facilities and a higher risk of terrorist attack to the transportation community in the United States. Ongoing foreign hostilities have made it prudent for U.S. ports and waterways to be on a higher state of alert because the Al-Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

In its effort to thwart terrorist activity, the Coast Guard has increased safety and security measures on U.S. ports and waterways. As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399), Congress amended section 7 of the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1226, to allow the Coast Guard to take actions, including the establishment of security and safety zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures. The Coast Guard also has authority to establish security zones pursuant to the Act of June 15, 1917, as amended by the Magnuson Act of August 9, 1950 (50 U.S.C. 191 *et seq.*) and implementing regulations promulgated by the President in subparts 6.01 and 6.04 of part 6 of title 33 of the Code of Federal Regulations.

In this particular rulemaking, to address the aforementioned security concerns, and to take steps to prevent the catastrophic impact that a terrorist attack against a cruise ship, tanker, or HIV would have on the public interest, the Coast Guard is proposing to establish permanent security zones around and under cruise ships, tankers, and HIVs that enter, are moored or anchored in, or depart from the designated waters of Monterey Bay or Humboldt Bay, California. These security zones help the Coast Guard to prevent vessels or persons from engaging in terrorist actions against these types of vessels. Due to these heightened security concerns, and the catastrophic impact a terrorist attack on a cruise ship, tanker, or HIV would have on the crew and passengers on board, and the surrounding area and communities, security zones are prudent for these types of vessels.

On December 31, 2002, we published the final rule [COTP San Francisco Bay 02–019] adding § 165.1183, "Security Zones; Cruise Ships and Tank Vessels, San Francisco Bay and Delta ports, California" in the **Federal Register** (67 FR 79854). That section set forth security zones for cruise ships and tank vessels in San Francisco Bay and delta ports. A subsequent final rule [COTP San Francisco Bay 03–002] published in the **Federal Register** (69 FR 8817) on February 26, 2004, amended § 165.1183 to include HIVs as protected vessels in that section, along with cruise ships and tank vessels.

On March 29, 2004, we published a temporary final rule under COTP San Francisco Bay 04–002 in the **Federal Register** (69 FR 16163) creating temporary § 165.T11–004 of Title 33 of the Code of Federal Regulations (CFR). Under temporary § 165.T11–004, the Coast Guard established 100-yard moving and fixed security zones around all cruise ships, tank vessels, and HIVs that enter, are moored or anchored in, or depart from the designated waters of Monterey Bay or Humboldt Bay, California.

Though temporary § 165.T11–004 expired at 11:59 p.m. on September 5, 2004, it was effectively and seamlessly extended by a change in effective period temporary rule that was issued on August 31, 2004. This change in the effective period of the temporary rule is also found under docket COTP San Francisco Bay 04–002, and extended the rule to 11:59 p.m. on March 5, 2005. The Captain of the Port has determined

there is a need for continued security regulations.

We propose to create permanent security zones in the same areas currently protected by temporary security zones under § 165.T11–004. Our proposed rule would amend § 165.1183 "Security Zones; Cruise Ships, Tank Vessels, and High Interest Vessels (HIVs), San Francisco Bay and Delta ports, California" (67 FR 79856) to accomplish the following: (1) Update the definition of "cruise ship" to match the definition in 33 CFR 101.105, (2) change the term "tank vessel" to "tanker" to coincide with the definition in 33 CFR 160.3 and better reflect our intention for the rule to apply to self-propelled vessels, and (3) extend the permanent security zones established around cruise ships, tank vessels, and HIVs in San Francisco Bay and Delta Ports to include cruise ships, tankers, and HIVs in Monterey Bay and Humboldt Bay.

Discussion of Proposed Rule

For Humboldt Bay, a security zone would be activated when any cruise ship, tanker, or HIV enters the area shoreward of a 4 nautical mile radius line drawn to the west of the Humboldt Bay Entrance Lighted Whistle Buoy HB (LLNR 8130), in position 40°46.25′ N, 124°16.13′ W.

For Monterey Bay, a security zone would be activated when any cruise ship, tanker, or HIV passes shoreward of a line drawn between Santa Cruz Light (LLNR 305) to the north in position 36°57.10′ N, 122°01.60′ W, and Cypress Point, Monterey to the south, in position 36°34.90′ N, 121°58.70′ W.

The security zone would remain in effect while the cruise ship, tanker, or HIV is underway, anchored or moored within the designated waters of Monterey Bay or Humboldt Bay. When activated, the security zone would encompass all waters, extending from the surface to the sea floor, within 100 yards ahead, astern and extending 100 yards along either side of the vessel. This security zone would be automatically deactivated when the vessel departs from the areas of Monterey Bay or Humboldt Bay designated in this rule. Vessels and people may be allowed to enter these proposed security zones on a case-by-case basis with authorization from the Captain of the Port.

These security zones are needed for national security reasons to protect cruise ships, tankers, HIVs, the public, transiting vessels, adjacent waterfront facilities and the ports from potential subversive acts, accidents or other events of a similar nature. Entry into these zones would be prohibited unless specifically authorized by the Captain of the Port or his designated representative.

The Captain of the Port would enforce these zones and may enlist the aid and cooperation of any Federal, State, county, municipal and private agency to assist in the enforcement of the regulation. Section 165.33 of Title 33, Code of Federal Regulations, prohibits any unauthorized person or vessel from entering or remaining in a security zone. Vessels or persons violating this section would be subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192. Pursuant to 33 U.S.C. 1232, any violation of the security zone described herein, is punishable by civil penalties (not to exceed $32,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment from 5 to 10 years and a maximum fine of $250,000), and in rem liability against the offending vessel. Any person who violates this section using a dangerous weapon, or who engages in conduct that causes bodily injury or fear of imminent bodily injury to any officer authorized to enforce this regulation, will also face imprisonment from 10 to 25 years. Vessels or persons violating this section are also subject to the penalties set forth in 50 U.S.C. 192: seizure and forfeiture of the vessel to the United States, a maximum criminal fine of $10,000, imprisonment up to 10 years, and a civil penalty of not more than $25,000 for each day of a continuing violation.

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).

Although this proposed regulation would restrict access to a portion of navigable waters, the effect of this regulation would not be significant because: (i) The zones would encompass only a small portion of the waterway; (ii) vessels would be able to pass safely around the zones; and (iii) vessels may be allowed to enter these zones on a case-by-case basis with permission of the Captain of the Port or his designated representative.

The size of the zones is the minimum necessary to provide adequate protection for all cruise ships, tankers, and HIVs, other vessels operating in the vicinity of these vessels, adjoining areas, and the public. The entities most likely to be affected are fishing vessels and pleasure craft engaged in recreational activities and sightseeing.

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 rule will not have a significant economic impact on a substantial number of small entities. We expect this rule may affect owners and operators of vessels, some of which may be small entities, intending to fish, sightsee, transit, or anchor in the waters affected by these security zones. These proposed security zones would not have a significant economic impact on a substantial number of small entities for several reasons: vessel traffic would be able to pass safely around the area, vessels engaged in recreational activities, sightseeing and commercial fishing would have ample space outside of the security zones to engage in these activities, and small entities and the maritime public will be advised of these security zones via public notice to mariners.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this 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 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 proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Doug Ebbers, Waterways Management Branch, U.S. Coast Guard Marine Safety Office San Francisco Bay,

(510) 437–2770. The Coast Guard will not retaliate against small entities that question of complain about this rule or any policy or action of the Coast Guard.

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 proposed 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 does not create an environmental risk to health or risk to safety that may 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 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

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.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

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 proposed rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation because we are establishing a security zone.

A draft "Environmental Analysis Check List" and a draft "Categorical Exclusion Determination" (CED) will be available in the docket where indicated under **ADDRESSES.** Comments on this section will be considered before we make the final decision on whether the rule should be categorically excluded from further environmental review.

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 proposes to amend 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. Revise § 165.1183 to read as follows:

§ 165.1183 Security Zones; Cruise Ships, Tankers and High Interest Vessels, San Francisco Bay and Delta ports, Monterey Bay and Humboldt Bay, California.

(a) *Definitions.* As used in this section—

Cruise ship means any vessel over 100 gross register tons, carrying more than 12 passengers for hire which makes voyages lasting more than 24 hours, of which any part is on the high seas. Passengers from cruise ships are embarked or disembarked in the U.S. or its territories. Cruise ships do not include ferries that hold Coast Guard Certificates of Inspection endorsed for "Lakes, Bays and Sounds" that transit international waters for only short periods of time on frequent schedules.

Tanker means any self-propelled tank vessel constructed or adapted primarily to carry oil or hazardous materials in bulk in the cargo spaces.

High Interest Vessel or HIV means any vessel deemed by the Captain of the Port or higher authority as a vessel requiring protection based upon risk assessment analysis of the vessel and is therefore escorted by a Coast Guard or other law enforcement vessel with an embarked Coast Guard commissioned, warrant, or petty officer.

(b) *Locations.* The following areas are security zones:

(1) *San Francisco Bay.* All waters, extending from the surface to the sea floor, within 100 yards ahead, astern

and extending 100 yards along either side of any cruise ship, tanker or HIV that is underway, anchored, or moored within the San Francisco Bay and Delta port areas shoreward of the line drawn between San Francisco Main Ship Channel buoys 7 and 8 (LLNR 4190 & 4195, positions 37°46.9′ N, 122°35.4′ W and 37°46.5′ N, 122°35.2′ W, respectively);

(2) *Monterey Bay.* All waters, extending from the surface to the sea floor, within 100 yards ahead, astern and extending 100 yards along either side of any cruise ship, tanker or HIV that is underway, anchored, or moored within the Monterey Bay area shoreward of a line drawn between Santa Cruz Light (LLNR 305) to the north in position 36°57.10′N, 122°01.60′W, and Cypress Point, Monterey to the south, in position 36°34.90′N, 121°58.70′W.

(3) *Humboldt Bay.* All waters, extending from the surface to the sea floor, within 100 yards ahead, astern and extending 100 yards along either side of any cruise ship, tanker or HIV that is underway, anchored, or moored within the Humboldt Bay area shoreward of a 4 nautical mile radius line drawn to the west of the Humboldt Bay Entrance Lighted Whistle Buoy HB (LLNR 8130), in position 40°46.25′N, 124°16.13′W.

(c) *Regulations.*

(1) In accordance with the general regulations in § 165.33 of this part, entry into or remaining in this zone is prohibited unless authorized by the Coast Guard Captain of the Port, San Francisco Bay, or his designated representative.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port at telephone number 415–399–3547 or on VHF–FM channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his designated representative.

Dated: September 7, 2004.

Gerald M. Swanson,

Captain, U.S. Coast Guard, Captain of the Port, San Francisco Bay, California.

[FR Doc. 04–21007 Filed 9–16–04; 8:45 am]

BILLING CODE 4910–15–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1228

RIN 3095–AB41

Records Management; Unscheduled Records

AGENCY: National Archives and Records Administration (NARA).

ACTION: Proposed rule.

SUMMARY: NARA is seeking comments from Federal agencies and the public on a proposed revision to our regulations to allow unscheduled records to be transferred to records storage facilities. These changes would allow agencies to transfer unscheduled records in a timely manner.

DATES: Submit comments on or before November 16, 2004.

ADDRESSES: NARA invites interested persons to submit comments on this proposed rule. Please include "Attn: 3095–AB41" and your name and mailing address in your comments. Comments may be submitted by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- E-mail: Send comments to *comments@nara.gov.* If you do not receive a confirmation that we have received your e-mail message, contact Cheryl Stadel-Bevans at (301) 837–3021.
- Fax: Submit comments by facsimile transmission to (301) 837–0319.
- Mail: Send comments to Regulations Comments Desk (NPOL), Room 4100, Policy and Communications Staff, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001.
- Hand Delivery or Courier: Deliver comments to 8601 Adelphi Road, College Park, MD.

FOR FURTHER INFORMATION CONTACT: Cheryl Stadel-Bevans at telephone number (301) 837–3021 or fax number (301) 837–0319.

SUPPLEMENTARY INFORMATION:

Background on Proposed Regulation Changes

As part of NARA's Records Management Initiatives to redesign Federal records management, NARA has determined that Federal agencies should be allowed to transfer unscheduled records to records storage facilities after notification to NARA but in advance of submitting a Standard Form (SF) 115 to schedule the records. The proposed rule does not change the prohibition on destruction of records without an approved SF 115. The existing regulation requires agencies to develop and submit the SF 115 prior to transferring records into a records storage facility. We believe that the proposed change would facilitate agency operations.

This proposed rule is not a significant regulatory action for the purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget (OMB). As required by the Regulatory Flexibility Act, it is hereby certified that this proposed rule will not have a significant impact on a substantial number of small entities because this rule applies to Federal agencies. This proposed rule does not have any federalism implications.

List of Subjects in 36 CFR Part 1228

Archives and records.

For the reasons set forth in the preamble, NARA proposes to amend chapter XII of title 36 of the Code of Federal Regulations as follows:

PART 1228—DISPOSITION OF FEDERAL RECORDS

1. The authority for Part 1228 continues to read as follows:

Authority: 44 U.S.C. chs. 21, 29, and 33.

2. Amend § 1228.152 by revising the entry in the table for item (2)(ii) to read as follows:

§ 1228.152 Under what conditions may Federal records be stored in records storage facilities?

* * * * *

Type of record	Conditions
* * * * *	
(2) * * *	(i) * * *. (ii) Also requires prior notification to NARA (see § 1228.154(b)).

* * * * *

3. Amend § 1228.154 by revising paragraphs (b) and (c)(1)(vii) to read as follows:

§ 1228.154 What requirements must an agency meet when it transfers records to a records storage facility?

* * * * *

(b) To transfer unscheduled records, notify NARA (NWML) in writing prior to the transfer. The notification must identify the records storage facility and include a copy of the information required by paragraph (c) of this section.

* * * * *

(c) * * *

(1) * * *

(vii) Citation to NARA-approved schedule or agency records disposition manual (unscheduled records must cite the date the agency notified NARA or, if available, the date the SF 115 was submitted to NARA);

* * * * *

Dated: September 9, 2004.

John W. Carlin,

Archivist of the United States.

[FR Doc. 04–20929 Filed 9–16–04; 8:45 am]

BILLING CODE 7515–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 312

[SFUND–2004–0001; FRL–7815–2]

RIN 2050–AF04

Standards and Practices for All Appropriate Inquiries

AGENCY: Environmental Protection Agency.

ACTION: Extension of comment period.

SUMMARY: On August 26, 2004, EPA published for public comment a proposed rule that would set federal standards and practices for conducting all appropriate inquiries, as required under Sections 101(35)(B)(ii) and (iii) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The original comment period was to expire on October 25, 2004. Today's action extends the comment period to November 30, 2004.

DATES: Comments on this proposed rule must be submitted on or before November 30, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, through hand delivery, or by courier. Follow the detailed instructions as provided in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: If you have questions, contact Patricia Overmeyer of EPA's Office of Brownfields Cleanup and Redevelopment at (202) 566–2774 or at *overmeyer.patricia@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

This notice extends the public comment period established in the **Federal Register** issued on August 26, 2004 (69 FR 52541). In that notice, EPA requested comment on proposed federal standards and practices for conducting all appropriate inquiries into the previous ownership, uses, and environmental conditions of a property for the purposes of meeting the all appropriate inquiries provisions necessary to qualify for certain landowner liability protections under CERCLA. EPA is extending the comment period, which was set to end on October 25, 2004, to November 30, 2004.

A. How Can I Get Copies of the Proposed Rule and Other Related Information?

1. Docket

EPA has established an official public docket for this action under Docket ID No. SFUND–2004–0001. The official public docket consists of the documents specifically referenced in the proposed rule, any public comments received, and other information related to the proposed rule. 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. Documents in the official public docket are listed in the index list in EPA's electronic public docket and comment system, EDOCKET. Documents may be available either electronically or in hard copy. Electronic documents may be viewed through EDOCKET. Hard copy documents may be viewed at the EPA Docket Center, 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 Federal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OSWER Docket is (202) 566–0276.

2. Electronic Access

You may access the **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr.* Comments on the proposed rule can be submitted through the federal e-rulemaking portal, *http://www.regulations.gov.*

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

Certain types of information will not be placed in EDOCKET. 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. Docket materials that are not available electronically may be viewed at the docket facility identified above in section A.1. EPA intends to work toward 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 copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

B. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier, as explained in the **ADDRESSES** section of this document. 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 late comments. Submit your comments,

identified by Docket ID No. SFUND–2004–0001, by one of the following methods:

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

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

3. E-mail: Comments may be sent by electronic mail to *superfund.docket@epa.gov*, /Attention Docket ID No. SFUND–2004–0001.

4. Mail: Send comments to: OSWER Docket, Environmental Protection Agency, Mailcode: 5305T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. SFUND–2004–0001. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St., NW., Washington, DC 20503.

5. Hand Delivery: Deliver your comments to: EPA Docket Center, EPA West Building, Room B102, 1301 Constitution Ave., NW., Washington, DC, Attention Docket ID No. SFUND–2004–0001. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. SFUND–2004–0001. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the federal regulations.gov Web sites are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102).

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket*. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the EPA Docket Center, EPA West Building, Room B102, 1301 Constitution Avenue, NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OSWER Docket is (202) 566–0276.

C. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be confidential business information (CBI) electronically through EPA's electronic public docket or by e-mail. Send or deliver information identified as CBI only to the following address: CERCLA CBI Document Control Officer, Office of Solid Waste and Emergency Response (5101T), U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. SFUND–2004–0001. 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 identified in the **FOR FURTHER INFORMATION CONTACT** section.

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

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

1. Identify the rulemaking by docket number and other identifying information (*e.g.*, subject heading, **Federal Register** date and page number).

2. Explain your views as clearly as possible.

3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

4. Describe any assumptions and provide any technical information and/or data that you used to support your views.

5. If you estimate potential burden or costs, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

6. Provide specific examples to illustrate your concerns and suggest alternative.

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.

Dated: September 13, 2004.

Linda Garczynski,

Director, Office of Brownfields Cleanup and Redevelopment.

[FR Doc. 04–20972 Filed 9–16–04; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 595

[Docket No. NHTSA–2004–19092]

RIN 2127–AJ07

Retro Fit On-Off Switches for Air Bags; Vehicle Modifications To Accommodate People With Disabilities

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: To facilitate further the modification of vehicles to accommodate individuals with disabilities, the agency is proposing to expand the existing exemption from a statutory provision that prohibits specified types of commercial entities from either removing safety equipment or features installed on motor vehicles pursuant to the Federal motor vehicle safety standards or altering the equipment or features so as to adversely affect their performance. In response to petitions for rulemaking from members of the mobility industry, we are proposing to include provisions from the advanced air bag requirements, the child seat anchorage system requirements, and the upper interior head protection requirements in this exemption.

DATES: You should submit comments early enough to ensure that Docket Management receives them not later than November 16, 2004.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number above by any of the following methods:

- Web Site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: (202) 493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Submission of Comments heading under the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to *http://dms.dot.gov,* including any personal information provided. Please see the information regarding the Privacy Act under the Comments heading.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: The following persons at the National Highway Traffic Safety Administration:

For non-legal issues: Gayle Dalrymple of the NHTSA Office of Crash Avoidance Standards at (202) 366–5559.

For legal issues: Christopher Calamita of the NHTSA Office of Chief Counsel at (202) 366–2992.

You may send mail to both of these officials at the National Highway Traffic and Safety Administration, 400 Seventh St., SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

In order to facilitate the modification of motor vehicles for persons with disabilities, NHTSA provides a limited exception from a statutory provision that prohibits specified types of commercial entities from either removing safety equipment or features installed on motor vehicles pursuant to the Federal motor vehicle safety standards or altering the equipment so as to adversely affect their performance.

Federal law requires vehicle manufacturers to certify that their vehicles comply with all applicable Federal motor vehicle safety standards (49 U.S.C. 30112). A manufacturer, distributor, dealer, or repair business may not then knowingly make inoperative any part or device or element of design installed in or on a motor vehicle that is in compliance with an applicable standard (49 U.S.C. 30122; make inoperative provision). Any action that removes or disables safety equipment or features installed to comply with an applicable standard, or that degrades the performance of such equipment or features qualifies as a "making inoperative" and could lead to the assessment of civil penalties.

This prohibition poses a problem for persons with disabilities. While a vast majority of Americans can drive and ride in a motor vehicle as produced and certified by manufacturers, individuals with disabilities often require special modifications to accommodate their particular needs. Some of these modifications may require removal of federally required safety equipment. In order for individuals with disabilities to drive and ride in a motor vehicle in these instances, federally required safety features must be made inoperative.

Recognizing the specialized transportation needs of individuals with disabilities, NHTSA established an exemption from the make inoperative provision. 49 CFR 595 subpart C, Vehicle Modifications To Accommodate People With Disabilities, permits repair businesses to modify certain types of federally required safety equipment and features under specified circumstances. This exemption from the make inoperative provision was established because the previous policy of considering and responding to requests on a case-by-case basis was not effective or efficient for the vehicle modifiers, the persons requiring the modifications, or the agency. (66 FR 12638; February 27, 2001.)

When establishing the exemption from the make inoperative provision, the agency considered that, as of 1997, we estimated that approximately 383,000 vehicles had some type of adaptive equipment installed in them to accommodate a driver or passenger with a disability.[1] We also recognized that the modification of vehicles to accommodate persons with disabilities would increase in frequency as the population ages and as a greater number of individuals with physical disabilities take advantage of opportunities presented by the Americans With Disabilities Act.[2] In 2002, the Bureau of Transportation Statistics estimated between one million and 2.3 million households in the U.S. owned at least one modified vehicle.[3]

[1] *Estimating the Number of Vehicles Adapted for Use by Persons With Disabilities,* NHTSA Research Note, 1997.

[2] 42 U.S.C. 12101, *et seq.*

[3] 2002 National Transportation Availability and Use Survey, Bureau of Transportation Statistics.

The exemption from the make inoperative provision facilitates modifications by providing guidance to modifiers on the type of modifications that can be made without unduly decreasing the level of safety provided to the vehicle occupants and to others. Included in the exemption are the seat belt and passive restraint requirements for passenger cars, and light trucks, buses and multipurpose passenger vehicles, under Federal Motor Vehicle Safety Standard (FMVSS) No. 208, *Occupant crash protection*[4] and head impact protection requirements for certain target points under FMVSS No. 201, *Occupant protection in interior impacts*.[5]

On February 5, 2002, Bruno Independent Living Aids (Bruno) submitted a petition to expand the specified requirements of FMVSS No. 208 exempted in § 595.7. We granted the petition for rulemaking from Bruno. The agency also received petitions for rulemaking from the Adaptive Driving Alliance (ADA)[6] and the National Mobility Equipment Dealers Association (NMEDA) to include the requirements of FMVSS No. 225, *Child restraint anchorage systems*, in § 595.7, on August 8, 2002, and January 13, 2003, respectively. The agency granted the FMVSS No. 225/part 595 petitions from the ADA and NMEDA. Later, the ADA and the NMEDA petitioned the agency to expand the specified requirements of FMVSS No. 201 exempted in § 595.7. Again, the agency granted the petitions for rulemaking from ADA and NMEDA.

II. Proposed Exemptions

To facilitate the modification of vehicles for persons with disabilities, the agency is proposing to amend the exemption from the make inoperative provision under 49 CFR part 595, by adding the FMVSS No. 208 advanced air bag requirements, a limited exemption for the FMVSS No. 225 LATCH requirements, and a limited exemption for the FMVSS No. 201 upper interior head protection requirements.

A. Advanced Air Bag Requirements

After the exemption from the make inoperative provision was published, the agency published a final rule that added requirements to FMVSS No. 208 to reduce the risk of serious air bag-induced injuries, especially to small women and young children, and to improve the safety for all occupants by means that include advanced air bag technology. (65 FR 30680; May 12, 2002; Advanced Air Bag Rule.) The advanced air bag technology requirements are being phased in beginning September 1, 2003, with full compliance required September 1, 2006. Motor vehicles subject to the phase-in will be required to minimize air bag risks by automatically turning off the air bag in the presence of an occupant who is a young child or deploy the air bag in a manner less likely to cause serious or fatal injury to an out of position occupant.[7] Among the technologies used to comply with these requirements are a variety of seat position, occupant weight, and pattern sensors incorporated into the seat structure.

In its petition for rulemaking, Bruno requested that the advanced air bag requirements be included with the other FMVSS No. 208 requirements excluded from the make inoperative provision. Bruno stated that the installation of one of its mobility aid products, the Turning Automotive Seat (TAS)[8] could be accomplished without making a conventional air bag inoperative, but would require deactivation of advanced air bag features. Bruno stated that maintaining the operation of seat position and occupant sensing devices used to comply with the advanced air bag requirements for numerous makes and models of motor vehicles is beyond its capability.

The August 8, 2002 ADA petition provided additional support for Bruno's request. The ADA argued that it is no more feasible for modifiers to comply with the advanced air bag requirements than the "*existing* air bag requirements," which are currently exempted. Petitioners argued that maintaining compliance with the advanced air bag requirements would require modifiers to reinstall, modify, or design complex components of the air bag system. Petitioners stated that this was beyond the capabilities of most vehicle modifiers and would severely limit the opportunity for an individual needing to replace the driver's seat or front passenger seat in order to accommodate a disability to obtain such an accommodation.

Petitioners further argued that just as the current FMVSS No. 208 sections exempted under part 595 are incompatible with the one-of-a kind, custom fitted, nature of vehicle modifications designed to accommodate a specific individual's disability, so are the advanced air bag requirements. Petitioners explained that often when a vehicle is modified to accommodate a person with a disability, the nature of the work requires removal of the air bag or some part of the crash sensing system connected to the air bag. As with the Bruno TAS, modifications may require removal or disconnection of the seat position, occupant weight, and pattern sensors that are part of the seat structure. Since these modifications are unique to each vehicle and individual, petitioners stated that modifiers do not have the ability (engineering or financial) to develop alternative air bags or crash sensing systems.

To address this issue, we are proposing to add the following sections of FMVSS No. 208 to the make inoperative exemptions established at 49 CFR 595.7(c)(14):

S15, *Rigid barrier test requirements using 5th percentile adult female dummies;*

S17, *Offset frontal deformable barrier requirements using 5th percentile adult female test dummies;*

S19, *Requirements to provide protection for infants in rear facing and convertible child restraints and car beds;*

S21, *Requirements using 3-year-old child dummies;*

S23, *Requirements using 6-year-old child dummies;*

S25, *Requirements using an out-of-position 5th percentile adult female at the driver position.*

In most instances, a vehicle modification requiring an exemption for the advanced air bag requirements would also rely on the current exemption from the occupant crash protection requirements of S5, *Occupant crash protection requirements for the 50th percentile adult male dummy*, of FMVSS No. 208. We expect that modifications requiring an exemption from the advanced air bag requirements in conjunction with the exemption from S5, as well as those requiring only an exemption from the advanced air bag regulations, would affect a very small number of motor vehicles each year in comparison to the overall number of motor vehicles in the country. The agency has tentatively concluded that these modifications would be essential to enable individuals with a disability to use a motor vehicle. Additionally, seating positions modified under the proposed exemption would

[4] Under 49 CFR 595.7(c)(14).

[5] 49 CFR 595.7(c)(7).

[6] The ADA is a trade association representing dealers and manufacturers that modify and sell vehicles adapted for people with disabilities.

[7] A majority of vehicle manufacturers are required to certify that a percentage of their fleet complies with these requirements according to the following phase-in schedule: September 1, 2003 to August 31, 2004—20 percent; September 1, 2004 to August 31, 2005—65 percent; September 1, 2005 to August 31, 2006—100 percent.

[8] Bruno described the TAS as seat replacement that is designed to pivot from the forward-facing position to the side-facing entry position, extend outward and lower the occupant to a suitable transfer height.

accommodate specific, individual needs making it less likely that these seating positions would be used by other occupants who would benefit either from the air bag itself, or from those features designed to minimize air bag risk.

B. LATCH Requirements

Prior to establishing the exemption from the make inoperative provision, the agency established FMVSS No. 225, which requires motor vehicles to be equipped with a lower anchorage and tether anchorage (LATCH) system designed exclusively to secure child restraint systems. (64 FR 10786; March 5, 1999; LATCH Rule) The lower anchorage consists of a straight rod, or bar that is attached to the vehicle in the location of the intersection of the seat cushion and seat back.

FMVSS No. 225 requires vehicles with three or more forward-facing rear designated seating positions, manufactured on or after September 1, 2002, to be equipped with (1) a LATCH system at not fewer than two forward-facing rear designated seating positions, with at least one system installed at a forward facing seating position in the second row in each vehicle that has three or more rows, and (2) a tether anchorage at a third forward-facing rear designated seating position.[9] Under S5(b) of FMVSS No. 225 a vehicle may be equipped with a built-in child restraint system conforming to the requirements of FMVSS No. 213, *Child restraint systems*, instead of one of the required tether anchorages or child restraint anchorage systems.

These LATCH requirements provide a more uniform method of securing a child restraint system and reduce the likelihood that a child restraint will be installed incorrectly.

In its petition for rulemaking, the ADA stated that compliance with LATCH requirements, like compliance with the advanced air bag requirements, would be impractical, and possibly not feasible for businesses modifying motor vehicles to accommodate disabled drivers and passengers. The ADA stated that such compliance would "likely serve as a prohibition against the use of motor vehicles for people with disabilities," as well as "significantly impact small businesses" and "unreasonably decrease consumer choice." The ADA explained that:

> When, as part of modifying a vehicle for a disabled individual, an entire row of seats needs to be modified or removed (*e.g.* to allow wheelchair egress and ingress), then Part 595 must permit removal of the tethers and child restraint anchorages at those modified or removed locations. Otherwise, vehicle modifiers will be required to reengineer child restraint anchorages for installation at locations not contemplated by [the vehicle manufacturers].

The ADA suggested amending 49 CFR § 595.7 to include a limited exception to FMVSS No. 225 as follows:

> (c)(16) 49 CFR 571.225 for the designated seating position modified or removed, in any cases in which the restraint system and/or seat at that position must be modified or removed to accommodate a person with a disability, provided that at least one child restraint anchorage system under 571.225 or built-in child restraint system under 571.213 is present in the vehicle.

The agency is proposing a limited exemption from the make inoperative provision for the vehicle LATCH requirements under FMVSS No. 225. The necessity for this exemption arises when a modifier makes changes to a vehicle, usually a van (standard size or minivan), to accommodate a wheelchair user. As explained by the ADA, typically one row of seats must be removed to allow a wheelchair user to enter the vehicle through either the side or rear door (fitted with either a ramp or a lift). The wheelchair is then either restrained in the space made vacant by the removed seats, maneuvered to permit a transfer to the driver's seat, or maneuvered into the driver's station to allow the user to drive from the wheelchair. In any event, at least one row of seats (typically two or three designated seating positions) must be removed.

Modifying a vehicle to accommodate a wheel chair could result in seating configurations that would take the vehicle out of compliance with FMVSS No. 225. If a vehicle with three rows of seating were to have LATCH systems only at the second row and the third row consisted of three designated seating positions, removal of that second row to permit wheelchair access to the driver's seat would remove the vehicle from compliance with FMVSS No. 225. Beyond this example, there are a myriad of van seating arrangements, desired wheelchair restraint positions, and vehicle entry/exit applications that could remove a vehicle from compliance with FMVSS No. 225.

The agency cannot anticipate all of these potential combinations and provide modifiers specific instructions for each situation. Therefore, we are proposing an amendment that would establish flexibility in the modification configurations and still allow a child seat to be restrained safely. NHTSA proposes to that an exemption be added to 49 CFR 595.7, to read as follows:

> (c)(16) 49 CFR 571.225 in any case in which an existing child restraint anchorage system, or built-in child restraint system relied upon for compliance with 571.225 must be removed to accommodate a person with a disability, provided the vehicle contains at least one tether anchorage which complies with 49 CFR 571.225 S6, S7 and S8 in one of the rear passenger designated seating positions. If no rear designated seating position exists after the vehicle modification, a tether anchorage complying with the requirements described above must be located at a front passenger seat. Any tether anchorage attached to a seat that is relocated shall continue to comply with the requirements of 49 CFR 571.225 S6, S7 and S8.

The proposed exemption is less demanding than that suggested by the ADA. Under the petitioner's language, if a vehicle complies with FMVSS No. 225 by having two LATCH systems and a tether anchorage in the second row of seating and no LATCH anchorages in the third row of seating, any modification resulting in the removal of the second row of seating would require the modifier to install complete LATCH systems in the third row of seating. Modifiers may not have the engineering and fabrication capabilities to install the lower anchorages in a seating position that was not originally equipped with the LATCH system. Under the agency's proposal, the modifier would only be required to install a tether anchorage. A child seat could still be installed in a modified vehicle through the use of the vehicle's seat belt system and still have the advantage of the tether.

Modifiers should note that if agency's proposal were made final, the tether anchorage(s) attached to any relocated seat would be required to remain compliant with 49 CFR 571.225 S6, S7 and S8 upon relocation. We tentatively conclude that this requirement to be within the capabilities of modifiers.

49 CFR 571.225 S4.4(c) requires that vehicles, manufactured on or after September 1, 2002, that do not have any forward-facing rear designated seating positions must have a compliant tether anchorage at each front passenger designated seating position. If a vehicle were to be modified such that only front designated seating positions remained, we expect that modifiers would have the capabilities to install conforming tether anchorages at the front forward-facing passenger designated seating positions (if not already provided by the original vehicle manufacturer).

The agency is seeking comment on whether or not modifiers should be required to add tether anchorages to

[9] Alternatively, until September 1, 2004, multipurpose passenger vehicles that have five or fewer forward-facing designated seating positions are not required to have a tether anchorage at a third seating position.

designated seating positions that were not so equipped by the original vehicle manufacturer.

C. Upper Interior Head Protection Requirements

On August 18, 1995, the agency issued a final rule amending FMVSS No. 201 to improve head protection in impacts with upper interior components of certain vehicles (60 FR 43031). The final rule, which mandated compliance with the new requirements, significantly expanded the scope of FMVSS No. 201. Previously, the standard applied to the instrument panel, seat backs, interior compartment doors, arm rests and sun visors only. To determine compliance with the upper interior impact requirements, the final rule added procedures for a new in-vehicle component test in which a Free Motion Headform (FMH) is fired at certain target locations on the upper interior of a vehicle at an impact speed of up to and including 24 km/h (15 mph). The resultant data must not exceed a Head Injury Criterion score of 1000.

The standard, as further amended on April 8, 1997 (67 FR 16718), provided manufacturers with four alternate phase-in schedules for complying with the upper interior impact requirements. Twice the agency extended the effective date for manufacturers of vehicles built in two or more stages, which now must comply with the expanded FMVSS No. 201 requirements on and after September 1, 2006 (68 FR 51706; August 28, 2003).

In the rulemaking that established the make inoperative exemption, we recognized that compliance with FMVSS No. 201 at some target points could be problematic for certain modifications, specifically the installation of a platform lift. Currently, part 595 includes an exemption to FMVSS No. 201 with respect to:

(i) Targets located on the right siderail, the right B-pillar and the first right side "other" pillar adjacent to the stowed platform of a lift or ramp that stows vertically, inside the vehicle.

(ii) Targets located on the left siderail, the left B-pillar and the first left side "other" pillar adjacent to the stowed platform of a lift or ramp that stows vertically, inside the vehicle.

(iii) Targets located on the rear header and the rearmost pillars adjacent to the stowed platform of a lift or ramp that stows vertically, inside the vehicle (49 CFR 595.7(c)(7)).

The ADA and NMEDA each submitted a separate petition for rulemaking requesting that NHTSA expand the exemption of FMVSS No. 201 to include the provisions pertaining to upper interior head protection. According to the ADA petition, the addition of handles and vertical stanchion bars,[10] as well as the raising or lowering of vehicle roofs or floors, creates a situation in which compliance with the upper interior head impact protection requirements would be "infeasible." The ADA asserted that such modifications are often unique to an individual customer's needs, size, and disability, and create the potential for many different configurations, each of which would have to be tested under FMVSS No. 201. The ADA requested that 49 CFR 595.7 be amended to include exemptions for requirements related to: (1) Targets located on any hand grip or vertical stanchion bar; and (2) all of S6 of 571.201 in any case in which accommodating a person's disability necessitates raising the roof or door, or lowering the floor of the vehicle.

The agency is proposing to amend the exemption from the make inoperative provision by adding a limited exemption from the upper interior head protection requirements of FMVSS No. 201. This amendment would facilitate the raising of a vehicle roof and the lowering of a vehicle floor in order to accommodate individuals with a disability. Also, in instances where a vehicle is not equipped with a grab bar, or the originally equipped grab bar is insufficient to accommodate an individual with a disability, the proposal would facilitate the installing of handles or stanchion bars.

The agency has already recognized the potential impact of the upper interior head protection requirements on manufacturers of vehicles manufactured in two or more stages and has provided additional lead time for compliance. The potential impacts of the upper interior head protection requirements on vehicle modifiers are analogous to those on manufacturers of vehicles manufactured in two or more stages.

We are making this proposal for the reasons stated by the petitioner.

III. Part 595 Title

The agency is also proposing to amend the title of part 595 to read "MAKE INOPERATIVE PROVISIONS." This amendment would reflect the fact that 49 CFR part 595 currently covers more than the retrofit of motor vehicles with on-off switches for air bags.

[10] Handles and stanchion bars are added to vehicles to aid a disabled individual in entering or exiting a vehicle, or transferring from a wheel chair to the driver's seat.

IV. Proposed Effective Date

This proposal would remove a restriction on the modification of vehicles for persons with disabilities. To further the interest of providing vehicle modifiers the flexibility required to accommodate these individuals, we are proposing that, if adopted, this amendment would become effective 60 days after the publication of the final rule. The agency requests comments on the appropriateness of the effective date.

V. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this proposed rule under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under E.O. 12866, "Regulatory Planning and Review." This action has been determined to be "nonsignificant" under the Department of Transportation's regulatory policies and procedures. NHTSA has determined that the impacts of this proposal would be so minimal that a full regulatory evaluation is not warranted.

The agency believes that the expanded exemptions might not have any adverse safety effects on individuals with disabilities. The proposed exemptions would allow an individual with a disability to operate or ride in a motor vehicle, while maintaining the benefit of all of the compatible safety standards. Absent the modifications that would be permitted by this rulemaking, individuals with disabilities might not be able to use the vehicles in question.

Modifying a vehicle to allow disabled individuals to operate or ride in a motor vehicle may result in some loss of safety for any individuals without disabilities who may operate or ride in those motor vehicles. However, any loss of safety would be minimal. We do not expect many individuals without a disability to use seating positions specially modified for individuals with a disability. Further, as noted above, the number of affected standards would remain small and the number of vehicles that would be modified would be relatively small.

B. Regulatory Flexibility Act

We have considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) Most motor vehicle modifiers are considered small entities. I hereby certify that this proposal would not have a significant economic impact on a substantial number of small entities. As explained above, this action would add several occupant crash protection

requirements, vehicle LATCH requirements, and upper interior head protection requirements to the current list of requirements exempted from the Make Inoperative Provision. While most modifiers are considered small entities, the proposal would not impose any mandatory significant impact on them since the proposal would permit greater flexibility when modifying a vehicle to accommodate an individual with a disability.

C. Paperwork Reduction Act

The collection of information burden under the labeling and recordkeeping requirements of 49 CFR 595.7, OMB clearance numbers 2127–0512 and 2127–0635, respectively, would not increase under the proposed rule. The agency anticipates that any vehicle modification using one of the proposed exemptions would be made in conjunction with one or more modifications based on the current exemptions. A vehicle modifier using one of the proposed exemptions would only be required to list the proposed exemption along with the other exemptions on the required disclosure to the consumer. The vehicle labeling and record keeping requirements do not vary on the number of exemptions per vehicle, only on the total number of vehicles modified.

D. National Environmental Policy Act

NHTSA has analyzed this amendment for the purposes of the National Environmental Policy Act and determined that it would not have any significant impact on the quality of the human environment.

E. Executive Order 13132 (Federalism)

Executive Order 13132 requires NHTSA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." The phrase "policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, the agency may not issue a regulation with federalism implications, that imposes substantial direct costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or the agency consults with State and local officials early in the process of developing the proposed regulation. NHTSA may also not issue a regulation with federalism implications and that preempts State law unless the agency consults with State and local officials early in the process of developing the proposed regulation.

The agency has analyzed this rulemaking action in accordance with the principles and criteria contained in Executive Order 13132 and has determined that it would not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The proposed rule would have no substantial effects on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials.

F. Executive Order 12778 (Civil Justice Reform)

This proposed rule would not have any retroactive effect. The proposed rule would not repeal any existing federal law or regulation. Additionally, the proposed rule would not preempt any causes of action in state or Federal court. If made final, the proposed rule would not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. 104–113, section 12(d) (15 U.S.C. 272) directs us to use voluntary consensus standards in regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers (SAE). The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

This proposed rule is procedural in nature and if adopted would not establish any standards, consensus-based or otherwise.

H. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year (adjusted for inflation with base year of 1995). Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires NHTSA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows NHTSA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes with the final rule an explanation why that alternative was not adopted.

This proposed rule would not impose any unfunded mandates under the Unfunded Mandates Reform Act of 1995. This proposed rule would not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector. Thus, this proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

I. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

VI. Submission of Comments

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are filed correctly in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21) NHTSA established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your

comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES.** You may also submit your comments to the docket electronically by logging onto the Docket Management System (DMS) Web site at *http://dms.dot.gov.* Click on "Help & Information" or "Help/Info" to obtain instructions for filing your comments electronically. Please note, if you are submitting comments electronically as a PDF (Adobe) file, we ask that the documents submitted be scanned using Optical Character Recognition (OCR) process, thus allowing the agency to search and copy certain portions of your submissions.[11]

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT.** In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES.** When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in NHTSA's confidential business information regulation (49 CFR part 512).

Will the Agency Consider Late Comments?

NHTSA will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES.** To the extent possible, the agency will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for the agency to consider it in developing a final rule (assuming that one is issued), the agency will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESSES.** The hours of the Docket are indicated above in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

1. Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov*).

2. On that page, click on "search."

3. On the next page (*http://dms.dot.gov/search*), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were "NHTSA–1998–1234," you would type "1234." After typing the docket number, click on "search."

4. On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments. Although the comments are imaged documents, instead of word processing documents, the "pdf" versions of the documents are word searchable.

Please note that even after the comment closing date, NHTSA will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, the agency recommends that you periodically check the Docket for new material.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

List of Subjects in 49 CFR Part 595

Motor vehicle safety, Motor vehicles.

1. The title to part 595 would be revised to read as follows:

PART 595—MAKE INOPERATIVE EXEMPTIONS

2. The authority citation for Part 595 would continue to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, 30122 and 30166; delegation of authority at 49 CFR 1.50.

3. Section 595.7 would be amended by adding paragraphs (c)(7)(iv) and (v), revising paragraph (c)(14), and adding paragraph (c)(16) to read as follows:

§ 595.7 Requirements for vehicle modifications to accommodate people with disabilities.

* * * * *

(c) * * *

(7) * * *

(iv) Targets located on any hand grip or vertical stanchion bar.

(v) All of S6 of 571.201 in any case in which the disability necessitates raising the roof or door, or lowering the floor of the vehicle.

* * * * *

(14) S4.1.5(a)(1), S4.1.5.1(a)(3), S4.2.6.2, S5, S7.1, S7.2, S7.4, S15, S16, S17, S18, S19, S20, S21, S22, S23, S24, S25, S26 and S27 of 49 CFR 571.208 for the designated seating position modified, provided Type 2 or Type 2A seat belts meeting the requirements of 49 CFR 571.209 and 571.210 are installed at that position.

* * * * *

(16) 49 CFR 571.225 in any case in which an existing child restraint anchorage system, or built-in child restraint system relied upon for compliance with 571.225 must be removed to accommodate a person with a disability, provided the vehicle contains at least one tether anchorage which complies with 49 CFR 571.225 S6, S7 and S8 in one of the rear passenger designated seating positions. If no rear designated seating position exists after the vehicle modification, a tether anchorage complying with the requirements described above must be located at a front passenger seat. Any tether anchorage attached to a seat that is relocated shall continue to comply with the requirements of 49 CFR 571.225 S6, S7 and S8.

* * * * *

Issued on: September 13, 2004.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 04–20922 Filed 9–16–04; 8:45 am]

BILLING CODE 4910–59–P

[11] Optical character recognition (OCR) is the process of converting an image of text, such as a scanned paper document or electronic fax file, into computer-editable text.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 040910261–4261–01; I.D. 072704A]

RIN 0648–AS08

Atlantic Highly Migratory Species; Atlantic Commercial Shark Management Measures

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

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would adjust the regional and trimester quotas for Large Coastal Sharks (LCS) and Small Coastal Sharks (SCS) based on updated landings information. This proposed rule includes a framework mechanism for the annual adjustment of quotas to account for future overharvests and season closures, for transferring under- and overharvests during the transition from semi-annual to trimester seasons, and for notifying participants of season openings and closures. In addition, this rule proposes the opening and closing dates for the LCS fishery based on the proposed changes to the regional and trimester quotas. This action is necessary to ensure that the landings quotas in the Atlantic commercial shark fishery represent the latest landings data, and accurately reflect historic and current fishing effort.

DATES: Written comments will be accepted until 5 p.m. on October 18, 2004.

NMFS will hold three public hearings to receive comments from fishery participants and other members of the public regarding the proposed shark regulations. The hearing dates are:

1. Tuesday, September 28, 2004, 7-9 p.m., Manteo, NC.
2. Wednesday, September 29, 2004, 4-6 p.m., Cocoa Beach, FL.
3. Thursday, September 30, 2004, 7-9 p.m., Madeira Beach, FL.

ADDRESSES: The hearing locations are:

1. Manteo - North Carolina Aquarium, Roanoke Island, Airport Road, Manteo, NC 27954.
2. Cocoa Beach - Cocoa Beach Public Library, 550 North Brevard Avenue, Cocoa Beach, FL 32931.
3. Madeira Beach - City of Madeira Beach, 300 Municipal Dr., Madeira Beach, FL 33708.

Written comments on the proposed rule or the Draft Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (Draft EA/RIR/IRFA) may be submitted to Christopher Rogers, Chief, Highly Migratory Species Management Division:

- E-mail: 072704A@noaa.gov.
- Mail: 1315 East-West Highway, Silver Spring, MD 20910. Please mark the outside of the envelope "Comments on Proposed Rule for LCS and SCS Quota Adjustments."
- Fax: 301–713–1917.
- Federal e-Rulemaking portal: *http://www.regulations.gov*. Include in the subject line the following identifier: I.D. 072704A.

Copies of the Draft EA/RIR/FRFA or Amendment 1 to the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks or its implementing regulations, may be obtained by using the above mailing address, and are also available on the internet at *http://www.nmfs.noaa.gov/sfa/hms*.

FOR FURTHER INFORMATION CONTACT: Karyl Brewster-Geisz, Chris Rilling, or Mike Clark by phone: 301–713–2347 or by fax: 301–713–1917.

SUPPLEMENTARY INFORMATION: The Atlantic shark fishery is managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act. The Fisheries Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP) and Amendment 1 to the HMS FMP are implemented by regulations at 50 CFR part 635.

Background

On December 24, 2003, NMFS published a final rule (68 FR 74746) for Amendment 1 to the HMS FMP that established, among other things, the 2004 annual landings quota for LCS at 1,017 metric tons (mt) dressed weight (dw), and the annual landings quota for SCS at 454 mt dw. The final rule also established regional LCS and SCS quotas for the commercial shark fishery in the Gulf of Mexico (Texas to the West coast of Florida), South Atlantic (East coast of Florida to North Carolina and the Caribbean), and North Atlantic (Virginia to Maine). The quota for LCS was split among the three regions as follows: 42 percent to the Gulf of Mexico, 54 percent to the South Atlantic, and 4 percent to the North Atlantic. The quota for SCS was split among the three regions as follows: 4 percent to the Gulf of Mexico, 83 percent to the South Atlantic, and 13 percent to the North Atlantic.

Recent updates to the regional landings data and new data collected since the December 2003 (68 FR 74746) final rule indicate that the regional quotas need to be adjusted. This action considers alternatives for adjusting the regional quotas.

In addition, beginning in January 2005, each regional quota will be divided among three trimester seasons rather than two semi-annual seasons. The first trimester season will operate between January 1 and April 30, the second trimester season will operate between May 1 and August 31, and the third trimester season will operate between September 1 and December 31. This action and the associated EA consider alternatives for dividing each region's quota among the three seasons, as well as accounting for over- or underharvests in the transition from semi-annual to trimester seasons.

Regional Quota Distribution

The regional quotas, along with trimester seasons, were implemented in Amendment 1 to the HMS FMP to ensure that historical catches were maintained, account for regional differences in fishing effort, and provide fishery managers with the flexibility to reduce mortality of juvenile and reproductive female sharks. For example, the quotas for the second trimester could be reduced and the fishing season shortened to minimize impacts during part of the primary shark pupping season.

The current regional quotas were based upon average historical landings (1999–2001) from the General Canvass and Quota Monitoring System (QMS) databases. Average landings were calculated in order to minimize the uncertainty associated with inter-annual fluctuations in regional landings as well as differences in reported landings between the two databases.

As of July 30, 2004, the overall semi-annual quota for LCS, but not SCS, was exceeded. Reported landings of LCS were at 107 percent of the LCS semi-annual quota, and SCS landings were at 31 percent of the SCS semi-annual quota for the three regions combined. The Gulf of Mexico experienced an overharvest of 21 and 22 percent of its LCS and SCS regional quotas, respectively, during the first semi-annual season of 2004, and the South Atlantic experienced an overharvest of 5 percent of its LCS quota.

For this proposed rule, NMFS examined commercial LCS and SCS landings data from 2002–2004 to determine the cause and nature of the increased harvests in the Gulf of Mexico. Preliminary information indicates that there was an increase in fishing effort in the Gulf of Mexico in

2002 and 2003 coupled with a reduction in effort in the North Atlantic region. Based on updated landings data, NMFS considered alternatives that would adjust the percentages of the overall LCS and SCS quotas among the regions to more accurately reflect current fishing effort.

The preferred alternative, A3, would establish new regional quotas based on updated landings information and include a framework for annual adjustment of regional quotas, as necessary. NMFS proposes to adjust the regional quota split for LCS in the Gulf of Mexico, South Atlantic, and North Atlantic to 49, 38, and 13 percent of the overall LCS landings quota for each of the regions, respectively. Comparing these revised quotas to those published in Amendment 1, this represents an increase in the regional LCS quota for the Gulf of Mexico (+7 percent) and North Atlantic (+9 percent), and a decrease in the regional LCS quota for the South Atlantic (−16 percent).

The regional SCS quotas for the Gulf of Mexico, South Atlantic, and North Atlantic would be adjusted to 10, 87, and 3 percent of the overall SCS landings quota for each of the three regions, respectively. These quotas represent an increase in the regional quota for the Gulf of Mexico (+6 percent) and South Atlantic (+4 percent), and a decrease in the SCS quota for the North Atlantic (−10 percent).

In proposing new regional quotas, NMFS examined updated landings from the General Canvass, QMS, Northeast Commercial Fisheries Database System (CFDBS), and the Coastal Fisheries Logbook databases. The updated landings include two additional years of data (2002 and 2003) that were not available during preparation of Amendment 1 to the HMS FMP. The four databases were used to collect all relevant data regarding shark landings. The General Canvass data are collected directly from all seafood dealers in the Southeast and Gulf of Mexico, the QMS data are collected from Federally-permitted shark dealers in the Southeast and Gulf of Mexico, the CFDBS data are collected from seafood dealers in the Northeast, and the Coastal Fisheries logbook data are submitted by commercial fishermen with any of the following permits: Gulf of Mexico Reef Fish, South Atlantic Snapper-Grouper, King and Spanish Mackerel, or Shark. In addition, NMFS re-reviewed data from 1999–2001 and made some corrections in how the data were compiled.

Overall economic impacts of adjusting the regional quotas are expected to be minimal. Economic data from LCS revenues generated in 2003 indicate that the proposed adjustments to the regional quotas would result in an increase in gross revenues to the Gulf of Mexico (+1 percent; $18,036) and North Atlantic (+6 percent; $19,612) regions, and a decrease in gross revenues to the South Atlantic (−6 percent; $130,169) region. Economic data for the SCS fishery indicate that gross revenues for the Gulf of Mexico would decrease (−57 percent; $14,885) while the gross revenues would increase for the South Atlantic (+54 percent $27,443) and the North Atlantic (+3 percent; revenues unknown because of lack of landings in 2003). The percentage change in gross revenues for SCS is larger than for LCS in some of the regions, however, the total dollar value for the SCS fishery is minimal compared to the total gross revenues generated by the LCS fishery (approximately $93,734 for SCS vs. approximately $4,402,136 in 2002 for LCS).

No ecological impacts are expected as a result of adjusting the regional quotas because the overall LCS and SCS quotas are not being changed, only the proportion of the quota being assigned to particular regions. For example, even though the quota for LCS in the Gulf of Mexico is being increased by approximately 7 percent, the LCS quota for the South Atlantic is proposed to be decreased by 16 percent, based upon updated landings data. As a result, there may be increased effort in the Gulf of Mexico, but a corresponding decline in effort in the South Atlantic.

The overall quota for LCS was reduced in Amendment 1 by approximately 35 percent from the 2003 quota of 1,714 mt dw, and 14 percent from 1997–2002 quotas of 1,285 mt dw. Since the overall quota will remain the same in this action as the one established in Amendment 1 (1,017 mt dw), the regional quotas are still well below the historic average for any of the regions. The reduction in overall quotas, as well as regional quotas, resulted in a decline in overall and regional fishing effort for the shark bottom longline fishery beginning in 2004, and will likely continue in 2005. Thus, even though NMFS proposes to increase the regional quota for the Gulf of Mexico and North Atlantic when compared to Amendment 1, these quotas are still much lower than in years 1997–2003. Furthermore, these quotas are based upon effort from previous years 1999–2003, and are believed to be a more accurate reflection of current and historic fishing effort in all regions. NMFS does not anticipate that changes to regional quotas will result in activation of latent fishing effort, because even though the percentage given to a particular region may increase, the overall LCS and SCS quotas are not being changed.

In addition to revising the regional quotas, NMFS is also proposing a framework mechanism for the annual adjustment of quotas among regions to minimize unharvested quotas using the following guidelines: if a region has an overharvest of 10 percent or greater of its regional quota, and another region or regions has an underharvest of more than 10 percent of their respective quotas, then NMFS may transfer up to 10 percent of the quota from the region or regions with the underharvest(s) to the region with the overharvest. Any overharvest above that 10 percent would be counted against that region's quota for the following year. For example, if a region had an overharvest of 15 percent, 10 percent may be transferred from another region or regions, provided they had an underharvest greater than 10 percent each, and 5 percent would be counted against the overharvesting region's quota for the following year. If the underharvest is less than 10 percent of the quota for any other region or regions, NMFS would not transfer any quota, even if another region or regions had an overharvest in excess of 10 percent. NMFS would transfer no more than 10 percent of a region's quota in any given year. If the overharvest is less than 10 percent, NMFS would not transfer any quota, but rather, would subtract any overharvest from that region's quota for the same season of the following year. Other factors NMFS would consider before making a transfer include the likelihood of protected species interactions and bycatch rates within a region, historic landings for the region, total landings reported for all regions at the end of their respective seasons, the number of storms during the open season, the size of a region's quotas, the amount of available quota remaining, the projected ability of the vessels fishing in the region from which the quota is proposed to be removed to harvest the remaining quota, and the projected ability of vessels fishing in the region receiving the quota to harvest the additional quota. NMFS would file with the Office of the **Federal Register** for publication, consistent with the Administrative Procedure Act, any annual quota adjustments. These quota adjustments would not take place until the first trimester season of 2006. Any quota transferred to a region would be divided among the three trimester seasons based upon historical landings for each season, as described below under trimester quota alternatives.

NMFS considered several other alternatives for regional quota distribution and adjustment, including: (A1) maintaining the current regional quota distribution (status quo); (A2) establishing new quotas based on updated landings information without an annual framework adjustment mechanism; (A4) establishing a single quota for LCS and SCS; (A5) maintaining regional quotas for LCS but a single quota for SCS; and (A6) combining the quotas for the Gulf of Mexico and South Atlantic regions. NMFS selected alternative A3 as its preferred alternative because it would revise quotas using updated landings information and provide managers with the ability to adjust future quotas based on a number of factors, including, but not limited to: the current fishing year's landings, the amount of available quota remaining, the size of a region's quota, and the ability of vessels in all regions to harvest their remaining quota. Alternative A3 would also provide NMFS with the ability to update regional quotas to reflect changes in fishing effort and landings on an annual basis.

The other options considered may have negative economic impacts on participants if there is not flexibility to address over- or underharvests, if any, of regional quotas. One of the alternatives would establish a single quota for LCS and SCS and eliminate the existing regional quotas. While a single quota system would simplify management and monitoring of the fishery, regional quotas provide a better means of ensuring that historical catches are maintained, accounting for regional differences in fishing effort, and providing flexibility to reduce mortality on juveniles and reproductive female sharks.

Trimester Quota Alternatives

NMFS also considered alternatives for dividing regional quotas among the trimester seasons, which are scheduled to take effect in January 2005. Amendment 1 to the HMS FMP implemented trimester seasons to provide flexibility to adjust the shark seasons to account for differences in the timing of shark pupping among regions, and to improve the market by allowing for the fishing seasons to be spread throughout the year. In the December 2003 final rule (69 FR 74746), implementing Amendment 1 to the HMS FMP, NMFS anticipated splitting the quotas equally among trimester seasons. After further analysis, NMFS had determined that this could lead to unharvested quotas (e.g., LCS quota for the first 2004 semi-annual season in the North Atlantic) and corresponding overharvested quotas in other seasons. Thus, NMFS considered three alternatives for dividing trimester season quotas, including: (B1) equal quotas for each trimester season regardless of historical landings (i.e., 33 percent of quota/trimester season); (B2) dividing quotas in proportion to the historical landings during each trimester season; and (B3) dividing quotas in proportion to the historical landings for each trimester season and reviewing landings annually to make adjustments as necessary.

In order to adapt to the change from semi-annual to trimester seasons beginning in 2005, NMFS is proposing that quotas be divided among the three seasons based on updated historical landings (1999–2003) within each region, and that trimester season quotas be reviewed and updated as necessary (alternative B3). NMFS would make adjustments to trimester season quotas based on a number of factors including, but not limited to: the historic landings for each trimester season in a particular region, total landings reported for all seasons at the end of their respective seasons, the number of storms during each open season, the size of each seasonal quota, the amount of available quota remaining, and the projected ability of vessels fishing in the season receiving additional quota to harvest the additional quota.

Landings data across all regions indicate that there are temporal variations in catches with highest catches currently occurring in January and July. Fewer sharks have been caught during the third trimester season because the fishery has historically been closed during that period. NMFS anticipates that the change from semi-annual to trimester seasons in 2005 will result in additional landings during the third trimester over time and that it may take time for effort and landings to stabilize. Maintaining an even distribution of quotas across trimester seasons (alternative B1) could result in consistent over- and underharvests as fishing effort has not historically been evenly distributed throughout the year due to shark migration patterns and geographic location of fishermen. Alternative B2 would divide quotas in proportion to historic landings during each trimester season, but would not provide a mechanism for making necessary adjustments as would preferred alternative B3.

Transition from Semi-Annual to Trimester Seasons

NMFS also considered alternatives to account for any over- or underharvests during the transition from two semi-annual seasons in 2004 to three trimester seasons in 2005. The first semi-annual season (January-June) partially overlaps with the first two trimesters (January-April and May-August) and the second semi-annual season (July-December) partially overlaps with the second and third trimester seasons (May-August and September-December), respectively. The alternatives considered would only apply to the transition year: 2005. Any over- or underharvest in subsequent years would be applied to the same trimester season of the following year, in the region in which it occurred, per the current regulations at 50 CFR 635.27(b)(1)(vi).

Alternatives considered for the transition include: (C1) dividing any over- or underharvests from the 2004 semi-annual seasons equally among the 2005 trimester seasons; (C2) carrying over any over- or underharvest from the first semi-annual season to the first trimester season, and any over- or underharvest from the second semi-annual season to the second trimester season; (C3) transferring over- or underharvests from the first semi-annual season to the first trimester season and dividing any over- or underharvest from the second semi-annual season equally between the second and third trimester seasons; and (C4) dividing over- or underharvests from the first semi-annual season equally between the first and second trimester season and dividing any over- or underharvest from the second semi-annual season equally between the second and third trimester seasons.

NMFS prefers alternative C3 because it would account for over- and underharvests in a manner that is most consistent with the historical landings in semi-annual seasons. For example, the opening of the first semi-annual season corresponds to the first trimester season, thus, this alternative would keep accounting of over- and underharvests consistent between the two years' seasons. This alternative also accounts for the overlap between the second semi-annual season and the second and third trimester seasons.

NMFS believes the preferred alternative would have no adverse impact on targeted species and minimal ecological impact on protected species because the number of interactions during the third trimester season has historically been low. Economically, it would provide the greatest benefit to those fishermen who will not have an opportunity to fish for sharks during the mid-Atlantic closure from January 1 through July 31, 2005. Any under- or

overharvests from the 2004 second semi-annual would be divided equally between the second and third trimester seasons, and fishermen in the South Atlantic region would thus have an opportunity to harvest a potentially larger quota during the third trimester season compared to the other alternatives.

Alternative C1 is not preferred because it does not account for the overlap between seasons, and does not account for differences in effort and landings among the three seasons. Alternative C2 does not account for the third trimester season, and would keep quotas for the third trimester season low, resulting in reduced revenues and temporal shortages of shark products, particularly for fishermen in the South Atlantic region who are already impacted by the mid-Atlantic closure area. Alternative C4 may reduce the quota for the second trimester season unnecessarily because overharvests from the first and second semi-annual seasons would both be subtracted from the second trimester season. This could result in additional negative economic impacts on the South Atlantic region which is already impacted by the mid-Atlantic closure.

Notification of the Length of Fishing Seasons and Annual Adjustments

Currently, pursuant to 50 CFR 635.27(b)(1)(iii) and (vi), NMFS files a notification of a shark fishing season's length and annual adjustments at least 30 days prior to the start of the season. This requirement was originally intended to address the need to provide shark fishermen with ample advance notice to prepare for the upcoming season. Given Amendment 1 to the HMS FMP and recent and proposed changes to shark management, NMFS proposes to remove the 30–day notification provisions and, as necessary and appropriate, issue proposed and final rules for season lengths and quotas to facilitate more opportunity for public comment. Prior to the beginning of the season, NMFS will file with the Office of the **Federal Register** for publication the length of each season and any annual adjustments.

Proposed Available Quotas

Per Amendment 1 to the HMS FMP, the 2005 annual landings quotas for LCS and SCS are established at 1,017 mt dw (2,242,078 lbs dw) for LCS and 454 mt dw (1,000,888.4 lbs dw) for SCS. The 2005 quota levels for pelagic, blue, and porbeagle sharks are established at 488 mt dw (1,075,844.8 lbs dw), 273 mt dw (601,855.8 lbs dw), and 92 mt dw (202,823.2 lbs dw), respectively. This rule does not change any of these quotas.

An emergency rule that published on December 27, 2002 (67 FR 78990; extended May 29, 2003, 68 FR 31983), implemented a new management measure from the 1999 HMS FMP that required dead discards from 2003 be subtracted from the commercial shark quotas in 2005. This emergency rule expired on December 27, 2003. In November 2003, NMFS released Amendment 1 to the HMS FMP; the final rule implementing this Amendment was published on December 24, 2003 (68 FR 74746). Amendment 1 to the HMS FMP also dealt with the issue of dead discards and devised a process for subtracting them when calculating maximum sustainable yield (MSY), in conjunction with establishing a timeframe for rebuilding stocks of LCS by 2030, while still allowing fishing by enacting other conservation measures including reducing quotas, time/area closures, and gear restrictions. Dead discards are already accounted for under the new process for determining MSY, thus if NMFS were to count the 2003 dead discards against the 2005 quota as stated in the December 27, 2002 rule (69 FR 78990), NMFS would be improperly recording dead discards against the quota twice, once prior to formulating this year's quota, and once after the quota had been formulated. Quotas were already reduced under Amendment 1 and further reductions could cause negative economic impacts with negligible effects on the rebuilding plan. Therefore, NMFS does not believe it is appropriate to count the 2003 dead discards against the 2005 commercial fishing quotas as stated in the 2002 emergency rule.

The first 2004 semiannual fishing season quota for LCS was set at 443.1 mt dw (December 24, 2003, 68 FR 74746 and June 9, 2004, 69 FR 33321). This equated to 244.7, 190.3, and 18.12 mt dw for the South Atlantic, Gulf of Mexico, and North Atlantic regions, respectively. As of July 2004, approximately 486.9 mt dw LCS had been reported landed from all regions.

Consistent with this proposed rule, the annual LCS quota (1,017 mt dw) would be split among the regions as follows: 49 percent to the Gulf of Mexico, 38 percent to the South Atlantic, and 13 percent to the North Atlantic. Any over- or underharvest in a given region for the first 2004 season would result in an equivalent increase or decrease in that region's quotas for the first 2005 trimester season.

Also consistent with this proposed rule, the quota for each region would be further split among the three fishing seasons according to historical catches during that season, and adjusted for over- or underharvests from the 2004 first season. The percentages for the first, second, and third trimester seasons for each region would be as follows: 47, 44, and 9 percent to the Gulf of Mexico, respectively; 63, 28, and 9 percent to the South Atlantic, respectively; and 34, 58, and 8 percent to the North Atlantic, respectively. In 2004, preliminary data indicate that the Gulf of Mexico had an overharvest of 39.7 mt dw, the South Atlantic had an overharvest of 11.1 mt dw, and the North Atlantic had an underharvest of 7.0 mt dw. Thus, the LCS quotas for the 2005 first trimester season would be as follows: the Gulf of Mexico - 194.5 mt dw (428,795 lbs dw); South Atlantic - 232.4 mt dw (512,349 lbs dw); and North Atlantic - 52.0 mt dw (114,639 lbs dw).

In the 2004 first semiannual fishing season for SCS, the quota was established at 280.9 mt dw (December 24, 2003, 68 FR 74746). This equated to 233.15, 36.5, and 11.23 mt dw for the South Atlantic, North Atlantic, and the Gulf of Mexico regions, respectively. As of July 2004, approximately 86.3 mt dw had been reported landed from all regions. This constitutes an underharvest for the first 2004 semiannual fishing season of 194.6 mt dw from all regions.

Consistent with this proposed rule, the annual SCS quota (454 mt dw) would be split among the regions as follows: 10 percent to the Gulf of Mexico, 87 percent to the South Atlantic, and 3 percent to the North Atlantic. Any over- or underharvest in a given region for the first 2004 season would result in an equivalent increase or decrease in that region's quotas for the first 2005 trimester season.

Also consistent with this proposed rule, the quota for each region would be further split among the three fishing seasons according to historical catches during that season in each of the regions. The percentages for the first, second, and third trimester seasons for each region would be as follows: 59, 29, and 12 percent to the Gulf of Mexico, respectively; 20, 53, and 27 percent to the South Atlantic, respectively; and 6, 17, and 77 percent to the North Atlantic, respectively. In 2004, preliminary data indicate that the Gulf of Mexico had an overharvest of 2.4 mt dw, the South Atlantic had an underharvest of 161.0 mt dw, and the North Atlantic had an underharvest of 36.1 mt dw. Thus, the SCS quotas for the 2005 first trimester season are proposed as follows: the Gulf of Mexico - 24.4 mt dw (53,351 lbs dw); South Atlantic - 240.0 mt dw (529,104

lbs dw); and North Atlantic - 37.0 mt dw (81,570 lbs dw).

The 2005 annual quotas for pelagic, blue, and porbeagle sharks would be established at 488 mt dw (1,075,844.8 lbs dw), 273 mt dw (601,855.8 lbs dw), and 92 mt dw (202,823.2 lbs dw), respectively. These are the same quotas that were established in the HMS FMP. As of July 2004, approximately 44 mt dw had been reported landed in the first 2004 semiannual fishing season in total for pelagic, blue, and porbeagle sharks combined. Thus, the pelagic shark quota does not need to be reduced consistent with the current regulations 50 CFR 635.27(b)(1)(iv). Thus, the 2005 first trimester quotas for pelagic, blue, and porbeagle sharks would be established at 162.6 mt dw (358,688.4 lbs dw), 91 mt dw (200,618.6 lbs dw), and 30.7 mt dw (67,681.2 lbs dw), respectively.

These proposed quotas may change depending on the final decision regarding the regional quotas split, the trimester transition, and any updates to the reported landings in first 2004 semi-annual season.

Proposed Fishing Season Notification

The first trimester fishing season of the 2005 fishing year for LCS, SCS, pelagic sharks, blue sharks, and porbeagle sharks in all regions in the northwestern Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea, is proposed to open on January 1, 2005. To estimate the LCS fishery closure dates, NMFS calculated the average reported catch rates for each region from the second seasons from recent years (2001–2004) and used these average catch rates to estimate the amount of available quota that would likely be taken by the end of each dealer reporting period. Because state landings after a Federal closure are counted against the quota, NMFS also calculated the average amount of quota reported received after the Federal closure dates of the years used to estimate catch rates.

Pursuant to 50 CFR 635.5(b)(1), shark dealers must report any sharks received twice a month. More specifically, sharks received between the first and 15th of every month must be reported to NMFS by the 25th of that same month and those received between the 16th and the end of the month must be reported to NMFS by the 10th of the following month. Thus, in order to simplify dealer reporting and aid in managing the fishery, NMFS proposes to close the Federal LCS fishery on either the 15th or the end of any given month.

Based on average LCS catch rates in recent years in the Gulf of Mexico region, approximately 84 percent of the proposed available LCS quota would likely be taken by the second week of March and 98 percent of the available LCS quota would likely be taken by the end of March. Dealer data also indicate that, on average, approximately 27 mt dw (59,524 lb dw) of LCS have been reported received by dealers after a Federal closure. This is approximately 14 percent of the proposed available quota. Thus, if catch rates in 2005 are similar to the average catch rates from 2001 to 2004, 99 percent (85 + 14 percent) of the proposed quota could be caught by the second week of March. If the fishery remains open until the end of March, the proposed quota would likely be exceeded (98 + 14 percent = 112 percent). Accordingly, NMFS is proposing to close the Gulf of Mexico LCS fishery on March 15, 2005, at 11:30 p.m. local time.

Based on average LCS catch rates in recent years in the South Atlantic region, approximately 97 percent of the proposed available LCS quota would likely be taken by the second week of February and 114 percent of the proposed available LCS quota would likely be taken by the end of February. Dealer data also indicate that, on average, approximately 55 mt dw (121,253 lb dw) of LCS have been reported received by dealers after a Federal closure. This is approximately 24 percent of the proposed available quota. Thus, if catch rates in 2005 are similar to the average catch rates from 2001 to 2004, 121 percent (97 + 24 percent) of the quota could be caught by the second week of February. If the fishery remains open until the end of February, the quota would likely be exceeded by 138 percent (114 + 24 percent). Since the Mid-Atlantic closed area will be in effect from January 1 through July 31, 2005, landings will likely not be accumulating at the same rate as they have in the past. For example, during the first 2004 shark fishing season, North Carolina accounted for 29 percent (68 mt dw) of landings in the South Atlantic region. Taking into account that a large portion of North Carolina will be closed during the first trimester season of 2005, NMFS does not believe that the quota will be exceeded by the February 15 closure date. Thus, NMFS is proposing to close the South Atlantic LCS fishery on February 15, 2005, at 11:30 p.m. local time.

Based on average LCS catch rates in recent years in the North Atlantic region, approximately 7 percent of the available proposed LCS quota would likely be taken by the end of April. Dealer data also indicate that, on average, approximately 10 mt dw (22,046 lb dw) of LCS have been reported received by dealers after a Federal closure. This is approximately 20 percent of the proposed available quota. Thus, if catch rates in 2005 are similar to the average catch rates from 2001 to 2004, 27 percent (7 + 20 percent) of the proposed quota could be caught by the end of April. Accordingly, NMFS is proposing to close the North Atlantic LCS fishery on April 30, 2005, at 11:30 p.m. local time.

Request for Comments

NMFS will hold three public hearings (see **DATES** and **ADDRESSES**) to receive comments from fishery participants and other members of the public regarding these proposed alternatives. These hearings will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Chris Rilling at (301) 713–2347 at least 5 days prior to the hearing date. For individuals unable to attend a hearing, NMFS also solicits written comments on this proposed rule (see **DATES** and **ADDRESSES**).

Classification

This proposed rule is published under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.*

As required under the Regulatory Flexibility Act, NMFS has prepared an Initial Regulatory Flexibility Analysis (IRFA) for this rule. The IRFA analyzes the anticipated economic impacts of these preferred actions and any significant alternatives to the proposed rule that could minimize economic impacts on small entities. A summary of the IRFA is below. The full IRFA and analysis of economic and ecological impacts, are available from NMFS (see **ADDRESSES**). NMFS does not believe that the proposed regulations would conflict with current relevant regulations, Federal or otherwise (5 U.S.C. 603(b)(5)).

This proposed rulemaking is being initiated to update the LCS and SCS regional and trimester quotas based on updated landings information and implement a framework for annual adjustment of quotas based on over- or underharvests, to address the transfer of over- and underharvests between semi-annual (2004) and trimester (2005) seasons, and to modify the fishing season notification requirement. This rule could directly impact commercial shark fishermen and dealers on the Atlantic Ocean in the United States. NMFS estimates that as of April 2004, there were approximately 253 directed and 358 incidental permit holders, of which 199 (32 percent) reported landings in 2003. As of September 2003,

there were 267 commercial shark dealers. All permit holders are considered small entities according to the Small Business Administration's standard for defining a small entity (5 U.S.C. 603(b)(3)). Other small entities involved in HMS fisheries such as processors, bait houses, and gear manufacturers might be indirectly affected by the proposed regulations.

Average annual gross revenues from sharks for commercial shark fishermen in 2003 was $31,085.60 and $1,946.18 for directed and incidental permit holders, respectively. Average ex-vessel prices were $0.79 and $0.53/lb dw for LCS and SCS flesh, respectively and shark fins averaged $19.86/lb dw. Preliminary cost-earning data obtained in 2003 indicated that fishermen, on average, spend approximately $1,765.49, $570.97, and $398.65 for fuel, bait, and ice, respectively, per trip.

An analysis of the economic impacts of the proposed rulemaking on active incidental and directed shark permit holders was conducted as part of the IRFA. The preferred alternative to modify the regional quotas based on updated landings information would increase the existing regional quotas, and therefore potential landings, by 6 percent for the Gulf of Mexico and 4 percent for South Atlantic for SCS, respectively and would decrease the SCS regional quota by 10 percent for the North Atlantic. Based on landings and revenue information obtained from the appropriate 2003 logbooks, these potential increases in landings may result in a similar increases to gross revenue, however, NMFS is unable to predict future ex-vessel prices for shark products. For LCS, regional quotas and potential landings would be increased by 7 percent for the North Atlantic and 9 percent for the Gulf of Mexico, respectively while reducing the South Atlantic quota by 16 percent.

The preferred measures outlined in this proposed rule were selected for the commercial Atlantic LCS and SCS fisheries because they minimize economic, ecological, and social impacts incurred on fishermen while, consistent with the Magnuson-Stevens Act and other domestic laws, enhancing equity among user groups, and allowing stocks to be managed at sustainable levels. Other alternatives analyzed herein for regional and trimester quota distribution were not preferred because they fail to base quotas on updated landings information or fail to provide a means of annually revising quotas to adjust for over- or underharvests, if any, to minimize economic hardships that may result due to fishery closures or an inability to harvest the full quota for LCS and SCS. Other alternatives for the transfer of over- and underharvests between semi-annual (2004) and trimester (2005) seasons were not selected because they would reduce quotas for the third trimester season resulting in reduced revenues and temporal shortages of shark products, particularly for fishermen in the South Atlantic region who are already impacted by the Mid-Atlantic closure area. The alternative to remove the 30–day requirement to publish a fishing season's length or quotas/annual adjustments is not expected to result in negative economic impacts, as it provides for more public input.

One of the requirements of an IRFA is to describe any alternatives to the proposed rule which accomplish the stated objectives and which minimize any significant economic impacts (5 U.S.C. 603(c)). Additionally, the Regulatory Flexibility Act (5 U.S.C. 603(c)(1)-(4)) lists four categories for alternatives that should be discussed. These categories are: (1) establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) use of performance rather than design standards; and (4) exemptions from coverage of the rule for small entities.

As noted earlier, NMFS considers all permit holders to be small entities and in order to meet the objectives of this proposed rule and the Magnuson-Stevens Act, NMFS cannot change the requirements only for small entities. Additionally, all of the proposed measures in this rule would not be effective with exemptions for small entities. Thus, there are no alternatives available to satisfy the stipulations of the first and fourth categories listed above. NMFS is proposing these measures to modify regional and trimester quotas based on updated landings information and as such, the use of performance rather than design standards and the simplification of compliance and reporting requirements under this proposed rule are not practicable. Alternatives relevant to the second category are identified in the preamble and further discussed below.

The preferred measures for updating regional and trimester quotas were selected because the other proposed alternatives do not allow NMFS to update the quotas based on the most up-to-date landings data available while installing a provision for the annual adjustment of these quotas to better adapt to future changes in regional fishing effort. Furthermore, although they may consolidate, clarify, and/or simplify compliance, other alternatives considered that do not maintain regional and trimester quotas could result in regional inequality as fishermen in the North Atlantic would be at a disadvantage due to their geographic location and these alternatives may also have negative impacts on shark pupping, both of which would conflict with National Standards (NSs) of the Magnuson-Stevens Act by inhibiting or discriminating against fishermen in a given state or region and delaying the rebuilding plan for LCS (NS 4 and NS 1). Maintaining the regional and trimester quotas also promote market stability by ensuring the availability of shark products year round and in all locales.

.There was little difference in economic impact between the different alternatives considered. Other proposed alternatives for the transition between semi-annual and trimester season are not expected to have adverse economic or ecological impacts, however, the preferred alternative was selected because it provides equitable distribution of quotas based on historic fishing practices. NMFS does not know of any performance or design standards that would satisfy the aforementioned objectives of this rulemaking while, concurrently, upholding the Magnuson-Stevens Act. This proposed rule does not contain any new reporting or recordkeeping requirements. This proposed rule would not increase the administrative burden or professional skills required of permit holders to maintain compliance with commercial shark regulations.

The biological opinion prepared in October 2003, entitled "Biological Opinion on the continued operation of Atlantic shark fisheries under the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP)", in response to the proposed measures in Amendment 1 to the HMS FMP, found that the continued existence of commercial shark fishery would not jeopardize marine mammals, sea turtles, or smalltooth sawfish. Regional quota administration and trimester seasons were actions finalized in Amendment 1 to the HMS FMP and therefore, were included in the aforementioned BiOp. This proposed rule will not increase overall quotas or landings for LCS or SCS, therefore interactions with, or incidental takes of, protected species should not increase. The preferred alternatives simply re-distribute quotas based on updated landings information, distribute them

across trimester seasons based on historical landings, and transfer over- or under harvests from semi-annual to trimester seasons.

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

NMFS has determined preliminarily that these regulations would be implemented in a manner consistent to the maximum extent practicable with the enforceable policies of those coastal states on the Atlantic including the Gulf of Mexico and Caribbean that have approved coastal zone management programs. Letters have been sent to the relevant states asking for their concurrence.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: September 13, 2004.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 635 is proposed to be amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

1. The authority citation for 50 CFR part 635 continues to read as follows:

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

2. In § 635.27, paragraphs (b)(1)(i), (b)(1)(iii), (b)(1)(iv), and (b)(1)(vi)(A) and (B) are revised to read as follows:

§ 635.27 Quotas.

* * * * *

(b) * * *

(1) * * *

(i) *Fishing seasons.* The commercial quotas for large coastal sharks, small coastal sharks, and pelagic sharks will be split among three fishing seasons: January 1 through April 30, May 1 through August 31, and September 1 through December 31.

(ii) * * *

(iii) *Large coastal sharks.* The annual commercial quota for large coastal sharks is 1,017 mt dw, unless adjusted pursuant to paragraph (b)(1)(vi) of this section. This annual quota is split among the regions as follows: 49 percent to the Gulf of Mexico, 38 percent to the South Atlantic, and 13 percent to the North Atlantic. The length of each fishing season will be determined based on the projected catch rates, available quota, and other relevant factors. Prior to the beginning of the season, NMFS will file with the Office of the **Federal Register** for publication, consistent with the Administrative Procedure Act, the length of each season.

(iv) *Small coastal sharks.* The annual commercial quota for small coastal sharks is 454 mt dw, unless adjusted pursuant to paragraph (b)(1)(vi) of this section. This annual quota is split among the regions as follows: 10 percent to the Gulf of Mexico, 87 percent to the South Atlantic, and 3 percent to the North Atlantic.

(v) * * *

(vi) *Annual adjustments.* (A) NMFS will adjust the next year's fishing season quotas for large coastal, small coastal, and pelagic sharks to reflect actual landings during any fishing season in any particular region. For example, a commercial quota underharvest or overharvest in the fishing season in one region that begins January 1 will result in an equivalent increase or decrease in the following year's quota for that region for the fishing season that begins January 1.

(*1*) NMFS will adjust a region's quota based on the following criteria: if a region has an overharvest of 10 percent or greater of its regional quota, and any other region or regions has an underharvest of more than 10 percent of their respective quotas, then NMFS may transfer up to 10 percent of the quota from the region or regions with the underharvest to the region with the overharvest. Any overharvest above that 10 percent would be counted against that region's quota for the same season of the following year. If the underharvest is less than 10 percent of the quota for any other region or regions, NMFS would not transfer any quota, even if another region or regions had an overharvest in excess of 10 percent.

(*2*) Other factors NMFS would consider before making a transfer include, but are not limited to, the likelihood of protected species interactions and bycatch rates within a region, historic landings for the region, total landings reported for all regions at the end of their respective seasons, the number of storms during the open season, the size of a region's quotas, the amount of available quota remaining, the projected ability of the vessels fishing in the region from which the quota is proposed to be removed to harvest the remaining quota, and the projected ability of vessels fishing in the region receiving the quota to harvest the additional quota.

(*3*) Quotas for each region would be further divided among the trimester seasons based upon historic landings in each of the seasons. NMFS would make adjustments to trimester season quotas based on a number of factors including, but not limited to: the historic landings for each trimester season in a particular region, total landings reported for all seasons at the end of their respective seasons, the number of storms during each open season, the size of each seasonal quota, the amount of available quota remaining, and the projected ability of vessels fishing in the season receiving additional quota to harvest the additional quota. Prior to the beginning of the season, NMFS will file with the Office of the **Federal Register** for publication, consistent with the Administrative Procedure Act, any annual adjustment.

(B) NMFS will reduce the annual commercial quota for pelagic sharks by the amount that the blue shark quota is exceeded prior to the start of the next fishing season.

(C) * * *

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[FR Doc. 04–21002 Filed 9–14–04; 2:52 pm]
BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 69, No. 180
Friday, September 17, 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

Office of the Secretary

Privacy Act of 1974; Amendment of Existing System of Records; USDA/FS–33, Law Enforcement and Investigation Records

AGENCY: Office of the Secretary, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Privacy act of 1974, as amended, the U.S. Department of Agriculture (USDA) is proposing to amend the name of the existing system of records to USDA/FS–33, Law Enforcement and Investigative Records. USDA invites public comment on this amendment.

DATES:

Comment Date: Comments must be received on or before October 18, 2004.

Effective Date: These system amendments will be adopted without further notice on November 16, 2004, unless modified to respond to comments received from the public and published in a subsequent notice.

ADDRESSES: Send written comments to the Director, Law Enforcement and Investigations (Mail Stop 1140), USDA Forest Service, P.O. Box 96090, Washington, DC 20090–6090. Those who submit comments should be aware that all comments, including names and addresses when provided, are placed in the record and are available for public inspection. Individuals wishing to inspect comments are encouraged to call (703) 605–4732 to make arrangements.

FOR FURTHER INFORMATION CONTACT: Greg Nichols, USDA Forest Service, Law Enforcement and Investigations Staff, at (703) 605–4732, or Fax (703) 605–5112, or e-mail *gnichols@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act (5 U.S.C. 552a), the Forest Service is proposing to amend the name of this system of records USDA/FS–33 Law Enforcement and Investigative Records to include a new system location and system manager, and include a new storage type of computer databases to store and retrieve information.

In accordance with the Privacy Act and OMB Circular A–130, the USDA has provided a report on this revised system of records to the Office of Management and Budget and to the Congress.

A copy of the amended system of records is set out at the end of this notice. Although the Privacy Act requires a Federal agency to solicit comments from the public only with respect to changes in a system's routine use, the department of Agriculture invites comments on all portions of this notice.

Dated: September 7, 2004.

Ann M. Veneman,

Secretary of Agriculture.

DEPARTMENT OF AGRICULTURE

USDA/FS–33

SYSTEM NAME:

Law Enforcement and Investigative Records, USDA/FS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

These records are located at Forest Service Headquarters in Washington, DC, in the office of the Law Enforcement and Investigations Director; each Regional Office, in the office of the Special Agent in Charge; each Forest Supervisor Office, in the office of the Special Agent; each Ranger District Office, in the office of the Law Enforcement Officer; and in the Federal Law Enforcement Training Center (FLETC) in Glynco, Georgia, 31524, in the office of the Assistant Director, Training, Development and Standards. The addresses of these offices are listed in 36 CFR Part 200, subpart A, or in local telephone directories under the heading "United States Government, Department of Agriculture, Forest Service."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

- *Subjects:* Individuals against whom allegations of wrongdoing have been made or who have committed a violation.
- *Principals:* Individuals not named as subjects, but who may be responsible for alleged violations.
- *Complainants:* Those who allege wrongdoing.
- *Others:* Those closely connected with or contacted about an investigation or law enforcement issues.
- *Law Enforcement and Investigations Personnel:* Records pertaining to firearms certifications, issuance of credentials, physical fitness testing results, training records, and personal information.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of files containing reports of investigation; correspondence; informal notes; statements of witnesses; names; addresses; social security numbers; dates of birth; law enforcement reports; and other available information incident to investigations conducted, enforcement actions, or violations; firearms inventory and officer certifications; credential information; qualifications of hours worked; and training records. Records in the system do not include general employee personnel folder (OPF) data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 16, Untied States Code, section 559.

PURPOSE OF THE SYSTEM:

The purpose of this system of records is to maintain (1) Records related to law enforcement investigations of civil, criminal, or regulatory violations of law; and (2) records related to Law Enforcement and Investigations personnel: firearms inventory and officer certifications; credential information; qualifications of hours worked; and training records.

ROUTINE USES OF INFORMATION IN THE SYSTEM:

(1) Disclose information to an appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating or prosecuting a violation of law, rule, regulation, or order issued pursuant thereto, when information available indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature and whether arising by general statute or particular program statute, or by rule, regulation, or order issued pursuant thereto.

(2) Disclose information to a court, magistrate, or administrative tribunal, or to opposing counsel in a proceeding before any of the above, which

constitutes evidence in that proceeding, or which is sought in the course of discovery.

(3) Disclose information to the Department of Justice for the defense of suits against the United States or its officers, or for the institution of suits for the recovery of claims by the United States Department of Agriculture.

(4) Disclose information to the Chairman of a Congressional Committee to conduct Committee business.

(5) Disclose information to a Member of Congress from the record of an individual in response to an inquiry from the Member of Congress made at the request of that individual. In such cases, however, the Member's right to a record is no greater than that of the individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in paper form in file folders or on computer printouts, and in computerized form stored in memory or on computer disk storage.

RETRIEVABILITY:

Records are maintained under the agency's 5300 and 5320 file codes, identified by case numbers and/or subject name.

SAFEGUARDS (ACCESS CONTROLS):

Computer files are password protected. Other records are maintained in restricted areas during duty hours and in locked file rooms, locked file cabinets, and locked law enforcement offices during non-duty hours. Employee access is limited to approved persons with USDA security clearances.

RETENTION AND DISPOSAL:

Records are maintained in accordance with the Records Disposal Act of 1943 (44 U.S.C. 366–380) and the Federal Records act of 1950, and so designated in the Forest Service Records Management Handbook (FSH) 6209.11. Enforcement and investigative records are retained for a period of 10 years from the date the case file is closed. Records are disposed of by shredding or burning.

SYSTEM MANAGER(S):

Law Enforcement and Investigations (LEI) Director, USDA Forest Service, 1400 Independence Avenue, SW., (Mail Stop 1140), Washington, DC 20090–1140; the LEI Special Agent in Charge or the Law Enforcement Officer at USDA Forest Service Regional, Forest Supervisor, and Ranger District Offices (listed in 36 CFR 200.2, subpart A or in local telephone directories under the heading "United States Government, Department of Agriculture, Forest Service"); and Assistant Director, Training, Developments and Standards, Federal Law Enforcement training Center (FLETC), Townhouse 378A, Glynco, GA 31524.

NOTIFICATION PROCEDURES:

An individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him/her by submitting a written request to the system manager.

RECORD ACCESS PROCEDURES:

An individual may request access to a record in this system, which pertains to him/her, by submitting a written request to the system manager.

CONTESTING RECORD PROCEDURES:

An individual may contest information in this system, which pertains to him/her, by submitting a written request to the system manager.

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from various sources, including, but not limited to: Subject interviews, witness interviews, victim interviews, examination of records and data, law enforcement databases, evidence gathered at crime scenes, and personal information furnished by the individuals themselves.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(k)(2), this system of records has been exempted from the requirements of 5 U.S.C. 552a(c)(3), (d), (e)(1), (3)(4)(G), (H), (I), and (f). *See* 7 CFR 1.123. This exemption will only be used to maintain the efficacy and integrity of law enforcement files, and to prevent access to certain law enforcement files, which would alert subjects of investigations that their activities are being scrutinized and thus allow them time to take measures to prevent detection of illegal action or escape prosecution. Any individual who feels, however, that they have been denied any right, privilege, or benefit for which they would otherwise be eligible as a result of the maintenance of such material may request access to the material by submitting a written request to the system manager.

[FR Doc. 04–20930 Filed 9–16–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Request for Extension of Currently Approved Information Collection

AGENCY: Farm Service Agency, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intent of the Farm Service Agency (FSA) to request an extension of a currently approved information collection used in support of the FSA Farm Loan Programs (FLP). This renewal does not involve any revisions to the program rules.

DATES: Comments on this notice must be received on or before November 16, 2004, to be assured consideration.

FOR FURTHER INFORMATION CONTACT: Gary Wheeler, USDA, Farm Service Agency, Loan Servicing and Property Management Division, 1250 Maryland Avenue, SW., STOP 0523, Washington, DC 20024–0523; Telephone (202) 690–4021; Electronic mail: *Gary.Wheeler@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: 7 CFR 1951–L, servicing cases where unauthorized loan or other assistance was received.

OMB Control Number: 0560–0160.

Expiration Date: March 31, 2005.

Type of Request: Extension of currently approved information collection.

Abstract: FSA encounters cases where unauthorized assistance was received by a borrower. This assistance may be a loan where the borrower did not meet the eligibility requirements contained in statute or program regulations or where the borrower was eligible for loan assistance but a lower subsidized interest rate was charged on the loan, resulting in the borrower's receipt of unauthorized interest subsidy benefits. The unauthorized assistance may also be in the form of loan servicing where a borrower received an excessive or unauthorized write-down or write-off of their debt. The information collected is provided on a voluntary basis by the borrower, although failure to cooperate to correct loan accounts may result in liquidation of the loan. The information to be collected will primarily be financial data such as amount of income, farm operating expenses, depreciation, crop yields, *etc.*

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 4 hours per response.

Respondents: Individuals or households, businesses or other for profit and farms.

Estimated Number of Respondents: 200.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 800 hours.

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 will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. These comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to Gary Wheeler, Senior Loan Officer, USDA, FSA, Farm Loan Programs, Loan Servicing Division, 1250 Maryland Avenue, SW., STOP 0523, Washington, DC 20024–0523.

Comments will be summarized and included in the request for OMB approval of the information collection. All comments will also become a matter of public record.

Signed in Washington, DC, on September 9, 2004.

James R. Little,

Administrator, Farm Service Agency.

[FR Doc. 04–20965 Filed 9–16–04; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Initial Notice of Funds Availability Inviting Applications for the Implementation of an American Indian Targeted Credit Outreach Program

Announcement Type: Initial Notice of Funds Availability (NOFA) inviting applications from qualified organizations for Fiscal Year 2005 funding.

Catalog of Federal Domestic Assistance Number and Program: 10.443: Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers.

SUMMARY: The Farm Service Agency (FSA) announces it is taking applications for a competitive cooperative agreement for Fiscal Year (FY) 2005 to initiate a credit outreach initiative targeted to American Indian farmers, ranchers, and youth residing primarily on Indian reservations within the contiguous 48 States. FSA requests proposals from eligible non-profit organizations, land grant institutions, and federally-recognized Indian tribal governments interested in a competitively-awarded cooperative agreement to create and implement a mechanism that will provide credit outreach and promotion, pre-loan education, one-on-one loan application preparation assistance, and other related services as proposed by the successful applicant that are specific to FSA's Agricultural Credit Programs.

This is a request for proposals for applications for the American Indian Targeted Credit Outreach Program (AITCOP) for FY 2005, subject to the availability of funds. FY 2004 funding for the AITCOP was $1,599,951. This notice is being issued prior to passage of a final appropriations bill to allow applicants sufficient time to submit proposals, give the Agency maximum time to process applications and to permit the continuity of this program while minimizing the time a prior program is administered. A Notice of Funds Availability (NOFA) will be published announcing the funding level for FY 2005 once an appropriation has been enacted. The commitment of program funds will be made to an applicant from selected responses that have fulfilled the necessary requirements for obligation to the extent announced in the subsequent NOFA.

Proposals should demonstrate ways of ensuring that American Indians will (1) Be provided a targeted promotional campaign about, (2) have ready access to, (3) be educated about, and (4) be able to obtain one-on-one assistance specific to the various FSA Agricultural Credit Programs. Applicants must also demonstrate and provide evidence of their ability to record and track program-specific data that can be accessed on a real-time basis and be available online through the Internet. In addition, the successful applicant must provide evidence that it has in place, or demonstrated the capability to put in place, a data-tracking system that thoroughly records all credit outreach-specific related activities and has the ability to provide detailed statistical information on an ad hoc basis. The database must also be built using software that is functional on a real-time basis as well as being available online through the Internet. Additionally, the applicant must demonstrate its ability to deliver these credit outreach services utilizing the FSA Online Business Plan software program upon acceptance of any financial award.

DATES: Applications should be completed and submitted as soon as possible, and must be received by the Agency no later than 5 p.m. eastern time, October 18, 2004.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

This notice does not involve a collection of information as defined by section 1320.3(c) of 5 CFR part 1320 because it will not involve the collection of information from 10 or more persons.

II. Funding Opportunity Description

Background

Today, American Indians own and control approximately 56 million acres of agricultural lands held in trust by the United States Government and administered, for the most part, by the Bureau of Indian Affairs (BIA). Land-based agricultural enterprises are considered the primary source of revenue for most tribes, due in large part to their severe isolation from any urban type industrial development activities. Thus, protecting this resource is an important function of the elected tribal officials charged with operating business activities that take place within reservations.

With this in mind, American Indian agribusinesses, as well as individual Indians have consistently reported that the primary need in Indian agriculture was access to the capital required to own and operate their own farms or ranches. Therefore, FSA has undertaken this initiative to create and implement a mechanism that will provide credit outreach and other related services related to FSA's Agricultural Credit Programs as a way to resolve some of the credit needs of Indian agriculture.

Definitions

The following definitions are applicable to this NOFA:

Agency or FSA: The United States Department of Agriculture Farm Service Agency or its successor agency.

Farm Land: Land used for commercial agriculture crops, poultry and livestock enterprises, or aquaculture.

Federally-Recognized Indian Tribal Government: The governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any Native village as defined in Section 3 of

the Alaska Native Claims Settlement Act (85 Stat. 688)) certified by the Secretary of the Interior as eligible for the special programs and services provided through the Bureau of Indian Affairs.

Land Grant Institution:

(1) A 1994 institution (as defined in Section 2 of the Agricultural Research, Extension, and Education Reform Act of 1998 (7 U.S.C. 7601)), or an 1890 institution;

(2) An Indian tribal community college or an Alaska Native cooperative college; or

(3) A Hispanic-serving institution (as defined in section 1404 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3103)).

Non-Profit Organization: Any corporation, trust, association, cooperative, or other organization that:

(1) Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;

(2) Is not organized primarily for profit; and

(3) Must be an organization that is recognized by the Internal Revenue Service as being exempt from Federal income tax under section as 501(3)(c) of the Internal Revenue Code.

III. Award Information

One cooperative agreement will be awarded. Approximately $1,600,000 is expected to be made available for FY 2005. Cooperative agreement funds may be used to cover allowable costs incurred by the recipient and approved by the Agency. Allowable costs will be governed by 7 CFR parts 3015, 3016, and 3019 and applicable Office of Management and Budget Circulars.

IV. Eligibility Information

1. Eligible Applicants

Applicants must be either non-profit organizations, federally recognized Indian tribes or land grant institutions, as defined in the Definitions section of this NOFA. Applications without sufficient information to determine their eligibility will not be considered.

2. Cost-Sharing or Matching

There are no provisions for cost-sharing or matching.

V. Application and Submission Information

1. Address To Request Application Package

The forms required for an application as described below and for subsequent reporting by the successful applicant may be obtained from Mike Hill, Associate Director, Outreach Staff, Farm Service Agency, USDA, STOP 0511, Room 3716–S, 1400 Independence Avenue, SW., Washington, DC 20250–0511, phone: (202) 690–1299, fax: (202) 690–4727, or e-mail: *mike.hill@wdc.usda.gov.*

All other information described below is to be provided by the applicant.

2. Content and Form of Application

(a) *Form SF–424, "Application for Federal Assistance."*

(b) *Form SF–424A, "Information—Non-Construction Programs."*

(c) *Form SF–424B, "Assurances—Non-Construction Programs."*

(d) *Table of Contents*—For ease of locating information, each application must contain a detailed Table of Contents immediately following the required Federal forms. The Table of Contents should include page numbers for each component of the application. Pagination should begin immediately following the Table of Contents.

(e) *Proposal Summary*—A summary of the Project Proposal, not to exceed one page, that includes the title of the project, a description of the project (including goals and tasks to be accomplished), the names of the individuals responsible for conducting and completing the tasks, and the expected time frame for completing all tasks (which should not exceed twelve months).

(f) *Eligibility*—A detailed discussion, not to exceed two pages, describing how the applicant meets the definition of land grant institution, non-profit organization, or federally recognized Indian tribal government, as outlined in the "Recipient Eligibility Requirements" section of this NOFA. In addition, the applicant must describe all other collaborative organizations that may be involved in the project.

(g) *Proposal Narrative*—The narrative portion of the project proposal must be in a font such as Times New Roman, 12 pt. or comparable font, and must include the following:

(h) *Project Title*—The title of the proposed project must be brief, not to exceed 100 characters, yet represent the major thrust of the project.

(i) *Information Sheet*—A separate one page information sheet that lists each of the evaluation criteria listed in this NOFA under the "Evaluation Criteria and Weights" subsection followed by the page numbers of all relevant material and documentation contained in the proposal which address or support that criteria.

(j) *Goals and Objectives of the Project*—A clear statement of the ultimate goals and objectives of the project must be presented.

3. Submission Date

The deadline for receipt of all applications is 5 p.m. eastern time, October 18, 2004. The Agency will not consider any applications received after the deadline. Late applications will not be accepted and will be returned to the applicant. Applicants must ensure that the service they use to deliver their applications can do so by the deadline. Due to recent security concerns, packages sent to the Agency by mail have been delayed several days or even weeks.

4. Submission of Applications

Submit applications and other required materials to Mike Hill, Associate Director, Outreach Staff, Farm Service Agency, USDA, STOP 0511, Room 3716–S, 1400 Independence Avenue, SW., Washington, DC 20250–0511.

5. Intergovernmental Review

Not applicable.

6. Funding Restrictions

Cooperative agreement funds cannot be used to:

(a) Support the organization's general operations;

(b) Plan, repair, rehabilitate, acquire, or construct a building or facility (including a processing facility);

(c) Purchase, rent, or install fixed equipment, including mobile and other processing equipment;

(d) Pay for the preparation of the grant application;

(e) Pay expenses not directly related to the funded venture;

(f) Fund political or lobbying activities;

(g) Pay costs incurred prior to receiving a Cooperative Agreement;

(h) Fund any activity prohibited by 7 CFR parts 3015, 3016, and 3019;

(i) Fund architectural or engineering design work for a specific physical facility; or

(j) All relevant material and documentation addressing the criteria in section VI(1) of this NOFA.

VI. Application Review Information

1. Criteria

The proposal will be evaluated using the following criteria and weights. Each criterion must be addressed specifically and individually by category. These criteria should be in narrative form with any specific supporting documentation attached as addenda and directly following the proposal narrative. If other materials, including financial statements, will be used to support any evaluation criteria, they should also be

placed directly following the proposal narrative. The applicant must also propose and delineate significant agency participation in the project. Failure to address any one of the criteria will disqualify the application. All proposals must be in compliance with this NOFA and applicable statutes.

(a) *Proposers Commitment and Resources (15 points)*—The standard evaluates the degree to which the organization is committed to the project, and the experience, qualifications, competency, and availability of personnel and resources to direct and carry out the project. Additionally, the applicant must demonstrate its ability to deliver these credit outreach services utilizing the FSA Online Business Plan software program upon acceptance of any financial award.

(b) *Feasibility and Policy Consistency (20 points)*—The standard evaluates the degree to which the proposal clearly describes its objectives and evidences a high level of feasibility. This criterion relates to the adequacy, soundness of the proposed approach to the solution of the problem and evaluates the plan of operation, timetable, evaluation and dissemination plans.

(c) *Detailed description of the anticipated number of underserved American Indian farmers, ranchers, and youths to be served by this initiative and collaborative partnerships, if any (20 points)*—This standard evaluates the degree to which the proposal reflects partnerships and collaborative initiatives with other agencies or organizations to enhance the quality and effectiveness of the program. Additionally, the areas and number of underserved American Indian farmers, ranchers and youth who would benefit from the services offered will be evaluated.

(d) *American Indian Applicants—Outreach (10 points)*—This standard evaluates the degree to which the proposal contains efforts to reach persons identified as American Indian farmers, ranchers and youth. The proposal will be evaluated for its potential for encouraging and assisting American Indian farmers, ranchers, and youths to utilize the various FSA agriculture credit programs. Elements considered include impact, continuation plans, innovation, and expected products and results.

(e) *Innovative Strategies (25 points)*—This standard evaluates the degree to which the proposal reflects innovative strategies for reaching the population targeted in the proposal and achieving the project objectives. Elements also evaluated include evidence that the applicant has in place, or has demonstrated the ability to put in place, a data tracking system that thoroughly records all credit outreach specific related activities and has the ability to provide detailed statistical information on an ad hoc basis, with additional evidence supporting its ability to function on a real-time basis as well its ability to be available online through the Internet, and originality, practicality, and creativity in developing and testing innovative solutions to existing or anticipated credit issues or problems of American Indian farmers, ranchers, and youths. The proposal will be reviewed for its responsiveness to the need to provide American Indian farmers, ranchers, and youths with promotion, relevant information, and direct assistance in applying for and receiving FSA agriculture credit, and other essential information to enhance participation in agricultural programs and conducting a successful farming or ranching operation.

(f) *Overall Quality of the Proposal (5 points)*—This standard evaluates the degree to which the proposal complies with this NOFA and is of high quality. Elements considered include adherence to instructions, accuracy and completeness of forms, clarity and organization of ideas, thoroughness and sufficiency of detail in the budget narrative, specificity of allocations between targeted areas if the proposal addresses more than one area, and completeness of vitae for all key personnel associated with the project.

(g) *Accuracy of Proposed Budget and Justification (5 points)*—This standard evaluates the accuracy of the proposed budget and the accompanying budget justification and should sufficiently provide the reviewer with a detailed description of each budget category that includes categorical subtotals as well as an attached budget justification that clearly defines and explains each and every proposed budget line item.

2. Review and Selection Process

Prior to technical examination, a preliminary review will be made by FSA Outreach Staff for responsiveness to this solicitation. Proposals that do not fall within the solicitation guidelines or are otherwise ineligible will be eliminated from competition.

All responsive proposals will be reviewed by a panel of career National Office FSA and/or USDA Agency employees chosen to provide maximum expertise and objective judgment in the evaluation of proposals. The panel will review applications using the evaluation criteria stated above for eligibility, completeness, and responsiveness to this NOFA. Incomplete or non-responsive applications will be returned to the applicant and not evaluated further. If the submission deadline has not expired and time permits, ineligible applications may be returned to the applicants for possible revision.

Successfully evaluated proposals will be ranked by the FSA Outreach Staff based on merit. Final approval of those proposals will be made by the Administrator of FSA.

When the reviewers have completed their individual evaluations, the panel reviewers, based on the individual reviews, will make recommendations to the Administrator. Prior to award, the Administrator reserves the right to negotiate with an applicant or applicants whose projects are recommended for funding regarding project revisions (*e.g.*, change in scope of work or the Agency's significant involvement), funding level, or period of support. A proposal may be withdrawn at any time before a final funding decision is made.

VI. Award Administration

1. Award Notices

The successful applicant will be notified by FSA when selected by the Administrator. Within the limit of funds available for such purpose, the Administrator shall enter into a cooperative agreement with the successful applicant. The successful applicant will be required to sign an agency-approved cooperative agreement.

2. Access to Panel Review Information

Upon written request from the applicant, scores from the evaluation panel, not including the identity of reviewers, will be sent to the applicant after the review and awards process has been completed.

3. Administrative and National Policy Requirements

In addition to the requirements provided in this notice, other Federal statutes and regulations apply to proposals considered for review and to the cooperative agreement awarded. These include, but are not limited to:

(a) 7 CFR part 15, subpart A—Nondiscrimination in Federally-Assisted Programs of the Department of Agriculture—Effectuation of Title VI of the Civil Rights Act of 1964;

(b) 7 CFR part 3015—Uniform Federal Assistance Regulations;

(c) 7 CFR part 3016—Uniform Administrative Regulations for Grants and Cooperative Agreements and State and Local Governments.

(d) 7 CFR part 3017—Government wide Debarment and Suspension (Non-

procurement) and Government wide Requirements for Drug-Free Workplace (Grants);

(e) 7 CFR part 3018—New Restrictions on Lobbying;

(f) 7 CFR part 3019—Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-profit Organizations; and

(g) 7 CFR part 3052—Audits of States, Local Governments, and Non-Profit Organizations.

4. Reporting

Cooperators will be required to:

(a) Sign required Federal grant-making forms including:

i. Form AD–1047, Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions;

ii. Form AD–1048, Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions;

iii. Form AD–1049, Certification Regarding a Drug-Free Workplace Requirements (Grants); and

iv. Form RD 400–4, Assurance Agreement (Civil Rights).

(b) Use Standard Form 270, Request for Advance or Reimbursement to request payments.

(c) Submit form SF–269, Financial Status Report and list expenditures according to agreed upon budget categories on a semi-annual basis. A semi-annual financial report is due within 45 days after the first 6-month project period and an annual financial report is due within 60 days after the second 6-month project period.

(d) Submit quarterly performance reports that compare accomplishments to the objectives; if established objectives are not met, discuss problems, delays, or other problems that may affect completion of the project; establish objectives for the next reporting period; and discuss compliance with any special conditions on the use of awarded funds.

(e) Maintain a financial management system that is acceptable to the Agency.

(f) Submit a final project performance report.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Mike Hill, Associate Director, Outreach Staff, Farm Service Agency, USDA, STOP 0511, Room 3716–S, 1400 Independence Avenue, SW., Washington, DC 20250–0511, phone: (202) 690–1299, fax: (202) 690–4727, or e-mail: *mike.hill@wdc.usda.gov.*

VIII. Other Information

1. Dun and Bradstreet Data Universal Numbering System (DUNS)

A DUNS number is a unique nine-digit sequence recognized as the universal standard for identifying and keeping track of over 70 million businesses worldwide. The Office of Management and Budget published a notice of final policy issuance in the **Federal Register** June 27, 2003 (68 FR 38402) that requires a DUNS number in every application (*i.e.*, hard copy and electronic) for a grant or cooperative agreement on or after October 1, 2003. Therefore, potential applicants should verify that they have a DUNS number or take the steps needed to obtain one. For information about how to obtain a DUNS number, go to *http://www.grants.gov.* Please note that the registration may take up to 14 business days to complete.

2. Required Registration for Electronic Submission of Proposals

The Central Contract Registry (CCR) is a database that serves as the primary Government repository for contractor information required for the conduct of business with the Government. This database will also be used as a central location for maintaining organizational information for organizations seeking and receiving grants from the Government. Such organizations must register in the CCR prior to the submission of applications. A DUNS number is needed for CCR registration. For information about how to register in the CCR, visit "Get Started" at the Web site, *http://www.grants.gov.* Allow a minimum of 5 days to complete the CCR registration.

Signed in Washington, DC on September 3, 2004.

James R. Little,

Administrator, Farm Service Agency.

[FR Doc. 04–20966 Filed 9–16–04; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Bar T Bar and Anderson Springs Allotment Management Plan EIS Southwestern Region, AZ, Coconino County, Coconino National Forest

AGENCY: Forest Service, USDA.

ACTION: Correction to the Notice of Intent to Prepare an Environmental Impact Statement published on February 13, 2001, pages 10008–10010.

SUMMARY: The purpose of this correction is three fold: (1) To notify that there has been a change in the schedule from the original NOI that was published on February 13, 2001, on page 10008–10010 in the **Federal Register**; (2) to notify that the Responsible Official has been changed; and (3) contact information for this project has changed.

Schedule: The original target date for completion, as stated in the NOI published on February 13, 2001, on page 10008–10010 in the **Federal Register**, was July 2001. That date has now been changed to December 2004.

Responsible Official: The Responsible Official has changed from Jim Golden, Forest Supervisor of the Coconino National Forest to Larry G. Sears, Mogollon Rim District Ranger and Terri Marceron, Mormon Lake District Ranger of the Coconino National Forest.

FOR FURTHER INFORMATION CONTACT: The project contact was Beth Humphrey and is now Carol Holland, Project Leader, (928) 477–2255, e-mail *cjholland@fs.fed.us.*

Dated: September 10, 2004.

Joseph P. Stringer,

Deputy Forest Supervisor.

[FR Doc. 04–20990 Filed 9–16–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

National Urban and Community Forestry Advisory Council

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The National Urban and Community Forestry Advisory Council will meet in New York, New York, October 14–16, 2004. The purpose of the meeting is to discuss emerging issues in urban and community forestry.

DATES: The meeting will be held October 14–16, 2004. A tour of local projects will be held October 14 from 8:30 a.m. to 12 p.m.

ADDRESSES: The meeting will be held at the Hilton Hotel, 1335 Avenue of the Americas, New York, New York. Individuals who wish to speak at the meeting or to propose agenda items must send their names and proposals to Suzanne M. del Villar, Executive Assistant, National Urban and Community Forestry Advisory Council, P.O. Box 1003, Sugarloaf, CA 92386–1003. Individuals may fax their names and proposed agenda items to (909) 585–9527.

FOR FURTHER INFORMATION CONTACT: Suzanne M. del Villar, Urban and Community Forestry Staff, (909) 585–9268.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Council discussion is limited to Forest Service staff and Council members; however, persons who wish to bring urban and community forestry matters to the attention of the Council may file written statements with the Council staff before or after the meeting. Public input sessions will be provided.

Dated: September 3, 2004.

Joel D. Holtrop,

Deputy Chief, State and Private Forestry.

[FR Doc. 04–20931 Filed 9–16–04; 8:45 am]

BILLING CODE 3410–11–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Additions and Deletions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete products previously furnished by such agencies.

DATES: Comments must be received on or before: October 17, 2004.

ADDRESSES: Committee for Purchase from People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for each product or service will be required to procure the products and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following products and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

Product/NSN: F–15 Fuel Tank Foam Kits,
1560–01–509–2207FX (#1 Fuel Tank Foam Kit),
1560–01–509–2208FX (#2 Fuel Tank Foam Kit),
1560–01–509–2210FX (#3A Fuel Tank Foam Kit),
1560–01–509–2214FX (Right Auxiliary Fuel Tank Foam Kit),
1560–01–509–2216FX (#1 Fuel Tank Foam Kit),
1560–01–509–2219FX (#3A Fuel Tank Foam Kit),
1560–01–509–2222FX (#3B Fuel Tank Foam Kit),
1560–01–509–2224FX (Right Auxiliary Fuel Tank Foam Kit),
1560–01–509–2225FX (#3B Fuel Tank Foam Kit),
1560–01–509–2653FX (#3A Fuel Tank Foam Kit),
1560–01–509–2654FX (#1 Fuel Tank Foam Kit),
1560–01–509–2658FX (Left Auxiliary Fuel Tank Foam Kit),
1560–01–509–3744FX (#1 Fuel Tank Foam Kit).
NPA: Middle Georgia Diversified Industries, Inc., Dublin, Georgia.
Contract Activity: Warner Robins Air Logistics Center/LFK, Robins AFB, Georgia.

Services

Service Type/Location: Custodial Services, Center for Information Services (CIS) Data Center, 1137 Branchton Road, Boyers, Pennsylvania.
NPA: The Easter Seal Society of Western Pennsylvania, Pittsburgh, Pennsylvania.
Contract Activity: Office of Personnel Management, Washington, DC.
Service Type/Location: Laundry Service, Alien Detention & Removal (ADR), Immigration & Customs, Enforcement (IEC), and Customs & Border Protection (CBP), San Diego, California.
NPA: Job Options, Inc., San Diego, California.
Contract Activity: Department of Homeland Security, Laguna Niguel, California.

Deletions

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action may result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. If approved, the action may result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products proposed for deletion from the Procurement List.

End of Certification

The following products are proposed for deletion from the Procurement List:

Products

Product/NSN: Cleaner, Multi-Purpose, 7930–01–398–0938.
NPA: Lighthouse for the Blind, St. Louis, Missouri.
Contract Activity: GSA, Southwest Supply Center, Fort Worth, Texas.
Product/NSN: Cleaning Compound, Rug and Upholstery, 7930–00–724–9556.
NPA: Lighthouse for the Blind, St. Louis, Missouri.
Contract Activity: GSA, Southwest Supply Center, Fort Worth, Texas.
Product/NSN: Detergent, General Purpose, 7930–00–282–9700.
NPA: Lighthouse for the Blind, St. Louis, Missouri.
Contract Activity: GSA, Southwest Supply Center, Fort Worth, Texas.
Product/NSN: Enamel, 8010–01–333–0916.
NPA: Lighthouse for the Blind, St. Louis, Missouri.
Contract Activity: GSA, Hardware & Appliances Center, Kansas City, Missouri.
Product/NSN: Net, Laundry, 3510–00–841–8376, 3510–00–841–8384.
NPA: Industries of the Blind, Inc., Greensboro, North Carolina.
Contract Activity: GSA, Southwest Supply Center, Fort Worth, Texas.
Product/NSN: Soap, Toilet, 8520–00–141–2519.
NPA: Lighthouse for the Blind, St. Louis,

Missouri.
Contract Activity: GSA, Southwest Supply Center, Fort Worth, Texas.

Sheryl D. Kennerly,
Director, Information Management.
[FR Doc. 04–20999 Filed 9–16–04; 8:45 am]
BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Deletions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.
ACTION: Deletions from the procurement list.

SUMMARY: This action deletes from the Procurement List a product and services previously furnished by such agencies.
EFFECTIVE DATE: October 17, 2004.
ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.
FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.
SUPPLEMENTARY INFORMATION:

Deletions

On March 24, April 30, and July 23, 2004, the Committee for Purchase from People Who Are Blind or Severely Disabled published notice (69 FR 15787, 23723, and 43970) of proposed deletions to the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the product and services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may result in additional reporting, recordkeeping or other compliance requirements for small entities.
2. The action may result in authorizing small entities to furnish the product and services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product and services deleted from the Procurement List.

End of Certification

Accordingly, the following product and services are deleted from the Procurement List:

Product

Product/NSN: Head Lantern, 6230–01–387–1399.
NPA: Easter Seals Greater Hartford Rehabilitation Center, Inc., Windsor, Connecticut.
Contract Activity: GSA, Southwest Supply Center, Fort Worth, Texas.

Services

Service Type/Location: Base Supply Center, U.S. Coast Guard Integrated Support Command, Kodiak, Alaska.
NPA: Raleigh Lions Clinic for the Blind, Inc., Raleigh, North Carolina.
Contract Activity: U.S. Coast Guard Integrated Support Command, Kodiak, Alaska.
Service Type/Location: Janitorial/Custodial, U.S. Federal Building and Post Office, Idabel, Oklahoma.
NPA: None currently authorized.
Contract Activity: General Services Administration.
Service Type/Location: Janitorial/Custodial, U.S. Federal Building, Russellville, Arkansas.
NPA: None currently authorized.
Contract Activity: General Services Administration.
Service Type/Location: Janitorial/Custodial, U.S. Post Office, Courthouse and Social Security Administration, Hot Springs, Arkansas.
NPA: Non currently authorized.
Contract Activity: General Services Administration.

Sheryl D. Kennerly,
Director, Information Management.
[FR Doc. 04–21000 Filed 9–16–04; 8:45 am]
BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1351]

Expansion of Foreign-Trade Zone 40 Cleveland, OH

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Cleveland-Cuyahoga County Port Authority, grantee of Foreign-Trade Zone 40, submitted an application to the Board for authority to expand FTZ 40-Site 3 to include the Cleveland Business Park (172 acres) in Cleveland, Ohio, within the Cleveland Customs port of entry (FTZ Docket 54–2003; filed 10/17/03);

Whereas, notice inviting public comment was given in the **Federal Register** (68 FR 61394, 10/28/03) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 40-Site 3 is approved, subject to the Act and the Board's regulations, including Section 400.28, and further subject to the Board's standard 2,000-acre activation limit for the overall zone project.

Signed in Washington, DC, this 10th day of September, 2004.

James J. Jochum,
Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:
Dennis Puccinelli,
Executive Secretary.
[FR Doc. 04–21004 Filed 9–16–04; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–423–808]

Notice of Extension of Time Limit for Final Results of Administrative Review: Stainless Steel Plate in Coils From Belgium

AGENCY: Import Administration, International Trade Administration, Department of Commerce.
SUMMARY: The Department of Commerce (the Department) is extending the time limit for the final results in the antidumping duty administrative review of stainless steel plate in coils from Belgium until no later than December 7, 2004. The period of review is May 1, 2002 through April 30, 2003.
EFFECTIVE DATE: September 17, 2004.
FOR FURTHER INFORMATION CONTACT: Elfi Blum or Toni Page at (202) 482–0197 or (202) 482–1398, respectively; Office of Antidumping/Countervailing Duty Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Statutory Time Limits: Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act) requires the Department to issue the final results in

an administrative review within 120 days after the date on which the preliminary results were published. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the final results to 180 days from the date of publication of the preliminary results.

Extension of Time Limits for Final Results

On June 10, 2004, the Department published the preliminary results of this administrative review. *See Stainless Steel Plate in Coils from Belgium: Preliminary Results of Antidumping Duty Administrative Review*, (69 FR 32501). The current deadline for the final results in this review is October 8, 2004. In accordance with 751(a)(3)(A) of the Act, and 19 CFR 351.213(h)(2), the Department finds that it is not practicable to complete the review within the original time frame because verification of respondent's submitted information took place after the preliminary results were published. Verification of respondent's sales and costs submissions took place from June 21, 2004 through June.30, 2004, in Genk, Belgium, and verification of constructed export price took place from July 21, 2004 through July 30, 2004, in New York, NY. We find that in order to afford the parties to this proceeding sufficient time to submit their case and rebuttal briefs and for the Department to analyze fully the parties' arguments, completion of this review is not practicable within the original time limit.

Consequently, in accordance with sections 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations, the Department is extending the time limit for the completion of the final results of the review to 180 days from the publication of the preliminary results. The final results will now be due no later than December 7, 2004.

Dated: September 13, 2004.

Jeffrey A. May,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E4–2230 Filed 9–16–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–852]

Structural Steel Beams From Japan: Notice of Final Results of Changed Circumstances Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of changed circumstances antidumping duty administrative review.

SUMMARY: On May 14, 2004, the Department of Commerce ("the Department") published a notice of preliminary results in the above-named case. We received only supportive comments and no request for a hearing. Accordingly, the Department continues to find that Yamato Steel Co., Ltd. ("Yamato Steel") is the successor-in-interest to Yamato Kogyo Co. Ltd., ("Yamato Kogyo").

FOR FURTHER INFORMATION CONTACT: Melissa Blackledge or Howard Smith, AD/CVD Enforcement Office IV, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3518 and (202) 482–5193, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 14, 2004, the Department published *Notice of Preliminary Results of Antidumping Duty Changed Circumstances Review: Structural Steel Beams From Japan*, 69 FR 26807 (*Preliminary Results*). We gave interested parties 30 days to comment on our preliminary results.

On June 14, 2004, the Department received comments from Yamato Steel in support of the Department's preliminary results. Yamato Steel argues that the Department correctly found, based on the evidence on the record provided by Yamato Steel, that the change in ownership of Yamato Kogyo has not significantly changed the company's management, production facilities, supplier relations, or customer base. Yamato Steel adds that the record contains no contrary facts or objections to the evidence upon which the Department relied in the preliminary results, and therefore, the Department should affirm its preliminary finding in the final results.

The Department received no other comments from interested parties. In addition, the Department did not receive a request for a hearing.

Scope of the Review

For purposes of this review, the products covered are doubly-symmetric shapes, whether hot or cold-rolled, drawn, extruded, formed, or finished, having at least one dimension of at least 80 mm (3.2 inches or more), whether of carbon or alloy (other than stainless) steel, and whether or not drilled, punched, notched, painted, coated, or clad. These products ("Structural Steel Beams") include, but are not limited to, wide-flange beams ("W" shapes), bearing piles ("HP" shapes), standard beams ("S" or "I" shapes), and M-shapes.

All products that meet the physical and metallurgical descriptions provided above are within the scope of this review unless otherwise excluded. The following products, are outside and/or specifically excluded from the scope of this review:

Structural steel beams greater than 400 pounds per linear foot or with a web or section height (also known as depth) over 40 inches.

The merchandise subject to this review is currently classifiable in the Harmonized Tariff Schedule of the United States ("HTSUS") at subheadings: 7216.32.0000, 7216.33.0030, 7216.33.0060, 7216.33.0090, 7216.50.0000, 7216.61.0000, 7216.69.0000, 7216.91.0000, 7216.99.0000, 7228.70.3040, 7228.70.6000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under review is dispositive.

Final Results of the Review

On the basis of the information on the record of this changed circumstance review, we have determined that Yamato Steel is the successor-in-interest company to Yamato Kogyo for purposes of determining antidumping duty liability in this proceeding. For a complete discussion of the basis for this decision, see the *Preliminary Results*. Therefore, Yamato Steel shall retain the antidumping duty cash deposit rate assigned to Yamato Kogyo by the Department in the most recent administrative review of the subject merchandise, *i.e.*, zero percent.

Instructions to U.S. Customs and Border Protection

The cash deposit determination from this changed circumstances review will apply to all entries of the subject merchandise entered, or withdrawn

from warehouse, for consumption on or after the date of publication of the final results of this changed circumstances review. *See Notice of Final Results of Antidumping Duty Changed Circumstances Review: Pressure Sensitive Plastic Tape From Italy*, 69 FR 15297, 15298 (March 25, 2004); *see also, Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom: Final Results of Changed-Circumstances Antidumping and Countervailing Duty Administrative Reviews*, 64 FR 66880, 66881 (November 30, 1999). This deposit rate shall remain in effect until publication of the final results of the next administrative review in which a review is conducted of Yamato Steel.

Notification

This notice also serves as a reminder to parties subject to administrative protective order(s) ("APO"s) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 351.306 of the Department's regulations. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation. This notice is in accordance with sections 751(b) and 777(i)(1) of the Tariff Act of 1930, as amended, and section 351.221(c)(3)(i) of the Department's regulations.

Dated: September 9, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. E4–2229 Filed 9–16–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–351–829]

Agreement Suspending the Countervailing Duty Investigation on Hot-Rolled Flat-Rolled Carbon-Quality Steel From Brazil; Termination of Suspension Agreement and Notice of Countervailing Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Termination of the suspension agreement on hot-rolled flat-rolled carbon-quality steel from Brazil and notice of countervailing duty order.

SUMMARY: On July 28, 2004, the Government of Brazil ("GOB") formally submitted a letter to the Department of Commerce ("the Department") announcing its desire to terminate the Agreement Suspending the Countervailing Duty ("CVD") Investigation on Hot-Rolled Flat-Rolled Carbon-Quality Steel From Brazil ("the Agreement"). In accordance with Section XI.B of the Agreement, termination of the Agreement shall be effective 60 days after notice of termination of the Agreement is given to the Department. On July 19, 1999, pursuant to section 704(g) of the Tariff Act of 1930, as amended ("the Act"), the underlying investigation was continued following the signature of the Agreement, resulting in an affirmative determination of countervailable subsidy practices resulting in material injury to a domestic industry. Therefore, the Department is terminating the Agreement and issuing a CVD order, effective September 26, 2004 (60 days from the official filing of the request for termination), and will direct suspension of liquidation to also begin on that date.

EFFECTIVE DATE: September 26, 2004.

FOR FURTHER INFORMATION CONTACT: Sally Gannon or Jonathan Herzog, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone: (202) 482–0162 or (202) 482–4271, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 15, 1998, the Department initiated a countervailing duty investigation under section 702 of the Act to determine whether manufacturers, producers, or exporters of certain hot-rolled flat-rolled carbon-quality steel products from Brazil receive subsidies. *See Initiation of Countervailing Duty Investigation: Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil*, 63 FR 56623 (October 22, 1998). On November 25, 1998, the International Trade Commission ("ITC") published its affirmative preliminary injury determination. *See Certain Hot-Rolled Steel Products From Brazil, Japan, and Russia*, 63 FR 65221 (ITC 1998). On February 12, 1999, the Department preliminary determined that countervailable subsidies were being provided to Companhia Siderugica Nacional ("CSN"), Usinas Siderugicas de Minas Gerais ("USIMINAS") and Companhia Siderurgica Paulista ("COSIPA"). *See Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil*, 64 FR 8313 (February 19, 1999).

On July 6, 1999, the Department suspended the CVD investigation involving certain hot-rolled flat-rolled carbon-quality steel products from Brazil by entering the Suspension Agreement on Hot-Rolled Flat-Rolled Carbon Quality Steel From Brazil ("the Agreement") under section 704(c) of the Act with the Government of Brazil ("GOB"). *See Suspension of Countervailing Duty Investigation: Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil*, 64 FR 38797 (July 19, 1999). Following signature of the Agreement, the underlying investigation was continued pursuant to section 704(g) of the Act, resulting in an affirmative determination by the Department and the ITC in the continued countervailing duty investigation. *See Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil*, 64 FR 38741 (July 19, 1999); *Certain Hot-Rolled Steel Products From Brazil and Russia*, 64 FR 46951, Inv. Nos. 701–TA–384 (Final) and 731–TA–806 and 808 (Final) (Aug. 27, 1999) ("*Final Determinations*").

After signature of the Agreement, Petitioners [1] challenged the Department's determination to enter into the Agreement with the GOB before the U.S. Court of International Trade ("CIT"). On August 3, 2001, the CIT issued its opinion, remanding the case to the Department for it to comply with section 704(e) of the Act, to reconsider its determination to enter into the Agreement in light of all comments and consultations, and to correct clerical errors. *See Bethlehem Steel Corporation* v. *United States*, 159 F. Supp. 2d 730 (CIT 2001). On November 19, 2001, the Department submitted its redetermination, upholding the validity of the Agreement, and requested that the CIT allow the Department more time to consult with the parties, rather than ruling on the remand determination. *See Final Redetermination Pursuant to Court Remand*, filed on November 19, 2001. The CIT granted this extension request. On March 7, 2002, the Department filed its Amended Final

[1] Bethlehem Steel Corp., Ispat Inland Inc., LTV Steel Company, Inc., National Steel Corp., U.S. Steel Group (a Unit of USX Corp.), California Steel Industries, Gallatin Steel Company, Geneva Steel, Gulf States Steel, Inc., Ipsco Steel Inc., Steel Dynamics, Weirton Steel Corporation, and Independent Steelworkers Union.

Redetermination with the CIT. *See Amended Final Redetermination Pursuant to Court Remand,* filed on March 7, 2002. After reviewing the Department's redetermination, the CIT remanded the case again to the Department on February 17, 2004, instructing the Department to comply with the notice and comment, and consultation requirements of section 704(e) of the Act, and to make the case that the consultations conducted gave meaningful consideration to terminating, abandoning, or revising the Agreement. *See Bethlehem Steel Corp.* v. *United States*, 316 F. Supp. 2d 1309 (CIT 2004). The Department complied with the CIT's remand, and submitted its second redetermination on April 5, 2004. *See Final Redetermination Pursuant to Court Remand,* filed on April 5, 2004. On May 3, 2004, the Department and the International Trade Commission ("ITC") initiated a sunset review of this case. *See Notice of Initiation of Five-Year ("Sunset") Reviews,* 69 FR 24118 (May 3, 2004); *Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil, Japan, and Russia*, 69 FR 24189 (May 3, 2004).

On June 24–25, 2004, the Department held consultations with the GOB in Brasilia, Brazil. In these meetings, the Department and the GOB discussed matters pertaining to the Agreement, such as the pending expiration of the agreed upon export limits on September 30, 2004, as well as the ongoing litigation. *See* Memorandum to the File from Sally C. Gannon, dated July 8, 2004. Further, in July 2004, the Department invited interested parties to meet with Department officials regarding the issues related to the Agreement; however, the domestic interested parties did not accept this invitation and a meeting with the representative of the Brazilian interested parties was subsequently cancelled. *See* Memorandum to the File from Sally C. Gannon, dated July 14, 2004. On July 13, 2004, Petitioners submitted a letter indicating their belief that the time for consultations had passed and that the Department should immediately terminate the Agreement.

On July 28, 2004, pursuant to Article XI.B of the Agreement, the Brazilian Embassy in Washington, DC, submitted a letter informing the Department that the GOB desired to terminate the Agreement. *See Letter from Mr. Alusio G. de Lima-Campos to Secretary Donald Evans,* dated July 28, 2004.

Scope of Investigation

For purposes of this investigation, the products covered are certain hot-rolled flat-rolled carbon-quality steel products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers) regardless of thickness, and in straight lengths, of a thickness less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of these investigations.

Specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free ("IF")) steels, high strength low alloy ("HSLA") steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of this investigation, regardless of HTSUS definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated: 1.80 percent of manganese, or 1.50 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.012 percent of boron, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.41 percent of titanium, or 0.15 percent of vanadium, or 0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this agreement unless otherwise excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of this agreement:

- Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including *e.g.*, ASTM specifications A543, A387, A514, A517, and A506).
- SAE/AISI grades of series 2300 and higher.
- Ball bearing steels, as defined in the HTSUS.
- Tool steels, as defined in the HTSUS.
- Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 1.50 percent.
- ASTM specifications A710 and A736.
- USS Abrasion-resistant steels (USS AR 400, USS AR 500).
- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

[In percent]

C	Mn (max)	P (max)	S (max)	Si	Cr	Cu	Ni (max)
0.10–0.14	0.90	0.025	0.005	0.30–0.50	0.30–0.50	0.20–0.40	0.20

Width = 44.80 inches maximum; Thickness = 0.063–0.198 inches; Yield Strength = 50,000 ksi minimum; Tensile Strength = 70,000–88,000 psi.

- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

[In percent]

C	Mn	P (max)	S (max)	Si	Cr	Cu (max)	Ni (max)	Mo
0.10–0.16	0.70–0.90	0.025	0.006	0.30–0.50	0.30–0.50	0.25	0.20	0.21

Width = 44.80 inches maximum; Thickness = 0.350 inches maximum; Yield Strength = 80,000 ksi minimum; Tensile Strength = 105,000 psi Aim.

• Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

[In percent]

C	Mn	P (max)	S (max)	Si	Cr	Cu	Ni max)	V (wt.) (max)	Cb (max)
0.10–0.14	1.30–1.80	0.025	0.005	0.30–0.50	0.50–0.70	0.20–0.40	0.20	0.10	0.08

Width = 44.80 inches maximum; Thickness = 0.350 inches maximum; Yield Strength = 80,000 ksi minimum; Tensile Strength = 105,000 psi Aim.

• Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

[In percent]

C (max)	Mn (max)	P (max)	S (max)	Si (max)	Cr (max)	Cu (max)	Ni (max)	Nb (min)	Ca	Al
0.15	1.40	0.025	0.010	0.50	1.00	0.50	0.20	0.005	Treated	0.01–0.07

Width = 39.37 inches; Thickness = 0.181 inches maximum; Yield Strength = 70,000 psi minimum for thicknesses ≤ 0.148 inches and 65,000 psi minimum for thicknesses > 0.148 inches; Tensile Strength = 80,000 psi minimum.

• Hot-rolled dual phase steel, phase-hardened, primarily with a ferritic-martensitic microstructure, contains 0.9 percent up to and including 1.5 percent silicon by weight, further characterized by either (i) tensile strength between 540 N/mm^2 and 640 N/mm^2 and an elongation percentage ≥ 26 percent for thicknesses of 2 mm and above, or (ii) a tensile strength between 590 N/mm^2 and 690 N/mm^2 and an elongation percentage ≥ 25 percent for thicknesses of 2 mm and above.

• Hot-rolled bearing quality steel, SAE grade 1050, in coils, with an inclusion rating of 1.0 maximum per ASTM E 45, Method A, with excellent surface quality and chemistry restrictions as follows: 0.012 percent maximum phosphorus, 0.015 percent maximum sulfur, and 0.20 percent maximum residuals including 0.15 percent maximum chromium.

• Grade ASTM A570–50 hot-rolled steel sheet in coils or cut lengths, width of 74 inches (nominal. within ASTM tolerances), thickness of 11 gauge (0.119 inch nominal), mill edge and skin passed, with a minimum copper content of 0.20%.

The merchandise subject to this agreement is classified in the *Harmonized Tariff Schedule of the United States* (HTSUS) at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, 7211.19.75.90, 7212.40.10.00, 7212.40.50.00, 7212.50.00.00. Certain hot-rolled flat-rolled carbon-quality steel covered by this agreement, including: vacuum degassed, fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under this agreement is dispositive.

Termination of Suspended Investigation and Issuance of Countervailing Duty Order

Article XI.B of the Agreement states:

> The Government of Brazil may terminate this Agreement at any time upon written notice to the [Department]. Termination will be effective 60 days after such notice is given to the [Department]. Upon termination at the request of GOB, the provisions of U.S. countervailing duty law and regulations will apply.

As noted above, the underlying investigation in this proceeding was continued pursuant to section 704(g) of the Act, following the acceptance of the Agreement. As a result, the Department made a final countervailing duty determination, and the ITC found material injury. *See Final Determinations.* Section 704(i)(1)(A) of the Act states that the Department shall order the suspension of liquidation of all unliquidated entries, on or after, the later of:

(i) The date which is 90 days before the date of publication of the notice of suspension of liquidation, or

(ii) The date on which the merchandise, the sale or export to the United States of which was in violation of the agreement, or under an agreement which no longer meets the requirements of subsection (b) and (d) or (c) and (d), was first entered, or withdrawn from warehouse, for consumption.

Furthermore, section 704(i)(1)(C) of the Act stipulates that the Department shall issue a countervailing duty order under section 706(a) of the Act effective with respect to entries of merchandise the liquidation of which was suspended, if the underlying investigation was completed. Finally, section 704(i)(1)(E) of the Act stipulates that the Department shall notify the petitioner, interested parties to the investigation, and the ITC of termination of the Agreement.

The GOB's request for termination of the Agreement is effective September 26, 2004. Because the GOB is withdrawing from the Agreement, the Department finds that suspension of the underlying investigation will no longer be in the public interest as of that date (*see* section 704(d)(1) of the Act). Therefore, the Department will direct U.S. Customs and Border Protection ("CBP") to suspend liquidation of all entries of hot-rolled flat-rolled carbon-quality steel products from Brazil effective September 26, 2004. Accordingly, pursuant to section 704(i)(1)(C) of the Act, the Department hereby issues a countervailing duty order effective September 26, 2004, which is 60 days from the official filing date of the termination request of the GOB.

Countervailing Duty Order

In accordance with section 706(a)(1) of the Act, the Department will direct CBP to assess, beginning on September 26, 2004, a countervailing duty equal to the amount of the net countervailable subsidy determined or estimated to exist.

We will instruct CBP to require a cash deposit for each entry equal to the countervailing duty ad valorem rates found in the Department's *Final Determination* of July 19, 1999, as listed below. These suspension-of-liquidation instructions will remain in effect until further notice. The "All Others Rate" applies to all producers and exporters of subject merchandise not specifically listed. The final countervailing duty ad valorem rates are as follows:

Manufacturer/exporter	Margin (percent)
Companhia Siderurgica Nacional ("CSN")	6.35
Usinas Siderurgicas de Minas Gerais, S.A ("USIMINAS")	9.67
Companhi Siderurgic Paulista ("COSIPA")	9.67
All others	7.81

This notice constitutes the countervailing duty order with respect to hot-rolled flat-rolled carbon-quality steel products from Brazil. Interested parties may contact the Department's Central Records Unit, room B–099 of the main Commerce building, for copies of an updated list of countervailing duty orders currently in effect. This notice is published in accordance with sections 704(i) and 777(i) of the Act. This order is published in accordance with section 706(a) of the Act.

Dated: September 13, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. E4–2231 Filed 9–16–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Notice of Availability of the Ballistic Missile Defense System Draft Programmatic Environmental Impact Statement

AGENCY: Missile Defense Agency, Department of Defense.

ACTION: Notice of availability and request for comment.

SUMMARY: In accordance with National Environmental Policy Act (NEPA) regulations, the Missile Defense Agency (MDA) is initiating a public review and comment period for a Draft Programmatic Environmental Impact Statement (PEIS). This notice announces the availability of the Ballistic Missile Defense System (BMDS) Draft PEIS, which analyzes the potential impacts to the environment as MDA proposes to develop, test, deploy, and plan for decommissioning activities to implement an integrated MDBS. This Draft PEIS addresses the integrated BMDS and the development and application of new technologies; evaluates the range of complex programs, architecture, and assets that comprise the BMDS; and provides the framework for future environmental analyses as activities evolve and mature. The Draft PEIS has been prepared in accordance with NEPA, as amended (42 U.S.C. 4321, *et seq.*), and the Council on Environmental Quality Regulations for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508).

DATES: The public comment period for the NEPA process begins with the publication of this notice and request for comments in the **Federal Register**. Public hearings will be conducted as a part of the PEIS development process to ensure opportunity for all interested government and private organizations and the general public to provide comments on the environmental areas considered in the Draft PEIS. Schedule and location for the public hearings are:

- October 14, 2004, 6:30 p.m., Marriott Crystal City, 1999 Jefferson Davis Highway, Arlington, VA.
- October 19, 2994, 6 p.m., Sheraton Grand Hotel, 1230 J. St., Sacramento, CA.
- October 21, 2004, 6:30 p.m., Sheraton Hotel, 401 E. 6th Ave., Anchorage, AK.
- October 26, 2004, 6 p.m., Best Western Hotel, 3253 N. Nimitz Hwy, Honolulu, HI.

Copies of the Draft PEIS will be made available for review at various libraries. A list of library locations and a downloadable electronic version of the Draft PEIS are available on the MDA public access Internet Web site: *http://www.acq.osd.mil/mda/peis/html/home.html*. To ensure all comments are addressed in the Final PEIS, comments should be received at one of the addressed listed below no later than November 17, 2004.

ADDRESSES: Written and oral comments regarding the Draft PEIS should be directed to MDA BMDS PEIS, c/o ICF Consulting, 9300 Lee Highway, Fairfax, VA 22031, phone (Toll-Free) 1–877–MDA–PEIS (1–877–632–7347), Fax (Toll-Free) 1–877–851–5451, e-mail *mda.bmds,peis@icfconsulting.com*, or Web site *http://www.acq.osd.mil/mda/peis/html/home.html*.

FOR FURTHER INFORMATION CONTACT: Please call Mr. Rick Lehner, MDA Director of Communications at (703) 697–8997.

SUPPLEMENTARY INFORMATION: The MDA has a requirement to develop, test, deploy, and prepare for decommissioning the BMDS to protect the United States (U.S.), its deployed forces, friends, and allies from ballistic missile threats. The proposed action would provide an integrated BMDS using existing infrastructure and capabilities, when feasible, as well as emerging and new technologies, to meet current and evolving threats in support of the MDA's mission. Conceptually, the BMDS would be a layered system of weapons, sensors, Command and Control, Battle Management, and Communications (C2BMC), and support assets; each with specific functional capabilities, working together to defend against all classes and ranges of threat ballistic missiles in all phases of flight. Multiple defensive weapons would be used to create a layered defense comprised of multiple intercept opportunities along the incoming threat missile's trajectory. This would provide

a layered defense system of capabilities designed to back up one another.

This Draft PEIS considers two alternative approaches for implementing the integrated BMDS. In Alternative 1, the MDA would develop, test, deploy, and plan to decommission land-, sea-, and air-based platforms for BMDS weapons components and related architecture and assets. The BMDS envisioned in Alternative 1 would include space-based sensors but would not include space-based weapons. In Alternative 2, the MDA would develop, test, deploy, and plan to decommission land-, sea-, air-, and space-based platforms for weapons and related architecture and assets. Alternative 2 would be identical to Alternative 1, with the addition of space-based defensive weapons.

Under the No Action Alternative, the MDA would not test, develop, deploy, or plan for decommissioning activities to implement an integrated BMDS. Instead, the MDA would continue existing test and development of discrete missile defensive systems as stand-alone defensive capabilities. Under the No Action Alternative, individual components would continue to be tested to determine the adequacy of their stand-alone capabilities, but would not be subjected to integrated system-wide tests. In addition, the C2BMC architecture would be designed around the needs of individual components and would not be designed to manage an integrated system.

The approach and methods for deployment and decommissioning of components under the No Action Alternative would be the same as under the proposed action. This alternative would not meet the purpose of or need for the proposed action or the specific direction of the President and the U.S. Congress to defend the U.S. against ballistic missile attack.

Potential impacts of Alternative 1 and Alternative 2 were analyzed in the Draft PEIS, including impacts to air quality, airspace, biological resources, geology and soils, hazardous materials and waste, health and safety, noise, transportation, orbital debris, and water resources. The impacts of the No Action Alternative would be the same as the impacts of developing and testing individual components, which would continue to comply with NEPA analyses and documentation requirements on a program-specific basis. Potential cumulative impacts of the proposed action are also addressed in the Draft PEIS.

Dated: September 10, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–20813 Filed 9–16–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Army

Department of Defense Historical Advisory Committee; Meeting

AGENCY: Department of the Army, DoD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting:

Name of Committee: Department of Defense Historical Advisory Committee.

Date: October 28, 2004.

Time: 9 a.m. to 4:30 p.m.

Place: U.S. Army Center for Military History, Collins Hall, Building 35, 103 Third Avenue, Fort McNair, DC 20319–5058.

Proposed Agenda: Review and discussion of the status of historical activities in the United States Army.

FOR FURTHER INFORMATION CONTACT: Dr. Jeffrey J. Clarke, U.S. Army Center of Military History, ATTN: DAMH–ZC, 103 Third Avenue, Fort McNair, DC 20319–5058; telephone number (202) 685–2709.

SUPPLEMENTARY INFORMATION: The committee will review the Army's historical activities for FY 2004 and those projected for FY 2005 based upon reports and manuscripts received throughout the period. And the committee will formulate recommendations through the Chief of Military History to the Chief of Staff, Army, and the Secretary of the Army for advancing the use of history in the U.S. Army.

The meeting of the advisory committee is open to the public. Because of the restricted meeting space, however, attendance may be limited to those persons who have notified the Advisory Committee Management Office in writing at least five days prior to the meeting of their intention to attend the October 28, 2004 meeting.

Any members of the public may file a written statement with the committee before, during, or after the meeting. To the extent that time permits, the committee chairman may allow public presentations or oral statements at the meeting.

Dated: August 19, 2004.

Jeffrey J. Clarke,

Chief Historian.

[FR Doc. 04–20956 Filed 9–16–04; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of Non-Exclusive, Exclusive License or Partially Exclusive Licensing of U.S. Patent Concerning Collapsible and Portable Work Station

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR part 404.6, announcement is made of the availability for licensing of U.S. Patent No. US 6,776,105 B2 entitled "Collapsible and Portable Work Station" issued August 17, 2004. This patent has been assigned to the United States Government as represented by the Secretary of the Army.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Rosenkrans at U.S. Army Soldier Systems Center, Kansas Street, Natick, MA 01760, Phone; (508) 233–4928 or E-mail: *Robert.Rosenkrans@natick.army.mil.*

SUPPLEMENTARY INFORMATION: Any licenses granted shall comply with 35 U.S.C. 209 and 37 CFR part 404.

Brenda S. Bowen,

Army Federal Reserve Liaison Officer.

[FR Doc. 04–20957 Filed 9–16–04; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of Non-Exclusive, Exclusive License or Partially Exclusive Licensing of U.S. Patent Concerning Method for Making a Disposable Package for an Agent Activatable Substance and a Package Made Thereby

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR part 404.6, announcement is made of the availability for licensing of U.S. Patent No. US 6,766,797 B1 entitled "Method for Making a Disposable Package for an Agent Activatable Substance and a Package Made Thereby" issued July 27, 2004. This patent has been assigned to the United

States Government as represented by the Secretary of the Army.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Rosenkrans at U.S. Army Soldier Systems Center, Kansas Street, Natick, MA 01760, Phone: (508) 233–4928 or E-mail: *Robert.Rosenkrans@natick.army.mil.*

SUPPLEMENTARY INFORMATION: Any licenses granted shall comply with 35 U.S.C. 209 and 37 CFR part 404.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 04–20958 Filed 9–16–04; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Estuary Habitat Restoration Council; Open Meeting

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 105(h) of the Estuary Restoration Act of 2000, (Title I, Pub. L. 106–457), announcement is made of the forthcoming meeting of the Estuary Habitat Restoration Council. The meeting is open to the public.

DATES: The meeting will be held on Wednesday, October 6, 2004, from 10 a.m. to 12 p.m.

ADDRESSES: The meeting will be in room 3M60/70, 441 G Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Ellen Cummings, Headquarters, U.S. Army Corps of Engineers, Washington, DC 20314–1000, (202) 761–4750; or Ms. Cynthia Garman-Squier, Office of the Assistant Secretary of the Army (Civil Works), Washington, DC (703) 695–6791.

SUPPLEMENTARY INFORMATION: The Estuary Habitat Restoration Council consists of representatives of five agencies. These are the National Oceanic and Atmospheric Administration, Environmental Protection Agency, U.S. Fish and Wildlife Service, Department of Agriculture, and Army. Among the duties of the Council is development of a national estuary restoration strategy designed in part to meet the goal of restoring one million acres by 2010.

Agenda topics will include election of a Council Chairperson, update on the National Estuary Restoration Inventory, reports on the Federal Symposium on Coastal Habitat Restoration and ongoing projects, and discussion of proposed focus areas for the future.

Current security measures require that persons interested in attending the meeting must pre-register with us before 2 p.m. October 4, 2004. Please contact Ellen Cummings to pre-register. When leaving a voice mail message please provide the name of the individual attending, the company or agency represented, and a telephone number, in case there are any questions. The public should enter on the "G" Street side of the GAO building. All attendees are required to show photo identification and must be escorted to the meeting room by Corps personnel. Attendee's bags and other possessions are subject to being searched. All attendees arriving between one-half hour before and one-half hour after 10:00 a.m. will be escorted to the hearing. Those who are not pre-registered and/or arriving later than the allotted time will be unable to attend the public meeting.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 04–20955 Filed 9–16–04; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 18, 2004.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Carolyn Lovett, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: September 13, 2004.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: Extension.

Title: Student Assistance General Provisions—Subpart E (Verification of Student Aid Application Information).

Frequency: Annually.

Affected Public: Individuals or household; Businesses or other for-profit; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 3,030,215.
Burden Hours: 1,022,384.

Abstract: Verification of Application Information for Title IV Student Financial Assistance Programs. Applicants and, in some cases, the applicant's parent or spouse must provide documentation to support data listed on the application for assistance.

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 2577. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. Please specify

the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at his e-mail address *Joe.Schubart@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. 04–20959 Filed 9–16–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Availability of the Bonneville Purchasing Instructions (BPI) and Bonneville Financial Assistance Instructions (BFAI)

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of document availability.

SUMMARY: Copies of the Bonneville Purchasing Instructions (BPI), which contain the policy and establish the procedures that BPA uses in the solicitation, award, and administration of its purchases of goods and services, including construction, are available in printed form for $30, or without charge at the following Internet address: *http://www.bpa.gov/corporate/kgp/bpi/bpi.htm.* Copies of the Bonneville Financial Assistance Instructions (BFAI), which contain the policy and establish the procedures that BPA uses in the solicitation, award, and administration of financial assistance instruments (principally grants and cooperative agreements), are available in printed form for $15 each, or available without charge at the following Internet address: *http://www.bpa.gov/corporate/kgp/bfai/bfai.htm.*

ADDRESSES: Unbound copies of the BPI or BFAI may be obtained by sending a check for the proper amount to the Head of the Contracting Activity, Routing CK–1, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208–3621.

FOR FURTHER INFORMATION CONTACT: Manager, Corporate Communications, 1–800–622–4519.

SUPPLEMENTARY INFORMATION: BPA was established in 1937 as a Federal Power Marketing Agency in the Pacific Northwest. BPA operations are financed from power revenues rather than annual appropriations. BPA's purchasing operations are conducted under 16 U.S.C. 832 *et seq.* and related statutes. Pursuant to these special authorities, the BPI is promulgated as a statement of purchasing policy and as a body of interpretative regulations governing the conduct of BPA purchasing activities. It is significantly different from the Federal Acquisition Regulation, and reflects BPA's private sector approach to purchasing the goods and services that it requires. BPA's financial assistance operations are conducted under 16 U.S.C. 839 *et seq.* and 16 U.S.C. 839 *et seq.* The BFAI express BPA's financial assistance policy. The BFAI also comprise BPA's rules governing implementation of the principles provided in the following OMB circulars:

A–21 Cost Principles for Educational Institutions
A–87 Cost Principles for State, Local and Indian Tribal Governments
A–102 Grants and Cooperative Agreements with State and Local Governments
A–110 Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations
A–122 Cost Principles for Non-Profit Organizations
A–133 Audits of States, Local Governments and Non-Profit Organizations

BPA's solicitations and contracts include notice of applicability and availability of the BPI and the BFAI, as appropriate, for the information of offerors on particular purchases or financial assistance transactions.

Issued in Portland, Oregon, on September 9, 2004.

Kenneth R. Berglund,

Manager, Contracts and Property Management.

[FR Doc. 04–20993 Filed 9–16–04; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2004–0014; FRL–7814–4]

Agency Information Collection Activities; Submission for OMB Review and Approval; Comment Request; NSPS for Rubber Tire Manufacturing (Renewal), ICR Number 1158.08, OMB Number 2060–0156

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 October 31, 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 October 18, 2004.

ADDRESSES: Submit your comments, referencing docket ID number OECA–2004–0014, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *docket.oeca@epa.gov,* or by mail to: Environmental Protection Agency, EPA Docket Center (EPA/DC), Enforcement and Compliance Docket and Information Center, EPA West, Mail Code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Maria Malave, Compliance Assessment and Media Programs Division (Mail Code 2223A), Office of Compliance, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–7027; fax number: (202) 564–0050; e-mail address: *malave.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 May 25, 2004 (69 FR 29718), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OECA–2004–0014, 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: NSPS for Rubber Tire Manufacturing (40 CFR part 60, subpart BBB) (Renewal).

Abstract: The New Source Performance Standards (NSPS) subpart BBB applies to affected facilities in rubber tire manufacturing plants that commence construction, modification or reconstruction after January 20, 1983. The affected facilities include: Each undertread cementing operation, each sidewall cementing operation, each tread end cementing operation, each bead cementing operation, each green tire spraying operation, each Michelin-A operation, each Michelin-B operation, each Michelin-C automatic operation. The rule establishes standards for volatile organic compounds (VOCs) use and emission limits.

Monitoring, recordkeeping and reporting requirements allow the regulatory agencies to determine compliance with the standard. One-time-only reports are required to identify the affected facilities and the compliance method used. Notification of Method 25 performance is also required. Annual reports of Method 24 results to verify VOC content of water-based sprays would be required.

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 167 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 and operators of rubber tire manufacturing plants.

Estimated Number of Respondents: 41.

Frequency of Response: Annually, semiannually, initially.

Estimated Total Annual Hour Burden: 13,323 hours.

Estimated Total Annual Costs: $866,093, which includes $0 annualized capital/startup costs, $16,000 annual O&M costs, and $850,093 annual labor costs.

Changes in the Estimates: There is an increase in 172 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. The reason for the change is due to the inclusion of managerial and clerical person-hours. The active ICR only covered technical burden hours.

The increase in labor cost from the most recently approved ICR is due to a revised hourly labor rate from the United States Department of Labor.

Dated: September 5, 2004.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 04–20976 Filed 9–16–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0111, FRL–7814–5]

Agency Information Collection Activities; Submission to OMB; Comment Request; EPA ICR No. 0922.07; OMB Control No. 2070–0057; Data Call-Ins for the Special Review and Registration Review Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Data Call-Ins for the Special Review and Registration Review Programs; EPA ICR No. 0922.07; OMB Control No. 2070–0057. The ICR, which is abstracted below, describes the nature of the information collection activity and its expected burden and costs.

DATES: Additional comments may be submitted on or before October 18, 2004.

FOR FURTHER INFORMATION CONTACT: Nathanael Martin, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–6475; fax number: (703) 305–5884; e-mail address: martin.nathanael@epa.gov.

ADDRESSES: Submit your comments, referencing docket ID number OPP–2004–0111, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *opp-docket@epa.gov*, or by mail to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Mailcode: 7502C, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. The **Federal Register** document, required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on June 1,

2004 (69 FR 30901). EPA received one comment on this ICR during the 60-day comment period and it has been addressed in the ICR.

EPA has established a public docket for this ICR under Docket ID No. OPP–2004–0111, which is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice.Please note, EPA's policy is that public comments, whether submitted electronically or on 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.*

ICR Title: Data Call-Ins for the Special Review and Registration Review Programs

ICR Status: This is a request for extension of an existing approved collection that is currently scheduled to expire on October 31, 2004. EPA is asking OMB to approve this ICR for three years. Under 5 CFR 1320.12(b)(2), the Agency may continue to conduct or sponsor the collection of information while the submission is pending at OMB.

Abstract: This information collection will enable EPA to collect the necessary data (*e.g.*, various scientific studies related to certain pesticides) to assess whether the continued registration of an existing pesticide causes an unreasonable adverse effect on human health or the environment. This information collection will also enable EPA to collect certain company data about pesticide registrants that may be needed in order to verify eligibility for waivers and exemptions. The special review process is set in motion when EPA has reason to believe that the use of a pesticide may result in unreasonable adverse effects to human health or the environment. The goal of this process is to reduce the risks posed by a pesticide to an acceptable level while taking into consideration the benefits provided by the use of the pesticide. This ICR also includes the information collection related to the Registration Review Program. The Food Quality Protection Act of 1996 (FQPA), which amended the two primary statutes regulating pesticides, *i.e.*, the Federal Food, Drug and Cosmetic Act (FFDCA) and FIFRA, established the Registration Review Program. Under FIFRA section 3(g), EPA must now periodically review all pesticide registrations. In doing so, the Agency is authorized to use FIFRA section 3(c)(2)(B) to require pesticide registrants to generate and submit data to the Agency where such data is needed to assess whether unreasonable risk to human health or the environment.

Burden Statement: The annual "respondent" burden for this ICR is estimated to be 64,699 hours. According to the Paperwork Reduction Act, "burden" means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For this collection, it is the time reading the regulations, planning the necessary data collection activities, conducting tests, analyzing data, generating reports and completing other required paperwork, and storing, filing, and maintaining the data. The agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this information collection appears at the beginning and the end of this document. In addition OMB control numbers for EPA's regulations, after initial display in the final rule, are listed in 40 CFR part 9.

The following is a summary of the burden estimates taken from the ICR:

Respondents/affected entities: Pesticide and other agricultural chemical manufacturing (NAICS 325320), *e.g.*, Businesses engaged in the manufacture of pesticides.

Estimated total number of potential respondents: 61.

Frequency of response: On occasion.

Estimated total/average number of responses for each respondent: 1.

Estimated total annual burden hours: 64,699.

Estimated total annual labor costs: $5,851,894.

Changes in the ICR Since the Last Approval: This ICR renewal request will result in a net decrease in the annual respondent burden of 6,433 hours (from 71,132 hours to 64,699 hours) from the previous ICR because the Agency expects to issue fewer special review data-call-ins over the next three years. Although respondent labor rates have increased when compared with the previous ICR, annual cost estimates have decreased from $6,072,472 to $5,851,894, again due to a decrease in the number of special review data call-in notices to be issued.

Dated: September 4, 2004.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 04–20977 Filed 9–16–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0092, FRL–7814–6]

Agency Information Collection Activities; Submission to OMB; Comment Request; EPA ICR No. 2147.02; OMB Control No. 2070–0167; Pesticide Registration Fee Waivers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Pesticide Registration Fee Waivers; EPA ICR Number: 2147.02; OMB Control Number: 2070–0167. The ICR, which is abstracted below, describes the nature of the information collection activity and its expected burden and costs.

DATES: Additional comments may be submitted on or before October 18, 2004.

FOR FURTHER INFORMATION CONTACT: Nathanael Martin, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–6475; fax number: (703) 305–5884; e-mail address: *martin.nathanael@epa.gov.*

ADDRESSES: Submit your comments, referencing docket ID number OPP–2004–0092, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *opp-docket@epa.gov*, or by mail to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Mailcode: 7502C, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. The **Federal Register** document, required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on March 25, 2003 (69 FR 15322). EPA received no comments on this ICR during the 60-day comment period.

EPA has established a public docket for this ICR under Docket ID No. OPP–2004–0092, which is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell Street, Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. Please note, EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

ICR Title: Pesticide Registration Fee Waivers.

ICR Status: This is a request for extension of an existing approved collection that is currently scheduled to expire on September 30, 2004. EPA is asking OMB to approve this ICR for three years. Under OMB regulations at 5 CFR 1320.10(e)(2), the Agency may continue to conduct or sponsor the collection of information while the submission is pending at OMB.

Abstract: This information collection will allow the Environmental Protection Agency (EPA) to process requests for waivers of fees under the Pesticide Registration Improvement Act of 2003 (PRIA). The ICR covers the collection activities associated with requesting a fee waiver and involves requesters submitting a waiver request, information to demonstrate eligibility for the waiver, and certification of eligibility. Waivers are available for small businesses, for minor uses, and for actions solely associated with the Inter-Regional Research Project Number 4 (IR–4). State and federal agencies are exempt from the payment of fees. This ICR provides burden hour and labor cost estimates for both applicants for fee waivers and EPA employees who process and approve or deny waiver requests. Responses to this information collection activity are required only to obtain or retain a benefit (*i.e.*, a reduction or waiver of fees).

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average about 30 hours per response. According to the Paperwork Reduction Act, "burden" means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For this collection it includes the time needed to read the new regulation, review instructions, plan activities, assemble pertinent materials, and transmit or otherwise disclose the information. The agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this information collection appears at the beginning and the end of this document.

The following is a summary of the burden estimates taken from the ICR:

Respondents/affected entities: Pesticide registrants.

Estimated total number of potential respondents: 1,565.

Frequency of response: On occasion.

Estimated total/average number of responses for each respondent: 1.

Estimated total annual burden hours: 10,670.

Estimated total annual labor costs: $899,360.

Changes in the ICR Since the Last Approval: The total estimated annual respondent burden for this ICR has decreased 10,930 hours (from 21,600 to 10,670), due mainly to an adjustment of the burden hour estimates resulting from the Agency's consultation efforts. Estimated costs have decreased almost $980,000 (from $1,879,200 to $899,360) for the same reason. These decreases are explained more fully in the ICR.

Dated: September 8, 2004.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 04–20978 Filed 9–16–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2004–0017; FRL–7814–7]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Recordkeeping Requirements for Producers of Pesticides Under Section 8 of the Federal Insecticide, Fungicide, and Rodenticide Act as Amended (FIFRA), EPA ICR Number 0143.08, OMB Control Number 2070–0028

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 October 31, 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 October 18, 2004.

ADDRESSES: Submit your comments, referencing docket ID number OECA–2004–0017, 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, 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: Stephen Howie, Office of Enforcement and Compliance Assurance (2225A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–4146; fax number: (202) 564–0085; e-mail address: *howie.stephen@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On March 31, 2004 (69 FR 16916), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA has addressed the comments received.

EPA has established a public docket for this ICR under Docket ID No. OECA–2004–0017, which is available for public viewing at the Enforcement and Compliance Docket and Information Center (ECDIC) 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 ECDIC is (202) 566–1927. 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: Recordkeeping Requirements for Producers of Pesticides under section 8 of the Federal Insecticide, Fungicide, and Rodenticide Act as amended (FIFRA).

Abstract: Producers of pesticides must maintain certain records with respect to their operations and make such records available for inspection and copying as specified in section 8 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and in regulations at 40 CFR Part 169. This information collection is mandatory under FIFRA section 8. It is used by the Agency to determine compliance with the Act. The information is used by EPA Regional pesticide enforcement and compliance staffs, OECA, and the Office of Pesticide Programs (OPP) within the Office of Prevention, Pesticides and Toxic Substances (OPPTS), as well as the U.S. Department of Agriculture (USDA), the Food and Drug Administration (FDA), other Federal agencies, States under Cooperative Enforcement Agreements, and the public.

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 2 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: Producers of pesticides.

Estimated Number of Respondents: 12,953.

Frequency of Response: 1.

Estimated Total Annual Hour Burden: 25,907.

Estimated Total Annual Cost: $1,107,524, includes $0 annualized capital or O&M costs.

Changes in the Estimates: There is a increase of 1,235 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase is due to an adjustment in the estimates of the number of respondents.

Dated: September 6, 2004.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 04–20979 Filed 9–16–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[UST–2004–0001; FRL–7814–8]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Underground Storage Tanks: Technical and Financial Requirements, and State Program Approval Procedures (Renewal), EPA ICR Number 1360.07, OMB Control Number 2050–0068

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, which is scheduled to expire on October 31, 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 October 18 2004.

ADDRESSES: Submit your comments, referencing Docket ID No. UST–2004–0001, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *rcra-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Underground Storage Tank (UST) Docket, Mail Code 5305T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Elizabeth Ketchum, Office of Underground Storage Tanks, Mail Code 5401G, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 603–7144; fax number: (703) 603–0175; e-mail address: *ketchum.elizabeth@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On April 19, 2004 (69 FR 20870), 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. UST–2004–0001, which is available for public viewing at the UST 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 UST Docket is (202) 566–0270. 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 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: Underground Storage Tanks: Technical and Financial Requirements, and State Program Approval Procedures (Renewal).

Abstract: Subtitle I of the Resource Conservation and Recovery Act (RCRA), as amended, requires that EPA develop standards for UST systems, as may be necessary, to protect human health and the environment, and establish procedures for approving State programs in lieu of the Federal program. EPA promulgated technical and financial requirements for owners and operators of USTs at 40 CFR part 280 and State program approval procedures at 40 CFR part 281. This ICR is a comprehensive presentation of all information collection requirements contained at 40 CFR parts 280 and 281.

The data collected under 40 CFR part 280 are used by the owners and operators and/or EPA or the implementing agency to monitor results of testing, inspections, and operations of UST systems, as well as demonstrate compliance with regulations. EPA believes strongly that if the minimum requirements specified under the regulations are not met, neither the facilities nor EPA can ensure that UST systems are being managed in a manner protective of human health and the environment.

The data collected under 40 CFR part 281 are used by EPA to determine whether to approve a State program. Before granting approval, EPA must determine that programs will be no less stringent than the Federal program and contain adequate enforcement mechanisms.

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 are identified on the form and/or instrument, if applicable.

Burden Statement: For UST facilities, the annual reporting and recordkeeping burden is estimated to average 24 hours per respondent. For States applying for program approval, the annual reporting and recordkeeping burden is estimated to average 28 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 use technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, 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 and operators of USTs and States that implement UST programs are potentially affected by this information collection.

Estimated Number of Respondents: 254,705 (254,666 UST facilities and 39 State programs).

Frequency of Response: Varies depending on the individual reporting and recordkeeping requirements.

Estimated Total Annual Hour Burden: 6,132,237 hours.

Estimated Total Annual Cost: $674.45 million, includes $80.25 million annual capital/startup costs, $263.26 million annual O&M costs and $330.94 annual labor costs.

Changes in the Estimates: There is an increase of 106,694 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase is due to updated respondent universe and burden and cost estimates from the

Office of Underground Storage Tanks (OUST) and the regulated community. The current OMB inventory reports $363,000 in total annualized costs (which includes capital/startup and O&M costs); there was an error in the burden associated with the previous ICR (1360.06) and the cost estimate should have been $363,561,000. The total annualized cost requested in this ICR is $343,507,000. This corrects the current OMB inventory and is based on updated data from the Office of Underground Storage Tanks (OUST) and the regulated community. This new burden is $20.05 million less than the previous ICR submission.

Dated: September 5, 2004.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 04–20980 Filed 9–16–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[Docket #: ID–04–004; FRL–7815–1]

Adequacy Status of the Portneuf Valley, Pocatello, ID Submitted Particulate Matter (PM_{10}) Maintenance Plan for Transportation Conformity Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy.

SUMMARY: In this notice, EPA is notifying the public that we have found the submitted motor vehicle emissions budgets for PM_{10} in the Moderate Portneuf Valley, Pocatello, Idaho PM_{10} Maintenance Plan (Maintenance Plan) are adequate for transportation conformity purposes. On March 2, 1999, the D.C. Circuit Court ruled that submitted SIPs cannot be used for conformity determinations until EPA has affirmatively found them adequate. As a result of this adequacy finding, the Bannock Planning Organization, Idaho Transportation Department, and the Federal Highway Administration are required to use the motor vehicle emissions budgets from this submitted Maintenance Plan for future conformity determinations.

DATES: This finding is effective October 4, 2004.

FOR FURTHER INFORMATION CONTACT: The finding is available at EPA's conformity Web site: *http://www.epa.gov/otaq/transp.htm*, (once there, click on the "Transportation Conformity" button, then look for "Adequacy Review of SIP Submissions"). You may also contact Wayne Elson, U.S. EPA, Region 10, Office of Air, Waste, and Toxics (AWT–107), 1200 Sixth Ave, Seattle WA 98101; (206) 553–1463 or *elson.wayne@epa.gov*.

SUPPLEMENTARY INFORMATION:

Background

Today's notice is simply an announcement of a finding that we have already made. EPA Region 10 sent a letter to Idaho Department of Environmental Quality on August 31, 2004, stating that the motor vehicle emissions budgets in the Maintenance Plan are adequate.

Transportation conformity is required by section 176(c) of the Clean Air Act. EPA's conformity rule requires that transportation plans, programs, and projects conform to state air quality implementation plans (SIPs) and establishes the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which we determine whether a SIP's motor vehicle emission budget is adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). Please note that an adequacy review is separate from EPA's completeness review and it also should not be used to prejudge our ultimate approval of the SIP. Even if we find a budgets adequate, the SIP could later be disapproved.

We have described our process for determining the adequacy of submitted SIP budgets in guidance (May 14, 1999 memo titled "Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision"). We followed this guidance in making our adequacy determination. For the reader's ease, we have excerpted the motor vehicle emission budgets from the Maintenance Plan. The budgets in tons per year are as follows:

Year	Particulate matter PM_{10}	Nitrogen oxides	Volatile organic compounds
2005	897	1,575	983
2010	1,120	1,085	716
2020	1,364	514	585

Authority: 42 U.S.C. 7401–7671q.

Dated: September 8, 2004.

Julie Hagensen,

Acting Regional Administrator, Region 10.

[FR Doc. 04–20975 Filed 9–16–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6655–8]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act, as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the **Federal Register** dated April 2, 2004 (69 FR 17403).

Draft EISs

ERP No. D–COE–G39041–LA Rating LO, Programmatic EIS—Louisiana Coastal Area (LCA) Ecosystem Restoration Study, Implementation, Tentatively Selected Plan, Mississippi River, LA.

Summary: EPA has no objection to the selection of the Tentatively Selected Plan of Action, and supports the primary restoration strategies, namely, river reintroduction and barrier island/shoreline restoration.

ERP No. D–COE–K39086–CA Rating EC2, Matilija Dam Ecosystem Restoration Feasibility Study, Restoring Anadromous Fish Populations, Matilija Creek, Ventura River, Ventura County Watershed Protection District, Ventura County, CA.

Summary: EPA supports the proposed project. However, EPA has environmental concerns regarding the potential adverse impacts of a flooding event mobilizing a large quantity of

sediment, as well as impacts regarding the proposed slurry disposal sites.

ERP No. D–FHW–E40801–00 Rating EC2, Interstate 69 Section of Independent Utility #9, Construction from the Interstate 55/MS State Route 304 Interchange in Hernando, MS to the Intersection of U.S. 51 and State Route 385 in Millington, TN, Desoto and Marshall Counties, MS, Shelby and Fayette Counties, MS.

Summary: EPA expressed concerns about aquatic resource impacts, land-use, noise, environmental justice, and connected and cumulative actions.

ERP No. D–FHW–J40164–MT Rating EC2, U.S.–2 Highway Corridor Improvement Project, Reconstruction between Havre to Fort Belknap to Replace the Aging U.S.–2 Facility, U.S. Army COE Section 404 Permit, Hill and Blaine Counties, MT.

Summary: EPA express concern about to riparian degradation and siltation of 303(d) listed Battle Creek.

ERP No. D–FHW–K40223–CA Rating EC2, South Orange County Transportation Infrastructure Improvement Project, To Locate, Construct and Operate Transportation Improvements, Orange and San Diego Counties, CA.

Summary: EPA expressed concerns about direct and indirect impacts to water resources, impacts to air and water quality from construction and operation, and cumulative impacts to species and habitats. EPA encourages the transportation agencies to commit to mitigation measures that compliment pending conversation plans in the region.

ERP No. DA–FTA–C40046–NY Rating LO, Erie Canal Harbor Project (formerly known as the Buffalo Inner Harbor Development Project) Updated Information on the Original Project, City of Buffalo, Erie County, NY.

Summary: EPA has no objection to the implementation of the proposed project.

ERP No. DS–COE–D36042–PA Rating LO, Wyoming Valley Levee Raising Project, Design Modification and Recreational Enhancements, Wilkes-Barre, Pennsylvania River Commons, Susquehanna River, Luzerne County, PA.

Summary: EPA had no objection to the proposed action.

Final EISs

ERP No. F–COE–C39016–PR, Port of The Americas Project, Development of a Deep-Draft Terminal at the Port of Ponce to Receive Post-Panamax Ships, COE Section 10 and 404 Permits, Municipalities of Guayanilla-Penuelas and Ponce, Puerto Rico.

Summary: Based on new information regarding port development and compensatory mitigation to offset unavoidable impacts to wetlands, EPA concluded that earlier objections to issuance of the Corps' CWA Section 404 Permit have been addressed. However, EPA requested that traffic models and emissions analyses be updated to incorporate new cargo volume projections.

ERP No. F–FHW–D40313–MD, MD–210 (Indian Head Highway) Multi-Modal Study, MD–210 Improvements between I–95/I–495 (Capitol Beltway) and MD–228 Funding and U.S. COE Section 404 Permit Issuance, Prince George's County, MD.

Summary: EPA's previous issues have been resolved, therefore, EPA has no objection to the proposed action.

Dated: September 14, 2004.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 04–20987 Filed 9–16–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6655–7]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed September 6, 2004 Through September 10, 2004

Pursuant to 40 CFR 1506.9.

EIS No. 040431, DRAFT EIS, AFS, MT, Fishtrap Project, Proposed Timber Harvest, Prescribed Burning, Road Construction and Other Restoration Activities, Lolo National Forest, Plains/Thompson Falls Ranger District, Sanders County, MT, Comment Period Ends: November 1, 2004, Contact: Pat Partyka (406) 826–4314.

EIS No. 040432, DRAFT EIS, AFS, NM, Ojo Caliente Proposed Transmission Line, Propose to Authorize, Construct, Operate and Maintain a New 115kV Transmission Line and Substation, Carson National Forest and BLM Taos Field Office, Taos and Rio Arriba Counties, NM, Comment Period Ends: November 1, 2004, Contact: Ben Kuykendall (505) 758–6311.

EIS No. 040433, DRAFT EIS, NRC, NM, National Enrichment Facility (NEF), To Construct, Operate, and Decommission a Gas Centrifuge Uranium Enrichment Facility, License Application, NUREG–1790, near Eunice, Lea County, NM, Comment Period Ends: November 6, 2004, Contact: Melanie Wong (301) 415–6262.

EIS No. 040434, DRAFT EIS, IBR, UT, WY, Operation of Flaming Gorge Dam Colorado River Storage Project, To Protect and Assist in Recovery of Populations and Designated Critical Habitat of Four Endangered Fishes: Bonytail, Colorado Pikeminnow, Humpback Chub and Razorback Sucker, Green River, UT and WY, Comment Period Ends: November 15, 2004, Contact: Peter Crookston (801) 379–1152.

EIS No. 040435, DRAFT EIS, BLM, CA, NM, OR, California Coastal National Monument Resource Management Plan, To Protect Important Biological and Geological Values: Islands, Rocks, Exposed Reefs, and Pinnacles above Mean High Tide, CA, OR and Mexico, Comment Period Ends: December 16, 2004, Contact: Rick Hanks (831) 372–6115.

EIS No. 040436, DRAFT EIS, AFS, SD, WY, Black Hills National Forest Land and Resource Management Plan Phase II Amendment, Proposal to Amend the 1997 Land and Resource Management Plan, Custer, Fall River, Lawrence, Meade, and Pennington Counties, SD and Crook and Weston Counties, WY, Comment Period Ends: December 15, 2004, Contact: Jeff Ulrich (605) 673–9200. This document is available on the Internet at: *http://www.fs.fed.us/r2/blackhills.*

EIS No. 040437, DRAFT EIS, AFS, NH, ME, White Mountain National Forest, Propose Land and Resource Management Plan, Forest Plan Revision Implementation, Carroll, Coos and Grafton Counties, NH and Oxford County, ME, Comment Period Ends: December 15, 2004, Contact: Barbara Levesque (603) 528–8743.

EIS No. 040438, DRAFT EIS, DOD, Programmatic—Missile Defense Agency, To Incrementally Develop, Test, Deploy and Planning for Decommissioning of the Ballistic Missile Defense System (BMDS), Comment Period Ends: November 1, 2004, Contact: Martin Duke (703) 697–4248.

EIS No. 040439, DRAFT EIS, DHS, MD, National Biodefense Analysis and Countermeasures Center (NBACC) Facility at Fort Detrick, Construction and Operation, Fort Detrick, Frederick County, MD, Comment Period Ends: November 1, 2004, Contact: Kevin Anderson (301) 846–2156.

EIS No. 040440, DRAFT EIS, FHW, OH, US–24, Transportation Project, Improvements between Napoleon to Toledo, Funding, Lucas and Henry Counties, OH, Comment Period Ends: November 10, 2004, Contact: Mark Vonderembse (614) 280–6854.

EIS No. 040441, DRAFT EIS, FRC, CA, Upper North Fork Feather River Project (FERC–No. 2105), Issuing a New License for Existing 3517.3 megawatt (MW) Hydroelectric Facility, North Fork Feather River, Chester, Plumas County, CA, Comment Period Ends: November 1, 2004, Contact: John Mudre (202) 502–8902.

Amended Notices

EIS No. 040421, FINAL EIS, NPS, MD, VA, PA, DC, Chesapeake Bay Special Resource Study (SRS), To Conserve and Restore Chesapeake Bay, New Unit of the National Park System, MD, VA, PA and DC, Wait Period Ends: October 12, 2004, Contact: Jonathan Doherty (410) 267–5725. Revision of **Federal Register** Notice Published on 9/10/2004: Correction to Contact Person Name.

Dated: September 14, 2004.

Robert W. Hargrove,

Division Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 04–20986 Filed 9–16–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0062; FRL–7677–7]

Exposure Modeling Work Group; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Exposure Modeling Work Group (EMWG) will hold a one–day meeting on October 4, 2004. This notice announces the location and time for the meeting and sets forth the tentative agenda topics.

DATES: The meeting will be held on October 4, 2004, from 9 a.m. to 3 p.m.

ADDRESSES: The meeting will be held at the Office of Pesticide Programs (OPP), Environmental Protection Agency, Crystal Mall #2, Room 1126 (Fishbowl), 1801 South Bell Street, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: James C. Lin, Environmental Fate and Effects Division (7507C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9591; fax number: (703) 305–6309; e-mail address: lin.james@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of particular interest to those persons who are or may be required to conduct testing of chemical substances under the Toxic Substances Control Act (TSCA), 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–2004–0062. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell Street, Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/.

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

II. Background

On a quarterly interval, the Exposure Modeling Workgroup meets to discuss current issues in modeling pesticide fate, transport, and exposure to pesticides in support of risk assessment in a regulatory context.

III. How Can I Request to Participate in this Meeting?

You may submit a request to participate in this meeting to the person listed under **FOR FURTHER INFORMATION CONTACT.**

IV. Tentative Agenda

1. Welcome and Introductions
2. Old Action Items
3. Brief Updates
   - PRZM/EXAMS model, EXPRESS (RD Jones, L. Burns)
   - Review of Public Comments on EFED's Modeling Scenarios (RD Jones)
   - Terrestrial Field Dissipation / New Technical Document (M. Corbin)
   - Direct Application of Herbicides to Water Bodies (M. Corbin)
   - Spray Drift Update (N. Birchfield)
   - Cumulative Drinking Water Assessment - Methods Review (N. Thurman)

V. Major Topics

- ILSI Risk Science Institute Project on CARES (B. Julien)
- Overview of CARES with a Focus on Drinking Water Assessment (S. Jackson)
- Ground Water Mapping Using Classification And Regression Tree Analysis: An EarthSat Approach (J. Cooper, F. Smith)
- EFED Ground Water Modeling Development Effort (D. Young)
- Evaluation of Vadose Zone Solute Transport Models (T. Nolan)
- Assessing the Vulnerability of Ground Water to Contamination - Recent Approaches and Future Prospects (J. Barbash).

List of Subjects

Environmental protection, Modeling, Pesticides, Pests.

Dated: September 10, 2004.

Steve Bradbury,

Director, Environmental Fate and Effects Division, Office of Pesticide Programs.

[FR Doc. 04–20985 Filed 9– 16–04 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0309; FRL–7678–3]

Pesticide Program Dialogue Committee, Pesticide Registration Improvement Act Process Improvement Workgroup; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA's Pesticide Program Dialogue Committee (PPDC), Pesticide Registration Improvement Act (PRIA) Process Improvement Workgroup will hold a public meeting on October 12, 2004. An agenda for this meeting is being developed and will be posted on EPA's website. The workgroup is developing advice and recommendations on topics related to EPA's registration process.

DATES: The meeting will be held on Tuesday, October 12, 2004, from 1 p.m. to 4 p.m.

ADDRESSES: The meeting will be held at EPA's Offices at 1801 S. Bell St., Crystal Mall #2, Rm. 1123, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Rick Keigwin, Office of Pesticide Programs, 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, and may be of particular interest to persons who are concerned about implementation of the Pesticide Registration Improvement Act (PRIA), the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and the Federal Food, Drug, and Cosmetic Act (FFDCA). Other potentially affected entities may include but are not limited to agricultural workers and farmers; pesticide industry trade associations; envrionmental, consumer and farmworker groups; pesticide users and growers; pest consultants; State, local and Tribal governments; academia; public health organizations; food processors; and the public. 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–2004–0309. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

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

II. Background

The Office of Pesticide Programs (OPP) is entrusted with the responsibility of ensuring the safety of the American food supply, protection and education of those who apply or are exposed to pesticides occupationally or through use of products, and the general protection of the environment and special ecosystems from potential risks posed by pesticides.

PPDC was established under the Federal Advisory Committee Act (FACA), Public Law 92–463, in September 1995 for a 2–year term and has been renewed every 2 years since that time. PPDC provides advice and recommendations to OPP on a broad range of pesticide regulatory, policy, and program implementation issues that are associated with evaluating and reducing risks from use of pesticides. The following sectors are represented on the PPDC: Pesticide industry and trade associations; environmental/public interest and consumer groups; farm worker organizations; pesticide user, grower, and commodity groups; Federal and State/local/Tribal governments; the general public; academia; and public health organizations. Copies of the PPDC charter are filed with appropriate committees of Congress and the Library of Congress and are available upon request.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: September 7, 2004.

Martha Monell,

Acting Director, Office of Pesticide Programs.

[FR Doc. 04–20984 Filed 9–16–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0301; FRL–7677–3]

Phenol/Sodium Phenate Preliminary Risk Assessment; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's preliminary risk assessment, and related documents for the antimicrobial pesticide Phenol/Sodium phenate, and opens a 12-day public comment period on these documents. The public also is encouraged to suggest risk management ideas or proposals to address the risks identified. EPA is developing a Reregistration Eligibility Decision (RED) for Phenol/Sodium Phenate using a modified, 4-phase public participation process. EPA uses this process to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

DATES: Comments, identified by docket ID number OPP–2004–0301, must be received on or before September 29, 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: Killian Swift, Antimicrobials Division (7510C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: 703–308–6346; fax number: 703–308–8481; e-mail address: *swift.killian@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and antimicrobial advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2004–0301. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

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

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

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

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

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/,* and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2004–0301. 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–2004–0301. 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–2004–0301.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP–2004–0301. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

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

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

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

II. Background

A. What Action is the Agency Taking?

EPA is releasing for public comment its human health and environmental fate and effects risk assessment(s), and related documents for phenol/sodium phenate, an antimicrobial pesticide, and encouraging the public to suggest risk management ideas or proposals. Phenol/Sodium Phenate is registered for the uses identified below. EPA developed the risk assessment(s) and preliminary risk reduction options for Phenol/Sodium Phenate through a modified version of its public process for making pesticide reregistration eligibility and tolerance reassessment decisions. Through these programs, EPA is ensuring that pesticides meet current standards under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA) and the Pesticide Registration Improvement Act of 2003 (PRIA).

Phenol is formulated as a pressurized ready-to-use liquid; and is registered for use as a sanitizer, bacteriostat, fungicide/fungistat, tuberculocide, disinfectant, and virucide. It is used to control animal pathogenic bacteria, animal pathogenic fungi, hydrophilic viruses, Polio Virus Type 1, Parvo Virus, lipophilic Viruses, Vaccinia Virus, influenza A2(Hong Kong, Japan, Japan 305/57 Asian Strain), HIV-1 (Human Immunodeficiency Virus), and mold/mildew.

Phenol has a number of use sites including indoor food uses in eating establishments on equipment and utensils, non-food indoor uses in commercial-transportation facilities, institutional and industrial floors, industrial premises and equipment, laundry equipment, paints, latex, and specialty industrial products. Indoor residential uses of phenol encompass the bathroom, hard surfaces, diaper pails, dogs and canines, household and domestic dwellings, solid waste containers (garbage cans). Phenol also has indoor, medical uses on surgical instruments and pacemakers (critical items), catheters and inhalation equipment (semi-critical items), bedpans and furniture (non-critical items), non-conductive floors, critical premises (burn wards), non-critical premises, patient premises, and institutional premises (human and veterinary). Additionally, phenol is used in aquatic non-food residential areas for swimming pool water systems. Phenol also is found in over-the-counter drugs for treatment of various conditions, including insect bites, poison ivy, diaper rash, antiseptics, and acne (21 CFR 310.531 and 310.545).

EPA is providing an opportunity, through this notice, for interested parties to provide written comments and input on the Agency's risk assessment(s) for phenol/sodium phenate. Such comments and input could address, for example, the availability of additional data to further refine the risk assessments, or could address the Agency's risk assessment methodologies and assumptions as applied to this specific pesticide.

EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical, unusually high exposure to Phenol/Sodium Phenate, compared to the general population.

All comments should be submitted using the methods in Unit I. of the **SUPPLEMENTARY INFORMATION**, and must

be received by EPA on or before the closing date. Comments will become part of the Agency record for Phenol/Sodium Phenate.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. In conducting these programs, the Agency is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of the issues, and degree of public concern associated with each pesticide. For Phenol/Sodium Phenate, a modified, 4-phase process with one comment period and ample opportunity for public consultation seems appropriate in view of its refined risk assessment(s), limited use, small number of users, few complex issues, few affected stakeholders, and/or other factors. However, if as a result of comments received during this comment period EPA finds that additional issues warranting further discussion are raised, the Agency may lengthen the process and include a second comment period, as needed. EPA plans to issue the Phenol/Sodium Phenate RED as a final document for public comment.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA as amended, directs that, after submission of all data concerning a pesticide active ingredient, "the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration," before calling in product specific data on individual end-use products and either reregistering products or taking other "appropriate regulatory action."

List of Subjects

Environmental protection, Pesticides and pests.

Dated: September 9, 2004.

Frank Sanders,

Director, Antimicrobials Division, Office of Pesticide Programs.

[FR Doc. 04–20913 Filed 9–15–04; 1:46 pm]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0302; FRL–7680–3]

Pine Oil Preliminary Risk Assessment; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's preliminary risk assessment, and related documents for the antimicrobial pesticide pine oil and opens a public comment period on these documents. The public is also encouraged to suggest risk management ideas or proposals to address identified risk. EPA is developing a Reregistration Eligibility Decision (RED) for using a modified, four-phase public participation process. EPA uses this process to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

DATES: Comments, identified by docket ID number OPP–2004–0302, must be received on or before September 29, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: ShaRon Carlisle, Antimicrobials Division (7510C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–6427; fax number: (703) 308–8481; e-mail address:*carlisle.sharon@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2004–0302. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell Street, 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. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public comments, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's

electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

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

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

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at*http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2004–0302. 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–2004–0302. 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–2004–0302.

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–2004–0302. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

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

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

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

II. Background

A. What Action is the Agency Taking?

EPA is releasing for public comment its human health and environmental fate and effects risk assessment(s), and related documents for pine oil, and encouraging the public to suggest risk management ideas or proposals.

Pine oil is registered for use as a disinfectant, sanitizer, microbiocide/microbiostat, virucide, and insecticide for indoor food use, indoor non-food use, indoor residential use, indoor medical use, and aquatic non-food industrial use. Some of these formulations are allowed for use as hard surface disinfectants in eating establishments where there may be the potential for indirect transfer to food. EPA developed the risk assessment(s) and preliminary risk reduction options for pine oil through a modified version of its public process for making pesticide reregistration eligibility and tolerance reassessment decisions. Through these programs, EPA is ensuring that pesticides meet current standards under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), and the Pesticide Registration Improvement Act of 2003 (PRIA).

EPA is providing an opportunity, through this notice, for interested parties to provide written comments and input on the Agency's risk assessment(s) for pine oil. Such comments and input could address, for example, the availability of additional data to further refine the risk assessments, or could address the Agency's risk assessment methodologies and assumptions as applied to this specific pesticide.

EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical, unusually high exposure to pine oil, compared to the general population.

All comments should be submitted using the methods in Unit I.C. and must be received by EPA on or before the closing date. Comments will become part of the Agency record for pine oil.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. In conducting these programs, the Agency is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of the issues, and degree of public concern associated with each pesticide. For pine oil, a modified, four-phase process with one comment period and ample opportunity for public consultation seems appropriate in view of its refined risk assessment(s), limited use, small number of users, few complex issues, few affected stakeholders, and/or other factors. However, if as a result of comments received during this comment period EPA finds that additional issues warranting further discussion are raised, the Agency may lengthen the process and include a second comment period, as needed. EPA plans to issue the Pine Oil RED as a final document for public comment.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA as amended, directs that, after submission of all data concerning a pesticide active ingredient, "the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration," before calling in product-specific data on individual end-use products and either reregistering products or taking other "appropriate regulatory action."

List of Subjects

Environmental protection, Pesticides and pests.

Dated: September 9, 2004.

Frank Sanders,

Director, Antimicrobials Division, Office of Pesticide Programs.

[FR Doc. 04–20910 Filed 9–15–04; 1:46 pm]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0303; FRL–7680–4]

Halohydantoins Preliminary Risk Assessment; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's preliminary risk assessment, and related documents for the antimicrobial pesticide halohydantoins and opens a public comment period on these documents. The public is also encouraged to suggest risk management ideas or proposals to address identified risk. EPA is developing a Reregistration Eligibility Decision (RED) for the halohydantoins using a modified, four-phase public participation process. EPA uses this process to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

DATES: Comments, identified by docket ID number OPP–2004–0303, must be received on or before September 29, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: ShaRon Carlisle, Antimicrobials Division (7510C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–6427; fax number: (703) 308–8481; e-mail address:*carlisle.sharon@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2004–0303. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell Street, 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. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public comments, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

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

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

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at*http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2004–0303. 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–2004–0303. 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–2004–0303.

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–2004–0303. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

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

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

II. Background

A. What Action is the Agency Taking?

EPA is releasing for public comment its human health and environmental fate and effects risk assessment(s), and related documents for halohydantoins, and encouraging the public to suggest risk management ideas or proposals.

The halohydantoin antimicrobial chemicals are registered for use in indoor food, indoor non-food, indoor residential, aquatic non-food residential, aquatic food, aquatic non-food, and aquatic non-food industrial sites for control of bacteria, fungi, and algal slimes. EPA developed the risk assessment(s) and preliminary risk reduction options for halohydantoins through a modified version of its public process for making pesticide reregistration eligibility and tolerance reassessment decisions. Through these programs, EPA is ensuring that pesticides meet current standards under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), and the Pesticide Registration Improvement Act of 2003 (PRIA).

EPA is providing an opportunity, through this notice, for interested parties to provide written comments and input on the Agency's risk assessment(s) for halohydantoins. Such comments and input could address, for example, the availability of additional data to further refine the risk assessments, or could address the Agency's risk assessment methodologies and assumptions as applied to this specific pesticide.

EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical, unusually high exposure to halohydantoins, compared to the general population.

All comments should be submitted using the methods in Unit I.C. and must be received by EPA on or before the closing date. Comments will become part of the Agency record for halohydantoins.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. In conducting these programs, the Agency is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of the issues, and degree of public concern associated with each pesticide. For halohydantoins, a modified, four-phase process with one comment period and ample opportunity for public consultation seems appropriate in view of its refined risk assessment(s), limited use, small number of users, few complex issues, few affected stakeholders, and/or other factors. However, if as a result of comments received during this comment period EPA finds that additional issues warranting further discussion are raised, the Agency may lengthen the process and include a second comment period, as needed. EPA plans to issue the Haloydantoin RED as a final document for public comment.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA as amended, directs that, after submission of all data concerning a pesticide active ingredient, "the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration," before calling in product-specific data on individual end-use products and either reregistering products or taking other "appropriate regulatory action."

List of Subjects

Environmental protection, Pesticides and pests.

Dated: September 9, 2004.

Frank Sanders,

Director, Antimicrobials Division, Office of Pesticide Programs.

[FR Doc. 04–20911 Filed 9–15–04; 1:46 pm]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0285; FRL–7675–9]

1,2-Ethanediamine, N, N, N', N'-tetramethyl-, polymer with 1, 1'-oxybis 2-chloroethane; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket identification (ID)number OPP–2004–0285, must be received on or before October 18, 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: Bipin Gandhi, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8380; e-mail address:*gandhi.bipin@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 ID number OPP–2004–0285. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 South Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

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

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

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

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

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2004–0285. 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–2004–0285. 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–2004–0285.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 South Bell St., Arlington, VA, Attention: Docket ID number OPP–2004–0285. 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: September 1, 2004.

Donald R. Stubbs,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner's summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by Buckman Laboratories International, Inc., and represents the view of the petitioner. 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. 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.

Buckman Laboratories International, Inc.

PP 4E6841

EPA has received a pesticide petition PP 4E6841 from Buckman Laboratories International, Inc., 1256 North McLean Blvd., Memphis, TN 38108, proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR 180.920 to establish an exemption from the requirement of a tolerance for 1,2-ethanediamine, N, N, N', N'-tetramethyl-, polymer with 1, 1'-oxybis[2-chloroethane] (CAS Reg. No. 31075–24–8) in or on raw agricultural commodities when used as an inert ingredient in or on growing crops. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

Buckman is petitioning that the inert ingredient, 1,2-ethanediamine, N, N, N', N'-tetramethyl-, polymer with 1, 1'-oxybis[2-chloroethane], be exempt from the requirement of a tolerance because the chemical meets all but one of the criteria that define a low risk polymer under 40 CFR 723.250(e). For this reason, neither plant metabolism data, residue data, nor an analytical method to determine residues of 1,2-ethanediamine, N, N, N', N'-tetramethyl-

, polymer with 1, 1'-oxybis[2-chloroethane] in raw agricultural commodities (RACs) are required.

B. Toxicological Profile

In the case of certain substances that are defined as "polymers," the Agency has established a set of criteria that identify categories of polymers that present low risk. These criteria, described in 40 CFR 723.250, identify polymers that are typically not readily absorbed, and are relatively unreactive and stable compounds in comparison to other chemical substances. These properties generally limit a polymer's ability to cause adverse effects. In addition, these criteria exclude polymers about which little is known. The Agency believes that polymers that meet the criteria in 40 CFR 723.250 will present minimal or no risk to human health.

1,2-Ethanediamine, N, N, N', N'-tetramethyl-, polymer with 1, 1'-oxybis[2-chloroethane] meets all but one of the exemption criteria in 40 CFR 723.250. That one exception is that 1,2-ethanediamine, N, N, N', N'-tetramethyl-, polymer with 1, 1'-oxybis[2-chloroethane] is a cationic polymer. Cationic polymers are excluded because of their typically inherent aquatic toxicity; however, 1,2-ethanediamine, N, N, N', N'-tetramethyl-, polymer with 1, 1'-oxybis[2-chloroethane] does not behave like a typical cationic polymer in the field. Environmental fate and toxicity data for 1,2-ethanediamine, N, N, N', N'-tetramethyl-, polymer with 1, 1'-oxybis[2-chloroethane] demonstrate that under natural conditions 1,2-ethanediamine, N, N, N', N'-tetramethyl-, polymer with 1, 1'-oxybis[2-chloroethane] binds tightly to organic material and, as a result, aquatic toxicity under field conditions is very low. For this reason, 1,2-ethanediamine, N, N, N', N'-tetramethyl-, polymer with 1, 1'-oxybis[2-chloroethane] should not be excluded on the basis that it is cationic because data are available that show that aquatic toxicity under field conditions is very low.

In all other respects, as listed below, 1,2-ethanediamine, N, N, N', N'-tetramethyl-, polymer with 1, 1'-oxybis[2-chloroethane] meets the polymer exemption criteria described in 40 CFR 723.250(d):

1. 1,2-Ethanediamine, N, N, N', N'-tetramethyl-, polymer with 1, 1'-oxybis[2-chloroethane] contains as an integral part of its composition the atomic elements carbon, hydrogen, oxygen, nitrogen and chloride ion.

2. 1,2-Ethanediamine, N, N, N', N'-tetramethyl-, polymer with 1, 1'-oxybis[2-chloroethane] does not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250 (d)(2)(ii).

3. 1,2-Ethanediamine, N, N, N', N'-tetramethyl-, polymer with 1, 1'-oxybis[2-chloroethane] is neither designed nor can it be reasonably anticipated to substantially degrade, decompose, or depolymerize.

4. 1,2-Ethanediamine, N, N, N', N'-tetramethyl-, polymer with 1, 1'-oxybis[2-chloroethane] is manufactured or imported from monomers and/or reactants that are already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

5. 1,2-Ethanediamine, N, N, N', N'-tetramethyl-, polymer with 1, 1'-oxybis[2-chloroethane] is not a water-absorbing polymer with a number average MW greater than or equal to 10,000 daltons. The number average MW is about 2,000 and the MW is around 3,000–5,000 daltons.

Additionally, 1,2-ethanediamine, N, N, N', N'-tetramethyl-, polymer with 1, 1'-oxybis[2-chloroethane] meets as required the following criteria specified in 40 CFR 723.250(e):

6. 1,2-Ethanediamine, N, N, N', N'-tetramethyl-, polymer with 1, 1'-oxybis[2-chloroethane] has a number average MW of about 2,000, which is greater than 1,000 and less than 10,000 daltons. The polymer contains less than 10% oligomeric material below MW 1,000 and the polymer does not contain any reactive functional groups.

1,2-Ethanediamine, N, N, N', N'-tetramethyl-, polymer with 1, 1'-oxybis[2-chloroethane] has the same chemical composition as Busan 77, a pesticide active ingredient registered by Buckman for non-food antimicrobial uses. As a result, a complete set of mammalian toxicology studies have been submitted, and reviewed and evaluated by the Agency. A summary of the mammalian toxicology studies follows:

1. *Acute toxicity.* 1,2-Ethanediamine, N, N, N', N'-tetramethyl-, polymer with 1, 1'-oxybis[2-chloroethane] exhibits moderate to low acute toxicity. The rat acute oral LD_{50} is 1,951 milligrams/kilogram (mg/kg) for males and 2,587 mg/kg for females (Toxicity Category III). In the rabbit acute dermal toxicity study, the LD_{50} was demonstrated to be >2,000 mg/kg (Toxicity Category III). The rat acute inhalation toxicity study concluded that the LC_{50} is 2.9 milligrams/Liter (mg/L) for males and females combined (Toxicity Category IV).

1,2-Ethanediamine, N, N, N', N'-tetramethyl-, polymer with 1, 1'-oxybis[2-chloroethane] was slightly irritating (Toxicity Category III) in the primary eye irritation study in rabbits and minimally irritating (Toxicity Category IV) in the rabbit primary skin irritation study. 1,2-Ethanediamine, N, N, N', N'-tetramethyl-, polymer with 1, 1'-oxybis[2-chloroethane] is not a skin sensitizer.

2. *Genotoxicity.* Four mutagenicity studies have been conducted and none of them demonstrated any genotoxic potential to be associated with the test material. The Ames Salmonella assay was negative with and without metabolic activation. Unscheduled DNA synthesis in primary rat hepatocytes in cultures was negative at dose levels up to 1,500 mg/kg. The mouse micronucleus assay was negative at dose levels tested up to 2,000 mg/kg. The sex-linked recessive lethal assay was negative at all dose levels tested: 0.08, 0.3 or 0.8 mg/mL.

3. *Reproductive and developmental toxicity.* In a rat teratology study, no effects were observed when the dose was administered during organogenisis. Some toxic effects were observed at high dose levels when the dose was administered during early gestation, but no teratogenic effects were observed. The maternal systemic lowest observable effect level (LOEL) was <6,000 parts per million (ppm) (300 mg/kg/day) or less. The no observable effect level (NOEL) was less than 6,000 ppm (300 mg/kg/day). The reproductive LOEL was 12,000 ppm (600 mg/kg/day) based on decreased live pups. The NOEL was 6,000 ppm (300 mg/kg/day).

In rabbits, no evidence of developmental toxicity was observed. The maternal toxicity NOEL and LOEL were determined to be 45 mg/kg/day and 125 mg/kg/day the highest dose tested, respectively. The NOEL and LOEL were the same for developmental toxicity. In the two-generation rat reproduction study, body weight and food consumption changes were noted in the mid-dose (12,000 ppm) and high-dose (18,000 ppm) dose animals. The mid-dose and high-dose groups showed a reduction in the number of live pups in both generations and showed some evidence of kidney mineralization. The NOEL for parental in-life and pathology data was less than 6,000 ppm in the diet. The NOEL for reproductive effects was 6,000 ppm (300 mg/kg/day) in the diet.

4. *Subchronic toxicity.* The systemic NOEL was 3,000 ppm (221 mg/kg/day) in the diet in a 90–day rat study. The LOEL was 10,000 ppm (752 mg/kg/day). Dose dependent mineralization of the kidney tubules was observed and at 40,000 ppm (3,685 mg/kg/day),

inflammation of the choroid plexus occurred. In a 90-day dermal study in rabbits, the NOEL for systemic toxicity was greater than 1,000 mg/kg/day (highest dose tested). The NOEL for dermal irritation (localized) was 10 mg/kg/day and the LOEL was 100 mg/kg/day.

5. *Chronic toxicity.* In a 52–week dog study, the NOEL was 10,000 ppm (250 mg/kg/day) and the LOEL was 20,000 ppm (500 mg/kg/day) in males. In females, the NOEL was 10,000 ppm (250 mg/kg/day) and the LOEL was 40,000 ppm (1,000 mg/kg/day). There was a dose-related decrease in body weight gain and in changes in some clinical chemistry/hematology parameters. The only histology findings were thickening of the wall of the GI tract in the high dose group (40,000 ppm) and changes in sperm growth/maturation in some of the mid (20,000 ppm) and high dose (40,000 ppm) males.

In a 2–year combined chronic toxicity and carcinogenicity study in rats, body weight and food consumption values were generally lower with increasing dose. Survival increased with dose. There were some dose-related effects in several clinical chemistry/hematology parameters. Histological exams showed mineralization in the brains of high dose animals and a possible increase in thyroid C-cell adenomas in females given 6,000 (300 mg/kg/day) and 18,000 ppm (900 mg/kg/day). This product is not considered a carcinogen. The NOEL for systemic toxicity was determined to be 2,000 ppm (100 mg/kg/day).

In a 78–week oncogenicity study in mice, dietary administration produced reduced body weight gains in both males and females. Kidney cysts were observed in the high dose animals. There was no evidence of any oncogenic (cancer) activity that would be considered treatment related. The systemic NOEL could not be established but the LOEL was determined to be less than 600 mg/kg/day (4,000 ppm). 1,2-Ethanediamine, N, N, N', N'-tetramethyl-, polymer with 1, 1'-oxybis[2-chloroethane] was found not to be carcinogenic in mice at doses up to 2,400 mg/kg/day (16,000 ppm) in the diet.

6. *Animal metabolism.* In a rat metabolism study, test animals were dosed with ^{14}C-labeled 1,2-ethanediamine, N, N, N', N'-tetramethyl-, polymer with 1, 1'-oxybis[2-chloroethane] at oral or intravenous doses of 10 mg/kg, an oral dose of 1,000 mg/kg or at repeated oral doses (14 daily doses) of unlabeled 1,2-ethanediamine, N, N, N', N'-tetramethyl-, polymer with 1, 1'-oxybis[2-chloroethane] at 10 mg/kg followed by administration of a single oral dose of labeled 1,2-ethanediamine, N, N, N', N'-tetramethyl-, polymer with 1, 1'-oxybis[2-chloroethane] at 10 mg/kg. Expired $^{14}CO_2$ was not detected.

In the intravenous dose group, the major routes of excretion of radioactivity were via the urine and feces. Over a 7–day period, approximately half (52–55%) of the test compound administered was excreted in the urine (38–44%) and feces (11–14%) from the animals.

In the single oral dose and repeated oral dose groups, most (88%–106%) of the test compound administered was excreted in the urine (3% of the dose) and feces (85–103% of the dose). In the oral dosed groups, the highest amount of residual radioactivity was found in kidneys, liver and spleen. The residues in the tissues including carcass were not more than 0.14%. This indicates that the potential for bioaccumulation of 1,2-ethanediamine, N, N, N', N'-tetramethyl-, polymer with 1, 1'-oxybis[2-chloroethane] is minimal after low single or repeated oral dose exposures. In the high (1,000 mg/kg) oral dose group, most (85%) of the dose was excreted in urine (14–17% of the dose) and feces (68–71%). Seven days after dosing, residues were low in all tissues except for the kidneys, liver and spleen in this group.

C. Aggregate Exposure

1,2-Ethanediamine, N, N, N', N'-tetramethyl-, polymer with 1, 1'-oxybis[2-chloroethane] is a polymer with a high molecular weight (3,000 – 5,000 daltons) that is not expected to be absorbed through the intact gastrointestinal (GI) tract or through intact human skin, therefore, it would not be capable of eliciting a toxic response. For this reason, health risks from potential exposure to 1,2-ethanediamine, N, N, N', N'-tetramethyl-, polymer with 1, 1'-oxybis[2-chloroethane] in food or drinking water as well as non-dietary exposure are expected to be negligible.

D. Cumulative Effects

Polymers with molecular weights greater than 400 generally are not absorbed through the intact skin and substances with molecular weights greater than 1,000 generally are not absorbed through the GI tract. Chemicals that are not absorbed through the skin or GI tract generally are incapable of eliciting a toxic response. 1,2-ethanediamine, N, N, N', N'-tetramethyl-, polymer with 1, 1'-oxybis[2-chloroethane] has a molecular weight of 3,000 - 5,000, therefore, there is no reasonable expectation of risk due to cumulative exposure.

E. Safety Determination

There are no safety concerns with 1,2-ethanediamine, N, N, N', N'-tetramethyl-, polymer with 1, 1'-oxybis[2-chloroethane] because it conforms to the definition of a low risk polymer given in 40 CFR 723.250 and is considered to be incapable of eliciting a toxic response because it is not expected to be absorbed through the intact skin or intact GI tract.

F. International Tolerances

Buckman is not aware of any country requiring a tolerance for 1,2-ethanediamine, N, N, N', N'-tetramethyl-, polymer with 1, 1'-oxybis[2-chloroethane], nor have there been any Codex maximum residue levels established for any food crops at this time.

[FR Doc. 04–20912 Filed 9–16–04; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7814–9]

Public Water System Supervision Program Revision for the State of Colorado

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The State of Colorado has revised its Public Water System Supervision (PWSS) Primacy Program by adopting regulations for the Long Term One Enhanced Surface Water Treatment Rule (LT1), the Filter Backwash Recycling Rule (FBRR), the Lead and Copper Rule Minor Revisions (LCRMR), the Arsenic MCL Clarifications and updates to analytical methods that correspond to 40 CFR parts 141 and 142. Having determined that these revisions meet all pertinent requirements in the Safe Drinking Water Act (SDWA), 42 U.S.C. 300f *et seq.*, and EPA's implementing regulations at 40 CFR parts 141 and 142, the EPA approves them.

Today's approval action does not extend to public water systems in Indian Country as that term is defined in 18 U.S.C. 1151. Please see Supplementary Information, Item B.

DATES: Any member of the public is invited to submit written comments and/or request a public hearing on this determination by October 18, 2004. Please see **SUPPLEMENTARY INFORMATION**, Item C, for information on submitting comments and requesting a hearing. If no hearing is requested or granted, then this action shall become effective

October 18, 2004. If a public hearing is requested and granted, then this determination shall not become effective until such time following the hearing as the Regional Administrator (RA) issues an order affirming or rescinding this action.

ADDRESSES: Written comments and requests for a public hearing should be addressed to: Robert E. Roberts, Regional Administrator, c/o Robert Clement (8P–W–MS), U.S. EPA, Region 8, 999 18th Street, Suite 300, Denver, CO 80202–2466.

All documents relating to this determination are available for inspection at the following locations: (1) U.S. EPA, Region 8, Municipal Systems Unit, 999 18th Street (4th Floor), Denver, CO 80202–2466; (2) Colorado Department of Public Health and Environment (CDPHE), Drinking Water Section, 4300 Cherry Creek Drive South, Denver, CO.

FOR FURTHER INFORMATION CONTACT: Robert Clement, Municipal Systems Unit, EPA, Region 8 (8P–W–MS), 999 18th Street, Suite 300, Denver, CO 80202–2466, 303–312–6653.

SUPPLEMENTARY INFORMATION: EPA approved Colorado's application for assuming primary enforcement authority for the PWSS program, pursuant to section 1413 of the Safe Drinking Water Act (SDWA), 42 U.S.C. 300g–2, and 40 CFR part 142. CDPHE administers Colorado's PWSS primacy program.

A. Why Are Revisions to State Programs Necessary?

States with primary PWSS enforcement authority must comply with the requirements of 40 CFR part 142 for maintaining primacy. They must adopt regulations that are at least as stringent as the National Primary Drinking Water Regulations (NPDWRs) at 40 CFR part 141 (40 CFR 142.10(a)). Changes to state programs may be necessary as federal primacy requirements change, as states must adopt all new and revised NPDWRs in order to retain primacy (40 CFR 142.12(a)).

B. How Does Today's Action Affect Indian Country (18 U.S.C. 1151) in Colorado?

Colorado is not authorized to carry out its PWSS program in Indian Country, as that term is defined at 18 U.S.C. 1151. Indian Country includes, but is not limited to, all land within the exterior boundaries of any Indian Reservations located within or abutting the State of Colorado, including the Southern Ute Indian Reservation and the Ute Mountain Ute Indian Reservation, any land held in trust by the United States for an Indian Tribe.

C. Requesting a Hearing and Submitting Written Comments

Any request for a 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 RA's determination and of information that the requesting person intends to submit at such 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 the responsible official of the organization or other entity.

Notice of any hearing shall be given not less than fifteen (15) days prior to the time scheduled for the hearing. Such notice will be made by the RA in the **Federal Register** and in newspapers of general circulation in the State of Colorado. A notice will also be sent to the person(s) requesting the hearing as well as to the State of Colorado. The hearing notice will include a statement of purpose, information regarding time and location, and the address and telephone number where interested persons may obtain further information. A final determination will be made upon review of the hearing record.

Frivolous or insubstantial requests for a hearing may be denied by the RA. However, if a substantial request is made within thirty (30) days after this notice, a public hearing will be held.

Please bring this notice to the attention of any persons known by you to have an interest in this determination.

Dated: September 3, 2004.

Robert E. Roberts,

Regional Administrator, Region 8.

[FR Doc. 04–20974 Filed 9–16–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 12, 2004.

A, Federal Reserve Bank of New York (Jay Bernstein, Bank Supervision Officer) 33 Liberty Street, New York, New York 10045-0001:

1. Barclays PLC and Barclays Bank PLC, both of London, England, and *Barclays Group US Inc.*, Wilmington, Delaware; to become bank holding companies by acquiring 100 percent of the voting shares of Juniper Financial Corp., and Juniper Bank, both of Wilmington, Delaware.

Board of Governors of the Federal Reserve System, September 13, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–20940 Filed 9–16–04; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Notice of Meeting

AGENCY: 2005 White House Conference on Aging, Administration on Aging.

ACTION: Notice of meeting of the 2005 White House Conference on Aging Policy Committee.

SUMMARY: Pursuant to Section 10(a) of the Federal Advisory Committee Act as amended (5 U.S.C. Appendix 2), notice is hereby given of the second Policy

Committee meeting concerning planning for the 2005 White House Conference on Aging. 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.

DATES: The meeting will be held Friday, October 1, 2004, from 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Hall of the States, 444 North Capitol Street, Room 333, Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Nora Andrews, (202) 357–0150, or e-mail *nora.Andrews@aoa.gov*.

SUPPLEMENTARY INFORMATION: Pursuant to the Older Americans Act Amendments of 2000 (Public Law 106–501, November 2000), the Policy Committee will meet to further organize efforts towards pursuing its duties in support of the 2005 White House Conference on Aging, and to discuss the potential conference agenda topics.

Speakers include Estelle James, Ph.D., formerly of the World Bank and Urban Institute Fellow; Paul Hodge, Director of the Generations Policy Institute and Research Fellow at the Houser Center, JFK School of Government, Harvard University; and Diane Braunstein, Program Director, Health Center for Best Practices, National Governors Association.

Dated: September 8, 2004.

Josefina G. Carbonell,

Assistant Secretary for Aging.

[FR Doc. 04–20964 Filed 9–16–04; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Request for Nominations for Voting Members on Public Advisory Committees

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for voting members to serve on the Allergenic Products Advisory Committee, Blood Products Advisory Committee, Transmissible Spongiform Encephalopathies Advisory Committee, and the Vaccines and Related Biological Products Advisory Committee in the Center for Biologics Evaluation and Research (CBER). Nominations will be accepted for vacancies that will or may occur through December 31, 2005.

FDA has a special interest in ensuring that women, minority groups, and individuals with disabilities are adequately represented on advisory committees, and therefore, encourages nominations of qualified candidates from these groups.

DATES: Because scheduled vacancies occur on various dates throughout each year, no cutoff date is established for the receipt of nominations. However, when possible, nominations should be received at least 6 months before the date of scheduled vacancies for each year, as indicated in this notice.

ADDRESSES: All nominations and curricula vitae should be sent to:Gail Dapolito, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–0314, e-mail: *dapolito@cber.fda.gov*.

SUPPLEMENTARY INFORMATION:

I. Vacancies

FDA is requesting nominations of voting members with appropriate expertise for vacancies listed as follows:

TABLE 1.

Advisory Committee and Expertise Needed to Fill Vacancies	Number of Vacancies	Approximate Date Members are Needed
Allergenic Products Advisory Committee—immunology, pediatrics, internal medicine, biochemistry, statistics, consumer advocacy, and related scientific fields	3	August 31,2005
Blood Products Advisory Committee—clinical and administrative medicine, hematology, immunology, blood banking, surgery, internal medicine, biochemistry, engineering, statistics, biological and physical sciences, and other related scientific fields	7	September 30, 2005
Transmissible Spongiform Encephalopathies Advisory Committee—clinical administrative medicine, hematology, virology, neurology, infectious diseases, immunology, blood banking, surgery, internal medicine, biochemistry, biostatistics, epidemiology, biological and physical sciences, sociology/ethics, and other related scientific fields	4	January 31, 2005
Vaccines and Related Biological Products Advisory Committee—immunology, molecular biology, rDNA, virology, bacteriology, epidemiology, biostatistics, allergy, preventive medicine, infectious diseases, pediatrics, microbiology, biochemistry, and other related scientific fields	3	January 31, 2005

II. Functions

A. Allergenic Products Advisory Committee

The committee reviews and evaluates available data concerning the safety, effectiveness, and adequacy of labeling of marketed and investigational allergenic biological products or materials that are administered to humans for the diagnosis, prevention, or treatment of allergies and allergic diseases.

B. Blood Products Advisory Committee

The committee reviews and evaluates available data concerning the safety, effectiveness, and appropriate use of blood and products derived from blood and serum or biotechnology which are intended for use in the diagnosis, prevention, or treatment of human diseases.

C. Transmissible Spongiform Encephalopathies Advisory Committee

The committee reviews and evaluates available scientific data concerning the safety of products which may be at risk for transmission of spongiform encephalopathies having an impact on the public health.

D. Vaccines and Related Biological Products Advisory Committee

The committe reviews and evaluates data concerning the safety, effectiveness, and appropriate use of vaccines and related biological products which are intended for use in the prevention, treatment, or diagnosis of human diseases.

III. Qualifications

Persons nominated for membership on the committees shall have adequately diversified experience appropriate to the work of the committee in such fields as clinical and administrative medicine, engineering, biological and physical sciences, statistics, and other related professions. The nature of specialized training and experience necessary to qualify the nominee as an expert suitable for appointment may include experience in medical practice, teaching, and/or research relevant to the field of activity of the committee. The particular need for vacancies on each committee for the calendar year 2005 are shown in table I of this document. The term of office is up to 4 years, depending on the appointment date.

IV. Nomination Procedures

Any interested person may nominate one or more qualified persons for membership on one or more of the advisory committees. Self-nominations are also accepted. Nominations shall include the name of the committee, a complete curriculum vitae of each nominee, current business address and telephone number, and shall state that the nominee is aware of the nomination, is willing to serve as a member (name of committee(s) must be specified), and appears to have no conflict of interest that would preclude membership. FDA will ask the potential candidates to provide detailed information concerning such matters as financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflict of interest.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14 relating to advisory committees.

Dated: September 9, 2004.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 04–20933 Filed 9–16–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004P–0162]

Determination That ZOLOFT (Sertraline Hydrochloride) Tablets, 150 Milligrams and 200 Milligrams, Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that ZOLOFT (sertraline hydrochloride (HCl)) Tablets, 150 milligrams (mg) and 200 mg (new drug application (NDA) 19–839), were not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for sertraline HCl tablets, 150 mg and 200 mg.

FOR FURTHER INFORMATION CONTACT: Elizabeth Sadove, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA sponsors must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the "listed drug," which is typically a version of the drug that was previously approved. Sponsors of ANDAs do not have to repeat the extensive clinical testing otherwise necessary to gain approval of an NDA. The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the "Approved Drug Products With Therapeutic Equivalence Evaluations," which is generally known as the "Orange Book." Under FDA regulations, drugs are withdrawn from the list if the agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness, or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (§ 314.162 (21 CFR 314.162)).

Under § 314.161(a)(1) (21 CFR 314.161(a)(1)), the agency must determine whether a listed drug was withdrawn from sale for reasons of safety or effectiveness before an ANDA that refers to that listed drug may be approved. FDA may not approve an ANDA that does not refer to a listed drug.

ZOLOFT Tablets, 150 mg and 200 mg, are the subject of approved NDA 19–839 held by Pfizer, Inc. (Pfizer). ZOLOFT (sertraline HCl) is indicated for the treatment of major depressive disorder, obsessive-compulsive disorder, panic disorder, posttraumatic stress disorder, premenstrual dysphoric disorder, and social anxiety disorder. Lachman Consultant Services, Inc., submitted a citizen petition dated April 5, 2004 (Docket No. 2004P–0162/CP1), under 21 CFR 10.30, requesting that the agency determine whether ZOLOFT (sertraline HCl) Tablets, 150 mg and 200 mg, were withdrawn from sale for reasons of safety or effectiveness.

The agency has determined that Pfizer's ZOLOFT Tablets, 150 mg and 200 mg, were not withdrawn from sale for reasons of safety or effectiveness. Pfizer has never commercially marketed ZOLOFT Tablets, 150 mg and 200 mg. In previous instances (see, e.g., 67 FR 79640 at 79641, December 30, 2002 (addressing a relisting request for Diazepam Autoinjector)), FDA has concluded that, for purposes of §§ 314.161 and 314.162, never marketing an approved drug product is equivalent to withdrawing the drug from sale. There is no indication that Pfizer's decision not to market ZOLOFT Tablets, 150 mg and 200 mg, commercially is a function of safety or effectiveness concerns, and the petitioner has identified no data or other information suggesting that ZOLOFT Tablets, 150 mg and 200 mg, pose a safety risk. FDA's independent evaluation of relevant information has uncovered nothing that would indicate this product was withdrawn for reasons of safety or effectiveness.

After considering the citizen petition and reviewing agency records, FDA determines that for the reasons outlined

above, ZOLOFT Tablets, 150 mg and 200 mg, were not withdrawn from sale for reasons of safety or effectiveness. Accordingly, the agency will continue to list ZOLOFT Tablets, 150 mg and 200 mg, in the "Discontinued Drug Product List" section of the Orange Book. The "Discontinued Drug Product List" delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to ZOLOFT Tablets, 150 mg and/or 200 mg, may be approved by the agency.

Dated: September 10, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–21022 Filed 9–16–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Anti-Infective Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Anti-Infective Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on October 14, 2004, from 8 a.m. to 4:30 p.m.

Location: Hilton, The Ballrooms, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: Shalini Jain, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, FAX: 301–827–6776, e-mail: *jains@cder.fda.gov* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512530. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss the following topics: (1) Issues related to clinical trial design and analysis in studying catheter-related bacteremia and (2) issues related to clinical trial design and analysis in studying bacteremia due to staphylococcus aureus. Background materials for this meeting will be posted on the Internet 1 business day before the meeting at: *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by October 4, 2004. Oral presentations from the public will be scheduled between approximately 1 p.m. to 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before October 4, 2004, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Shalini Jain at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 9, 2004.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 04–20935 Filed 9–16–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committee for Pharmaceutical Science; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Advisory Committee for Pharmaceutical Science.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on October 19 and 20, 2004, from 8:30 a.m. to 5 p.m.

Location: Food and Drug Administration, Center for Drug Evaluation and Research Advisory Committee conference rm. 1066, 5630 Fishers Lane, Rockville, MD.

Contact Person: Hilda Scharen, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, FAX: 301–827–6776, e-mail: SCHARENH@cder.fda.gov, or FDAAdvisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512539. Please call the Information Line for up-to-date information on this meeting.

Agenda: On October 19, 2004, the committee will do the following: (1) receive updates pertaining to the Manufacturing Subcommittee, the Parametric Tolerance Interval Test (PTIT) Workgroup, and the Good Manufacturing Practices (GMPs) for the 21st Century Initiative, and (2) review and discuss research opportunities under the Critical Path Initiative. On October 20, 2004, the committee will do the following: (1) review and discuss the Office of Pharmaceutical Science (OPS) plans and activities designed to take the organization towards the "desired state" of science and risk-based regulatory policies and practices as articulated under the GMPs for the 21st Century Initiative, and (2) review and discuss specific topics related to pharmaceutical equivalence and bioequivalence of generic drugs.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by October 12, 2004. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. on both days. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before October 12, 2004, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Hilda Scharen at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 9, 2004.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 04–20934 Filed 9–16–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Submission for OMB Review, Comments Request; Improving Media Coverage of Cancer: A Survey of Science and Health Reporters

SUMMARY: In compliance with the requirement of section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Cancer Institute, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on March 11, 2004, page 11638 and allowed 60 days for public comment. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection

Title: Improving Media Coverage of Cancer: A Survey of Science and Health Reporters.

Type of Information Collection Request: New.

Need and Use of Information Collection: The NCI is dedicated to improving the extent and quality of cancer coverage in all forms of news media. Towards this goal, the NCI would like to explore how health stories are currently being covered in print, television, and radio news coverage and would also like to understand the barriers that exist to better health and cancer coverage. Information from this research can be used to support the myriad of efforts and initiatives of the NCI as described in the Bypass Budget to "understand and apply the most effective communications approaches to maximize access to and use of cancer information by all who need it." The primary objective of the NCI Media survey of reporters and editors covering health and medical science news stories in the U.S. is to gain knowledge of their background, environment, perspectives, and training needs in an effort to develop initiatives that will improve news media reportage of health in general and cancer in particular. Six hundred reporters and editorial personnel of daily and weekly newspapers, magazines, wire service agencies, and television and radio stations with a specific focus on health and medical science reporting will be surveyed to determine their socio-demographic characteristics, individual characteristics, occupational practices, and other organizational and environmental factors that influence how they report health and medical science stories. This information will allow NCI to assess reporters' training needs, the barriers they face, and the resources NCI can develop to assist them in reporting cancer-related stories.

Frequency of Response: Once.

Affected Public: Individuals and businesses.

Type of Respondents: Reporters and editors.

The annual reporting burden is as follows:

Estimated Number of Respondents: 600;

Estimated Number of Responses per Respondent: 1;

Average Burden Hours per Response: .25; and

Estimated Total Annual Burden Hours Requested: 150.

The total estimated cost to respondents is $2,838. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Reporters	600	1	.25	150
Total				150

Request for Comments: Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Helen I. Meissner, PhD, Chief, Applied Cancer Screening Research Branch, Behavioral Research Program, Division of Cancer Control and Population Sciences, National Cancer Institute, Executive Plaza North, Suite 4102, 6130 Executive Boulevard, MSC 7331, Bethesda, MD 20892–7331, or call non-toll-free

number (301) 435–8236 or e-mail your request, including your address to: *meissneh@mail.nih.gov*.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: September 9, 2004.

Rachelle Ragland Greene,

NCI Project Clearance Liaison, National Institutes of Health.

[FR Doc. 04–20947 Filed 9–16–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; Transition Career Development Award for Underrepresented Minorities (K22).

Date: October 14, 2004.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6116 Executive Boulevard, Rockville, MD 20852, (telephone conference call).

Contact Person: Robert Bird, PhD, Scientific Review Administrator, Resources and Training Review Branch, National Cancer Institute, National Institutes of Health, 6116 Executive Blvd., MSC 8328, Room 8113, Bethesda, MD 20892–8328, (301) 496–7978, *birdr@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS.)

Dated: September 10, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–20944 Filed 9–16–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed 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 Center for Research Resources Special Emphasis Panel, Biomedical Technology.

Date: October 25–26, 2004.

Time: October 25, 2004, 8 a.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel & Executive Meeting Center, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Linda C. Duffy, PhD, Scientific Review Administrator, Office of Review, National Center for Research Resources, National Institutes of Health, 6701 Democracy Boulevard, Room 1082, Bethesda, MD 20892, (301) 435–0810, *duffyl@mail.nih.gov*.

Name of Committee: National Center for Research Resources Special Emphasis Panel, Comparative Medicine.

Date: October 26, 2004.

Time: 1 p.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Office of Review, One Democracy Plaza, 6701 Democracy Boulevard, Room 1076, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Carol Lambert, PhD, Scientific Review Administrator, Office of Review, National Institutes of Health, NCRR, 6701 Democracy Boulevard, 1 Democracy Plaza, Room 1076, MSC 4874, Bethesda, MD 20892, (301) 435–0814, *lambert@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333, National Institutes of Health, HHS.)

Dated: September 10, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–20941 Filed 9–16–04; 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 Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C Appendix 2), notice is hereby given of a meeting of the National Heart, Lung, and Blood Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, land Blood Advisory Council.

Date: October 21, 2004.

Time: 8:30 a.m. to 3 p.m.

Agenda: For discussion of program policies and issues.

Place: National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892.

Closed: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892.

Closed: 4 p.m. to adjournment.

Agenda: To review and evaluate review of Intramural Program.

Place: National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Deborah P Beebee, PhD, Director, Division of Extramural Affairs, National Heart, Lung, and Blood Institute,

National Institutes of Health, Two Rockledge Center, Room 7100, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 435–0260.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: *http://www.nhlbi.nih.gov/meetings/index.htm*, where an agenda and any additional information for the meeting will be posted when available.

(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: September 10, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–20943 Filed 9–16–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Initial Review Group, Interventions Research Review Committee.

Date: October 13–14, 2004.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: David I. Sommers, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Boulevard, Room 6144, MSC 9606, Bethesda, MD 20892–9606, (301) 443–6470, *dsommers@mail.nih.gov*.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Interventions Conflicts Review.

Date: October 13, 2004.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: David I. Sommers, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Boulevard, Room 6144, MSC 9606, Bethesda, MD 20892–9606, (301) 443–7861, *dsommers@mail.nih.gov*.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, ITV Related Schizophrenia SEP.

Date: October 15, 2004.

Time: 9 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Peter J. Sheridan, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Boulevard, Room 6142, MSC 9606, Bethesda, MD 20892–9606, (301) 443–1513, *psherida@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: September 10, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–20945 Filed 9–16–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; 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 Biomedical Imaging and Bioengineering Special Emphasis Panel, NIBIB K & T32 Training Grant Review Special Emphasis Panel.

Date: November 9, 2004.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Bonnie Dunn, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of Biomedical Imaging, and Bioengineering, 6707 Democracy Boulevard, Suite 920, Bethesda, MD 20892, (301) 496–8633, *dunnbo@mail.nih.gov*.

Dated: September 10, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–20946 Filed 9–16–04; 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(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the PubMed Central National Advisory 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 notify the Contact Person listed below in advance of the meeting.

Name of Committee: PubMed Central National Advisory Committee.

Date: November 22, 2004.

Time: 9:30 a.m. to 4 p.m.

Agenda: Review and Analysis of Systems.

Place: National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: David J. Lipman, MD, Director, 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.

Information is also available on the Institute's/Center's home page: *http://www.pubmedcentral.nih.gov/about/nac.html*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS.)

Dated: September 10, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–20942 Filed 9–16–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Enhanced Public Access to National Institutes of Health (NIH) Research Information

ACTION: Notice.

SUMMARY: With this notice, NIH announces and seeks public comments regarding its plans to facilitate enhanced public access to NIH health-related research information. The NIH intends to request that its grantees and supported Principal Investigators provide the NIH with electronic copies of all final version manuscripts upon acceptance for publication if the research was supported in whole or in part by NIH funding. This would include all research grants, cooperative agreements, and contracts, as well as National Research Service Award (NRSA) fellowships. We define final manuscript as the author's version resulting after all modifications due to the peer review process. Submission of the final manuscript will provide NIH-supported investigators with an alternate means by which they will meet and fulfill the requirement of the provision of one copy of each publication in the annual or final progress reports. Submission of the electronic versions of final manuscripts will be monitored as part of the annual grant progress review and close-out process.

The NIH considers final manuscripts to be an important record of the research funded by the Government and will archive these manuscripts and any appropriate supplementary information in PubMed Central (PMC), NIH's digital repository for biomedical research. Six months after an NIH-supported research study's publication-or sooner if the publisher agrees-the manuscript will be made available freely to the public through PMC. If the publisher requests, the author's final version of the publication will be replaced in the PMC archive by the final publisher's copy with an appropriate link to the publisher's electronic database.

As with NIH's DNA sequence and genetics databases, this digital archive in PMC is expected to be fully searchable to enhance retrieval and can be shared with other international digital repositories to maximize archiving and to provide widespread access to this information. It is anticipated that investigators applying for new and competing renewal support from the NIH will utilize this resource by providing links in their applications to their PubMed archived information. This practice will increase the efficiency of the application and review process.

The NIH trusts that the up-to-six-month delay to public archiving in PMC recommended by the policy will not result in unreasonable or disproportionate charges to grantees. As with all other costs, NIH expects its grantees to be careful stewards of Federal funds and to carefully manage these resources. We will carefully monitor requested budgets and other costing information and would consider options to ensure that grantees' budgets are not unduly affected by this policy.

Background: The NIH is dedicated to improving the health of Americans by conducting and funding biomedical research that will help prevent, detect, treat, and reduce the burdens of disease and disability. In order to achieve these goals, it is essential to ensure that scientific information arising from NIH-funded research is available in a timely fashion to other scientists, health care providers, students, teachers, and the many millions of Americans searching the Web to obtain credible health-related information. The NIH's mission includes a long-standing commitment to share and support public access to the results and accomplishments of the activities that it funds.

Establishing a comprehensive, searchable electronic resource of NIH-funded research results and providing free access to all, is perhaps the most fundamental way to collect and disseminate this information. The NIH must balance this need with the ability of journals and publishers to preserve their critical role in the peer review, editing, and scientific quality control process. The economic and business implications of any changes to the current paradigm must be considered as the NIH weighs options to ensure public access to the results of studies funded with public support without compromising the quality of the information being provided. The NIH has established and intends to maintain a dialogue with publishers, investigators, and representatives from scientific associations and the public to ensure the success of this initiative.

Request for Comments: The NIH encourages comments concerning its intentions to enhance public access to NIH-funded health-related research information as outlined in this notice. Comments on short-term impacts and suggestions for mitigating these are especially welcome.

Persons, groups, and organizations interested in commenting on NIH's intentions should direct their comments to the following NIH Web site: *http://grants.nih.gov/grants/guide/public_access/add.htm*. As an alternative, comments may be submitted by e-mail to *PublicAccess@nih.gov* or sent by mail to the following address: NIH Public Access Comments, National Institutes of Health, Office of Extramural Research, 6705 Rockledge Drive, Room 350, Bethesda, MD 20892–7963.

DATES: Comments must be received on or before November 16, 2004.

Dated: September 14, 2004.

Elias A. Zerhouni,

Director, National Institutes of Health.

[FR Doc. 04–21097 Filed 9–15–04; 3:04 pm]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Advisory Committee for Women's Services; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Substance Abuse and Mental Health Services Administration (SAMHSA) Advisory Committee for Women's Services in September 2004.

The open meeting of the Advisory Committee for Women's Services will include discussion around the activities of the Substance Abuse and Mental Health Services Administration involving Access to Recovery, criminal justice, co-occurring disorders, and an

update on women's issues as they relate to the Administrator's matrix, and current administrative and program developments.

Public attendance and public comments are welcome. Please communicate with the individual listed as contact to make arrangements to comment or to request special accommodations for persons with disabilities.

Substantive program information, a summary of the meeting, and a roster of committee members may be obtained either by accessing the SAMHSA Council Web site, *http://www.samhsa.gov/council/council* or by communicating with the contact whose name and telephone number is listed below. The transcript for the open session will also be available on the SAMHSA Council Web site.

Committee Name: Substance Abuse and Mental Health Services Administration Advisory Committee for Women's Services.

Meeting Date and Time: Open—Monday, September 27, 2004; 9 a.m.–5 p.m. Open—Tuesday, September 28, 2004; 9 a.m.–1:30 p.m.

Place: Doubletree Hotel, 1750 Rockville Pike, Rockville, Maryland 20852, telephone (301) 468–1100.

Contact: Carol D. Watkins, Executive Secretary, 1 Choke Cherry Road, Room 8–1002, Gaithersburg, Maryland 20857, telephone: (240) 276–2254: Fax (240) 276–2252, e-mail: *carol.watkin2@samhsa.hhs.gov*.

Dated: September 13, 2004.

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 04–20960 Filed 9–16–04; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Science and Technology Directorate; Notice of Availability of the Draft Environmental Impact Statement for the National Biodefense Analysis and Countermeasures Center Facility at Fort Detrick, Frederick, MD

AGENCY: Science and Technology Directorate, DHS.

ACTION: Notice of availability.

SUMMARY: In keeping with the purposes of the National Environmental Policy Act (NEPA), the Department of Homeland Security (DHS), has prepared, in cooperation with the U.S. Army, Fort Detrick, a Draft Environmental Impact Statement (DEIS) for the proposed National Biodefense Analysis and Countermeasures Center (NBACC) Facility for DHS, at Fort Detrick in Frederick, Maryland. The DEIS evaluated the potential environmental impacts associated with the construction and operation of the proposed NBACC Facility.

DATES: DHS and the U.S. Army Garrison of Fort Detrick will hold a joint public hearing to receive comments on the DEIS on Tuesday, October 5, 2004, 7 p.m. to 9 p.m.

ADDRESSES: The meeting will be held at the Governor Thomas Johnson Middle School, 1799 Schifferstadt Boulevard, Frederick, Maryland, 21701.

Comments on the DEIS must be received no later than Monday, November 1, 2004. Additional information on how to submit comments is included in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Kevin Anderson, 301–846–2156.

SUPPLEMENTARY INFORMATION: The proposed action is construction and operation of the NBACC Facility with laboratory and office space that will enable DHS to safely conduct research to meet program requirements for biological threat characterization and bioforensic programs.:

- The National Bioforensics Analysis Center (NBFAC), designated in Presidential Directive *Biodefense for the 21st Century*, to be the lead Federal agency for conducting Biodefense analysis of evidence from a bio-crime or terrorist attack to attain a "biological fingerprint" to determine where the agent came from and the perpetration of the attack and
- The Biological Threat Characterization Center (BTCC), for conducting research to better understand current and future biological threats. The mission of the BTCC is to fill scientific knowledge gaps for high-consequence biological threat agents.

Significant issues analyzed in the DEIS included safety of laboratory operations; public health and safety; handling, collection, treatment, and disposal of research wastes; and analysis of other risks, as well as concerns for pollution prevention and impacts of the proposed action on air quality, biological resources, cultural resources, water resources, land use, and socioeconomic resources. Several alternatives were considered, including the No Action Alternative under which the new facility will not be built. The Notice of Intent for preparation of the DEIS was published in the **Federal Register** (69 FR 31830–31831, June 7, 2004).

Public Participation: To obtain copies of the DEIS or submit comments, please contact Kevin Anderson, Department of Homeland Security, 7435 New Technology Way, Suite A, Frederick, Maryland, 21703, by telephone 301–846–2156, fax 301–682–3662, or e-mail *kevin.anderson@dhs.gov*. Comments, including names and addresses of respondents, will be available for public review during regular business hours at the above location. All submissions from organizations or businesses and from individuals identifying themselves as representatives or officials of organizations or businesses will be made available for public inspection in their entirety.

Maureen I. McCarthy,

Director, Office of Research and Development, Science and Technology Directorate.

[FR Doc. 04–20994 Filed 9–16–04; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2004–19107]

National Boating Safety Advisory Council

AGENCY: Coast Guard, DHS.

ACTION: Notice of meetings.

SUMMARY: The National Boating Safety Advisory Council (NBSAC) and its subcommittees on boats and associated equipment, aftermarket marine equipment, and prevention through people will meet to discuss various issues relating to recreational boating safety. All meetings will be open to the public.

DATES: NBSAC will meet on Saturday, October 9, 2004, from 1 p.m. to 5 p.m., on Monday, October 11, 2004, from 1:30 p.m. to 4:30 p.m., and on Tuesday, October 12, 2004, from 8:30 a.m. to 12 noon. The Prevention Through People Subcommittee will meet on Sunday, October 10, 2004, from 8:30 a.m. to 12 noon. The Boats and Associated Equipment Subcommittee will meet on Sunday, October 10, 2004, from 1:30 p.m. to 5 p.m. The Aftermarket Marine Equipment Subcommittee will meet on Monday, October 11, 2004, from 8:30 a.m. to 12 noon. These meetings may close early if all business is finished. On Sunday, October 10, a Subcommittee meeting may start earlier if the preceding Subcommittee meeting has closed early. Written material and requests to make oral presentations should reach the Coast Guard on or before Tuesday, September 22, 2004. Requests to have a copy of your material distributed to each member of the

committee or subcommittees in advance of the meeting should reach the Coast Guard on or before Friday, September 17, 2004.

ADDRESSES: NBSAC will meet at the Sheraton Hotel Crystal City, 1800 Jefferson Davis Highway, Arlington, VA 22202. The subcommittee meetings will be held at the same address. Send written material and requests to make oral presentations to Mr. Jeff Hoedt, Executive Director of NBSAC, Commandant (G–OPB–1), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001. This notice is available on the Internet at *http://dms.dot.gov* or at the Web site for the Office of Boating Safety at URL address *http://www.uscgboating.org.*

FOR FURTHER INFORMATION CONTACT: Jeff Hoedt, Executive Director of NBSAC, telephone (202) 267–0950, fax (202) 267–4285. You may obtain a copy of this notice by calling the U.S. Coast Guard Infoline at 1–800–368–5647.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Tentative Agendas of Meetings

National Boating Safety Advisory Council (NBSAC)

The agenda includes the following:

(1) Remarks—Rear Admiral James W. Underwood, Director of Operations Policy and Council Sponsor.

(2) Chief, Office of Boating Safety Update on NBSAC Resolutions and Recreational Boating Safety Program report.

(3) Executive Director's report.

(4) Recreational Boating Safety Program Goal Setting Project.

(5) Chairman's session.

(6) Report from TSAC Liaison.

(7) Report from NAVSAC Liaison.

(8) Coast Guard Auxiliary report.

(9) National Association of State Boating Law Administrators Report.

(10) Wallop Breaux reauthorization update.

(11) Recreational Marine Research Center report.

(12) National Transportation Safety Board report.

(13) Prevention Through People Subcommittee report.

(14) Boats and Associated Equipment Subcommittee report.

(15) Aftermarket Marine Equipment Subcommittee report.

Boats and Associated Equipment Subcommittee

The agenda includes the following: Discuss current regulatory projects, grants, contracts and new issues impacting boats and associated equipment.

Aftermarket Marine Equipment Subcommittee

The agenda includes the following: Discuss current regulatory projects, grants, contracts and new issues impacting aftermarket marine equipment.

Prevention Through People Subcommittee

The agenda includes the following: Discuss current regulatory projects, grants, contracts and new issues impacting prevention through people.

Procedural

All meetings are open to the public. At the Chairs' discretion, members of the public may make oral presentations during the meetings. If you would like to make an oral presentation at a meeting, please notify the Executive Director of your request no later than Tuesday, September 21, 2004. Written material for distribution at a meeting should reach the Coast Guard no later than Tuesday, September 21, 2004. If you would like a copy of your material distributed to each member of the committee or subcommittee in advance of a meeting, please submit 25 copies to the Executive Director no later than Friday, September 17, 2004.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact the Executive Director as soon as possible.

Dated: September 10, 2004.

James W. Underwood,

Rear Admiral, U.S. Coast Guard, Director of Operations Policy.

[FR Doc. 04–20924 Filed 9–16–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4901–N–38]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

Effective Date: September 17, 2004.

FOR FURTHER INFORMATION CONTACT: Kathy Burruss, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: September 9, 2004.

Mark R. Johnston,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 04–20735 Filed 9–16–04; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Invasive Species Advisory Committee

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of public meetings of the Invasive Species Advisory Committee.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of meetings of the Invasive Species Advisory Committee. The purpose of the Advisory Committee is to provide advice to the National Invasive Species Council, as authorized by Executive Order 13112, on a broad array of issues related to preventing the introduction of invasive species and providing for their control and minimizing the economic, ecological, and human health impacts that invasive species cause. The Council is Co-chaired by the Secretary of the Interior, the Secretary of Agriculture, and the Secretary of Commerce. The duty of the Council is to provide national leadership regarding invasive species issues. The purpose of a meeting on October 13–15, 2004, is to convene the full Advisory Committee; and to discuss

implementation of action items outlined in the National Invasive Species Management Plan, which was finalized on January 18, 2001.

DATES: Meeting of Invasive Species Advisory Committee: 8 a.m., Wednesday, October 13, 2004 (ISAC Orientation); 8:30 a.m., Thursday, October 14, 2004; and 8 a.m., Friday, October 15, 2004 (Actual Meeting).

ADDRESSES: National Conservation Training Center, 968 Conservation Way, Shepherdstown, WV 25443. Both the orientation and actual meeting will be held in Room 170—Instructional West Building.

FOR FURTHER INFORMATION CONTACT: Kelsey Brantley, National Invasive Species Council Program Analyst; Phone: (202) 513–7243; Fax: (202) 371–1751.

Dated: September 14, 2004.

Lori Williams,

Executive Director, National Invasive Species Council.

[FR Doc. 04–21003 Filed 9–16–04; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of an Environmental Assessment/Habitat Conservation Plan and Receipt of Application for an Incidental Take Permit (Purcell)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: Purcell Investments, L.P., (Applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act). The Applicant has been assigned permit number TE–838761–0. The requested permit, which is for a period of 30 years, would authorize incidental take of the endangered golden-cheeked warbler (*Dendroica chrysoparia*). The proposed take would occur as a result of the construction and operation of a commercial development on 19.3-acres (7.8-hectares) of the Horizon Center Development, Travis County, Texas.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy or non-jeopardy to the species and a decision pursuant to the National Environmental Policy Act (NEPA) will not be made until at least 60 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: To ensure consideration, written comments must be received on or before November 16, 2004.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Room 4102, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by written or telephone request to Sybil Vosler, U.S. Fish and Wildlife Service, Ecological Services Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758; (512) 490–0057. Documents will be available for public inspection by written request or by appointment only during normal business hours (8 a.m. to 4:30 p.m.) at the U.S. Fish and Wildlife Service Office, Austin, Texas. Data or comments concerning the application and EA/HCP should be submitted in writing to the Field Supervisor, U.S. Fish and Wildlife Service, Ecological Services Office, Austin, Texas at the above address. Please refer to permit number TE–838761–0 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Sybil Vosler at U.S. Fish and Wildlife Service, Ecological Services Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the "taking" of endangered species such as the golden-cheeked warbler. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

Applicant: Purcell Investments, L.P., plans to construct a commercial development on 19.3-acres (7.8-hectares) of the Horizon Center Development, Travis County, Texas. This action would eliminate approximately 8.4 acres (3.4 hectares) of habitat and adversely affect 25.5 acres (10.3 hectares) resulting in incidental take of the golden-cheeked warbler. The Applicant proposes to compensate for this incidental take of the golden-cheeked warbler by preserving 32.5 acres (13.2 hectares) of habitat which will be managed in perpetuity for the benefit of the golden-cheeked warbler or purchasing 32.5 Participation Certificates in the Balcones Canyonlands Conservation Plan, a regional permit which will preserve 30,428 acres (12,314 hectares) of habitat.

Pursuant to the June 10, 2004, order in *Spirit of the Sage Council* v. *Norton*, Civil Action No. 98–1873 (D. D.C.), the Service is enjoined from approving new section 10(a)(1)(B) permits or related documents containing "No Surprises" assurances until such time as the Service adopts new permit revocation rules specifically applicable to section 10(a)(1)(B) permits in compliance with public notice and comment requirements of the Administrative Procedure Act. This notice concerns a step in the review and processing of a section 10(a)(1)(B) permit and any subsequent permit issuance will be in accordance with the Court's order. Until such time as the Service's authority to issue permits with "No Surprises" assurances has been reinstated, the Service will not approve any incidental take permits or related documents containing "No Surprises" assurances.

Authority: 16 U.S.C. 1531, *et seq.*

Bryan Arroyo,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 04–20991 Filed 9–16–04; 8:45 am]

BILLING CODE 4510–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–939–04–1610–00]

Notice of Availability of the California Coastal National Monument Draft Resource Management Plan and Draft Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, and under the authority of the Federal Land Policy and Management Act of 1976, the Bureau of Land Management (BLM) has prepared a Draft Resource Management Plan (RMP)/Draft Environmental Impact Statement (EIS) for the California Coastal National Monument (CCNM) that is now available for public review.

DATES: Written comments on the Draft RMP/Draft EIS will be accepted for 90 days following the Environmental Protection Agency's publication of the Notice of Availability for this Draft RMP/Draft EIS in the **Federal Register**. Future public meetings and any other public involvement activities will be announced at least 15 days in advance through public notices, media news

releases, mailings, and/or the project Web site at *http://www.ca.blm.gov/pa/coastal_monument/*.

ADDRESSES: Written comments should be sent to Rick Hanks, California Coastal National Monument, 299 Foam Street, Monterey, CA 93940 or by Fax at (831) 647–4244, or e-mail at *cacnm@ca.blm.gov*.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, contact Rick Hanks, California Coastal National Monument, 299 Foam Street, Monterey CA 93940 or telephone (831) 372–6115 or e-mail at *cacnm@ca.blm.gov*.

SUPPLEMENTARY INFORMATION: The CCNM was established by Presidential Proclamation on January 11, 2000, under the discretionary authority given to the President of the United States by Section 2 of the Antiquities Act of 1906. (34 Stat. 225, 16 U.S.C. 431). The purpose of the CCNM, as stated in the Presidential Proclamation, is to protect "all unappropriated or unreserved lands and interest in the lands owned or controlled by the United States in the form of islands, rocks, exposed reefs, and pinnacles above mean high tide within 12 nautical miles of the shoreline of the State of California." The Presidential Proclamation tasked the Secretary of the Interior, through the BLM with the ultimate responsibility for ensuring protection and providing long-term management of the CCNM.

The CCNM consists of more than 20,000 rocks and small islands situated within an offshore area of more than 14,600 square nautical miles that stretches the entire length of the 1,100 miles of the California coastline. The CCNM, however, totals no more than 1,000 acres of exposed surface area. The CCNM does not include Santa Catalina and the other Channel Islands (although it does include some of the rocks associated with the Channel Islands), the Farallon Islands, the islands of San Francisco Bay, or rocks and islands under the jurisdiction of the military, National Park Service, Fish and Wildlife Service, Forest Service, or other landowners. The CCNM is within the jurisdiction of five BLM California field offices and adjoins or borders on 10 California State Park district offices, 11 California Department of Fish and Game's Marine Division field offices, six National Park Service units, a variety of military properties (including Vandenberg Air Force Base), 15 California coastal counties, and dozens of municipalities, as well as being above four National Marine Sanctuaries and the subsurface responsibilities of the USDI Minerals Management Service and the California State Lands Commission.

During the initial scoping process for the plan, eight public meetings were held in towns and cities along the California coast (*i.e.*, Trinidad, Elk, Bodega Bay, Monterey, Santa Barbara, Laguna Beach, and San Francisco) in order to solicit input for use in the development of the draft plan. Based on the direction provided in the Presidential Proclamation, comments received during the scoping process, and input from the multi-agency/organization interdisciplinary team overseeing the development of the CCNM planning effort, five issue areas were identified for analysis in the Draft RMP/Draft EIS. The Draft RMP/Draft EIS examines four alternatives that respond to these issues. The issues include the following: (1) How will biological resources be protected? (2) How will cultural, geologic, and visual resources be protected? (3) How will BLM coordinate its CCNM planning and management activities to be consistent with the numerous jurisdictions that have existing plans and policies associated with the Coastal Zone? (4) How will people's activities and uses along the coast be affected by management of the CCNM? and (5) What programs, facilities, infrastructure, and partnerships are needed to provide the public with interpretive and educational material regarding the values and significance of the CCNM? Alternative A is the No Action Alternative (*i.e.*, continuation of existing management condition). Alternative B, C, and D present a range of management scenerios with varying amounts of natural resource protection and focus and differing levels of recreation/interpretation actions and facilities. Alternative B is the Preferred Alternative. Alternatives C and D are variations in management approaches from Alternative B.

Please note that comments, including names and street addresses of respondents, are available for public review and/or release under the Freedom of Information Act (FOIA). Individual respondents may request confidentiality. Respondents who wish to withhold names and/or street address from public review or from disclosure under FOIA, must state this prominently at the beginning of the written comment. Such requests will be honored to the extent allowed by law. BLM will not consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials or organizations or businesses, will be made available for public inspection in their entirety.

Copies of the Draft RMP/Draft EIS have been sent to affected Federal, tribal, State, and local government agencies, and to interested publics and are available at the California Coastal National Monument headquarters at 299 Foam Street, Monterey, CA. In addition, copies of the Draft RMP/Draft EIS may be viewed at the following BLM offices: California State Office, Information Access Center, 2800 Cottage Way, Sacramento, CA; Arcata Field Office, 1695 Heindon Rd., Arcata, CA; Ukiah Field Office, 2550 North State St., Ukiah, CA; Hollister Field Office, 20 Hamilton Court, Hollister, CA; Bakersfield Field Office, 3801 Pegasus Drive, Bakersfield, CA; Palm Springs/South Coast Field Office, 690 W. Garnet Ave., North Palm Springs, CA; and California Desert District Office, 22835 Calle San Juan de Los Lagos, Moreno Valley, CA. Information regarding additonal viewing opportuntities may be announced through public notices, media news releases, mailings, and/or the project Web site at *http://www.ca.blm.gov/pa/coastal_monument/*. The Draft RMP/Draft EIS and associated documents may be viewed and downloaded in PDF format at the CCNM Web site at *cacnm@ca.blm.gov*.

Dated: March 25, 2004.

J. Anthony Danna,

Deputy State Director, Natural Resources.

[FR Doc. 04–20917 Filed 9–16–04; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–921–1410–BK–P]

Alaska: Notice of Filing of Plat of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plat of survey.

SUMMARY: The Bureau of Land Management (BLM) Alaska State Office, Anchorage, Alaska, officially filed plats of survey for the following described lands on the date indicated below.

ADDRESSES: This survey has been placed in the open files in the Alaska State Office and is available to the public as a matter of information. All inquiries relating to these lands should be sent to the Alaska State Office, Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599.

FOR FURTHER INFORMATION CONTACT: Daniel L. Johnson, Chief, Branch of Field Surveys, (907) 267–1403.

SUPPLEMENTARY INFORMATION: The plat representing the retracement, dependent resurvey and subdivision of sections 2–7, 9–21, and 27–34, the retracement and dependent resurvey of portions of U.S. Survey Nos. 3729, 3770, 3790, 3799, 4440, 4046, and 4117, the retracement of portions of private Land Survey Nos. 71–55, 74–577, 79–11, 80–2, 80–8, 80–18, 81–10, 81–17, 81–18, 82–9, 82–13, 82–22, 83–40, 84–9, 84–19, 87–6, 93–32, 96–7 and 98–15, an unrecorded private Land Survey dated July 22, 1997, the partition line of U.S. Survey No. 4046, and the retracement and survey of portions of the meanders in Township 8 North, Range 71 West, Seward Meridian Alaska, and the plat representing the retracement, dependent resurvey and subdivision of sections 1–4, 9–17, 20–27, 35 and 36, the retracement and dependent resurvey of portions of U.S. Survey Nos. 3729, 4117 and 4383, the retracement of portions of private Land Survey Nos. 79–11, 81–12, 83–42BS, 95–11, 96–18, 96–20, 96–23, 97–17, 98–3, 98–9, 2000–16 and a 1989 unrecorded plat in sections 14 and 15 in Township 8 North, Range 72 West, Seward Meridian Alaska, and accepted on March 18, 2004 and officially filed July 29, 2004.

This survey was prepared at the request of the BLM, Division of Geomatics and Cadastral Services, and will immediately become part of the basic record for describing lands for all authorized purposes within these townships.

Daniel L. Johnson,

Chief, Branch of Field Surveys.

[FR Doc. 04–20992 Filed 9–16–04; 8:45 am]

BILLING CODE 1410–BK–M

DEPARTMENT OF JUSTICE

National Institute of Corrections

Solicitation for a Cooperative Agreement—Production of Ten Satellite/Internet Broadcasts

AGENCY: National Institute of Corrections, Department of Justice.

ACTION: Solicitation for a cooperative agreement.

SUMMARY: The Department of Justice (DOJ), National Institute of corrections (NIC), announces the availability of funds in FY 2005 for a cooperative agreement to fund the production of ten satellite/Internet broadcasts. Five of the proposed programs are nationwide satellite/Internet broadcasts (three hours each). One is eight hours in length. The other four are satellite/Internet Training Programs: two of the four are site coordinator/facilitator training (Training for Trainers) sessions. The site coordinator precursor modules will contain eight hours of satellite/Internet training split over two days. The remaining two training programs are content-driven programs, 32 hours in length. For the 32-hour program, there will be 16 hours of live-broadcast satellite/Internet training over four days (supplemented by 16 hours of off-air activities directed by our trained site coordinators). There will be a total of 71 hours of broadcast time in FY 2005.

DATES: Applications must be received by 4 p.m. on Wednesday, October 20, 2004. They should be addressed to: Director, National Institute of Corrections, 320 First Street, NW., Room 5007, Washington DC 20534. Applicants are encouraged to use Federal Express, UPS, or similar service to insure delivery by the due date. Hand delivered applications can be brought to 500 First Street, NW., Room 5007, Washington DC 20534. The security desk will call Germaine Jefferson at (202) 307–3106, and 0 for pickup. Faxed or e-mailed applications will not be accepted.

FOR FURTHER INFORMATION: A copy of this announcement and the required application forms can be downloaded from the NIC Web page at *http://www.nicic.org* (click on "cooperative agreement.") Hard copies of the announcement can be obtained by calling Rita Rippetoe at 1–800–995–6423, ext. 44222, or by e-mail at *rrippetoe@bop.gov*. Any specific questions regarding the application process should be directed to Ms. Rippetoe. All technical and/or programmatic questions concerning this announcement should be directed to Ed Wolahan, Corrections Program Specialist, at 1960 Industrial Circle, Longmont, Colorado 80501, or by calling 800–995–6429, ext. 131, or by e-mail at *ewolahan@bop.gov*.

SUPPLEMENTARY INFORMATION:

Background: Satellite/Internet Broadcasting is defined as a training/education process transpiring between trainers/teachers at one location and participants/students at other locations via technology. NIC is using satellite broadcasting and the Internet to economically reach more correctional staff in federal, state and local agencies. Another strong benefit of satellite delivery is its ability to broadcast programs conducted by experts in the correctional field, thus reaching the entire audience at the same time with exactly the same information. In addition, NIC is creating training programs from its edited 24- and 32-hour satellite/Internet training programs that will be disseminated through the NIC Information Center.

Purpose: The purposes of funding this initiative are:

(1) Produce five three-hour satellite/Internet broadcasts, disseminating current information to the criminal justice community;

(2) Produce one eight-hour satellite/Internet broadcast that will train participants on how to implement the Prison Rape Elimination Act. This will consist of 4 hours each day with a one hour break after two hours of programing.

(3) Produce two eight-hour training sessions for site coordinators/facilitators. These sessions will train facilitators from each registered site concerning the outcomes expected and the knowledge and skills needed to facilitate the broadcast and off-air activities for the two training programs described in paragraph (4) below;

(4) Produce two satellite/Internet training programs, 16 hours in length, that respond directly to the needs identified by practitioners working in the criminal justice arena. Each 16-hour satellite/Internet training session will be delivered on four hours each day from Monday through Thursday.

Scope of Work: To address the scope of work for this project, the following will be needed:

1. *Producer Consultation and Creative Services:* The producer will: (a) Consult and collaborate with NIC's Distance Learning Manager on program design, program coordination, design of field segments and content development; (b) work with each consultant/trainer to develop their modules for delivery using the satellite/Internet format and/or the teleconference format; (c) help develop scripts, graphic design, production elements and rehearsals for each module of the site coordinators' training and the satellite/Internet training programs; and (d) use their expertise in designing creative ways to deliver satellite teleconferencing. The producer will also be responsible for attending planning meetings and assisting in the videotaping of testimonials at conferences.

2. *Pre-Production Video:* The producer will supervise the production of vignettes to be used in each of the three-hour satellite/Internet broadcasts, as well as each 16-hour satellite/Internet training program. NIC presenters (content experts) will draft outlines of the scripts for each vignette. From the

outlines, scripts will be developed by the producer (script writing expert) and approved by NIC's Distance Learning Manager. Professional actors will play the parts designated by the script. Story boards for each production will be written by NIC's Distance Learning Manager. A total of between 18 and 25 vignettes will be created under this cooperative agreement. The producer will supervise camera and audio crews to capture testimonials from leaders in the correctional field at designated correctional conferences. The producer will coordinate all planning of the production and post-production for each of the ten satellite/Internet broadcasts.

Video Production: Video production for each teleconference will consist of videotaping content-related events in the field, editing existing video, and videotaping experts for testimonial presentations. It will also include voice-over, audio and music for each video, if necessary. Blank tapes and narration for field shooting will be purchased for each site. The format for all field shooting will be either Beta Cam, DV Pro Digital and/or Mini DVD.

Post Production (Studio): Innovative and thought-provoking opening sequences will be produced for each teleconference. In addition, graphics will be utilized to enhance the learning in each module. The producer will coordinate art direction, lighting, and set design and furniture for all teleconference segments. (Set design should change periodically throughout the award period.) The set will be customized to each topic. The producer will organize and supervise the complete production crew on rehearsal and production days, per the schedules below.

3. *Production:* The production group will set up and maintain studio lighting, adjust audio, and have a complete production crew for the days and hours set forth below. A production crew shall include the following: Director, Audio Operator, Video Operator, Character Generator Operator, Floor Director, Four (4) Camera Operators, Teleprompter Operator, On-Line Internet Coordinator, Make-Up Artist (production time only), and Interactive Assistance Personnel (fax, e-mail, and telephone).

Each production will also have closed caption for all programs except the site coordinator training. A closed-caption person will be needed for 55 hours.

After each production, the studio will provide 12 VHS copies to NIC and the Master on Beta Cam and DVD. The DVD will have a splash page that will break down each module, each day, and the vignettes that have been produced for each program.

SATELLITE/INTERNET SCHEDULE FOR FY–05

(1) Prison Rape Elimination Act (PREA)—Phase II (8 hours)		
Program Dates	January 26 & 27, 2005.	
Rehearsal	January 25, 2005	8 hours.
Production On Air & Rehearsal	January 26, 2005	8 hours.
Production On Air	January 27, 2005	5 hours.
(2) What is NIC? (3 hours)		
Program Date	February 9, 2005.	
Rehearsal	February 8, 2005	8 hours.
Production On-Air	February 9, 2005	3 hours.
(3) Correctional Leadership Competencies for the 21st Century (3 hours)		
Program Date	March 3, 2005.	
Rehearsal	March 2, 2005	8 hours.
Production On-Air	March 3, 2005	3 hours.
(4) Utilizing Family and Community in Offender Transition and Supervision (3 hours)		
Program Date	March 16, 2005.	
Rehearsal	March 15, 2005	8 hours.
Production On-Air	March 16, 2005	3 hours.
(5) Workforce Development for Community Corrections in the 21st Century (3 hours)		
Program Date	April 20, 2005.	
Rehearsal	April 19, 2005	8 hours.
Production On-Air	April 20, 2005	3 hours.
(6) Site Coordinator Training for Senior Level Leaders (8 hours)		
Program Dates	May 11 & 12, 2005.	
Rehearsal	May 10, 2005	8 hours.
Production On-Air & Rehearsal	May 11, 2005	9 hours.
Production On-Air	May 12, 2005	4 hours.
(7) Site Coordinator Training for Strategies for Building Effective Work Teams (8 hours)		
Program Dates	June 15 & 16, 2005.	
Rehearsal	June 14, 2005	8 hours.
Production On-Air & Rehearsal	June 15, 2005	9 hours.
Production On-Air	June 16, 2005	5 hours.

SATELLITE/INTERNET SCHEDULE FOR FY–05—Continued

(8) Correctional Health Care and Cost Containment: (3 hours)		
Program Date	July 13, 2005.	
Rehearsal	July 12, 2005.	
Production On-Air	July 13, 2005.	
(9) Senior Level Leader Training (16 hours)		
Program Dates	August 22–25, 2005.	
Rehearsal	August 21, 2005	8 hours.
Production On-Air & Rehearsal	August 22, 2005	9 hours.
Production On-Air & Rehearsal	August 23, 2005	9 hours.
Production On-Air & Rehearsal	August 23, 2005	9 hours.
Production On-Air	August 24, 2005	5 hours.
(10) Strategies for Building Effective Work Teams (16 hours)		
Program Dates	September 12–15, 2005.	
Rehearsal	September 11, 2005	8 hours.
Production On-Air & Rehearsal	September 12, 2005	9 hours.
Production On-Air & Rehearsal	September 13, 2005	9 hours.
Production On-Air & Rehearsal	September 14, 2005	9 hours.
Production On-Air	September 15, 2005	5 hours.

4. *Transmission:* a. Purchase satellite uplink time that will include the footprints of Alaska, Hawaii, Virgin Islands, and the Continental United States;

b. Acquire downlink transponder time for KU-Band and C-Band; and

c. Purchase Internet streaming of 200 simultaneous feeds for each program. Be able to have closed caption on the Internet feed.

5. *Equipment:* Applicants must have a minimum of the following equipment:

a. Broadcast Studio of approximately 2,000 square feet, with an area for a studio audience of between 15 and 20 people;

b. Four Digital Studio Cameras (one of which may be an overhead camera with robotic control);

c. Chroma Key: At least one wall with chroma key capability along with the digital ultimate keying system;

d. A tape operation facility providing playback/record in various formats, including DV, Betacam, Betacam SP, SVHS, VHS, U-Matic 3/4 & SP;

e. Advit or comparable editing bay;.

f. Three-dimensional animation with computer graphics;

g. Internet streaming capacity for several hundred simultaneous downloads in both G2 Real Player and Microsoft Media Player—Capture Closed caption;

h. Ability to archive four selected satellite/Internet broadcast from FY 2004 and all nine broadcasts from FY 2005;

i. Computer Teleprompter for at least three studio cameras;

j. Satellite Uplink and Transponder: KU-Band and C-Band/or Digital with C-Band to cover the footprints of Alaska, Hawaii, Virgin Islands, and the Continental United States; and

k. Portable Field Equipment—Digital Video Cameras with recording decks, portable lighting kits, microphones (both hand-held and lapel), field monitors, audio mixers, and camera tripods.

6. *Personnel:* Applicants must have a minimum of the following qualified personnel:

a. Producer/Director
b. Script Writer
c. Set Designer
d. Lighting Designer
e. Audio Operator
f. Graphics Operator
g. Graphics Artist
h. Floor Manager
i. Studio Camera Operators (4)
j. Tape Operator
k. Location Camera Operator
l. Teleprompter Operator
m. Clerical/Administrative Support
n. Makeup Artist (as needed during production)
o. Closed Caption Operator (as needed during production)

Application Requirements: Applicants must submit an original (signed in blue ink) and five copies of their application and the required forms (see below). Applicant must prepare a proposal that describes their plan to address the requirements to produce ten live satellite/Internet broadcasts. The plan must include a list of all required equipment, identify their key operational staff and the relevant expertise of each, and address the manner in which they would perform all tasks in collaboration with NIC's Distance Learning Supervisor. Please note that Standard Form 424, Application for Federal Assistance, submitted with the proposal, must contain the cover sheet, budget, budget narrative, assurances, certifications, and management plan. All required forms and instructions for their completion may be downloaded from the NIC Web site: *http://www.nicic.org.*

Authority: Public Law 93–415.

Amount of Award: This is a cooperative agreement which is a form of assistance relationship in which the National Institute of Corrections is involved during the performance of the award. This award will be made to an organization that has the capability to produce live satellite/Internet teleconferences. This initiative emphasizes television-quality production that meets or exceeds major network quality. The award will be limited to $400,000 for both direct and indirect costs related to this project. Funds may not be used to purchase equipment, for construction, or to acquire or build real property. This project will be a collaborative venture with the NIC Academy Division.

All products from this funding will be in the public domain and available to interested agencies through the National Institute of Corrections.

Funds Available: Funds are not presently available for this cooperative agreement. The Government's obligation under this cooperative agreement is contingent upon the availability of appropriated funds from which payment for cooperative agreement purposes can be made. No legal liability on the part of the government for any payment may arise until funds are made available for this cooperative agreement

and until the awardee receives notice of such availability, to be confirmed in writing. Nothing contained herein shall be construed to obligate the parties to any expenditure or obligation of funds in excess or in advance of appropriation in accordance with Antideficiency Act, 31 U.S.C. 1341.

Award Period: This award period is from December 1, 2004 to November 30, 2005.

Eligibility of Applicants: An eligible applicant is any state or general unit of local government, public or private agency, educational institution, organization, team or individual with the requisite skills to successfully meet the objectives of the project.

Review Considerations: Applications received under this announcement will be subjected to a NIC three to five member review panel.

Number of Awards: One (1).

Executive Order 12372: This program is not subject to the provisions of Executive Order 12372.

NIC Application Number: 05A26. This number should appear as a reference line in your cover letter, in box 11 of Standard Form 424, and on the outside of the package sent to NIC.

Catalog of Federal Domestic Assistance Number: 16.601. Title—Corrections: Staff Training and Development.

Dated: September 13, 2004.

Larry Solomon,

Deputy Director, National Institute of Corrections.

[FR Doc. 04–20937 Filed 9–16–04; 8:45 am]

BILLING CODE 4410–36–M

DEPARTMENT OF JUSTICE

Parole Commission

Public Announcement; Sunshine Act Meeting Pursuant to the Government in the Sunshine Act (Public Law 94–409) (5 U.S.C. 552b)

AGENCY HOLDING MEETING: Department of Justice, United States Parole Commission.

TIME AND DATE: 9:30 a.m., Tuesday, September 21, 2004.

PLACE: 5550 Friendship Blvd., Fourth Floor, Chevy Chase, MD 20815.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the open Parole Commission meeting:

1. Approval of Minutes of Previous Commission Meeting.
2. Reports from the Chairman, Commissioners, Legal, Chief of Staff, Case Operations, and Administrative Sections.

AGENCY CONTACT: Thomas W. Hutchison, Chief of Staff, United States Parole Commission, (301) 492–5990.

Dated: September 14, 2004.

Rockne Chickinell,

General Counsel, U.S. Parole Commission.

[FR Doc. 04–21041 Filed 9–15–04; 10:39 am]

BILLING CODE 4410–31–M

DEPARTMENT OF JUSTICE

Parole Commission

Public Announcement; Sunshine Act Meeting Pursuant to the Government in the Sunshine Act (Public Law 94–409) (5 U.S.C. 552b)

AGENCY HOLDING MEETING: Department of Justice, United States Parole Commission.

DATE AND TIME: 10:30 a.m., Tuesday, September 21, 2004.

PLACE: U.S. Parole Commission, 5550 Friendship Boulevard, 4th Floor, Chevy Chase, Maryland 20815.

STATUS: Closed—Meeting.

MATTERS CONSIDERED: The following matter will be considered during the closed portion of the Commission's Business Meeting:

Appeals to the Commission involving approximately six cases decided by the National Commissioners pursuant to a reference under 28 CFR 2.27. These cases were originally heard by an examiner panel wherein inmates of Federal prisons have applied for parole and are contesting revocation of parole or mandatory release.

AGENCY CONTACT: Thomas W. Hutchison, Chief of Staff, United States Parole Commission, (301) 492–5990.

Dated: September 14, 2004.

Rockne Chickinell,

General Counsel.

[FR Doc. 04–21042 Filed 9–15–04; 10:43 am]

BILLING CODE 4410–31–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Availability of Funds and Solicitation for Grant Applications (SGA) for High-Growth Job Training Initiative Grants for the Healthcare and Biotechnology Industries

Announcement Type: Notice of solicitation for grant applications

Funding Opportunity Number: SGA/DFA–PY 04–1.

Catalog of Federal Assistance Number: 17.261.

SUMMARY: The Employment and Training Administration (ETA), U.S. Department of Labor (DOL), announces the availability of approximately $10 million in demonstration grant funds to address labor shortages, innovative training strategies, and other workforce challenges in the Healthcare and Biotechnology industries as identified through the President's High Growth Job Training Initiative.

The President's High Growth Job Training Initiative (HGJTI) is a strategic effort to prepare workers for new and increasing job opportunities in high growth/high demand and economically vital industries and sectors of the American economy. The initiative provides national leadership for a demand-driven workforce system by identifying high growth/high demand industries, evaluating their skills needs, and leveraging the publicly funded workforce system in collaboration with private and public sector partners to ensure that people are being trained with the skills required for positions in these rapidly expanding or transforming industries.

Grant funds awarded under the HGJTI should be used to develop and implement innovative solutions to workforce challenges identified by the Healthcare industry or Biotechnology industry. Each solution should take place in the context of a strategic partnership between the public workforce system, business and industry representatives, and education and training providers such as community colleges. It is anticipated that individual awards will fall within the range of $750,000 to $1 million.

KEY DATES: The closing date for receipt of applications under this announcement is November 2, 2004. Applications must be received at the address below no later than 4 p.m. (Eastern Time). Grant applications received after this time and date will not be considered.

ADDRESSES: Mailed applications must be addressed to the U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, Attention: Eric Luetkenhaus, Reference SGA/DFA–PY04–1, 200 Constitution Avenue, NW., Room N4438, Washington, DC 20210. Telefacsimile (FAX) applications will not be accepted. Applicants are advised that mail delivery in the Washington area may be delayed due to mail decontamination procedures. Hand delivered proposals will be received at the above address.

SUPPLEMENTARY INFORMATION: This solicitation consists of seven parts:

- Part I provides background information on the President's High Growth Job Training Initiative, describes the critical elements of HGJTI grants, and highlights the special emphases for this solicitation.
- Part II describes the size and nature of the award.
- Part III describes eligible applicants.
- Part IV provides information on the application and submission process.
- Part V describes the criteria against which applications will be reviewed and explains the proposal review process.
- Part VI provides award administration information.
- Part VII contains DOL agency contact information.
- Part VIII lists additional resources of interest to applicants.

I. Funding Opportunity Description

Part A of this section provides background information on the principles and processes of the President's High Growth Job Training Initiative (HGJTI) and describes the specific results of the HGJTI process for the Healthcare and Biotechnology Industries. Part B describes critical elements of all HGJTI grants. Part C describes areas of emphasis particular to this SGA.

A. Background on the President's High Growth Job Training Initiative

The President's High Growth Job Training Initiative is a strategic effort to prepare workers for new and increasing job opportunities in high growth/high demand and economically vital industries and sectors of the American economy. The initiative is designed to provide national leadership for a demand-driven workforce system by identifying high growth/high demand industries, evaluating their skills needs, and funding demonstration projects that provide workforce solutions to ensure individuals can gain the skills to get good jobs in these rapidly expanding or transforming industries.

The foundation of this initiative is partnerships between the publicly funded workforce investment system, business and industry representatives, and education and training providers, such as community colleges. The purpose of these partnerships is to develop innovative solutions or replicate models that address a particular industry's workforce issues. These solutions demonstrate how a demand-driven workforce system can more efficiently serve the workforce needs of business while effectively helping workers find good jobs with good wages and promising career paths.

The HGJTI process engages each partner in its area of strength. Industry representatives and employers define workforce challenges facing the industry and identify the competencies and skills required for the industry's workforce. Community colleges and other education and training providers assist in developing competency models and training curricula and train new and incumbent workers. The publicly funded workforce investment system accesses human capital (youth, unemployed, underemployed, and dislocated workers), assists with training programs, and places trained workers in jobs.

The publicly funded workforce investment system is a state and local network of resources to assist businesses in recruiting, training, and retaining a skilled workforce. The cornerstone of the system is the One-Stop Career Center, which unifies numerous training, education and employment programs into a single service delivery system at the local level. State and local governments, providing strategic direction through State and Local Workforce Investment Boards, have responsibility for the ongoing operation of the One-Stop system. The Workforce Investment Act (WIA) provides significant flexibility, with significant authority reserved for the Governor and chief elected officials, to implement One-Stop systems that are tailored to the particular needs of the local and regional labor markets. ETA, in collaboration with other required Federal Partners identified in WIA, provides general leadership and guidance to these state-driven, locally-operated systems.

ETA is modeling the power of this partnership at the national level through investments in demonstration projects in twelve high growth/high demand industries. Each of the 12 industries was selected because it meets one or more of the following criteria: (1) Is projected to add substantial numbers of new jobs to the economy; (2) has a significant impact on the economy overall; (3) impacts the growth of other industries; (4) is being transformed by technology and innovation requiring new skills sets for workers; or (5) is a new and emerging business that is projected to grow. The twelve industries are:

- Advanced Manufacturing
- Automotive Services
- Biotechnology
- Construction
- Energy
- Financial Services
- Geospatial Technology
- Healthcare
- Hospitality
- Information Technology (IT) & IT Business-Related Services
- Retail
- Transportation

For each industry, ETA follows a three-step process to identify workforce challenges and solutions and demonstrate solutions nationally. First, ETA conducts an environmental scan to understand the economic conditions and workforce challenges facing the industry. Second, ETA convenes a series of meetings to offer leaders in business and industry an opportunity to share their current and future workforce needs with the workforce system. Using the information gathered at these meetings, ETA convenes a second round of meetings with industry and public workforce system representatives to verify workforce gaps and devise solutions. The results of these meetings are published in a comprehensive industry report. These reports are made available to the public via ETA's Web site *http://www.doleta.gov/BRG/JobTrainInitiative* as the HGJTI process is completed for each industry.

In addition to numerous industry-specific solutions, ETA identified a core set of priority solution elements that are common to all 12 target industries. These elements include:

1. Developing a pipeline of young workers;
2. Building competency models, career ladders, and career lattices for new and incumbent workers;
3. Expanding post-secondary training alternatives including apprenticeships and community colleges' workforce development programs;
4. Accessing new and/or untapped labor pools;
5. Transitioning workers from declining industries;
6. Developing strategies for retaining incumbent workers and updating their skills; and
7. Engaging small businesses.

The third and final step of the HGJTI process is a series of investments in unique, innovative, and industry-driven projects that reflect one or more of the seven elements outlined above and demonstrate training initiatives and capacity building strategies to address the industry's unique workforce challenges. Together, these projects make up a solution set tailored to each industry's specific needs.

ETA has completed the three-step HGJTI process for both the Healthcare industry and Biotechnology industry. In the spring and summer of 2004, ETA announced a first round of investments in nineteen projects under the

Healthcare industry and nine projects under the Biotechnology industry. While a brief description of industry workforce challenges is provided below, applicants are encouraged to familiarize themselves with the full industry reports and with the current investments, which can be found at *http://www.doleta.gov/BRG.* The projects selected for funding under this SGA are intended to further enhance the existing solution sets for each industry.

Workforce Challenges in the Healthcare Industry

The Healthcare industry is responsible for 11.5 million jobs nationwide, making it the country's largest industry. In 2002, the U.S. Bureau of Labor Statistics announced that over the next ten years, the Healthcare industry is projected to add 3.5 million new jobs, the greatest job growth for any industry in the United States. Further, ten of the twenty fastest growing occupations in the nation are concentrated in health services. For example, jobs in four key healthcare occupations such as medical assistants, physician assistants, home health aides, and medical records and health information technicians, will grow by over 45 percent between 2002 and 2012.

Despite this expected growth, significant workforce supply and demand gaps currently exist across the U.S., affecting health care's three primary sectors: acute care, long term care, and primary care. Many occupations for which demand is great require two-year degrees and certifications, making community colleges an important focal point for addressing this industry's workforce challenges.

ETA hosted a series of forums in order to identify workforce challenges faced by the healthcare industry and developed a range of potential solutions to these challenges. Forum attendees identified thirteen critical workforce challenges:

Recruitment and Retention:

- Increasing available labor pools
- Accessing untapped diverse/non-traditional labor pools
- Reducing turnover

Skill Development:

- Entry-level worker preparation
- Incumbent worker training
- Need for targeted/specialized skill areas

Capacity of Education and Training Providers:

- Lack of academic and clinical instructors
- Lack of facilities and resources
- Lack of alignment between requirements and curriculum

Sustainability: Infrastructure, Leadership and Policy:

- Need for sustainable partnerships at all levels
- Opportunities to leverage funding
- Planning tools (data, projections, and information systems)
- Policy and regulatory issues

Forum attendees also identified 1,001 potential solutions to these challenges. Examples of the identified solutions include, but are not limited to:

- Youth-related programs developed and implemented by partnerships that include schools, healthcare employers, post-secondary programs for health occupations, and public workforce system entities;
- Initiatives that meet the needs for academic and clinical faculty in high-demand healthcare education programs and that are designed to adapt to changing levels of workforce demand; and
- Programs focused on non-traditional and traditional labor pools for healthcare entry-level workers that both broaden approaches to preparation programs and enhance career mobility in healthcare and related industries.

Workforce Challenges in the Biotechnology Industry

The Biotechnology industry is an emerging industry with large growth potential. The industry has more than tripled in size since 1992, with revenues increasing from $8 billion in 1992 to $28.5 billion in 2001. Additionally, the Biotechnology industry is expected to add approximately 101,900 new positions between 2002 and 2007, growing from 713,000 workers to 814,900 workers. Because of this rapid growth, significant workforce supply and demand gaps currently exist across the United States. The gaps remain consistent across Biotechnology industry regional cluster areas and across levels of education. For example, the projected growth by 2012 for Medical Scientists (doctoral degree) is 26.9 percent; Biomedical Engineers (bachelors degree), 26.1 percent, and Biological Technicians (Associates Degree), 19.4 percent.

The Biotechnology industry faces a number of workforce challenges. For example, because of the emerging nature of the industry, occupations are often difficult to classify, and the public is unaware of the range of employment opportunities available in the industry. Furthermore, employee skill upgrades are required on a regular basis to keep up with rapidly changing technology and skills requirements. Additionally, there is a need for articulated career ladders and lattices that allow individuals to advance from technician positions to engineer positions.

ETA conducted three meetings with the biotechnology industry to allow business and industry an opportunity to share their current and future workforce challenges. Forum attendees identified the following six critical workforce challenges:

Pipeline Issues:

- Recruitment of new employees to the industry
- Retention

Skills, Competencies, and Training Issues:

- Developing competencies and career ladders
- Mapping occupations to other industries

Image and Outreach to the Public:

- Definition of the industry
- Image of the industry

The forums also identified 137 potential solutions to these challenges. Examples of the identified solutions include, but are not limited to:

- Programs focused on developing an industry-validated definition and corresponding pipeline of characteristics that creates exposure and demonstrates the critical skills and attributes needed for employment within the industry; and
- Programs designed to better prepare educators for teaching the requisite skills necessary for entry into the industry, *e.g.*, teacher externships.

B. Critical Elements of High Growth Grants

HGJTI funded grants are expected to contain at least six critical elements. These elements consist of: (1) New and innovative solutions; (2) strategic partnerships; (3) leveraged resources; (4) sustainability; (5) replication of successful models for broad distribution; and (6) clear and specific outcomes. Each of these characteristics will be reflected in the ratings criteria in Part V and is described in further detail below.

1. *Innovative Solution(s) to Industry Identified Workforce Challenges.* The HGJTI employs a solutions based approach to addressing the needs of the 21st Century workforce. In a solutions based approach, the grantee works through the cycle of (1) collecting and analyzing information about workforce issues; (2) incorporating a business or demand-driven perspective; (3) ensuring the right strategic partners are at the table; (4) working collaboratively to explore, frame, and implement solutions; and (5) assessing how the products and outcomes of the project

can be effectively deployed and replicated. Applicants are not limited in the strategies and approaches they may employ to implement solutions, provided the strategy is well developed and meets industry and local area workforce challenges. Examples of previously funded solutions include:

- An incumbent worker career acceleration program that provides remedial education and skills-based training programs to workers in a hospital setting. On-site training opportunities help the hospital retain workers while helping workers upgrade their skills, making them eligible for critical skills shortage positions.
- A program led by a local Workforce Investment Board, in partnership with community colleges and local employers, to develop career pathways in biotechnology fields through training models targeted at transitioning workers and entry-level workers in need of remedial skill training.

2. *Strategic Partnerships.* ETA believes that strategic partnerships between the public workforce system, business and industry entities, economic development agencies, and community colleges or other education and training providers need to be in place in order to implement effective workforce development solutions. In order to maximize success of the solution and to keep pace with the rapid changes in the economy and the nature of the skills and competencies necessary for work in these industries, these partnerships need to be substantial and sustained. Furthermore, each partner needs to have a clearly defined role in the partnership. By contributing to the workforce system's efforts to become demand driven, these strategic alliances maximize the impact of the partnership on both businesses and the U.S. labor pool.

3. *Leveraged Funds and Resources.* HGJTI investments leverage funds and resources from key entities in the strategic partnership. Leveraging resources in the context of strategic partnerships accomplishes three goals: (1) It allows for the pursuit of resources driven by the strategy; (2) it increases stakeholder investment in the project at all levels including design and implementation phases; and (3) it broadens the impact of the project itself.

Businesses, faith-based and community organizations, and foundations often invest resources to support workforce development. In addition, other government programs, including other Employment and Training Administration programs, such as registered apprenticeship and Job Corps, as well as non-ETA One-Stop partner programs such as Vocational Rehabilitation and Adult Education may have resources available that can be integrated into the proposed project. ETA encourages HGJTI grantees and their partners to be entrepreneurial as they seek out, utilize, and sustain these resources, whether it is in-kind or cash contributions, when creating effective solutions to the workforce challenges identified by the industry.

4. *Sustainability.* The HGJTI investment should be considered as seed funding. Thus, ETA intends that the partnerships and/or solutions-based activities be sustainable long after the federal investment has ended. While financial resources are important, they are not the only component of sustainability. Sustainability is also created through the partnerships formed before and during the grant term; systems, strategies, and processes put in place during the grant period; and the experience gained through implementing a HGJTI grant. All of these may provide the foundation for developing long-term systemic solutions to workforce challenges in high growth/high demand industries.

5. *Replication.* The HGJTI is driving the Workforce Investment System to become demand-driven through the broad, national dissemination of the products, models, and effective approaches that result from HGJTI investments. Solution sets should demonstrate how a demand-driven workforce system can more efficiently serve the workforce needs of business while at the same time helping workers find good jobs with good wages and promising career pathways. To that end, the outcomes of HGJTI projects should be replicable in a variety of settings and, if appropriate, other industries. Learning and achievement resulting from HGJTI projects should be developed into solution models that can be shared with and implemented by the public workforce system, industry leaders, and education and training community.

6. *Outcomes.* Clear and specific outcomes that are appropriate to the nature of the solution and the size of the project are vital components of HGJTI projects. However, because HGJTI grants demonstrate solutions-based approaches to addressing industry workforce challenges, ETA recognizes that specific outcomes will vary from project to project based on the specific solution proposed. Projects that address building capacity should report on the status of products and activities and describe the impact each outcome has on the industry. For example, a project with a curriculum development component would predict impact on ability to train and certify individuals for specific occupations. Proposals that contain training elements should report outcome measures such as how many trainees received jobs or promotions, as well as trainee earnings gains and retention.

C. ETA Emphases for This SGA

In addition to the critical elements described above, ETA has developed three areas of emphasis for Healthcare and Biotechnology projects funded through this SGA: (1) The specific workforce challenges identified by each industry; (2) the integration of Workforce Investment Act funding into the project; and (3) regional approaches to workforce challenges.

1. *Healthcare and Biotechnology Industry-Identified Workforce Challenges.* Based on the scope and nature of investments made during the first funding round, ETA has identified specific workforce challenges for emphasis in this SGA. Applicants are encouraged to develop proposals that address these challenges; however, all unique and innovative proposals providing solutions to identified industry workforce challenges will be considered and reviewed.

Healthcare

- Increasing the capacity of education and training providers: Applicants are encouraged to submit projects that address shortages of qualified academic and clinical faculty to teach nursing and other health care-related occupational skills in community colleges.
- Accessing untapped labor pools: Applicants are encouraged to submit projects that focus on accessing new and untapped labor pools to fill healthcare industry positions. Untapped labor pools may include women or men (depending on the occupation), minority populations, older workers, workers transitioning from declining industries, those with limited English proficiency, veterans, and persons with disabilities. Where appropriate, applicants are encouraged to partner with faith-based and community organizations to deliver social services to these labor pools.
- Developing specialized skill sets: The demand for highly skilled incumbent workers as well as new workers in the healthcare industry is high. While this challenge is well-recognized for the general nursing field, ETA would like to draw attention to the needs of specialty nursing areas and the allied health fields (radiological and surgical technicians, dental hygienists, etc.).

Applicants are encouraged to propose solutions that develop competency models for these occupations with a specific focus on career lattices. Career lattices articulate clear paths employees may follow to move horizontally, vertically, and diagonally within a single occupation or across occupations to advance their careers by moving into positions with more responsibility and increased compensation and benefits.

Biotechnology

- Accessing untapped labor pools: Applicants are encouraged to submit projects that focus on accessing new and untapped labor pools to fill biotechnology industry positions. Untapped labor pools may include women, minority populations, older workers, workers transitioning from declining industries, those with limited English proficiency, veterans, and persons with disabilities. Where appropriate, applicants are encouraged to partner with faith-based and community organizations to deliver social services to these labor pools.
- Increasing retention through skills training: Applicants are encouraged to submit proposals for projects that develop and implement curricula for new and incumbent workers in either community college or business settings for specialty skills areas such as bioinformatics and Good Manufacturing Practices (GMP).
- Developing apprenticeship models for biotechnology occupations: Applicants are encouraged to submit proposals that integrate apprenticeship opportunities into skill development programs in the biotechnology industry.
- Developing career guidance for young adults and adults: Applicants are encouraged to submit proposals that address the industry-identified need for new models that help adults and youth understand career options and opportunities in the biotechnology industry.

2. *Integrated WIA Funding.* Applicants are encouraged to integrate Workforce Investment Act (WIA) funding at the state and local level into their proposed project. Integrating WIA funds ensures that the full spectrum of assets available from the workforce system is leveraged to support the HGJTI solution. The wide variety of WIA programs and activities provide both breadth and depth to the proposed solution offered to both businesses and individuals. In addition, the use of WIA funds embeds the solution into the local or regional Workforce Investment System, which serves to strengthen the system's ability to become more demand-driven.

The integration of WIA funds may take many forms. For example, HGJTI funds may be used for the development of curriculum and training materials while WIA resources for Individual Training Accounts (ITAs) provide training under the new curriculum, and other WIA resources fund supportive services (such as transportation or child care) to training recipients. Applicants may wish to consider the appropriateness of a variety of WIA funds such as Job Corps (Title 1, Subtitle C), Youth (section 129), Adults and Dislocated Workers (section 133), Native Americans (section 166), Migrant and Seasonal Farm Workers, (section 167), Youth Opportunity Grants (section 169), Trade Adjustment Assistance (section 170), Other Demonstrations and Pilot Projects (section 171), and National Emergency Grants (section 173).

Applicants that demonstrate evidence of integration of WIA funds into the project will receive 5 bonus points in the final score of their proposal. Please note that WIA integrated funds used for the proposed solution may not be counted towards the match requirement. In addition, all federal requirements will continue to apply to WIA funds integrated into HGJTI projects. However, once grants are awarded, grantees will be encouraged to apply for waivers of statutory and regulatory requirements through their states as authorized under section 189 of WIA.

3. *Regional Approach.* Often-times, addressing the critical challenges job seekers and employers face requires the considerable leveraging of efforts by the employment, education, and economic development systems that impact expanded labor markets. Since HGJTI grants are designed to provide workforce solutions that are relevant in a variety of geographical areas and business and education settings, applicants are encouraged to connect their projects to larger regional efforts. Regional approaches can occur at a variety of scales, ranging from local projects involving multiple workforce investment boards to state-wide or multi-state projects.

II. Award Information

A. Award Amount

ETA intends to fund 10 to 12 projects at a range of $750,000 to $1 million; however, this does not preclude funding grants at either a lower or higher amount, or funding a smaller or larger number of projects, based on the type and the number of quality submissions. Applicants are encouraged to submit budgets for quality projects at whatever funding level is appropriate to the project. Nevertheless, applicants should recognize that the limited funds available through this SGA are intended to supplement project budgets rather than be the sole source of funds for the proposal.

B. Period of Performance

The initial period of grant performance will be up to 24 months from the date of execution of the grant documents. If applied for, ETA may elect to exercise its option to award no-cost extensions to these grants for an additional period based on the success of the program and other relevant factors.

III. Eligibility Information

A. Eligible Applicants

Applicants may be public, private for-profit, and private non-profit organizations including faith-based and community organizations. The application must clearly identify the applicant and describe its capacity to administer the HGJTI Healthcare and/or Biotechnology grant, in terms of both organizational capacity and data management capabilities. Please note that the applicant and fiscal agent must be the same organization.

B. Matching Funds

Applicants must provide resources equivalent to at least 50 percent of the grant award amount as matching funds. This match may be provided in cash or in-kind; however, at least 50% of the total grant match amount must be a cash match provided by business partners. Please note that neither prior investments nor Federal resources may be counted as match.

Please note that to be allowable as part of match, a cost must be an allowable charge for Federal grant funds. If the cost would not be allowable as a grant-funded charge, then it also cannot be counted toward matching funds. Matching funds must be expended during the grant period of performance. Applicants are encouraged to leverage additional funds outside of the match to supplement the project as a whole.

C. Demonstrated Partnerships

Applicants must demonstrate the existence of a partnership that includes at least one entity from each of three categories: (1) The publicly-funded Workforce Investment System, which may include state and local Workforce Investment Boards, State Workforce Agencies, and One Stop Career Centers and their partners; (2) the education and training community, which includes

community and technical colleges, four year colleges and universities, and other training entities; and (3) employers or industry-related organizations such as associations and unions. While ETA welcomes applications from newly formed partnerships, applicants are advised that grant funds may not be used for partnership development.

D. Other Eligibility Requirements

• *Participants Eligible to Receive HGJTI Training.* This element applies only to proposals with a training component. Generally, the scope of potential trainees is very broad. Training may be targeted to a wide variety of populations, including unemployed individuals and incumbent workers. The identification of targeted and qualified trainees should be part of the larger project planning process by the required partnership and should relate to the workforce issue that is being addressed by the training.

Veterans Priority. This program is subject to the provisions of the "Jobs for Veterans Act," Public Law 107–288, which provides priority of service to veterans and spouses of certain veterans for the receipt of employment, training, and placement services in any job training program directly funded, in whole or in part, by the Department of Labor. Please note that, to obtain priority of service, a veteran must meet the program's eligibility requirements. ETA Training and Employment Guidance Letter (TEGL) No. 5–03 (September 16, 2003) provides general guidance on the scope of the veterans priority statute and its effect on current employment and training programs.

• *Administrative Costs.* Under the President's High Growth Job Training Initiative, an entity that receives a grant to carry out a project or program may not use more than 10 percent of the amount of the grant to pay administrative costs associated with the program or project. Administrative costs are defined at 20 CFR 667.220. Although there will be administrative costs associated with the managing of the partnership as it relates to specific grant activity, the primary use of funding should be to support the actual capacity building or training activity(ies).

• *ETA Distribution Rights.* Applicants should note that grantees must agree to give USDOL–ETA the right to use and distribute all training models, curricula, technical assistance products, etc. developed with grant funds. USDOL–ETA has the right to use, reuse, and modify all grant-funded products, curricula, materials, etc. Additionally, USDOL–ETA has the right to distribute these grant-funded materials and products to any interested parties, including broad distribution to the state and local public workforce system through Internet-based and other means.

• *Legal rules pertaining to inherently religious activities by organizations that receive Federal Financial Assistance.* The government is generally prohibited from providing direct financial assistance for inherently religious activities. These grants may not be used for religious instruction, worship, prayer, proselytizing or other inherently religious activities. Neutral, non-religious criteria that neither favor nor disfavor religion will be employed in the selection of grant recipients and must be employed by grantees in the selection of sub-recipients.

IV. Application and Submission Information

A. Address To Request Application Package

This SGA contains all of the information and forms needed to apply for grant funding.

B. Content and Form of Application Submission

Applicants must submit an original signed application and two hard copies. The proposal must consist of two (2) separate and distinct parts, Parts I and II. Applications that fail to adhere to the instructions in this section will be considered non-responsive and will not be considered.

Part I of the proposal is the Cost Proposal and must include the following four items:

• The Standard Form (SF) 424, "Application for Federal Assistance" (Appendix A). Upon confirmation of an award, the individual signing the SF 424 on behalf of the applicant shall represent the responsible financial and administrative entity. Beginning October 12, 2003, all applicants for federal grant and funding opportunities are required to have a Dun and Bradstreet (DUNS) number. See OMB Notice of Final Policy Issuance, 68 FR 38402 (June 27, 2003). Applicants must supply their DUNS number in item #5 of the new SF–424 issued by OMB (Rev. 9–2003). The DUNS number is a nine-digit identification number that uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access this Web site: *http://www.dunandbradstreet.com or call 1–866–705–5711.*

• The Budget Information Form (Appendix B). In preparing the Budget Information form, the applicant must provide a concise narrative explanation to support the request. The budget narrative should break down the budget and corresponding matching funds by deliverable and should discuss precisely how the administrative costs support the project goals.

• Assurances and Certifications Signature Page (Appendix C).

Part II of the application is the Technical Proposal, which demonstrates the applicant's capabilities to plan and implement the President's High Growth Job Training Initiative grant project in accordance with the provisions of this solicitation. The Technical Proposal is limited to twenty five (25) double-spaced single-sided, 8.5 inch x 11 inch pages with 12 point text font and one-inch margins. In addition, the applicant may provide resumes, a staffing pattern, statistical information and related material in attachments, which may not exceed fifteen (15) pages. Although not required, letters of commitment from partners providing financial resources may be submitted as attachments. Such letters will not count against the allowable maximum page total. The applicant must briefly reference any partners in the text of the Technical Proposal.

No cost data or reference to prices should be included in the Technical Proposal. The following information is required:

• A two-page abstract summarizing the proposed project and applicant profile information including: applicant name, project title, industry focus (healthcare or biotechnology), industry workforce challenges addressed, partnership members, funding level requested, and the match amount.,

• A table of contents listing the application sections,

• A time line outlining project activities, and

• A project description as described in the Criteria section of this solicitation.

Please note that the abstract, table of contents, and time line are not included in the twenty five page limit. Applications that do not meet these requirements will not be considered.

C. Submission Date, Times, and Addresses

The closing date for receipt of applications under this announcement is November 2, 2004. Applications must be received at the address below no later than 4 p.m. (Eastern Time). Applications sent by e-mail, telegram, for facsimile (FAX) will not be accepted. Applications that do not meet the conditions set forth in this notice will not be honored. No exceptions to the

mailing and delivery requirements set forth in this notice will be granted.

Mailed applications must be addressed to the U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, Attention: Eric Luetkenhaus, Reference SGA/DFA–PY04–1, 200 Constitution Avenue, NW., Room N4438, Washington, DC 20210. Applicants are advised that mail delivery in the Washington area may be delayed due to mail decontamination procedures. Hand delivered proposals will be received at the above address.

Applicants may apply online at *http://www.grants.gov.* Applicants submitting proposals online are requested to refrain from mailing an application as well.

Any application received after the deadline will not be considered.

D. Intergovernmental Review

This funding opportunity is not subject to Executive Order (EO) 12372, "Intergovernmental Review of Federal Programs."

E. Funding Restrictions

Determinations of allowable costs will be made in accordance with the applicable Federal cost principles, *e.g.*, Non-Profit Organizations—OMB Circular A–122. Disallowed costs are those charges to a grant that the grantor agency or its representative determines not to be allowed in accordance with the applicable Federal Cost Principles or other conditions contained in the grant.

F. Other Submission Requirements

Withdrawal of Applications. Applications may be withdrawn by written notice or telegram (including mailgram) received at any time before an award is made. Applications may be withdrawn in person by the applicant or by an authorized representative thereof, if the representative's identity is made known and the representative signs a receipt for the proposal.

V. Application Review Information

A. Evaluation Criteria

This section identifies and describes the criteria that will be used to evaluate the President's High Growth Job Training Initiative Grant proposals. These criteria and point values are:

Criterion	Points
1. Statement of Need	10
2. Linkages to Key Partners	15
3. Leveraged Resources	10
4. Innovative Solutions to Address Industry Identified Workforce Challenges	25
5. Outcomes, Benefits, and Impact	15
6. Replication	15
7. Program Management and Organization Capacity	10
** Bonus: Integration of WIA Funds	5
Total Possible Points	105

1. Statement of Need (10 Points)

The applicant must demonstrate a clear and specific need for the HGJTI investment in the proposed solution. This should be accomplished by describing the nature of the Healthcare or Biotechnology industry workforce challenge(s) addressed in the proposal with respect to the specific economic and workforce conditions in the area in which the grant activity will take place. Applicants may draw from a variety of resources for supporting data, including traditional labor market information, information from economic developers on locally projected growth, information collected by business organizations such as chambers of commerce and trade associations, and discussions with local businesses that make up the high growth, high demand industries. Scoring on this factor will be based on the extent of demonstrated need. Important factors for evaluation include:

- Demonstrated knowledge of the Healthcare or Biotechnology industry in the local area, including the impact of the industry on the local or regional economy.
- Demonstrated existence of the identified workforce challenges in the area in which the grant activity will take place.
- Identification of the sources of the data used in the analysis.
- If appropriate, the nature of larger strategic economic development or workforce investment projects with which the proposed project is aligned.

2. Linkages to Key Partners (15 Points)

The application must demonstrate that the proposed project will be implemented by a partnership which includes at least one entity from each of three categories: (1) The publicly-funded Workforce Investment System, (2) education and training providers such as community colleges, and (3) employers and industry representatives. ETA encourages, and will be looking for, applications that go beyond the minimum level of partnership and demonstrate broader, substantive and sustainable partnerships. The applicant should identify the partners and explain the meaningful role each partner will play in the project.

Scoring on this factor will be based on the comprehensiveness of the partnership and the degree to which each partner plays a committed role, either financial or non-financial, in the proposed project. Important factors include:

- The scope of each partner's contribution, their knowledge and experience concerning the proposed grant activities, and their ability to impact the success of the project.
- The overall completeness of the partnership, including its ability to manage all aspects and stages of the project and to coordinate individual activities with the partnership as a whole.
- Evidence that key partners have expressed a clear commitment to the project and understand their areas of responsibility.
- Evidence of a plan for interaction between partners at each stage of the project, from planning to execution.
- Evidence that the partnership has the capacity to achieve the outcomes of the proposed project.

3. Leveraged Resources (10 Points)

Applicants must demonstrate their ability to provide resources equivalent to at least 50 percent of the grant award amount as matching funds. Both cash and in-kind matching funds are acceptable; however, at least 50% of the total grant match amount must be a cash match provided by employers or industry representative partners.

Scoring on this factor will be based on the extent to which the applicant fully describes the size, nature, and quality of the non-Federal match. Important elements of the explanation include:

- Which partners have contributed to the match and the extent of each contribution.
- The nature of the match, including an itemized description of each cash or in-kind contribution and a description of how each contribution will be used.
- The quality of the match, including the quality of each in-kind contribution and the extent to which each contribution furthers the goals of the project.

If the applicant leverages additional non-match resources, the nature and quality of these resources should also be explained according to the guidelines described above.

Bonus: Integration of WIA funds. Applicants who plan to integrate WIA funding into the implementation of the proposed project must describe in detail how such funds will be used and demonstrate how these funds will contribute to the goals of the project and ultimately, to the workforce investment

system in which they reside. Applicants who demonstrate a firm commitment to leverage WIA funding will receive five bonus points.

4. Innovative Solutions To Address Industry Identified Workforce Challenges (25 Points)

Approach/Strategy: The applicant must describe the proposed solution strategy in full. The description should demonstrate (1) that the proposed project will address one or more identified workforce challenges in the Healthcare or Biotechnology industries through an innovative solution strategy; (2) that the project will contribute to a demand-driven workforce investment system; and (3) that the applicant has a clear understanding of the tasks required to successfully meet the objectives of the grant.

Scoring on this factor will be based on evidence that the applicant has developed an effective, innovative solutions-based approach and a plan of implementation that will address the three objectives described above. Applicants will be evaluated based on the following factors:

- The existence of a work plan that is responsive to the applicant's statement of need and includes specific goals, objectives, activities, implementation strategies, and a timeline.
- The demonstrated link between the proposed project and a workforce challenge identified in either the biotechnology or healthcare industry forums documented in the industry reports.
- The extent to which the work plan provides an understanding of the entire project's intended implementation and outcomes.
- The extent to which the approach reflects and builds on the applicant's core capacities.
- The feasibility and sensibility of the timeframes for the accomplishment of tasks.
- The extent to which the budget is justified with respect to the adequacy and reasonableness of resources requested.
- Whether budget line items are consistent with and tied to the work plan objectives.
- The existence of a sound strategy that incorporates outreach activities geared towards appropriate audiences, including disseminating information about the project, planned activities, and, if appropriate, recruitment of eligible participants.
- The proposed impact on the demand-driven Workforce Investment System.

Innovation: Applicants should fully describe the innovative and creative approaches to be undertaken in the context of their solution strategies. Examples of innovative approaches may include creativity in the content of the product or training being delivered, the form and style with which it is delivered, and the manner of managing and executing its development. Innovation may also take place in the context of unique partnerships.

Scoring on this element will be based on the degree to which the applicant demonstrates that the approaches and techniques through which the solutions are implemented are creative, unique, and not duplicative of previously funded HGJTI projects.

5. Outcomes, Benefits, and Impact (15 Points)

Applicants must describe fully the predicted outcomes and products resulting from the project. Applicants should also demonstrate a results-oriented approach to managing and operating the project by describing proposed outcome measures relevant to measuring the success or impact of the project. For example, projects with training components may include as outcome measures employment placement numbers, and the number of certifications or degrees awarded. Projects with capacity building components may include the number of participants or entities who will benefit. Any discussion of outcome goals should include the methods proposed to collect and validate outcome data in a timely and accurate manner.

Scoring on this factor will be based on evidence that the expected project outcomes are clearly identified, measurable, realistic, and consistent with the objectives of the project. Additional factors to be examined include:

- The ability of the applicant to achieve the stated outcomes within the time frame of the grant.
- The appropriateness of the outcomes with respect to the requested level of funding.
- The extent to which the products and outcomes of the grant will be of significant and practical use to the Workforce Investment System and the target industry.

6. Replication (15 Points)

Applicants must describe how the products and outcomes of the solution(s), including models, curricula, career ladders and lattices, partnership strategies, and best practices can be replicated. Also important is evidence that the benefits of the project will be sustained. This may be demonstrated by indicating how the products and outcomes will become imbedded into the long-term systemic solutions and activities of the industry, the education and training community, and/or the workforce system.

Scoring on this factor will be based on the extent to which the applicant provides evidence that the project's products and outcomes can be replicated, and that the benefits of the project will be sustained.

7. Program Management and Organization Capacity (10 Points)

Applicants should identify a proposed project manager, discuss the proposed staffing pattern and the qualifications and experience of key staff members, provide detailed descriptions of the roles of the participating partners, and give evidence of the utilization of data systems to track outcomes. The applicant should also include a description of organizational capacity and the organization's track record in projects similar to that described in the proposal and/or related activities of the primary partners.

Scoring on this factor will be based on evidence of the following:

- The time commitment of the proposed staff is sufficient to ensure proper direction, management, and timely completion of the project.
- The roles and contribution of staff, consultants, and collaborative organizations are clearly defined and linked to specific objects and tasks.
- The background, experience, and other qualifications of the staff are sufficient to carry out their designated roles.
- The applicant organization has significant capacity to accomplish the goals and outcomes of the project, including appropriate systems to track outcome data.

B. Review and Selection Process

Applications for the President's High Growth Job Training Initiative Grants will be accepted after the publication of this announcement until the closing date. A technical review panel will make careful evaluation of applications against the criteria. These criteria are based on the policy goals, priorities, and emphases set forth in this SGA. Up to 105 points may be awarded to an application, including the five point bonus for WIA integration, based on the required information described in Part V (1). The ranked scores will serve as the primary basis for selection of applications for funding, in conjunction with other factors such as urban, rural,

and geographic balance; the availability of funds; and which proposals are most advantageous to the Government. The panel results are advisory in nature and not binding on the Grant Officer. The Government may elect to award the grant(s) with or without discussions with the applicants. Should a grant be awarded without discussions, the award will be based on the applicant's signature on the SF 424, which constitutes a binding offer.

VI. Award Administration Information

A. Award Notices

All award notifications will be posted on the ETA homepage at *http://www.doleta.gov.*

B. Administrative and National Policy Requirements

1. Administrative Program Requirements

All grantees, including faith-based organizations, will be subject to all applicable Federal laws (including provisions of appropriate laws), regulations, and the applicable Office of Management and Budget (OMB) Circulars. The grant(s) awarded under this SGA will be subject to the following administrative standards and provisions, if applicable:

a. Workforce Investment Boards—20 Code of Federal Regulations (CFR) part 667.220. (Administrative Costs).

b. Non-Profit Organizatioqns—Office of Management and Budget (OMB) Circulars A–122 (Cost Principles) and 29 CFR part 95 (Administrative Requirements).

c. Educational Institutions—OMB Circulars A–21 (Cost Principles) and 29 CFR part 95 (Administrative Requirements).

d. State and Local Governments—OMB Circulars A–87 (Cost Principles) and 29 CFR part 97 (Administrative Requirements).

e. Profit Making Commercial Firms—Federal Acquisition Regulation (FAR)—48 CFR part 31 (Cost Principles), and 29 CFR part 95 (Administrative Requirements).

f. All entities must comply with 29 CFR parts 93 and 98, and, where applicable, 29 CFR parts 96 and 99.

g. In accordance with Section 18 of the Lobbying Disclosure Act of 1995, Public Law 104–65 (2 U.S.C. 1611) non-profit entities incorporated under Internal Revenue Service Code section 501(c)(4) that engage in lobbying activities are not eligible to receive Federal funds and grants.

Note: Except as specifically provided in this Notice, DOL/ETA's acceptance of a proposal and an award of Federal funds to sponsor any programs(s) does not provide a waiver of any grant requirements and/or procedures. For example, the OMB Circulars require that an entity's procurement procedures must ensure that all procurement transactions are conducted, as much as practical, to provide open and free competition. If a proposal identifies a specific entity to provide services, the DOL/ETA's award does not provide the justification or basis to sole source the procurement, i.e., avoid competition, unless the activity is regarded as the primary work of an official partner to the application.

2. Special Program Requirements

Evaluation. DOL may require that the program or project participate in an evaluation of overall HGJTI grant performance. To measure the impact of grants funded under the HGJTI, ETA may arrange for or conduct an independent evaluation of the outcomes and benefits of the projects. Grantees must agree to make records on participants, employers and funding available and to provide access to program operating personnel and to participants, as specified by the evaluator(s) under the direction of ETA, including after the expiration date of the grant.

3. Reporting

The grantee is required to provide the reports and documents listed below:

Quarterly Financial Reports. A Quarterly Financial Status Report (SF 269) is required until such time as all funds have been expended or the grant period has expired. Quarterly reports are due 30 days after the end of each calendar year quarter. Grantees must use ETA's On-Line Electronic Reporting System.

Quarterly Progress Reports. The grantee must submit a quarterly progress report to the designated Federal Project Officer within 30 days after the end of each quarter. Two copies are to be submitted providing a detailed account of activities undertaken during that quarter. DOL may require additional data elements to be collected and reported on either a regular basis or special request basis. Grantees must agree to meet DOL reporting requirements. The quarterly progress report should be in narrative form and should include:

1. In-depth information on accomplishments, including project success stories, upcoming grant activities, and promising approaches and processes.

2. Progress toward performance outcomes, including updates on product, curricula, and training development.

a. If the project includes training elements, provide employment placement, employment retention, and earnings gain data.

b. If the project includes capacity building elements, provide project impact data (*e.g.*, the number of participants who have benefited) and the status of specific deliverables.

c. When appropriate, include employer outcomes such as increased productivity, Return On Investment (ROI), and/or retention rates.

3. Challenges, barriers, or concerns regarding project progress.

4. Lessons learned in the areas of project administration and management, project implementation, partnership relationships and other related areas.

Final Report. A draft final report must be submitted no later than 60 days prior to the expiration date of the grant. This report must summarize project activities, employment outcomes, and related results of the training project, and should thoroughly document the solution approach. After responding to DOL questions and comments on the draft report, three copies of the final report must be submitted no later than the grant expiration date. Grantees must agree to use a designated format specified by DOL for preparing the final report.

VII. Agency Contacts

Any questions regarding this SGA should be faxed to Eric Luetkenhaus, Grant Officer, Division of Federal Assistance, fax number (202) 693–2705. (This is not a toll-free number). You must specifically address your fax to the attention of Eric Luetkenhaus and should include SGA/DFA PY 04–1, a contact name, fax and phone number.

FOR FURTHER INFORMATION CONTACT: Kevin Brumback, Grants Management Specialist, Division of Federal Assistance, on (202) 693–3381. (This is not a toll-free number). This announcement is also being made available on the ETA Web site at *http://www.doleta.gov/sga/sga.cfm* and *http://www.grants.gov.*

VIII. Other Information

Resources for the Applicant

The Department of Labor maintains a number of web-based resources that may be of assistance to applicants. The webpage for the Employment and Training Administration's Business Relations Group (*http://www.doleta.gov/BRG*) is a valuable source of background on the President's High Growth Job Training Initiative. America's Service Locator (*http://www.servicelocator.org*) provides a directory of our nation's One-

Stop Career Centers. Applicants are encouraged to review "Understanding the Department of Labor Solicitation for Grant Applications and How to Write an Effective Proposal" (*http://www/dol.gov/cfbci/sgabrochure.htm*). "Questions and Answers" regarding this solicitation will be posted and updated on the Web (*http://www.doleta.gov/usworkforce*). For a basic understanding of the grants process and basic responsibilities of receiving Federal grant support, please see "Guidance for Faith-Based and Community Organizations on Partnering with the Federal Government (*http://www.fbci.gov*).

Signed at Washington, DC, this 14th day of September.

Eric D. Luetkenhaus,

Grant Officer, Employment & Training Administration.

Appendix A: (SF) 424—Application Form

Appendix B: Budget Information Form

Appendix C: Assurances and Certifications Signature Page

Appendix D: OMB Survey N. 1890–0014: Survey on Ensuring Equal Opportunity for Applicants

BILLING CODE 4510–30–P

APPLICATION FOR FEDERAL ASSISTANCE

Version 7/03

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction / Pre-application ☐ Construction ☐ Non-Construction		**2. DATE SUBMITTED**	Applicant Identifier
		3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	**Organizational Unit:** Department:
Organizational DUNS:	Division:
Address: Street:	**Name and telephone number of person to be contacted on matters involving this application (give area code)** Prefix: / First Name:
City:	Middle Name
County:	Last Name
State: / Zip Code	Suffix:
Country:	Email:
6. EMPLOYER IDENTIFICATION NUMBER *(EIN):* ☐☐-☐☐☐☐☐☐☐	Phone Number (give area code) / Fax Number (give area code)
8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision If Revision, enter appropriate letter(s) in box(es) (See back of form for description of letters.) ☐ ☐ Other (specify)	**7. TYPE OF APPLICANT:** (See back of form for Application Types) Other (specify)
10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐-☐☐☐ TITLE (Name of Program):	**9. NAME OF FEDERAL AGENCY:** / **11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:**
12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.):*	
13. PROPOSED PROJECT Start Date: / Ending Date:	**14. CONGRESSIONAL DISTRICTS OF:** a. Applicant / b. Project

15. ESTIMATED FUNDING:		**16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?**	
a. Federal	$ .00	a. Yes. ☐	THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON DATE:
b. Applicant	$ .00		
c. State	$ .00	b. No. ☐	PROGRAM IS NOT COVERED BY E. O. 12372
d. Local	$ .00	☐	OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW
e. Other	$ .00		
f. Program Income	$ .00	**17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?**	
g. TOTAL	$ .00	☐ Yes If "Yes" attach an explanation.	☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Authorized Representative

Prefix / First Name		Middle Name
Last Name		Suffix
b. Title		c. Telephone Number (give area code)
d. Signature of Authorized Representative		e. Date Signed

Previous Edition Usable
Authorized for Local Reproduction

Standard Form 424 (Rev.9-2003)
Prescribed by OMB Circular A-102

INSTRUCTIONS FOR THE SF-424

This is a standard form used by applicants as a required face sheet for pre-applications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:	Item:	Entry:
1.	Select Type of Submission.	11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
2.	Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).	12.	List only the largest political entities affected (e.g., State, counties, cities).
3.	State use only (if applicable).	13	Enter the proposed start date and end date of the project.
4.	Enter Date Received by Federal Agency Federal identifier number: If this application is a continuation or revision to an existing award, enter the present Federal Identifier number. If for a new project, leave blank.	14.	List the applicant's Congressional District and any District(s) affected by the program or project
5.	Enter legal name of applicant, name of primary organizational unit (including division, if applicable), which will undertake the assistance activity, enter the organization's DUNS number (received from Dun and Bradstreet), enter the complete address of the applicant (including country), and name, telephone number, e-mail and fax of the person to contact on matters related to this application.	15	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.	16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
7.	Select the appropriate letter in the space provided. A. State B. County C. Municipal D. Township E. Interstate F. Intermunicipal G. Special District H. Independent School District I. State Controlled Institution of Higher Learning J. Private University K. Indian Tribe L. Individual M. Profit Organization N. Other (Specify) O. Not for Profit Organization	17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
8.	Select the type from the following list: • "New" means a new assistance award. • "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. • "Revision" means any change in the Federal Government's financial obligation cr contingent liability from an existing obligation. If a revision enter the appropriate letter: A. Increase Award B. Decrease Award C. Increase Duration D. Decrease Duration	18	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)
9.	Name of Federal agency from which assistance is being requested with this application.		
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.		

PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

	(A)	(B)	(C)
1. Personnel			
2. Fringe Benefits (Rate %)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Other			
8. Total, Direct Cost (Lines 1 through 7)			
9. Indirect Cost (Rate %)			
10. Training Cost/Stipends			
11. TOTAL Funds Requested (Lines 8 through 10)			

SECTION B - Cost Sharing/ Match Summary (if appropriate)

	(A)	(B)	(C)
1. Cash Contribution			
2. In-Kind Contribution			
3. TOTAL Cost Sharing / Match (Rate %)			

NOTE: Use Column A to record funds requested for the initial period of performance (i.e. 12 months, 18 months, etc.); Column B to record changes to Column A (i.e. requests for additional funds or line item changes; and Column C to record the totals (A plus B).

INSTRUCTIONS FOR PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

1. ***Personnel:*** *Show salaries to be paid for project personnel.*

2. ***Fringe Benefits:*** *Indicate the rate and amount of fringe benefits.*

3. ***Travel:*** *Indicate the amount requested for staff travel. Include funds to cover at least one trip to Washington, DC for project director or designee.*

4. ***Equipment:*** *Indicate the cost of non-expendable personal property that has a useful life of more than one year with a per unit cost of $5,000 or more.*

5. ***Supplies:*** *Include the cost of consumable supplies and materials to be used during the project period.*

6. ***Contractual:*** *Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts/grants.*

7. ***Other:*** *Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.*

8. ***Total, Direct Costs:*** *Add lines 1 through 7.*

9. ***Indirect Costs:*** *Indicate the rate and amount of indirect costs. Please include a copy of your negotiated Indirect Cost Agreement.*

10. ***Training /Stipend Cost:*** *(If allowable)*

11. ***Total Federal funds Requested:*** *Show total of lines 8 through 10.*

SECTION B - Cost Sharing/Matching Summary

Indicate the actual rate and amount of cost sharing/matching when there is a cost sharing/matching requirement. Also include percentage of total project cost and indicate source of cost sharing/matching funds, i.e. other Federal source or other Non-Federal source.

NOTE:

PLEASE INCLUDE A DETAILED COST ANALYSIS OF EACH LINE ITEM.

SURVEY ON ENSURING EQUAL OPPORTUNITY FOR APPLICANTS

OMB No. 1890-0014 Exp. 1/31/2006

Purpose: The Federal government is committed to ensuring that all qualified applicants, small or large, non-religious or faith-based, have an equal opportunity to compete for Federal funding. In order for us to better understand the population of applicants for Federal funds, we are asking nonprofit private organizations (not including private universities) to fill out this survey.

Upon receipt, the survey will be separated from the application. Information provided on the survey will not be considered in any way in making funding decisions and will not be included in the Federal grants database. While your help in this data collection process is greatly appreciated, completion of this survey is voluntary.

Instructions for Submitting the Survey: If you are applying using a hard copy application, please place the completed survey in an envelope labeled "Applicant Survey." Seal the envelope and include it along with your application package. If you are applying electronically, please submit this survey along with your application.

Applicant's (Organization) Name: _____

Applicant's DUNS Number: _____

Grant Name: _____ **CFDA Number:** _____

1. Does the applicant have 501(c)(3) status?

   ☐ Yes ☐ No

2. How many full-time equivalent employees does the applicant have? *(Check only one box).*

   ☐ 3 or Fewer ☐ 15-50
   ☐ 4-5 ☐ 51-100
   ☐ 6-14 ☐ over 100

3. What is the size of the applicant's annual budget? *(Check only one box.)*

   ☐ Less Than $150,000
   ☐ $150,000 - $299,999
   ☐ $300,000 - $499,999
   ☐ $500,000 - $999,999
   ☐ $1,000,000 - $4,999,999
   ☐ $5,000,000 or more

4. Is the applicant a faith-based/religious organization?

   ☐ Yes ☐ No

5. Is the applicant a non-religious community-based organization?

   ☐ Yes ☐ No

5. Is the applicant an intermediary that will manage the grant on behalf of other organizations?

   ☐ Yes ☐ No

7. Has the applicant ever received a government grant or contract (Federal, State, or local)?

   ☐ Yes ☐ No

8. Is the applicant a local affiliate of a national organization?

   ☐ Yes ☐ No

Survey Instructions on Ensuring Equal Opportunity for Applicants

Provide the applicant's (organization) name and DUNS number and the grant name and CFDA number.

1. 501(c)(3) status is a legal designation provided on application to the Internal Revenue Service by eligible organizations. Some grant programs may require nonprofit applicants to have 501(c)(3) status. Other grant programs do not.

2. For example, two part-time employees who each work half-time equal one full-time equivalent employee. If the applicant is a local affiliate of a national organization, the responses to survey questions 2 and 3 should reflect the staff and budget size of the local affiliate.

3. Annual budget means the amount of money your organization spends each year on all of its activities.

4. Self-identify.

5. An organization is considered a community-based organization if its headquarters/service location shares the same zip code as the clients you serve.

6. An "intermediary" is an organization that enables a group of small organizations to receive and manage government funds by administering the grant on their behalf.

7. Self-explanatory.

8. Self-explanatory.

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1890-0014. The time required to complete this information collection is estimated to average five (5) minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, D.C. 2202-4651.

If you have comments or concerns regarding the status of your individual submission of this form, write directly to: Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, SW, ROB-3, Room 3671, Washington, D.C. 20202-4725

OMB No. 1890-0014 Exp. 1/31/2006

[FR Doc. 04–20953 Filed 9–16–04; 8:45 am]
BILLING CODE 4510–30–C

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statues, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR part 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitle "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

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NV030003 (Jun. 13, 2003)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determination Issued Under the Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *http://www.access.gpo.gov/davisbacon.* They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic deliver of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed in Washington, DC this 9th day of September 2004.

Terry Sullivan,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 04–20734 Filed 9–16–04; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before November 1, 2004. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting the Life Cycle Management Division (NWML) using one of the following means:

Mail: NARA (NWML), 8601 Adelphi Road, College Park, MD 20740–6001.

E-mail: records.mgt@nara.gov.

FAX: 301–837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Paul M. Wester, Jr., Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–3120. E-mail: *records.mgt@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Agriculture, Food Safety and Inspection Service (N1–462–04–16, 3 items, 3 temporary items). Records relating to correcting computer hardware and software problems associated with Y2K. Included are such documents as laboratory working records, agency certifications, contracts, implementation files, repair and renovation records, and testing records. Also included are electronic copies of records created using electronic mail and word processing.

2. Department of the Army, Agency-wide (N1–AU–04–1, 4 items, 4 temporary items). Practitioner credentialing files consisting of diplomas, licenses, board certifications, and other documentation used for granting clinical privileges to medical personnel at hospitals and other medical facilities. Also included are electronic copies of records created using electronic mail and word processing.

3. Department of Homeland Security, Transportation Security Administration (N1–560–04–4, 28 items, 19 temporary items). Records of the Office of Communications and Public Information. Included are such records as communication files, reading files, broadcast e-mail messages, program management files, reports and statistics, planning records, working papers, visitor files, and video library collections. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of such files as communications policy records, photographs, sound recordings, and video recordings, briefing materials, internal newsletters, press releases, and speeches.

4. Department of Homeland Security, Transportation Security Administration (N1–560–04–5, 12 items, 9 temporary items). Correspondence, air carrier contact list case files and related databases, audit reports, financial transaction reports, airline bankruptcy claims, revenue forecasting records, and policy development files accumulated by the Office of Revenue. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of rulemaking files, policy statements, and records concerning compensation disbursements to air carriers.

5. Department of Homeland Security, Federal Emergency Management Agency (N1–311–04–1, 3 items, 3 temporary items). Electronically received and processed grants records, including applications, financial reports, and status reports. Also included are electronic copies of records created using electronic mail and word processing.

6. Department of Homeland Security, Bureau of Citizenship and Immigration Services (N1–563–03–5, 4 items, 3 temporary items). Duplicates of rulemaking docket case files that are accumulated by offices other than the originating office. Included are such records as development plans, notices of intent to regulate, preliminary drafts, comments, copies of published rules/regulations, background summaries, memorandums, and correspondence. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of rulemaking files created by the originating office.

7. Department of Homeland Security, Bureau of Immigration and Customs Enforcement (N1–567–04–2, 19 items, 7 temporary items). Budget formulation files, including working papers, cost statements, budget estimates and justifications, rough data and similar materials used in the preparation of the Federal Air Marshal Service's annual budget. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of organizational files, directives, audiovisual materials, legal opinions, speeches and press materials, emergency planning files, strategic planning files, agency history files, and agency publications.

8. Department of Justice, Drug Enforcement Administration (N1–170–04–4, 2 items, 2 temporary items). **Federal Register** notices and supporting documentation accumulated by the Office of the Chief Counsel. Also included are electronic copies of records created using electronic mail and word processing.

9. Department of State, Bureau of Administration (N1–59–04–7, 1 item, 1 temporary item). Log of incoming and outgoing airgrams for the period 1971 to 1983.

10. Department of Transportation, Federal Motor Carrier Safety Administration (N1–557–04–1, 30 items, 30 temporary items). Records created by agency Field Operations. Included are such records as budget background files, chronological files, complaints files, conference files, driver disqualification files, motor carrier case files, motor carrier grant files, motor carrier safety management studies, occupational health and safety files, safety program files, and technical reference files. The proposed disposition instructions apply to both paper and electronic versions of the records. Also included are electronic copies of records created using electronic mail and word processing.

11. Department of Transportation, Federal Aviation Administration (N1–237–02–5, 13 items, 13 temporary items). Records relating to air traffic control. Included are such records as voice recordings, flight plans, pre-flight briefing logs, aircraft flight contact records, and National Airspace System printouts and data extraction recordings.

12. Environmental Protection Agency, Office of Research and Development Laboratories (N1–412–04–6, 3 items, 2 temporary items). Records relating to scientific research projects that support agency rulemaking. Included are electronic and paper records relating to the maintenance and calibration of scientific equipment and electronic copies of records created using electronic email and word processing. Proposed for permanent retention are recordkeeping copies of research project case files.

13. Environmental Protection Agency, Office of Research and Development Laboratories (N1–412–04–7, 3 items, 3

temporary items). Scientific research project files pertaining to basic, exploratory research. Files include such records as reports, research plans, questionnaires, quality assurance project plans, lab notebooks, raw data, and correspondence. Also included are electronic and paper records relating to the maintenance and calibration of scientific equipment as well as electronic copies of records created using electronic email and word processing.

14. Environmental Protection Agency, Office of Research and Development Laboratories (N1–412–04–9, 4 items, 4 temporary items). Software programs, inputs, electronic data, and documentation associated with an electronic system that serves as a repository for metadata about agency projects, data sets and databases, models, and other documents used or created during environmental projects.

Dated: September 10, 2004.

Michael J. Kurtz,

Assistant Archivist for Records Services—Washington, DC.

[FR Doc. 04–20954 Filed 9–16–04; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Submission for OMB Review; Comment Request

The National Endowment for the Arts (NEA) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. Copies of this ICR, with applicable supporting documentation, may be obtained by calling the National Endowment for the Arts' Deputy for Guidelines & Panel Operations, A.B. Spellman 202/682–5421. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call 202/682–5496 between 10 a.m. and 4 p.m. Eastern time, Monday through Friday.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the National Endowment for the Arts, Office of Management and Budget, Room 10235, Washington, DC 20503 303/395–7316, within 30 days from the date of this publication in the **Federal Register.**

The Office of Management and Budget (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 agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

SUPPLEMENTARY INFORMATION: The Endowment requests the review of all of its funding application guidelines and grantee reporting requirements. This entry is issued by the Endowment and contains the following information: (1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Agency: National Endowment for the Arts.

Title: Blanket Justification for NEA Funding Application Guidelines and Reporting Requirements.

OMB Number: 3135–0112.

Frequency: Annually.

Affected Public: Nonprofit organizations, state and local arts agencies, and individuals.

Estimated Number of Respondents: 5,845.

Estimated Time Per Respondent: 23 hours (applications)/8 hours (reports).

Total Burden Hours: 148,505.

Total Annualized Capital/Startup Costs: 0.

Total Annual Costs (Operating/Maintaining Systems or Purchasing Services): 0.

Description: Guideline instructions and applications elicit relevant information from individuals, nonprofit organizations, and state and local arts agencies that apply for funding from the NEA. This information is necessary for the accurate, fair, and thorough consideration of competing proposals in the review process. According to OMB Circulars A–102 and A–110, recipients of federal funds are required to report on project activities and expenditures. Reporting requirements are necessary to ascertain that grant projects have been completed, and all terms and conditions fulfilled.

ADDRESSES: A.B. Spellman, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Room 516, Washington, DC 20506–0001, telephone 202/682–5421 (this is not a toll-free number), fax 202/682–5049.

Murray Welsh,

Director, Administrative Services, National Endowment for the Arts.

[FR Doc. 04–20938 Filed 9–16–04; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

Notice of Issuance of Final Design Approval Pursuant to 10 CFR Part 52, Appendix O, Westinghouse Electric Company AP1000 Standard Design

The U.S. Nuclear Regulatory Commission has issued a final design approval (FDA) to Westinghouse Electric Company for the AP1000 standard design pursuant to 10 CFR part 52, Appendix O. This FDA allows the AP1000 standard design to be referenced in an application for a construction permit or operating license under 10 CFR part 50, or an application for a combined license under 10 CFR part 52. In addition, the Commission has issued the Final Safety Evaluation Report (FSER) that supports issuance of the FDA.

Issuance of this FDA signifies completion of the technical review phase of the application for certification of the AP1000 design under Subpart B of 10 CFR part 52. The NRC staff performed its technical review of the AP1000 Design Control Document (DCD) and Probabilistic Risk Assessment in accordance with the standards for review of design certification applications set forth in 10 CFR 52.48 that were applicable and technically relevant to the AP1000 design or were modified by the exemptions identified in section 1.8 of the NRC's FSER (NUREG–1793).

On the basis of its evaluation and independent analyses, as described in the FSER, the NRC staff concludes that Westinghouse's application for design certification meets the applicable portions of 10 CFR 52.47 and the review standards in 10 CFR 52.48. Therefore, the AP1000 application is ready for the rulemaking phase. The NRC staff and Advisory Committee on Reactor Safeguards will utilize the AP1000 DCD

and will rely on it in the rulemaking phase of the design certification review process pursuant to 10 CFR 52.51.

A copy of the AP1000 FSER and FDA have been placed in the NRC's Public Document Room, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, for review and copying by interested persons.

Dated in Rockville, Maryland, this 13th day of September, 2004.

For the Nuclear Regulatory Commission

William D. Beckner,

Program Director, New Research and Test Reactors Program Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 04–20988 Filed 9–16–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Requests Comments on a Draft Environmental Assessment Related to a U.S. Nuclear Regulatory Commission Decision To Take No Further Action at the Kiski Valley Water Pollution Control Authority Site

The U.S. Nuclear Regulatory Commission (NRC) is considering the alternative of issuing a decision of no further action for the Kiski Valley Water Pollution Control Authority (KVWPCA) site in Leechburg, Pennsylvania and has prepared a draft Environmental Assessment (EA) in support of this action.

The NRC staff has developed a draft EA to address this action (see Section II of this **Federal Register** notice). In accordance with both the NRC and Federal guidance, NRC is requesting stakeholders comments regarding the action for inclusion to the EA. If any interested stakeholders have comments regarding the NRC's draft EA, please provide them within 30 days from the date of this **Federal Register** notice so they may be fully considered. If you require additional information, please contact the project manager, Kenneth Kalman, at 301–415–6664 or by e-mail at *klk@nrc.gov*.

I. Summary

KVWPCA operates a waste water treatment plant in Leechburg, Pennsylvania, about 40 kilometers (25 miles) northeast of Pittsburgh on the flood plain of the Kiskiminetas River. From 1976 to 1993, KVWPCA treated sewage sludge by incineration. KVWPCA disposed of the resulting sewage sludge ash by mixing it with water to form a liquid slurry and pumping this material into an onsite lagoon. Discharges to the lagoon ceased in 1993 and plans for closure were developed in 1994. Subsequent analyses revealed that subsurface uranium contamination was present in the ash lagoon. The NRC staff conducted a dose assessment related to the incinerator ash lagoon at the KVWPCA site and has determined that the ash meets the NRC's criteria for releasing sites for unrestricted use under the License Termination Rule 10 CFR Part 20, Subpart E. The KVWPCA site is not licensed by the NRC. Since the material in the ash lagoon meets the criteria for unrestricted use, NRC has determined that the site can be released from NRC jurisdiction without further remedial action.

II. Environmental Assessment

Introduction

In 1994, plans were made to remove the ash from the lagoon at the KVWPCA site. In the course of site closure, the Pennsylvania Department of Environmental Resources notified NRC that elevated uranium concentrations had been found in an ash sample from the KVWPCA site. Subsequent analyses revealed that subsurface uranium contamination was present at concentrations of up to 34 becquerels per gram (Bq/g) [923 picocuries per gram (pCi/g)] total uranium, and that the material was enriched to approximately 4% uranium-235. Further characterization revealed that the volume of the contaminated ash is approximately 9,000 cubic meters (320,000 cubic feet) and that the total uranium inventory is approximately 32–41 gigabecquerels (0.85–1.1 Ci), resulting in an average total uranium concentration of approximately 3.0 Bq/g (80 pCi/g). The contaminated ash is highly heterogeneous and the highest levels of contamination are found over a relatively small area, at a depth of 2 to 3 meters (m) [7 to 10 feet (ft)]. Radionuclides other than uranium are also present, but at much lower concentrations.

The contamination is believed to have resulted from the reconcentration of uranium-contaminated effluents released from the sanitary sewers and laundry drains of the Babcock & Wilcox (B&W) Apollo facility. During its operation, the B&W Apollo facility conducted fuel manufacturing and fabrication. Upon successful completion of its decommissioning activities, the NRC terminated the B&W Apollo site's license on April 14, 1997. There is no evidence suggesting that the discharges from the B&W Apollo facility exceeded permissible levels during operation.

NRC, KVWPCA, and the Pennsylvania Department of Environmental Protection (PADEP) have engaged in numerous interactions on the decommissioning of the KVWPCA site. By letter dated November 7, 2003, NRC staff informed KVWPCA that it would be conducting a dose assessment to determine what actions should be taken at the KVWPCA site. This letter also noted that PADEP has taken the position that under Pennsylvania's Solid Waste Management Act, the ash in the lagoon should be removed and properly disposed of per the Commonwealth's jurisdiction over the material as solid waste. Therefore, the NRC staff's dose assessment included scenarios for leaving the ash on site as well as scenarios for removing the ash.

NRC staff conducted dose assessments for a range of potential scenarios. These scenarios include a removal scenario, in which the contaminated ash is excavated and removed to an offsite disposal facility, and an onsite no-action scenario, in which the lagoon is abandoned in place with no remedial actions performed. The onsite scenarios included a reasonably foreseeable future land use case and a pair of less likely cases used as assessment tools to bound the uncertainty associated with future land use. In all of the scenarios, doses from the groundwater pathway are expected to be significantly limited by the relatively non-leachable form of uranium in the ash as determined by leaching tests.

It is likely that the contaminated ash will be removed from the lagoon, and that the site will continue to be used as a waste water treatment plant. Thus, the critical group in the removal scenario is the workers who excavate the contaminated ash and are exposed through inhalation of resuspended fine contaminated ash particles and direct irradiation. In addition, to address the possibility that the ash may be removed to a RCRA-permitted landfill, potential impacts of more aggressive leachate chemistry (low or high pH conditions) on uranium mobility were considered and the range of doses to a hypothetical individual residing near the landfill was qualitatively evaluated.

The dose to workers who excavate and remove the ash is expected to be approximately 0.15 mSv (15 mrem). Since any removal operation would take considerably less than one year, this constitutes the total annual dose in the year of removal. Doses to ash removal workers are dominated by the inhalation of uranium-234 and uranium-238 along with a small additional dose from external exposure. Doses to the ash removal workers are limited by the

relatively low average concentration of these isotopes, the limited exposure time during excavation of the ash, and the limited respirability of the ash particles.

Three cases of the onsite no-action scenario, in which the ash is assumed to be left in place without any remedial action, were also evaluated. These include a recreational use case, in which the property is converted into a riverside park; an agricultural use case; and an intrusion case, in which it is assumed that a volume of ash is excavated for the construction of a basement and the excavated ash is spread on the land surface. These cases, while less likely, were evaluated because they are useful assessment tools. Since they comprise a range of future land usages and include all exposure pathways, they can be used to bound other scenarios and, therefore, provide an evaluation of the uncertainty associated with future land use.

In the event that the contaminated ash remains onsite with no remedial action taken, the assumption of a recreational exposure case results in a annual dose of approximately 0.01 mSv (1 mrem) over the next few centuries, eventually rising to approximately 0.02 mSv (2 mrem) at 1000 years. This result is approximately an order of magnitude lower than either the agricultural case or the intrusion case because no crop intake is assumed in the recreational case.

The results of analysis of the agricultural case indicate that the peak annual dose within the 1000-year compliance period is predicted to be less than 0.2 mSv (20 mrem) and to occur at 1000 years after the present time. Results of the analysis of the intrusion case indicate that the peak mean annual dose within the 1000-year compliance period is also expected to be less than 0.2 mSv (20 mrem) and to occur at 1000 years after the present time.

In the agricultural and intrusion cases, it was assumed that a person would site a well or cultivated field at a random location within the 4000 m^2 (1 acre) site. In the unrealistic case that a farmer were to occupy the site and place a home in the most contaminated 200 m^2 (0.05 acre) area on the site, the peak annual dose would be expected to be well below the public dose limit and thus this scenario is not given further consideration in the staff's evaluation.

Regardless of whether the ash is left in place or excavated and removed pursuant to Pennsylvania State law, the NRC staff concludes that the doses for all scenarios meet the NRC's criteria for unrestricted use (*i.e.*, the doses are less than 25 mrem per year). Therefore, no further remedial action under NRC authority is required. The staff's dose assessment is presented in greater detail in SECY–04–0102, "The Results of the Staff's Evaluation of Potential Doses to the Public from Materials at the Kiski Valley Water Pollution Control Authority site in Leechburg, Pennsylvania."

Proposed Action

The proposed action is for NRC to take no further regulatory action regarding the KVWPCA site.

Purpose and Need for the Proposed Action

The purpose of the proposed action is to allow the KVWPCA site in Leechburg, Pennsylvania, to be made available for unrestricted use. This can be justified by demonstrating that the site meets the NRC criteria for unrestricted use. Should the proposed action be approved, under Pennsylvania's Solid Waste Management Act, PADEP could require that the ash in the lagoon be removed and disposed of as solid waste.

NRC is fulfilling its responsibilities under the Atomic Energy Act to make a decision on release of facilities for unrestricted use that ensures protection of public health and safety and the environment.

Alternative to the Proposed Action

Based on its dose assessment, the NRC staff found the KVWPCA site to be acceptable for release for unrestricted use. The only alternative to the proposed action would be to make no determination regarding the need for NRC action at the site (*i.e.*, a no-action alternative). This would leave the KVWPCA site subject to potential unnecessary regulation by NRC. The staff has determined that the site meets the NRC criteria for unrestricted use and that no further action by NRC is necessary. The no-action alternative is not acceptable because KVWPCA does not plan to conduct any activities that would require NRC oversight.

The Affected Environment and Environmental Impacts

The site is located in the central portion of the Appalachian Plateau physiographic province. The Allegheny River and its tributaries such as the Kiskiminetas River drain the majority of the region. The KVWPCA site drains into the Kiskiminetas River.

The ash lagoon occupies approximately one acre of the 36-acre KVWPCA site. The bottom of the lagoon basin was excavated into the native silty clay of the bench terrace of the Kiskimenetas River. The lagoon is 2 to 3 meters deep. Land use within the vicinity of the site consists of medium-sized rural residences, small farms, and light industrial areas.

The NRC staff has reviewed the Closure Plan for the KVWPCA site and a draft Environmental Impact Statement for decommissioning the nearby B&W Shallow Land Disposal Area in Parks Township, Pennsylvania (NUREG–1613). As discussed earlier, the NRC staff has conducted a dose assessment using site-specific data. Based on its review and analyses, the staff has determined that the affected environment and environmental impacts associated with the release for unrestricted use of the KVWPCA site is bounded by the impacts evaluated by the "Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities" (NUREG–1496). The staff also finds that the proposed release for unrestricted use of the KVWPCA site is in compliance with Title 10, Code of Federal Regulations, Part 20.1402, "Radiological Criteria for Unrestricted Use." The proposed action will result in no physical change to the site. Therefore, the NRC expects no significant impact of a nonradiological nature. However, by NRC taking no action, PADEP will have the ability to exercise its authority to require the material to be removed from the site, which will result in physical change to the site. The NRC staff has found no other activities in the area that could result in cumulative impacts.

Agencies and Persons Consulted

This EA was prepared by the NRC staff. The NRC staff has been in contact with the State of Pennsylvania regarding this issue and has informed the state of its proposal to take no further action at the Kiski Valley site. The State Office of Historical Preservation, the State Fish and Wildlife Service, and the U.S. Fish and Wildlife Service were not contacted because release of the KVWPCA site for unrestricted use would not affect historical or cultural resources, nor would it affect threatened or endangered species. No other sources were used beyond those referenced in this EA.

NRC published this draft EA for public comment and will address comments received in the final EA.

Conclusions

The NRC staff concludes that the proposed action complies with 10 CFR Part 20. NRC has prepared this EA in support of the proposal to take no further action in regard to the KVWPCA

site. On the basis of the EA, NRC has concluded that the environmental impacts from the proposed action are expected to be insignificant and has determined that an environmental impact statement for the proposed action is not necessary.

List of Preparers

Kenneth Kalman, Project Manager, Division of Waste Management and Environmental Protection.

List of References

1. November 7, 2003. Letter from Kenneth Kalman to Robert Kossack, "Nuclear Regulatory Commission Staff Intent to Conduct Dose Assessment of the Kiski Valley Water Pollution Control Authority Site.
2. Kenneth Kalman (2004). *The Results of the Staff's Evaluation of Potential Doses to the Public from Materials at the Kiski Valley Water Pollution Control Authority site in Leechburg, Pennsylvania. (SECY–04–0102).* U.S. Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, June 22, 2004.
3. Chester Environmental (1994). *Closure Plan for Incinerator Ash Lagoon, Kiski Valley Water Pollution Control Authority, Westmoreland County, Pennsylvania.* Chester Environmental. Pittsburgh, PA, July 1994.
4. Chester Engineers (1997). *Ash Lagoon Closure: Kiski Valley Water Pollution Control Authority.* Chester Engineers, Pittsburgh, PA. February 1998. (ADAMS ML003683061).
5. *Draft Environmental Impact Statement on Decommissioning of the Babcock and Wilcox Shallow Land Disposal Area in Parks Township, Pennsylvania (NUREG–1613).* U.S. Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, August 1997.
6. *Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities (NUREG–1496).* U.S. Nuclear Regulatory Commission, Office of Nuclear Regulatory Research, July 1997.

III. Further Information

Supporting documentation is available for inspection at NRC's Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/ADAMS.html.* A copy of the draft EA can be found at this site using the ADAMS accession number ML042320320. Any questions should be referred to Ken Kalman, Decommissioning Directorate, Division of Waste Management and Environmental Protection, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Mailstop T7–F27, telephone (301) 415–6664, fax (301) 415–5397.

Dated at Rockville Maryland this 13th day of September 2004.

For the U.S. Nuclear Regulatory Commission.

Daniel M. Gillen,

Deputy Director, Decommissioning Directorate, Division of Waste Management and Environmental Protection, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 04–20989 Filed 9–16–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No.: 70–3103]

Notice of Availability of Environmental Impact Statement for the Proposed National Enrichment Facility In Lea County, NM, NUREG–1790, Draft Report, and Notice of Public Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability of draft environmental impact statement and notice of public meeting.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) is issuing a Draft Environmental Impact Statement (DEIS) for the Louisiana Energy Services (LES) license application, dated December 12, 2003, as revised by letters dated February 27, 2004, and July 30, 2004, and docketed on January 30, 2004, for the possession and use of source, byproduct and special nuclear materials at its proposed National Enrichment Facility (NEF) in Lea County, New Mexico.

The DEIS discusses the purpose and need for the proposed LES facility and reasonable alternatives to the proposed action, including the no-action alternative. The DEIS also discusses the environment potentially affected by the LES proposal, presents and compares the potential environmental impacts resulting from the proposed action and its alternatives, and identifies mitigation measures that could eliminate or lessen the potential environmental impacts.

The DEIS is being issued as part of the NRC's decision-making process on whether to issue a license to LES. Based on the preliminary evaluation in the DEIS, the NRC environmental review staff has concluded that the proposed action would have small effects on the physical environment and human communities with the exception of: (1) short-term impacts associated with construction traffic, accidents, and waste management, which would be small to moderate, and (2) beneficial economic impacts of the proposed NEF on the local communities which have been determined to be moderate. The DEIS is a preliminary analysis of the environmental impacts of the proposed action and its alternatives. The Final EIS and any decision documentation regarding the proposed action will not be issued until public comments on the DEIS have been received and evaluated. Notice of the availability of the Final EIS will be published in the **Federal Register**.

DATES: The NRC is offering an opportunity for public review and comment on the DEIS in accordance with applicable regulations, including NRC requirements in 10 CFR 51.73, 51.74 and 51.117. The comment period on this DEIS will be 45 days from the date the U.S. Environmental Protection Agency publishes the notice of availability in the **Federal Register**. Written comments submitted by mail should be postmarked by that date to ensure consideration. Comments mailed after that date will be considered to the extent practical. Comments will also be accepted by electronic or facsimile submission.

ADDRESSES: Members of the public are invited and encouraged to submit comments to the Chief, Rules Review and Directives Branch, Mail Stop T6–D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Please note Docket No. 70–3103 when submitting comments. Comments will also be accepted by e-mail at *nrcrep@nrc.gov* or by facsimile to (301) 415–5397, Attention: Anna Bradford.

Public Meetings: The NRC staff will hold a public meeting to present an overview of the DEIS and to accept oral and written public comments. Prior to the public meeting, the NRC staff will be available to informally discuss the proposed LES project and answer questions in an "open house" format. This "open house" format provides for one-on-one discussions with the NRC staff involved with the preparation of the LES Draft EIS. The meeting date, time and location are listed below:

Thursday, October 14, 2004. Eunice Community Center, 1115 Avenue I, Eunice, New Mexico.

Open House: 6 p.m. to 7 p.m.,

Public Meeting: 7 p.m. to 10 p.m.

The meeting will be transcribed and will include: (1) A presentation summarizing the contents of the DEIS and (2) an opportunity for interested government agencies, organizations, and individuals to provide comments on the DEIS. Persons wishing to provide oral comments can register in advance by contacting Ms. Anna Bradford at (301) 415–5228 by October 8, 2004, or at the public meeting. Individual oral comments may have to be limited by the

time available, depending upon the number of persons who register.

If special equipment or accommodations are needed to attend or present information at the public meeting, the need should be brought to Ms. Bradford's attention no later than October 1, 2004, to provide NRC staff with adequate notice to determine whether the request can be accommodated.

FOR FURTHER INFORMATION CONTACT: For environmental review questions, please contact Anna Bradford at (301) 415–5228. For questions related to the safety review or overall licensing of the proposed NEF, please contact Timothy Johnson at (301) 415–7299.

Information and documents associated with the proposed NEF project, including the Environmental Report and the License Application, may be obtained from the Internet on NRC's LES Web page: *http://www.nrc.gov/materials/fuel-cycle-fac/lesfacility.html.* In addition, all documents, including the DEIS (ADAMS Accession Number: ML042510184), are available for public review through the NRC electronic reading room: *http://www.nrc.gov/reading-rm.html.* Any comments of Federal, State and local agencies, Indian tribes or other interested persons will be made available for public inspection when received. Documents may also be obtained from NRC's Public Document Room located at U.S. Nuclear Regulatory Commission Headquarters, 11555 Rockville Pike (first floor), Rockville, Maryland. For those without access to the Internet, paper copies of any electronic documents may be obtained for a fee by contacting the NRC's Public Document Room at 1–800–397–4209.

SUPPLEMENTARY INFORMATION: The NRC staff has prepared a DEIS in response to an application submitted by LES for a license to construct, operate and decommission a gas centrifuge uranium enrichment facility in Lea County, New Mexico. The DEIS for the proposed NEF was prepared by the staff of the NRC and its contractor, Advanced Technologies and Laboratories, International, Inc. and Pacific Northwest National Laboratory, in compliance with the National Environmental Policy Act (NEPA) and the NRC's regulations for implementing NEPA (10 CFR part 51). The proposed action involves a decision by NRC of whether to issue a license to LES to construct, operate and decommission the proposed NEF.

The NRC staff published a Notice of Intent to prepare an EIS for the proposed NEF and to conduct a scoping process, in the **Federal Register** on February 4, 2004 (69 FR 5374). The NRC staff accepted comments through March 18, 2004, and subsequently issued a Scoping Summary Report in April 2004 (ADAMS Accession Number: ML041050128).

The DEIS describes the proposed action and alternatives to the proposed action, including the no-action alternative. The NRC staff assesses the impacts of the proposed action and its alternatives on public and occupational health, air quality, water resources, waste management, geology and soils, noise, ecology resources, land use, transportation, historical and cultural resources, visual and scenic resources, socioeconomics, accidents and environmental justice. Additionally, the DEIS analyzes and compares the costs and benefits of the proposed action.

Based on the preliminary evaluation in the DEIS, the NRC environmental review staff has concluded that the proposed action should be approved, unless safety issues mandate otherwise, with implementation of the proposed mitigation measures that could eliminate or lessen the potential environmental impacts. The DEIS is a preliminary analysis of the environmental impacts of the proposed action and its alternatives. The Final EIS and any decision documentation regarding the proposed action will not be issued until public comments on the DEIS have been received and evaluated. Notice of the availability of the Final EIS will be published in the **Federal Register**.

Dated in Rockville, Maryland, this 2nd day of September, 2004.

For the Nuclear Regulatory Commission.

Scott C. Flanders,

Deputy Director, Environmental and Performance Assessment Directorate, Division of Waste Management and Environmental Protection, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 04–20852 Filed 9–16–04; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 26597; 812–12936]

Barclays Global Fund Advisors, et al.; Notice of Application

September 14, 2004.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application to amend certain prior orders under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c–1 under the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (a)(2) of the Act.

SUMMARY OF APPLICATION: The order would amend a prior order to permit a registered open-end management investment company to offer additional series that operate as exchange-traded funds and that are based on specified foreign equity securities indices. The order also would amend the prior order and certain other prior orders to permit exchange-traded funds that principally invest in foreign equity securities to invest in depositary receipts.

APPLICANTS: Barclays Global Fund Advisors (the "Adviser"), iShares Trust (the "Trust"), iShares, Inc. (the "Corporation" and together with the Trust, the "iShares ETFs") and SEI Investments Distribution Co. (the "Distributor").

FILING DATES: The application was filed on February 28, 2003, and amended on March 3, 2004 and on September 8, 2004. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 4, 2004 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 5th Street, NW., Washington, DC 20549–0609. Applicants: Richard F. Morris, Esq., Barclays Global Fund Advisors, c/o Barclays Global Investors, 45 Fremont Street, San Francisco, CA 94105; Susan C. Mosher, Esq., iShares Trust and iShares, Inc., c/o Investors Bank & Trust Company, 200 Clarendon Street, Boston, MA 02116; and John Munch, Esq., SEI Investments Distribution Co., One Freedom Valley Drive, Oaks, PA 19456.

FOR FURTHER INFORMATION CONTACT: Laura J. Riegel, Senior Counsel, at (202) 942–0567, or Michael W. Mundt, Senior

Special Counsel, at (202) 942–0564 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 5th Street, NW., Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. The Trust, a Delaware business trust, and the Corporation, a Maryland corporation, are open-end management investment companies registered under the Act. Each iShares ETF consists of multiple series (each, an "Index ETF") that invest in portfolios of securities generally consisting of the component securities ("Component Securities") of various securities indices (each index, an "Underlying Index"). Certain Index ETFs principally invest in non-U.S. equity securities (each such series, an "International ETF"). The Adviser, which is registered as an investment adviser under the Investment Advisors Act of 1940, serves as investment adviser to the Index ETFs. The Distributor, a broker-dealer registered under the Securities Exchange Act of 1934, serves as the principal underwriter and distributor for the iShares ETFs.

2. The Trust is currently permitted to offer certain Index ETFs in reliance on a prior order (the "Prior Order").[1] Applicants seek to amend the Prior Order to permit the Trust to offer three new International ETFs (each, a "New ETF") that would operate in a manner identical to the existing International ETFs that are subject to the Prior Order. Applicants also seek to amend the Prior Order and certain other prior orders to permit International ETFs to invest in certain depositary receipts ("Depositary Receipts"), as described below.[2]

3. The investment objective of each New ETF will be to provide investment results that correspond generally to the price and yield performance of its relevant Underlying Index. The Underlying Indices for the New ETFs are FTSE/Xinhua China 25 Index, MSCI EAFE Value Index and MSCI EAFE Growth Index.[3] No entity that creates, compiles, sponsors, or maintains an Underlying Index is or will be an affiliated person, as defined in section 2(a)(3) of the Act, or an affiliated person of an affiliated person, of the Trust, the Adviser, the promoter of a New ETF, or the Distributor.

4. Each New ETF will utilize a representative sampling strategy where each New ETF will seek to hold a representative sample of the Component Securities of its Underlying Index. Each of the New ETFs that track the MSCI EAFE Value Index and the MSCI EAFE Growth Index, respectively, will invest at least 90% of its assets in Component Securities and in Depositary Receipts representing such Component Securities. The New ETF that tracks the FTSE/Xinhua China 25 Index will invest at least 80% of its assets in Component Securities and in Depositary Receipts representing such Component Securities, and at least half of the remaining 20% of its assets in such Component Securities or Depositary Receipts or in stocks included in the Chinese market but not included in the Underlying Index that the Adviser believes will help the New ETF track its Underlying Index. Each New ETF may invest the remainder of its assets in certain futures, options and swap contracts, cash and cash equivalents, including money market mutual funds advised by the Adviser, other exchange-traded funds, including other Index ETFs, and in stocks not included in the Underlying Index but which the Adviser believes will help the New ETF track its Underlying Index. Applicants expect that each New ETF will have a tracking error relative to the performance of its respective Underlying Index of no more than 5 percent.

5. Each International ETF relying on the iShares Orders is subject to representations as to the percentage of its portfolio that will be invested in the Component Securities of its Underlying Index. Applicants seek to amend the respective iShares Orders so that any International ETF would be able to include Depositary Receipts that represent Component Securities together with Component Securities for purposes of satisfying any requirements related to the percentage of an International ETF's portfolio to be invested in Component Securities.

6. For purposes of this relief, "Depositary Receipts" are American Depositary Receipts ("ADRs"), Global Depositary Receipts ("GDRs") and Euro Depositary Receipts ("EDRs"). Applicants state that Depositary Receipts are typically issued by a financial institution ("depository") and evidence ownership interests in a security or a pool of securities (the "underlying securities") that has been deposited with the depository. With respect to ADRs, the depository is typically a United States financial institution and the underlying securities are issued by a foreign issuer. With respect to other Depositary Receipts, the depository may be a foreign or United States entity, and the underlying securities may have a foreign or a United States issuer.

7. To the extent that an International ETF invests in Depositary Receipts, applicants state that the Depositary Receipts will be listed on a national securities exchange, as defined in Section 2(a)(26) of the Act, NASDAQ, or a foreign exchange. An International ETF will not invest in any unlisted Depositary Receipts. An International ETF will invest only in sponsored Depositary Receipts, except for certain listed ADRs that remain unsponsored.[4] Barclays Global Investors, N.A., the parent company of the Advisor, and its affiliated persons, will not serve as the depositary bank for any Depositary Receipts held by an International ETF. Generally, an International ETF would only hold Depositary Receipts in situations where the Advisor believed that holding the Depositary Receipts, rather than holding the underlying foreign Component Securities, would benefit the International ETF. This could occur where an investment in a Depositary Receipt offers greater liquidity or would otherwise improve the liquidity, tradability or settlement of an International ETF's portfolio.

8. Applicants note that factors such as supply and demand and differences between the market-trading hours of the exchanges on which Depositary

[1] iShares Trust, *et al.*, Investment Company Act Rel. No. 25111 (Aug. 15, 2001) (the "Original Order"), as amended by iShares, Inc., *et al.*, Investment Company Rel. No. 25623 (June 25, 2002) and iShares Trust, *et al.*, Investment Company Act Rel. No. 26006 (Apr. 15, 2003) (the Original Order, as amended, the "Prior Order").

[2] In addition to amending the Prior Order, the requested order would amend The Foreign Fund, Inc., *et al.*, Investment Company Act Rel. No. 21803 (Mar. 5, 1996); WEBS Index Fund, Inc., *et al.*, Investment Company Act Rel. No. 23890 (July 6, 1999); Barclays Global Fund Advisors, *et al.*, Investment Company Act Rel. No. 24452 (May 12, 2000); and iShares, Inc., *et al.*, Investment Company Act Rel. No. 25215 (Oct. 18, 2001); each as amended by iShares, Inc., *et al.*, Investment Company Act Rel. No. 25623 (June 25, 2002) and iShares Trust, *et al.*, Investment Company Act Rel. No. 26006 (April 15, 2003) (collectively, the "iShares Orders").

[3] The two MSCI Underlying Indices are subsets of the MSCI EAFE Index, which serves as the Underlying Index for an existing Index ETF operating in reliance on the Prior Order.

[4] Applicants understand that since 1984 all listed ADRs are required to be sponsored. Applicants also understand that a few listed, but unsponsored ADRs that existed prior to the 1984 requirement have been "grandfathered." Applicants do not believe these unsponsored listed ADRs pose any special pricing or liquidity issues. Although the Applicants have no present intention for an International ETF to invest in these unsponsored listed ADRs, Applicants seek to reserve the ability for an International ETF to hold these unsponsored listed ADRs in those situations where the use of these ADRs would otherwise benefit the International ETF.

Receipts and the underlying securities trade may cause Depositary Receipts to trade at premiums or discounts to the trading price of the underlying securities they represent. To the extent an International ETF is invested in Depositary Receipts and an Underlying Index contains local securities, any premium or discount between the price of the underlying security and the corresponding Depositary Receipt creates the potential for tracking error between the International ETF and its Underlying Index. Applicants expect any such impact to be insignificant as the Adviser monitors each International ETF's portfolio and Underlying Index on a daily basis and would take appropriate action as warranted (such as rebalancing the International ETF's portfolio) to reduce potential tracking error.

9. Applicants do not believe the potential for premiums and discounts between the price of Depositary Receipts and corresponding underlying securities will have any material negative impact on the efficiency of the creation and redemption process for shares of an International ETF because market participants have access to both the prices of the Depositary Receipts and the prices of the corresponding underlying securities. Applicants believe the pricing transparency for listed Depositary Receipts will be substantially equivalent to the pricing transparency of the corresponding underlying securities, since both are traded and priced intra-day on securities exchanges and markets. Applicants therefore expect that an International ETF's investment in Depositary Receipts will not have any material negative impact on the arbitrage efficiency of the International ETFs. Finally, applicants do not anticipate any liquidity issues with respect to any International ETF's use of Depositary Receipts. The Adviser does not intend to use Depositary Receipts unless they are liquid enough to facilitate efficient creations and redemptions and the use of Depositary Receipts would otherwise benefit the International ETF.

10. Applicants state that all discussions contained in the application for the Prior Order are equally applicable to the New ETFs. Accordingly, applicants believe that the requested relief to amend the Prior Order to permit the operations of the New ETFs continues to meet the necessary exemptive standards. Applicants agree that any iShares Order amended by the requested order will remain subject to the same conditions stated in the relevant iShares Order.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–2232 Filed 9–16–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50347; File No. SR–NASD–2003–176]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendments Nos. 1 and 2 Thereto by the National Association of Securities Dealers, Inc. Relating to Chief Executive Officer Certification and Designation of Chief Compliance Officer

September 10, 2004.

I. Introduction

A. Background

On November 28, 2003, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to Chief Executive Officer Certification and Designation of Chief Compliance Officer. The proposed rule change was published for comment in the **Federal Register** on December 31, 2003.[3] The Commission received six comment letters in response to the proposed rule change.[4]

On March 8, 2004, NASD filed Amendment No. 1 to the proposed rule change.[5] On July 15, 2004, NASD filed Amendment No. 2 to the proposed rule change.[6]

On August 3, 2004, Amendments No. 1 and 2 were published for comment in the **Federal Register**.[7] The Commission received eight comment letters in response to these amendments.[8] For the reasons discussed below, the Commission is approving the proposal as amended.

B. NASD Notice to Members 03–29

In June 2003, NASD issued Notice to Members 03–29, seeking comment on a proposal to require members to designate a Chief Compliance Officer ("CCO") and have their CCOs and Chief Executive Officers ("CEOs") annually certify that the member "has in place adequate compliance and supervisory policies and procedures reasonably designed to comport with applicable NASD rules, MSRB rules and federal securities laws and rules."[9] The proposal would have required, among other things, that the CCO and CEO

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Exchange Act Release No. 48961 (Dec. 23, 2003), 68 FR 75704 (December 31, 2003). Subsequently, the Commission designated a longer period for Commission action and extended the comment period. Exchange Act Release No. 49129 (January 27, 2004), 69 FR 5228 (February 3, 2004).

[4] *See* letters to Jonathan G. Katz, Secretary, Commission from: Laura Singer, Vice President and General Counsel, E*Trade Brokerage Holdings, Inc. dated February 11, 2004 (E*Trade Letter); George R. Kramer, Vice President and Acting General Counsel, Securities Industry Association, Paul A. Merolla, Executive Vice President, SIA Compliance and Legal Division, and Paul Saltzman, Executive Vice President and General Counsel, The Bond Market Association dated February 6, 2004 ("SIA/TBMA Letter"); Joan Hinchman, Executive Director, President, and CEO, National Society of Compliance Professionals, Inc. dated February 5, 2004 ("NSCP Letter"); and Christiane G. Hyland, Senior Vice President and General Counsel, Empire Corporate FCU dated January 21, 2004 ("Empire Letter"); Stephen A. Batman, CEO, 1st Global Capital Corp. dated January 21, 2004 ("1st Global Letter"); and Herbert A. Pontzer, SVP/Chief Compliance Officer, NFP Securities, Inc. dated February 4, 2004 ("NFP Letter"). The comments are available online at *http://www.sec.gov/rules/sro/nasd/nasd2003176.shtml.*

[5] *See* letter from Philip A. Shaikun, Assistant General Counsel, NASD, to Catherine McGuire, Chief Counsel, Division of Market Regulation, Commission, dated March 8, 2004 ("Amendment No. 1"). In Amendment No. 1, NASD proposed to add a requirement that the mandated meetings between the CEO and CCO include discussion of compliance system deficiencies, risks and resources.

[6] *See* letter from Philip A. Shaikun, Assistant General Counsel, NASD, to Catherine McGuire, Chief Counsel, Division of Market Regulation, Commission, dated July 15, 2004 ("Amendment No. 2"). In Amendment No. 2, NASD eliminated the CCO certification requirement and added to the accompanying interpretive material a description of the CCO's role in the member's compliance scheme and the CEO certification required under this proposed rule.

[7] Exchange Act Release No. 50105 (July 28, 2004), 69 FR 46603 (August 3, 2004).

[8] *See* Letters to Jonathan G. Katz, Secretary, Commission from: Pamela Fritz, CCO, MWA Financial Services, Inc. dated August 6, 2004 ("MWA Letter"); Stephen A. Batman, CEO, 1st Global, Inc. dated August 23, 2004 ("1st Global-2 Letter"); R. Bredt Norwood, General Counsel, NFP Securities, Inc. dated August 23, 2004 ("NFP-2 Letter"); Barry S. Augenbraun, Senior Vice President and Corporate Secretary, Raymond James Financial, Inc. dated August 24, 2004 ("Raymond James Letter"); S. Kendrick Dunn, Assistant Vice President, Pacific Select Distributors dated August 24, 2004 ("Pacific Select Letter"); John Polanin, Jr., Chairman, SIA Self-Regulation and Supervisory Practices Committee, and Paul A. Merolla, Executive Vice President, SIA Compliance and Legal Division dated August 24, 2004 ("SIA Letter"); Dale E. Brown, CAE Executive Director, CEO Financial Services Institute dated August 24, 2004 ("FSI Letter"); Gregory E. Smith, President, Sunset Financial Services, Inc. dated August 24, 2004 ("SFS Letter"). The comments are available online at *http://www.sec.gov/rules/sro/nasd/nasd2003176.shtml.*

[9] NASD Notice to Members 03–29. Notice to Members 03–29 is available online at *http://www.nasdr.com/pdf-text/0329ntm.txt.*

have a reasonable basis to certify that a member was in compliance with all applicable laws, rules, and regulations at a fixed moment in time. Interpretive material included in the rule proposal clarified that the signatories to the certification would incur no additional liability as a consequence of the certification, provided there was a reasonable basis to certify at the time of execution.

NASD received 166 comments on the proposal, most of which disfavored the proposal.[10] According to NASD, commenters contended, among other things, that the proposal was duplicative of existing requirements. They also complained that the proposal could impose liability on the signatories in an unfair manner. Finally, they criticized the potential breadth of the certification.

Although NASD disputed most of the criticism with the proposal, it acknowledged the difficulty in certifying to absolute compliance at any given moment in the face of dynamic regulatory and business environments. As a result, in its initial filing of this rule proposal with the Commission, in response to comments it received on Notice to Members 03–29, NASD changed the focus of the proposed certification from whether the member had "adequate" compliance and supervisory policies to whether the member had in place "processes" to establish, maintain, review, test, and modify written compliance policies and written supervisory procedures reasonably designed to achieve compliance with applicable NASD rules, MSRB rules and federal securities laws and regulations.[11]

II. Description

A. Description of the Proposal

NASD's proposal seeks to provide a mechanism to compel substantial and purposeful interaction between senior management and compliance personnel to enhance the quality of members' supervisory and compliance systems. Specifically, NASD proposes to adopt new Rule 3013 requiring (1) That each member designate a principal to serve as CCO and (2) each member's CEO to certify annually to having in place processes to establish, maintain, review, modify, and test policies and procedures reasonably designed to achieve compliance with applicable NASD rules, MSRB rules, and federal securities laws and regulations.

With respect to the certification, the proposed rule change also would require the CEO[12] to certify annually that senior executive management has in place processes to (1) Establish, maintain and review policies and procedures reasonably designed to achieve compliance with applicable NASD rules, MSRB rules and federal securities laws and regulations; (2) modify such policies and procedures as business, regulatory and legislative changes and events dictate; and (3) test the effectiveness of such policies and procedures on a periodic basis, the timing of which is reasonably designed to ensure continuing compliance with NASD rules, MSRB rules and federal securities laws and regulations. The proposed rule change further would require the CEO to certify that those processes are evidenced in a report that has been reviewed by the CEO and submitted to the member's board of directors and audit committee.[13] The processes, at a minimum, must include one or more meetings annually between the CEO and CCO to (1) Discuss and review the matters that are the subject of the certification; (2) discuss and review the member's compliance efforts as of the date of such meetings; and (3) identify and address significant compliance problems and plans for emerging business areas.

The proposed rule change also would create IM–3013, which sets forth the language of the CEO certification and gives further guidance as to the requirements and limitations of the proposed rule. The proposed interpretive material recognizes that responsibility for discharging compliance policies and written supervisory procedures rests with business line supervisors. The proposed interpretive material clarifies that consultation on the certification does not, by itself, establish a signatory as having such line supervisory responsibility.

The proposed interpretive material also discusses what information must be included in the report that must evidence a member's compliance processes. It states that the report must be produced prior to execution of the certification and be reviewed by the CEO, CCO, and such other officers as the member deems necessary. The report also must include the manner and frequency in which the processes are administered and identify those officers and supervisors with responsibility for such administration. The proposed interpretive material further explains that the report need not contain conclusions that result from following the specified processes. Additionally, the proposed interpretive material states that the report may be combined with other reports required by a self-regulatory organization, provided the report is made annually, clearly indicates in the title that it contains the information required by proposed NASD Rule 3013, and that the entire report is provided in response to any regulatory request for all or part of the combined report.

B. Comment Summary

The proposal was published for comment in the **Federal Register** on December 31, 2003.[14] The SEC received six comment letters in response to the proposed rule change.[15]

Three commenters generally supported requiring members to identify CCOs, prepare annual compliance reports, hold CEO/CCO meetings on the compliance function, and present the annual compliance report to their boards of directors and audit committees.[16]

Three commenters opposed the proposed rule change in its entirety.[17] They argued it was duplicative of existing rules requiring members to establish and maintain supervisory systems.

Two commenters opposed the proposed CEO/CCO certification requirement included in the proposed rule change.[18] They argued this certification was unnecessary in light of existing rules. These commenters also contended that CEO/CCO certification would weaken compliance by diverting compliance personnel from their day-to-day functions, and would increase CEO and CCO exposure to arbitration claims and legal actions.

One commenter opposed requiring the CCO to sign the certification alongside the CEO and called for further study on whether to have a CEO certification requirement.[19] This commenter argued requiring CCO

[10] Exchange Act Release No. 48961 (December 23, 2003), 68 FR 75704, 75706 (December 31, 2003).

[11] Exchange Act Release No. 48961 (December 23, 2003), 68 FR 75704 (December 31, 2003).

[12] The rule proposal originally filed by NASD with the Commission called for both the CEO and CCO to sign the certification but in response to comments, the CCO certification requirement was removed by Amendment No. 2. *See* Exchange Act Release No. 50105 (July 28, 2004), 69 FR 46603 (August 3, 2004) at footnote 3.

[13] Members that do not employ a board of directors or audit committee or other similar bodies in their governance and management would not be subject to this requirement.

[14] Exchange Act Release No. 48961 (December 23, 2003), 68 FR 75704 (December 31, 2004).

[15] *See* note 4 *supra*.

[16] *See* SIA/TBMA Letter; NSCP Letter; and E*Trade Letter.

[17] *See* Empire Letter; NFP Letter; and 1st Global Letter.

[18] *See* SIA/TBMA Letter; and E*Trade Letter.

[19] *See* NSCP Letter.

certifications could compromise the ability of compliance officers to endorse novel approaches to new business or regulatory challenges.

In response to these comments and following additional discussions with SEC staff, NASD submitted Amendments No. 1 and 2, which, among other things, propose to eliminate the CCO certification requirement and incorporate into the accompanying interpretive material language that describes the obligations of the CCO with respect to a member's compliance scheme and the role the CCO must play to enable the CEO to make the certification that a member has in place compliance processes. The proposal, as amended by Amendment Nos. 1 and 2, was published for comment in the **Federal Register** on August 3, 2004. The SEC received eight comment letters in response to the proposed rule change.[20]

The comments generally reiterated arguments made by earlier commenters. Four commenters supported the proposed rule change's requirement for designation of a CCO but opposed the proposed rule's requirement for CEO certification.[21] Three commenters opposed the proposed rule change by reiterating arguments that the proposal was duplicative of existing rules and would place member CEOs and CCOs at undue liability risk.[22] In a telephone conversation with staff, NASD staff stated its belief that as a general matter, the commenters' concerns discussed above had been raised previously and had already been addressed in Amendment Nos. 1 and 2.[23]

One commenter supported the proposed rule change but expressed concern that some language in the Interpretive Material describing areas of expertise attributable to the CCO may create confusion if that language is compared with other language in the IM, and in other SRO rules, that recognize the possibility of allocation of some aspects of compliance functions to other firm personnel.[24]

NASD staff stated that they believed other language in the Interpretive Material, including the statement that the CCO should have an expertise in "evidencing the supervision by the line managers who are responsible for the execution of compliance policies" rendered the language questioned by the commenter unambiguous. NASD staff also indicated they would monitor the implementation of the rule, and if aspects of the rule were confusing to members, NASD staff would consider developing Questions and Answers to clarify any aspects of the rule confusing to members.[25]

C. Discussion

The Commission finds the proposed rule change is consistent with the Act and in particular with Section 15A(b)(6) of the Act, which requires, among other things, that NASD's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.[26] The Commission believes that the proposed rule change is consistent with the provisions of the Act noted above in that it will enhance focus on members' compliance and supervision systems, thereby decreasing the likelihood of fraud and manipulative acts and increasing investor protection.

The proposal's requirements for designation of CCOs, annual CEO certifications, mandatory meetings of the CCOs and CEOS, annual compliance reports, and provision of the compliance reports to member boards of directors and audit committees should increase members' senior management's focus on the effectiveness of member compliance efforts with applicable NASD rules, MSRB rules, and federal securities laws. The requirement that the person designated as CCO be a principal helps ensure a person with appropriate stature within the member organization will in fact hold this responsibility at each member.

The proposed requirement that the CEO certify the member has in place processes to establish, maintain, review, modify and test policies and procedures reasonably designed to achieve compliance with applicable NASD rules, MSRB rules and federal securities laws and regulations will help to ensure that members have in place a compliance framework that will allow the member to adapt its compliance efforts to the ever-changing business and regulatory environment. Especially helpful in this regard is the requirement that the processes, at a minimum, must include one or more meetings annually between the CEO and CCO to (1) Discuss and review the matters that are the subject of the certification; (2) discuss and review the member's compliance efforts as of the date of such meetings; and (3) identify and address significant compliance problems and plans for emerging business areas. The Commission believes it is appropriate that the proposed interpretive material recognizes that responsibility for discharging compliance policies and written supervisory procedures rests with business line supervisors. The Commission also believes it is appropriate that the proposed interpretive material clarifies that consultation on the certification does not in itself establish a signatory as having such line supervisory responsibility. In this respect, the proposal should encourage full cooperation throughout the member organization in meeting the requirements of proposed NASD Rule 3013 without assigning regulatory obligations on member employees that is not commensurate with their responsibilities in the organization.

The requirement for annual CEO certifications and preparation of a related report will help motivate firms to keep their compliance programs current with business and regulatory developments. Notwithstanding comments to the contrary[27] the Commission believes the proposal supplements rather than duplicates current member compliance obligations. In particular, the proposal would complement and underscore the closely related obligations that currently exist under NASD rules that require each member to designate principals who must review the member's supervisory systems and procedures and recommend to senior management appropriate action to ensure the systems are designed to achieve compliance with applicable rules and regulations.[28]

The Commission also believes that Amendments Nos. 1 and 2, as well as NASD's oral assurances to provide necessary clarification if requested adequately and appropriately addresses commenters' concerns regarding the originally proposed CCO certification (which NASD has omitted) and the potential inconsistencies in the interpretive materials regarding CCO

[20] *See* note 8 *supra*.

[21] *See* FSI Letter; Raymond James Letter; SFS Letter; and NFP–2 Letter.

[22] *See* 1st Global–2 Letter; Pacific Select Letter; and MWA Letter.

[23] Telephone call dated August 26, 2004 between Brian Baysinger, Special Counsel, Division and Philip Shaikun, Associate General Counsel, NASD.

[24] *See* SIA Letter.

[25] Telephone call dated August 26, 2004 between Brian Baysinger, Special Counsel, Division and Philip Shaikun, Associate General Counsel, NASD.

[26] 15 U.S.C. 78o–3(b)(6).

[27] *See* note 21 *supra*.

[28] The Commission recently approved a proposed rule change requiring members, among other things, to designate one or more principals who will establish, maintain, and enforce a system of supervisory control policies and procedures that test and verify that the members' supervisory procedures are reasonably designed to achieve compliance with applicable securities laws and NASD rules. Exchange Act Release No. 49883 (June 17, 2004), 69 FR 35092 (June 23, 2004) (approving SR–NASD–2002–162).

obligations.[29] The requirement that the annual report be provided to members' boards of directors and audit committees will further enhance member focus on the need for strong and effective compliance programs.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act[30] that the proposed rule change (File No. SR–NASD–2003–176) as amended by Amendment Nos. 1 and 2 be, and hereby is, approved.[31]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[32]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E4–2227 Filed 9–16–04; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3620]

State of Florida (Amendment #3)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency—effective September 10, 2004, the above numbered declaration is hereby amended to include Baker, Bradford, Lee, Nassau, Pinellas, and Union counties as disaster areas due to damages caused by Hurricane Frances occurring on September 3, 2004, and continuing.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Camden, Charleton, and Ware in the State of Georgia may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary counties have previously been declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is November 3, 2004 and for economic injury the deadline is June 6, 2005.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 13, 2004.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 04–20968 Filed 9–16–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #P052]

State of Indiana

As a result of the President's major disaster declaration for Public Assistance on September 1, 2004, the U.S. Small Business Administration is activating its disaster loan program only for private non-profit organizations that provide essential services of a governmental nature. I find that Clark, Clay, Crawford, Daviess, Dubois, Gibson, Greene, Harrison, Martin, Orange, Owen, Parke, Perry, Pike, Putnam, Scott, Spencer, Sullivan, Vermillion, and Warren Counties in the State of Indiana constitute a disaster area due to damages caused by severe storms and flooding occurring on July 3, 2004, and continuing through July 18, 2004. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on November 1, 2004, at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations Without Credit Available Elsewhere	2.750
Non-Profit Organizations With Credit Available Elsewhere	4.875

The number assigned to this disaster for physical damage is P05206.

(Catalog of Federal Domestic Assistance Program Nos. 59008)

Dated: September 13, 2004.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 04–20970 Filed 9–16–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3623]

State of North Carolina

As a result of the President's major disaster declaration on September 10, 2004, I find that Avery, Buncombe, Burke, Caldwell, Haywood, Henderson, Jackson, Madison, McDowell, Mitchell, Polk, Rutherford, Transylvania, Watauga and Yancey Counties in the State of North Carolina constitute a disaster area due to damages caused by Tropical Storm Frances occurring on September 7, 2004, and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on November 9, 2004, and for economic injury until the close of business on June 10, 2005, at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Alexander, Ashe, Catawba, Cleveland, Lincoln, Macon, Swain and Wilkes in North Carolina; Rabun County in the State of Georgia; Cherokee, Greenville, Oconee, Pickens and Spartanburg Counties in the State of South Carolina; and Carter, Cocke, Greene, Johnson and Unicol Counties in the State of Tennessee.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	6.375
Homeowners Without Credit Available Elsewhere	3.187
Businesses With Credit Available Elsewhere	5.800
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	2.900
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	4.875
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	2.900

The number assigned to this disaster for physical damage is 362308. For economic injury the number is 9ZU500 for North Carolina; 9ZU600 for Georgia; 9ZU700 for South Carolina; and 9ZU800 for Tennessee.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 13, 2004.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 04–20967 Filed 9–16–04; 8:45 am]

BILLING CODE 8025–01–P

[29] *See* SIA Letter and summary of NASD staffs' oral response in text accompanying footnote 23 above.

[30] 15 U.S.C. 78s(b)(2).

[31] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[32] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #P053]

State of South Carolina

As a result of the President's major disaster declaration for Public Assistance on September 1, 2004, the U.S. Small Business Administration is activating its disaster loan program only for private non-profit organizations that provide essential services of a governmental nature. I find that Georgetown and Horry Counties in the State of South Carolina constitute a disaster area due to damages caused by Hurricane Charley occurring on August 14–15, 2004. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on November 1, 2004, at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations Without Credit Available Elsewhere	2.900
Non-Profit Organizations With Credit Available Elsewhere	4.875

The number assigned to this disaster for physical damage is P05308.

(Catalog of Federal Domestic Assistance Program Nos. 59008)

Dated: September 13, 2004.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 04–20969 Filed 9–16–04; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Opportunity for Public Comment on Future Surplus Property Release at Andalusia-Opp Airport, Covington County, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on land release request.

SUMMARY: Under the provisions of title 49 U.S.C. 47153(c), notice is being given that the FAA is considering a request from the Andalusia-Opp Airport Authority to release for future sale to commercial and industrial users one parcel totaling 3.78 acres of surplus property located at the Andalusia-Opp Airport.

DATES: Comments must be received on or before October 18, 2004.

ADDRESSES: Comments on this notice may be mailed or delivered in triplicate to the FAA at the following address: Jackson Airports District Office, 100 West Cross Street, Suite B, Jackson, MS 39208–2307.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Sam Benton, Chairman of Andalusia-Opp Airport Authority, Alabama, at the following address: 21861 Bill Benton Lane, Andalusia, AL 36421.

FOR FURTHER INFORMATION CONTACT: William Schuller, Program Manager, Jackson Airports District Office, 100 West Cross Street, Suite B, Jackson, MS 39208–2307, (601) 664–9883. The land release request may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA is reviewing a request by the Andalusia-Opp Airport Authority, AL, to allow release of a lot containing 3.78 acres of surplus property at the Andalusia-Opp Airport. The property will be sold in whole to the current commercial tenant for fair market value. The current tenant executed a lease with option to buy for this lot in 1996. The tenant is seeking to exercise the purchase option contained in the 1996 lease. The property is located in the industrial park. The net proceeds from the sale of the property will be used for airport projects approved by the FAA.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.** In addition, any person may, upon request, inspect the request, notice and other documents germane to the request in person at the offices of the Andalusia-Opp Airport Authority, Andalusia, Alabama.

Issued in Jackson, Mississippi, on September 10, 2004.

Rans D. Black,

Manager, Jackson Airports District Office, Southern Region.

[FR Doc. 04–20919 Filed 9–16–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Opportunity for Public Comment on Surplus Property Release at Gadsden Municipal Airport, Gadsden, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on land release request.

SUMMARY: Under the provisions of title 49 U.S.C. 47153(c), notice is being given that the FAA is considering a request from the City of Gadsden to waive the requirement that a 12.21-acre parcel of surplus property, located at the Gadsden Municipal Airport, be used for aeronautical purposes.

DATES: Comments must be received on or before October 18, 2004.

ADDRESSES: Comments on this notice may be mailed or delivered in triplicate to the FAA at the following address: Jackson Airports District Office, 100 West Cross Street, Suite B, Jackson, MS 39208–2307.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to the Gadsden Airport Authority, Gadsden, Alabama at the following address: Mr. Fred Sington, Gadsden Airport Authority, Post Office Bos 267, Gadsden, AL 35902–0267.

FOR FURTHER INFORMATION CONTACT: Keafur Grimes, Program Manager, Jackson Airports District Office, 100 West Cross Street, Suite B, Jackson, MS 39208–2307, (601) 664–9886. The land release request may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA is reviewing a request by Mr. Fred Sington to release 12.21 acres of surplus property at the Gadsden Municipal Airport. The property will be purchased by Decatur Plastics for industrial purposes. The net proceeds from the sale of this property will be used for airport purposes.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.** In addition, any person may, upon request, inspect the request, notice and other documents germane to the request in person at the Airport District Office.

Issued in Jackson, Mississippi, on September 9, 2004.

Rans D. Black,

Manager, Jackson Airports District Office, Southern Region.

[FR Doc. 04–20918 Filed 9–16–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Opportunity for Public Comment on Surplus Property Release at Gadsden Municipal Airport, Gadsden, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on land release request.

SUMMARY: Under the provisions of title 49 U.S.C. 47153(c), notice is being given that the FAA is considering a request from the City of Gadsden to waive the requirement that a 10.99-acre parcel of surplus property, located at the Gadsden Municipal Airport, be used for aeronautical purposes.

DATES: Comments must be received on or before October 18, 2004.

ADDRESSES: Comments on this notice may be mailed or delivered in triplicate to the FAA at the following address: Jackson Airports District Office, 100 West Cross Street, Suite B, Jackson, MS 39208–2307.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Gadsden Airport Authority, Gadsden, Alabama, at the following address: Mr. Fred Sington, Gadsden Airport Authority, Post Office Box 267, Gadsden, AL 35902–0267.

FOR FURTHER INFORMATION CONTACT: Keafur Grimes, Program Manager, Jackson Airports District Office, 100 West Cross Street, Suite B, Jackson, MS 39208–2307, (601) 664–9886. The land release request may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA is reviewing a request by Mr. Fred Sington to release 10.99 acres of surplus property at the Gadsden Municipal Airport. The property will be purchased by MS2 for industrial purposes. The net proceeds from the sale of this property will be used for airport purposes.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.** In addition, any person may, upon request, inspect the request, notice and other documents germane to the request in person at the Airport District Office.

Issued in Jackson, Mississippi, on September 9, 2004.

Rans D. Black,

Manager, Jackson Airports District Office, Southern Region.

[FR Doc. 04–20920 Filed 9–16–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2004–18925]

Airport Improvement Program Grant Assurances; Extension of Comment Period

AGENCY: Federal Aviation Administration, FAA.

ACTION: Advance notice of modification of Airport Improvement Program grant assurances and the opportunity to comment; extension of comment period.

SUMMARY: The Federal Aviation Administration (FAA) is extending to November 8, 2004, the comment period for the opportunity to comment that appeared in the **Federal Register** of August 24, 2004 (69 FR 52057). In the opportunity to comment, FAA requested comments on proposed modifications to the Airport Improvement Program Grant Assurances. The agency is taking this action in response to requests for an extension to allow interested persons additional time to submit comments.

DATES: Submit written and electronic comments by November 8, 2004.

ADDRESSES: Submit written comments to the, FAA, Airports Financial Assistance Division, APP–500, Attn: Mr. Kendall Ball, Room 619, 800 Independence Ave., SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Mr. Kendall Ball, Airport Improvement Program Branch, APP 520, Airports Financial Assistance Division, Room 619, FAA, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–7436, or e-mail: *Kendall.Ball@faa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of August 24, 2004 (69 FR 52057), FAA published a notice of modification of Airport Improvement Program (AIP) grant assurances and for additional assurances with a 30-day comment period to request comments on the modified and proposed additional AIP grant assurances. The Secretary must receive certain assurances from a sponsor (applicant) seeking financial assistance for airport planning, airport development, noise compatibility planning or noise mitigation under Title 49, U.S.C., as amended. These assurances are submitted as part of a sponsor's application for Federal assistance and are incorporated into all grant agreements. As need dictates, these assurances are modified to reflect new Federal requirements. Notice of such proposed modifications is published in the **Federal Register**, and an opportunity for public comment is provided.

The agency has received multiple requests for either a 45-day or 60-day extension of the comment period for the notice of modification. Each request conveyed concern that the current 30-day comment period does not allow sufficient time to develop a meaningful or thoughtful response to the notice of modification. All of the requests explained that an extension is necessary due to the impact of the grant assurances on airport costs and operating efficiency. FAA has considered the requests and is extending the comment period for the notice of modification for 45 days, until November 8, 2004. The agency believes that a 45-day extension allows adequate time for interested persons to submit comments without significantly delaying the implementation of the grant assurances.

II. Request for Comments

Interested persons may, on or before November 8, 2004, submit to the FAA, Airports Financial Assistance Division, APP–500, Attn: Mr. Kendall Ball, Room 619, 800 Independence Avenue, SW., Washington, DC 20591.

Dated: September 13, 2004.

Ben DeLeon,

Deputy Director, Office of Airport Planning and Programming.

[FR Doc. 04–21011 Filed 9–16–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 04–04–U–00–AVP To Use the Revenue From a Passenger Facility Charge (PFC) at Wilkes-Barre/Scranton International Airport, Avoca, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Wilkes-Barre/Scranton International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before October 18, 2004.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Ms. Lori Ledebohm, PFC Contact, Harrisburg Airports District Office, 3905 Hartzdale Drive, Suite 508, Camp Hill, PA 17011.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Barry Centini, Airport Director of the Counties of Luzerne and Lackawanna at the following address: Wilkes-Barre/Scranton International Airport, 100 Terminal Road, Suite 221, Avoca, PA.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Counties of Luzerne and Lackawanna under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Lori Ledebohm, PFC Contact, Harrisburg Airports District Office, 3905 Hartzdale Dr. Suite 508, Camp Hill, PA 17011, (717) 730–2835. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Wilkes-Barre/Scranton International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On July 22, 2004, the FAA determined that the application to use the revenue from a PFC submitted by Counties of Luzerne and Lackawanna was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application in whole or in part, no later than October 21, 2004.

The following is a brief overview of the application.

PFC Application No.: 04–04–U–00–AVP.

Level of the proposed PFC: $4.50.

Proposed charge effective date: May 1, 2001.

Proposed charge expiration date: November 1, 2010.

Total estimated PFC revenue: $522,012.

Brief description of proposed project(s):

—Design and Construct Snow Removal Equipment Maintenance Facility.
—Design and Construct Airport Perimeter Fence.
—Acquire Snow Removal Equipment.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Non-scheduled/on demand air carriers, with seating capacity of less than 20 seats, filing DOT Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional airports office located at: Eastern Region, Airports Division, AEA–610, 1 Aviation Plaza, Jamaica, NY 11434.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Wilkes-Barre/Scranton International Airport.

Issued in Camp Hill, PA, on September 10, 2004.

Lori Ledebohm,

PFC Contact, Harrisburg Airports District Office, Eastern Region.

[FR Doc. 04–20921 Filed 9–16–04; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–04–18817; Notice 1]

Pipeline Safety: Petition for Waiver; Tractebel Power, Inc.

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice; petition for waiver.

SUMMARY: Tractebel Power, Inc. (TPI) has petitioned the Research and Special Programs Administration's Office of Pipeline Safety (RSPA/OPS) for a waiver from the requirements of 49 CFR 192.113 to employ a 1.0 longitudinal joint factor (LJF) in the design formula for austenitic stainless steel pipe to be used in its Tractebel Calypso Pipeline (TCP) project.

DATES: Persons interested in submitting written comments on the waiver proposed in this notice must do so by October 18, 2004. Late-filed comments will be considered so far as practicable.

ADDRESSES: You may submit written comments by mailing or delivering an original and two copies to the Dockets Facility, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. The Dockets Facility is open from 10 a.m. to 5 p.m., Monday through Friday, except on Federal holidays when the facility is closed. Alternatively, you may submit written comments to the docket electronically at the following Web address: *http://dms.dot.gov.*

All written comments should identify the docket and notice numbers stated in the heading of this notice. Anyone who wants confirmation of mailed comments must include a self-addressed stamped postcard. To file written comments electronically, after logging on to *http://dms.dot.gov,* click on "Comment/Submissions." You can also read comments and other material in the docket at *http://dms.dot.gov.* General information about our pipeline safety program is available at *http://ops.dot.gov.*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: James Reynolds by phone at 202–366–2786, by fax at 202–366–4566, by mail at DOT, RSPA, OPS, 400 Seventh Street, SW., Washington, DC 20590, or by e-mail at *james.reynolds@rspa.dot.gov.*

SUPPLEMENTARY INFORMATION: TPI's Tractebel Calypso Pipeline project includes a 96 mile, 24-inch diameter, X65 steel, standard API 5L compliant interstate natural gas pipeline. The pipeline will transport natural gas from TPI's liquefied natural gas (LNG) receiving and re-gasification terminal in Freeport, Grand Bahamas Island, to an onshore location in Broward County, FL. The offshore portion of the pipeline will be in a Class 1 area and extend from the shoreline to a water depth of 200 feet. The onshore portion of the pipeline will be in a Class 3 area.

TPI proposes to route a portion of this pipeline through a U.S. Navy exclusion zone offshore of Port Everglades, in Broward County, FL. As a condition of the pipeline traversing the exclusion zone, the U.S. Navy stipulated that approximately 14,000 feet of the pipeline be constructed of a low magnetic permeability steel material to prevent electromagnetic interference with U.S. Navy operations. A large percentage of this pipe will be installed using horizontal directional drill technology. TPI intends to use austenitic stainless steel pipe to satisfy the U.S. Navy requirement.

TPI has petitioned RSPA/OPS for a waiver from 49 CFR 192.113 to use 1.0 longitudinal joint factor (LJF) for

austenitic stainless steel pipe. Section 192.113 requires a 0.80 LJF to be used in the design formula given under § 192.105 for pipe over 4 inches in diameter and manufactured to a specification not listed under § 192.113. This limitation is imposed because the quality of the pipe material, the manufacturing process, and the extent of inspection may not be to the same standard as the pipe for which a 1.0 LJF is permitted.

TPI stated the following reasons for selecting austenitic stainless steel pipe and the use of a 1.0 LJF:

- The pipeline meets the requirements of the U.S. Navy and is a low magnetic permeability pipe material;
- The pipeline is manufactured to the American Society for Testing and Materials (ASTM) standards ASTM A–358 and A–999;
- The plate material is manufactured to comply with standards ASTM A–240 and Unified Numbering System S31254;
- The selected material is compatible with the bending properties and the test criteria in Appendix B of 49 CFR Part 192;
- The selected material is compatible with the weldability testing and inspection criteria required by Appendix B of 49 CFR Part 192; and
- The selected material is consistent with prior practice of the American Society of Mechanical Engineers (ASME) standard ASME B31.8 to allow a LJF of 1.0 when the longitudinal seam has been subjected to 100% X-ray.

TPI will require girth weld testing and will X-ray 100% of the girth welds of this pipeline as part of the procurement specification to comply with the weldability requirements of Appendix B, Section II (B) of 49 CFR Part 192. TPI will purchase ASTM A–358, Class 1 pipe and radiograph 100% of the longitudinal joint, and TPI will exceed the tensile testing requirements of ASTM A–358 (Section 12) for both the plate and the welded joint by performing one tensile test per 5 lengths of pipe. Only one test per 10 lengths of pipeline is required under the weldability section of Appendix B Section II (B) of 49 CFR Part 192.

RSPA/OPS is publishing this notice in the **Federal Register** to provide an opportunity for public comment. At the conclusion of the comment period, RSPA/OPS will make a determination on the proposed waiver and publish its decision in the **Federal Register**. This notice is RSPA/OPS' only request for public comment before making its final decision in this matter.

Authority: 49 U.S.C. 60118(c) and 49 CFR 1.53.

Issued in Washington, DC, on September 14, 2004.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 04–21013 Filed 9–16–04; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

September 8, 2004.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before October 18, 2004 to be assured of consideration.

Alcohol and Tobacco Tax and Trade Bureau (TTB)

OMB Number: 1513–0001.

Form Number: TTB F 5000.19.

Type of Review: Extension.

Title: Tax Authorization Information.

Description: TTB F 5000.19 is required by TTB to be filed when respondent's representative, not having a power of attorney, wishes to obtain confidential information regarding the respondent. After proper completion of the form, information can be released to the representative.

Respondents: Business of other for-profit.

Estimated Number of Respondents: 50.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 50 hours.

OMB Number: 1513–0003.

Form Number: TTB F 5000.21.

Type of Review: Extension.

Title: Referral of Information.

Description: TTB asks the Federal agency or State or local regulatory compliance agency to respond as to any action that will be taken and if so the action planned on referrals of potential violations of Federal, State or local law discovered by TTB personnel during investigations. This form is also used to evaluate effectiveness of these referrals.

Respondents: Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents: 500.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: Other (as necessary).

Estimated Total Reporting Burden: 500 hours.

OMB Number: 1513–0054.

Form Number: TTB F 5640.1.

Type of Review: Extension.

Title: Offer in Compromise of Liability Incurred under the Provisions of Title 26 U.S.C. Enforced and Administered by the Alcohol and Tobacco Tax and Trade Bureau.

Description: TTB F 5640.1 is used by persons who wish to compromise criminal and/or civil penalties for violations of the Internal Revenue code. If accepted, the office in compromise is a settlement between the government and the party in violation in lieu of legal proceedings or prosecution. The form identifies the party making the offer, violations, amount of offer and circumstances concerning the violations.

Respondents: Business of other for-profit.

Estimated Number of Respondents: 40.

Estimated Burden Hours Per Respondent: 2 hours.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 80 hours.

OMB Number: 1513–0096.

Form Number: TTB F 5300.27.

Type of Review: Extension.

Title: Federal Firearms and Ammunition Excise Tax Deposit.

Description: Businesses and individuals who manufacture or import firearms, shells and cartridges may be required to deposit Federal excise tax. TTB uses this information to identify the taxpayer and the deposit.

Respondents: Business of other for-profit, Individuals or households.

Estimated Number of Respondents: 283.

Estimated Burden Hours Per Respondent: 9 minutes.

Frequency of Response: Other.

Estimated Total Reporting Burden: 770 hours.

Clearance Officer: William H. Foster, (202) 927–8210, Alcohol and Tobacco Tax and Trade Bureau, Room 200 East, 1310 G. Street, NW., Washington, DC 20005.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management

and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 04–20996 Filed 9–16–04; 8:45 am]

BILLING CODE 4810–31–P

Federal Register

Friday,
September 17, 2004

Part II

Department of Housing and Urban Development

24 CFR Part 291
Disposition of HUD-Acquired Single Family Property; Disciplinary Actions Against HUD-Qualified Real Estate Brokers; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 291

[Docket No. FR–4871–P–01; HUD 2004–0006]

RIN 2502–AI08

Disposition of HUD-Acquired Single Family Property; Disciplinary Actions Against HUD-Qualified Real Estate Brokers

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: The purpose of this proposed rule is to address real estate broker participation in predatory lending practices targeted at Federal Housing Administration (FHA) borrowers. This rule includes measures to prevent property "flipping," inflated appraisals, falsified gift letters, and fraudulent underwriting. This rule is similar to existing removal rules for FHA appraisers, consultants, and nonprofit organizations, and provides HUD a more expeditious disciplinary procedure for real estate brokers than the suspension and debarment procedures that would otherwise be applicable.

DATES: *Comment Due Date:* November 16, 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. Interested persons may also submit comments electronically through either:

- The Federal eRulemaking Portal at: *http://www.regulations.gov;* or
- The HUD electronic Web site at: *http://www.epa.gov/feddocket.* Follow the link entitled "View Open HUD Dockets". Commenters should follow the instructions provided on that site to submit comments electronically.

Facsimile (FAX) comments are not acceptable. In all cases, communications must refer to the docket number and title. All comments and communications submitted will be available, without revision, for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Copies are also available for inspection and downloading at *http://www.epa.gov/feddocket.*

FOR FURTHER INFORMATION CONTACT: Wanda L. Sampedro, Deputy Director, Asset Management Division, Office of Housing, Room 9176, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone (202) 708–1672 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: This rule proposes to establish the bases and procedures for removing real estate brokers from HUD's qualified selling broker list and prohibiting removed brokers from using HUD's systems to participate in the sale of HUD-owned, single family properties. Currently, HUD's qualified selling broker list is maintained in the Single Family Acquired Asset Management System (SAMS). In SAMS, a real estate broker's name and address identifier (NAID) enables a real estate broker to be compensated for services rendered. Deactivation of the NAID removes the real estate broker's ability to participate in the sale of HUD-owned single family properties.

This rule would add a new paragraph (i) to § 291.100, which would provide for the removal by HUD, for good cause, of a real estate broker from HUD's qualified selling broker list and the deactivation of the broker's NAID. The rule provides several examples of activities that would constitute good cause, such as fraudulent activities, the use of false and misleading statements, the loss of a state license, or acting in concert with an appraiser to arrive at an artificial appraised value.

Once HUD makes an initial finding that there is good cause to remove a broker, HUD will provide the broker with written notice of the proposed removal. The notice will state the reasons that HUD is taking action, identify the violations or deficiencies involved, and provide a citation to the relevant regulation, statute, or policy. The notice will also state the effective date and duration of the proposed removal. The effective date of the broker's removal will be the 30th day after the date of the notice. HUD's determination of the duration of removal will reflect the number, extent, and seriousness of the broker's improper actions.

Real estate brokers will be given 20 days after the date of the notice (or longer, if provided in the notice) to submit a written response to HUD opposing the proposed removal and to request a conference. A request for a conference must be in writing and must be submitted along with the written response.

If the real estate broker does not respond within the time provided, the removal takes effect in accordance with the notice. If a conference is requested, it will occur within 15 days after the date of HUD's receipt of the request. Within 20 days after the date of completion of the conference, HUD will advise the real estate broker in writing of HUD's decision to rescind, modify, or affirm the broker's removal from HUD's qualified selling broker list. If the real estate broker did not request a conference when submitting the written response, HUD will respond in writing within 20 days after the date of receipt of the broker's response.

If HUD's decision affirms the removal, the broker has the right to a hearing before an administrative law judge (ALJ) to appeal the removal. The removal, however, would remain effective pending the hearing before the ALJ. All bids submitted and commissions earned by the real estate broker prior to removal will be honored, unless they are determined to have been made under fraudulent circumstances.

HUD is particularly interested in obtaining public comment on whether the procedures proposed in this rule for removing real estate brokers from HUD's qualified selling broker list may be made less burdensome, while still providing real estate brokers the opportunity to respond adequately to a notice of removal and to participate in the resolution of problems.

Findings and Certifications

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 the private sector. This proposed rule does not impose any federal mandate on any state, local, or tribal government or the private sector within the meaning of UMRA.

Environmental Impact

In accordance with HUD's regulations at 24 CFR 50.19(c)(6), this rule sets forth administrative requirements which do not constitute a development decision that affects the physical condition of specific project areas or building sites, and therefore is categorically excluded from the requirements of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and related federal laws and authorities.

Regulatory Flexibility Act

The Secretary has reviewed this rule before publication and, by approving it,

certifies, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this rule would not have a significant economic impact on a substantial number of small entities. The proposed rule would establish uniform and expeditious requirements and procedures to remove real estate brokers from HUD's qualified selling broker list. As such, the rule would benefit both the industry and the government in that it clarifies the terms of the relationship between HUD and its listed real estate brokers. Notwithstanding HUD's determination that this rule will not have a significant economic impact on a substantial number of small entities, HUD specifically invites comments regarding less burdensome alternatives to this rule that will meet HUD's program responsibilities.

With respect to removing a real estate broker or taking other appropriate enforcement action against a real estate broker, HUD is cognizant that Section 222 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121) (SBREFA) requires the Small Business and Agriculture Regulatory Enforcement Ombudsman to "work with each agency with regulatory authority over small businesses to ensure that small business concerns that receive or are subject to an audit, on-site inspection, compliance assistance effort, or other enforcement related communication or contact by agency personnel are provided with a means to comment on the enforcement activity conducted by this personnel." To implement this statutory provision, the Small Business Administration has requested that agencies include the following language on agency publications and notices that are provided to small businesses concerns at the time the enforcement action is undertaken. The language is as follows:

Your Comments Are Important

The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of an agency, including HUD, you will find the necessary comment forms at URL: *http://www.sba.gov/ombudsman*, or call 1–888–REG–FAIR (1–888–734–3247).

As HUD stated in its notice describing HUD's actions on the implementation of SBREFA, published on May 21, 1998 (63 FR 28214), HUD intends to work with the Small Business Administration to provide small entities with information on the Fairness Boards and National Ombudsman program at the time enforcement actions are taken to ensure that small entities have the full means to comment on the enforcement activity conducted by HUD.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either (1) imposes substantial direct compliance costs on state and local governments and is not required by statute or (2) the rule preempts state law, unless the agency meets the consultation and funding requirements of Section 6 of the executive order. This 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.

Executive Order 12866, Regulatory Planning and Review

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 executive order (although not economically significant, as provided in Section 3(f)(1) of the executive 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, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

List of Subjects in 24 CFR Part 291

Community facilities, Conflict of interests, Homeless, Lead poisoning, Low and moderate income housing, Mortgages, Reporting and recordkeeping requirements, Surplus government property.

Accordingly, HUD proposes to amend 24 CFR part 291 as follows:

PART 291—DISPOSITION OF HUD-ACQUIRED SINGLE FAMILY PROPERTY

1. The authority citation for 24 CFR part 291 continues to read as follows:

Authority: 12 U.S.C. 1701 *et seq.*; 42 U.S.C. 1441, 1441a, and 3535(d).

2. In § 291.100, add paragraph (i) to read as follows:

§ 291.100 General policy.

* * * * *

(i) *Disciplinary actions against HUD-qualified real estate brokers—*

(1) *In general.* Real estate brokers that are involved in Real Estate Owned (REO) sales will be removed from HUD's qualified selling broker list and will be blocked from using HUD systems to participate in the sale of HUD-owned single family properties for good cause in accordance with the procedures of this paragraph. Nothing in this section prohibits HUD from taking such other action against a broker as provided in 24 CFR part 24 or from seeking any other available remedy.

(2) *Good cause.* Good cause includes, but is not limited to:

(i) Conviction of a broker under 18 U.S.C. 1010;

(ii) Any of the following actions by a broker:

(A) Falsifying loan documents or aiding or abetting persons in the use of false or misleading information including, but not limited to forged or fraudulent gift letters and owner occupant certifications;

(B) Acting in concert with an appraiser to arrive at an artificial appraised value;

(C) Engaging in fraudulent activities (with or without the assistance of an appraiser) that have led to default and payment of an insurance claim;

(D) Violating the terms of the *Selling Broker Certification*, form SAMS–1111–A;

(E) Failing to maintain a current state license;

(F) Violating Section 8(a) of the Real Estate Settlement Procedures Act (RESPA) (12 U.S.C. 2607(a)), particularly when the real estate broker has acted in concert with a particular settlement service provider by accepting a "thing of value" for the referral of the settlement service business; and

(G) Committing any other offense that reflects on the broker's character and integrity, including non-compliance with civil rights requirements regarding the sale of HUD-owned single family properties.

(3) *Written notice.* Once HUD makes an initial finding that there is good cause to remove a broker, HUD will provide the broker with written notice of proposed removal from HUD's qualified selling broker list and deactivation of the broker's access to HUD systems to participate in the sale of HUD-owned properties. The notice will:

(i) State the reasons that HUD is taking the action;

(ii) Identify the violations or deficiencies involved;

(iii) Provide a citation to the relevant regulation, statute, or policy; and

(iv) State the effective date and duration of the removal and deactivation;

(A) The effective date of the broker's removal will be the 30th day after the date of the notice;

(B) HUD's determination of the duration of removal and deactivation will be based upon HUD's consideration of the number and seriousness of the broker's violations and deficiencies.

(4) *Response and conference.* Real estate brokers will be given 20 days after the date of the notice (or longer, if provided in the notice) to submit a written response to HUD opposing the proposed removal and to request a conference. A request for a conference must be in writing and must be submitted along with the written response. If a conference is requested, it will occur within 15 days after the date of receipt of the request.

(5) *Disposition.*—(i) *No response from real estate broker.* If the real estate broker does not submit a written response within the time provided, the removal and deactivation take effect in accordance with the notice.

(ii) *Response from real estate broker.* If the real estate broker submits a written response within the time provided, the removal and deactivation are delayed until HUD considers the response and makes a final determination. Within 20 days after the date of receipt of the written response, or if a conference is requested, within 20 days after the date of completion of the conference, HUD will advise the real estate broker in writing of the decision to rescind, modify, or affirm the removal from HUD's qualified selling broker list and the deactivation of the broker's access to HUD systems to participate in the sale of HUD-owned properties. If HUD's decision affirms the removal, the broker has the right to a hearing before an administrative law judge (ALJ). The removal remains in effect pending the proceeding before the ALJ. Participation in the appeal process before the ALJ is not a prerequisite to filing an action for judicial review under the Administrative Procedure Act.

(6) *Effect of removal proceeding on bids.* All bids submitted and commissions earned by the real estate broker prior to removal will be honored, unless HUD determines they were made under fraudulent circumstances.

Dated: August 24, 2004.

Sean Cassidy,

General Deputy Assistant Secretary for Housing.

[FR Doc. 04–20932 Filed 9–16–04; 8:45 am]

BILLING CODE 4210–27–P

Federal Register

Friday,
September 17, 2004

Part III

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 870 and 872
Coal Production Fees and Fee Allocations; Final Rule and Proposed Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 870

RIN 1029–AC46

Coal Production Fees

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: This rule sets forth the criteria and procedures that we will use to establish fees under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act) for coal produced after September 30, 2004, when the current statutory fees expire. We also are providing notice of the fees established for FY 2005. We are establishing the fee at a rate to provide for the transfer from the Abandoned Mine Reclamation Fund (AML Fund or the Fund) to the Combined Benefit Fund (CBF), a total expected to be approximately $69 million for FY 2005. The fees necessary to generate the transfer amount are established as follows for each ton of coal produced for sale, transfer, or use: Surface-mined coal (except lignite), 8.8 cents per ton; Underground-mined coal (except lignite), 3.8 cents per ton; and, Lignite, 2.5 cents per ton.

We also are publishing in today's **Federal Register** a proposed rule that includes the changes made in this final rule as well as some additional issues related to the fee and the AML Fund.

DATES: This rule is effective September 17, 2004.

FOR FURTHER INFORMATION CONTACT: Dennis Rice, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW., Washington, DC 20240. Telephone: (202) 208–2829. E-mail address: *drice@osmre.gov*. You will find additional information concerning OSM, fees on coal production, and abandoned mine reclamation on our home page at *http://www.osmre.gov*.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background Information

A. What Is the History of the SMCRA Fee on Coal Production?

Title IV of SMCRA created an abandoned mine land reclamation program funded by a fee, known as the reclamation fee, assessed on each ton of coal produced for sale, transfer, or use (produced). The fees collected are placed in the AML Fund. We, either directly or through grants to States and Indian tribes with approved AML reclamation plans under SMCRA, use appropriations from the Fund primarily to reclaim lands and waters adversely impacted by mining conducted before the enactment of SMCRA and to mitigate the adverse impacts of mining on individuals and communities. In addition, subject to appropriation, up to $10 million per year may be used for the small operator assistance program under section 507(c) of SMCRA, which pays for certain costs involved with the preparation of coal mining permit applications under Title V of SMCRA. Also, since Fiscal Year (FY) 1996, an amount equal to the interest earned by and paid to the Fund has been available for direct transfer to the United Mine Workers of America CBF to defray the cost of providing health care benefits for certain retired coal miners and their dependents.

Section 402(a) of SMCRA and existing 30 CFR 870.13 fix the reclamation fee at 35 cents per ton (or 10 percent of the value of the coal, whichever is less) for surface-mined coal other than lignite; 15 cents per ton (or 10 percent of the value of the coal, whichever is less) for coal from underground mines; and 10 cents per ton (or 2 percent of the value of the coal, whichever is less) for lignite. Under section 402(b) of SMCRA, our authority to collect fees at those rates will expire with respect to coal produced after September 30, 2004, as will our authority to collect fees for AML reclamation purposes. However, unappropriated monies remaining in the Fund after that date will remain available for grants to State and tribal AML reclamation programs and the other purposes for which the AML Fund was established.

As originally enacted, section 402 of SMCRA authorized collection of reclamation fees for 15 years following the date of enactment (August 3, 1977), meaning that our fee collection authority would have expired August 3, 1992. However, Congress has twice extended that deadline. As enacted on November 5, 1990, Section 6003(a) of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508, 104 Stat. 1388) extended both the fees and our fee collection authority through September 30, 1995. Section 6002(c) of that law also required that the Fund be invested in interest-bearing public debt securities, with the interest becoming part of the Fund. Section 19143(b) of Title XIX of the Energy Policy Act of 1992 (Pub. L. 102–486, 106 Stat. 2776, 3056) subsequently extended the fees and our fee collection authority through September 30, 2004.

Section 2515 of Title XXV of the Energy Policy Act (106 Stat. 2776, 3113) further amended section 402(b) of SMCRA by adding the requirement that, after September 30, 2004, "the fee shall be established at a rate to continue to provide for the deposit referred to in subsection (h) [of section 402 of SMCRA]." See 30 U.S.C. 1232(b). The rule that we are adopting today implements this provision of SMCRA by establishing criteria and procedures for establishment of fees for coal produced on or after October 1, 2004.

B. What Is the CBF?

The Energy Policy Act of 1992 also included provisions known as the Coal Industry Retiree Health Benefit Act of 1992 (the Coal Act), which is codified at 26 U.S.C. 9701 *et seq*. See Pub. L. 102–486, 106 Stat. 2776, 3036. The Coal Act created the United Mine Workers of America (UMWA) Combined Benefit Fund by merging two financially troubled health care plans, the UMWA 1950 Benefit Plan and Trust and the UMWA 1974 Benefit Plan and Trust, effective February 1, 1993. See 26 U.S.C. 9702. The CBF is a private employee benefit trust fund that provides health care and death benefits to UMWA coal industry retirees and their dependents and survivors who were both eligible to receive and were receiving benefits from the 1950 Benefit Plan or the 1974 Benefit Plan on July 20, 1992. See 26 U.S.C. 9703(f). Most current beneficiaries are widows and dependents of coal miners. The CBF health insurance plan provides "Medigap" coverage; *i.e.*, it pays for health care expenses remaining after

Medicare and Medicaid reimbursement and covers prescription drugs.

Under the Coal Act, the Social Security Administration (SSA) has the duty of assigning retirees and their dependents to former employers or related companies. See 26 U.S.C. 9706. Coal operators and related companies pay monthly premiums (also determined by the SSA) to the CBF to cover the costs of benefits for the beneficiaries assigned to them. In addition, under 26 U.S.C. 9704(a)(3), those companies must pay a monthly premium for the health care costs of eligible unassigned beneficiaries; *i.e.*, those beneficiaries associated with now-defunct coal operators for which no related company exists or remains in business. However, as discussed in Part I.C. below, Congress created a mechanism to wholly or partially offset premium costs for unassigned beneficiaries by transferring an amount equal to certain interest earned by the AML Fund to the CBF.

C. Why Do We Transfer Monies From the AML Fund to the CBF and How Do We Determine the Amount To Transfer?

In paragraphs (a) and (b) of section 19143 of the Energy Policy Act of 1992, respectively, Congress amended the Internal Revenue Code of 1986 and SMCRA to require that, at the beginning of each fiscal year, starting with FY 1996, an amount equal to the AML Fund's estimated interest earnings for that year be transferred to the CBF to help defray the cost of health care benefits for unassigned beneficiaries. See section 402(h) of SMCRA (30 U.S.C. 1232(h)) and section 9705(b) of the Internal Revenue Code (26 U.S.C. 9705(b)). See also Pub. L. 102–486, 106 Stat. 3047 and 3056.

Section 9705(b)(2) of the Internal Revenue Code provides that any amount transferred to the CBF under section 402(h) of SMCRA "shall be used to proportionately reduce the unassigned beneficiary premium under section 9704(a)(3) of each assigned operator for the plan year in which transferred." However, to the extent that these transfers do not fully cover costs for unassigned beneficiaries, assigned operators remain obligated to pay the difference under 26 U.S.C. 9704(a)(3) and (d)(3)(A).

Section 402(h) of SMCRA (30 U.S.C. 1232(h)) states that—

(1) In the case of any fiscal year beginning on or after October 1, 1995, with respect to which fees are required to be paid under this section, the Secretary shall, as of the beginning of such fiscal year and before any allocation under subsection (g), make the transfer provided in paragraph (2).

(2) The Secretary shall transfer from the [AML] fund to the United Mine Workers of America Combined Benefit Fund established under section 9702 of the Internal Revenue Code of 1986 for any fiscal year an amount equal to the sum of—

(A) the amount of interest which the Secretary estimates will be earned and paid to the Fund during the fiscal year, plus

(B) the amount by which the amount described in subparagraph (A) is less than $70,000,000.

(3)(A) The aggregate amount which may be transferred under paragraph (2) for any fiscal year shall not exceed the amount of expenditures which the trustees of the Combined Fund estimate will be debited against the unassigned beneficiaries premium account under section 9704(e) of the Internal Revenue Code of 1986 for the fiscal year of the Combined Fund in which the transfer is made.

(B) The aggregate amount which may be transferred under paragraph (2)(B) for all fiscal years shall not exceed an amount equivalent to all interest earned and paid to the fund after September 30, 1992, and before October 1, 1995.

(4) If, for any fiscal year, the amount transferred is more or less than the amount required to be transferred, the Secretary shall appropriately adjust the amount transferred for the next fiscal year.

In sum, section 402(h)(2)(A) of SMCRA requires an annual transfer of estimated interest earnings from the AML Fund to the CBF. Paragraphs (h)(2)(B) and (3)(B) of section 402 require the transfer of an additional amount from a reserve (the interest earned on the AML Fund between FY 1993 and FY 1995) if the estimated interest earnings during the fiscal year will not cover eligible estimated CBF expenditures for that year. However, as explained further below, the amounts in the reserve fund were fully utilized in FY 2003 and no longer are available to supplement the annual transfer. In addition, the total amount transferred under paragraphs (h)(2)(A) and (B) may not exceed $70 million for any one year, as discussed more fully in Part V below.

The section 402(h)(2)(A) transfer is further limited by section 402(h)(3)(A), which precludes the transfer of monies to the CBF in excess of the CBF's yearly costs for health benefits for unassigned beneficiaries. However, under a memorandum of understanding between OSM and the CBF trustees, which was signed on January 19, 2001, the amount transferred is not limited to estimated costs based on premium amounts determined by the SSA—it includes all actual health care expenditures for all unassigned beneficiaries, up to the amount authorized in section 402(h)(3) of SMCRA (subject to the $70 million cap). This approach reflects language in the conference report accompanying the FY 2001 appropriations bill for Interior and related agencies. Page 200 of that report (H.R. Rep. No. 106–914) states:

As a general matter, the managers note that it has been the practice for the amount of the annual interest transfers under current law to be based on a calculation which multiplies the number of unassigned beneficiaries by that year's per beneficiary premium rate established by the Social Security Administration (SSA) with adjustments made later (normally two years after the initial transfer) to reflect the Combined Benefit Fund's actual expenditures for unassigned beneficiaries. This practice has an adverse effect on the Combined Benefit Fund's cash flow and is contributing to its financial difficulties. * * * The managers believe that the interest transfer at the beginning of each fiscal year should be based on the Combined Benefit Fund trustees' estimate of the year's actual expenditures for unassigned beneficiaries, which may be adjusted to the actual amount of those expenditures at a later time if the initial transfer proves to be either too high or too low. This approach is completely consistent with the underlying statutory provision found in section 402(h) of the Surface Mining Control and Reclamation Act of 1977 which provides that the amount of interest transferred "shall not exceed the amount of expenditures that the trustees of the Combined Fund estimate will be debited against the unassigned beneficiaries premium account."

The transfer from the AML Fund to the CBF occurs at the beginning of the fiscal year based on our estimate of interest the AML Fund will earn during the fiscal year and the CBF trustees' estimate of their health care expenditures for unassigned beneficiaries for that year. After the close of the fiscal year, we adjust the amount of the transfer to reflect actual interest earnings and CBF expenditures. There is no statute of limitations on adjustments to the number of beneficiaries. Therefore, several adjustments to the transfer for a particular year may be made in following years as figures are refined (usually as a result of bankruptcies and litigation), provided that the statutory transfer cap of $70 million for that year has not been reached. For example, our transfer in FY 2002 included adjustments to our first transfer in FY 1996.

II. What Is the Rationale for Our Determination of the Total Amount of Fees To Be Collected Each Year Under This Rule?

As explained above, section 402(b) of SMCRA requires the establishment of a fee "to continue to provide for the deposit referred to in subsection (h)" of SMCRA. We interpret that language as requiring establishment of a fee that will generate revenue up to, but not more than, the amount of net interest that the

AML Fund is anticipated to earn in the coming fiscal year, subject to certain limitations described in detail below. This interpretation gives meaning to the section 402(b) requirement that some "rate" be established. Furthermore, this reading construes the phrase "deposit referred to subsection (h)" in section 402(b) to mean only what is currently provided for in section 402(h) (*i.e.*, the transfer of an amount of money equal to estimated AML Fund interest earnings subject to the "caps" described below) and nothing more.

The legislative history of paragraphs (b) and (h) of section 402 sheds little light on congressional intent with respect to the amount of fees to be collected for coal produced after September 30, 2004. The provision in section 402(b) concerning post-September 30, 2004, fees appears to have originated in two bills introduced in 1992 in the 102nd Congress. Those bills, H.R. 4344 and H.R. 776, both included a version of section 402(h) that would have required an annual transfer of $50 million from the AML Fund to the CBF. However, H.R. 4344 was never adopted, and the House removed the CBF transfer provisions from H.R. 776 prior to passage. In acting on H.R. 776, the Senate added a variation of the provisions that the House had removed. However, instead of authorizing the transfer of $50 million from the AML Fund to the CBF each year as in the prior House version of section 402(h), the Senate version authorized transfer only of an amount equal to interest earned or estimated to be earned by the Fund. See 138 Cong. Rec. 10558, July 29, 1992. The Senate did not make any conforming changes to section 402(b). The House subsequently accepted the Senate version without change and the provisions became law as part of the Energy Policy Act of 1992.

Thus, the basis for the fee collection target in new section 870.13(b)(2) of the final rule that we are adopting today is the plain language of the statute and the absence of any legislative history to support a contrary reading. Section 402(b) of SMCRA provides that, after September 30, 2004, "the fee shall be established at a rate to continue to provide for the deposit referred to in subsection (h)." Section 402(h) of the Act lists two components of the deposit:

(1) An estimate of the interest that will be earned by and paid to the AML Fund during the fiscal year (paragraph (h)(2)(A)); and

(2) A "supplement" to increase that amount to $70 million if necessary (paragraph (h)(2)(B)), but with a cap on the total amount of the supplement for "all fiscal years" equal to the interest earned and paid to the AML Fund from October 1, 1992 to September 30, 1995 (paragraph (h)(3)(B)), and further capped by the needs of the CBF (paragraph (h)(3)(A)).

The supplement referenced in paragraph (h)(2)(B) is no longer available because the cap in paragraph (h)(3)(B) has been reached. By its terms, the cap applies to "all fiscal years" without any limitation. There is nothing in the legislative history to suggest that in section 402(b) Congress meant to refer only to certain portions of section 402(h). That is, we have no indication that Congress intended to continue the supplement in paragraph (h)(2)(B) without regard to the cap on that supplement in paragraph (h)(3)(B)). Moreover, the cap resulted in a transfer from the AML Fund to the CBF of only $49.8 million in FY 2004, which was based only on the estimate of interest that the Fund would earn in FY 2004. There was no supplement provided to raise that amount because the supplement already was exhausted. It would be anomalous to suggest that Congress intended for the cap in paragraph (h)(3)(B) to apply to the transfer in FY 2004 (as it did), but not in FY 2005, when the plain language of that paragraph applies the cap to "all fiscal years."

In sum, at this time nothing in SMCRA authorizes transfer of any monies to the CBF in excess of an amount equal to estimated interest earnings for that year (adjusted in future years to reflect actual interest earnings). Furthermore, there is no indication in the legislative history of sections 402(b) and (h) that Congress intended otherwise.

Therefore, the reference in section 402(b) to "the deposit referred to in subsection (h)" is best read as meaning that the fees established for coal produced after September 30, 2004, must be designed to generate an amount of revenue equal to the estimated interest earnings transferred to the CBF at the beginning of each fiscal year, with any modifications needed to reflect the true-up adjustments required by section 402(h)(4).

Table 1 shows the fees for FY 2005 and our projection of fees for the following ten years based on this rule; on currently available estimates on interest rates, CBF needs, and coal production; and on maintaining current congressional appropriations, grant formulas, and AML Fund assets available for investment.

TABLE 1.—FEES FOR FY 2005 AND FEE PROJECTIONS FOR FY 2006–2015

Fiscal year	Estimated AML Fund interest earnings (millions of dollars)	Estimated CBF needs for unassigned beneficiaries (millions of dollars)	Fees for non-lignite coal produced by surface methods (cents per short ton)	Fees for non-lignite coal produced by underground methods (cents per short ton)	Fees for lignite coal (cents per short ton)
2005	69.0	85.0	8.8	3.8	2.5
2006	72.0	99.6	8.7	3.7	2.5
2007	71.9	97.9	8.5	3.7	2.4
2008	69.4	96.3	8.5	3.6	2.4
2009	65.8	94.1	7.8	3.4	2.2
2010	61.6	92.2	7.3	3.1	2.1
2011	22.1	90.1	2.6	1.1	0.7
2012	17.6	87.7	2.0	0.9	0.6
2013	14.2	85.4	1.6	0.7	0.5
2014	10.9	83.2	1.2	0.5	0.4
2015	46.4	81.0	5.2	2.2	1.5

For the reasons discussed above, we believe that this rule is a reasonable reconciliation of the statutory language with congressional intent as evidenced by the legislative history.

III. What Will This Rule Accomplish?

This final rule revises 30 CFR 870.13 by—

- Changing the section heading from "Fee computations" to "Fee rates";
- Redesignating existing paragraphs (a) through (d) as paragraphs (a)(1) through (4);
- Adding a new heading for paragraph (a) to clarify that the rates in that paragraph apply only to fees for coal produced on or *before* September 30, 2004; and
- Adding a new paragraph (b), which establishes criteria and procedures for use in establishing the fee for coal produced *after* September 30, 2004.

In addition, in a conforming technical change, we are revising 30 CFR 870.12(d) to remove the September 30, 2004, expiration date for fee payment obligations.

As explained further below, we are publishing a proposed rule in today's **Federal Register** that proposes the same changes we are making in this final rule. The proposed rule also includes some provisions (*i.e.*, proposed revisions to 30 CFR 872.11) that are not in this final rule. After considering any comments that we receive on that proposed rule, we may adopt a new final rule that makes changes to the final rule we are adopting today.

New paragraph (b) of section 870.13 of the final rule implements in part the provision in section 402(b) of SMCRA that requires that, after September 30, 2004, "the fee shall be established at a rate to continue to provide for the deposit referred to in subsection (h)." As discussed in Part I.C. above, section 402(h) of SMCRA essentially requires the transfer from the AML Fund to the CBF, at the beginning of each fiscal year, of an amount equal to estimated AML Fund interest earnings during that year to defray the cost of health care benefits for the plan's unassigned beneficiaries. Those transfers effectively are capped at the estimated AML Fund interest earnings for that year, $70 million, or the CBF's estimated expenditures for health care benefits for unassigned beneficiaries for that year, whichever is the smallest amount. Therefore, effective October 1, 2004, we must determine the fee based on the amount of the transfer from the AML Fund to the CBF.

New paragraph (b)(1) of section 870.13 of the final rule requires us to establish fees on an annual basis because the amount transferred to the CBF each year will vary. We will publish the fees for each fiscal year after FY 2005 in the **Federal Register** at least 30 days before the start of the fiscal year to which the fees will apply. Part VII of this preamble provides notice of the fees that we have established for FY 2005. Although not specified in the rule, we also will provide notice of the new fees by modifying the Abandoned Mine Land Payer Handbook (*http://ismdfmnt5.osmre.gov*), revising the OSM–1 form, and issuing Payer Letters to permittees.

Once we publish the fees for a given fiscal year, they will not change during that year. Later in this preamble we explain how we will make adjustments for differences between the estimates (for factors as interest earnings and coal production) used to establish the fees and actual data once the actual data becomes available.

New paragraph (b)(2) of section 870.13 of the final rule essentially provides that each year's fee must be established to generate an amount of revenue equal to the amount of estimated AML Fund interest earnings that will transfer from the AML Fund to the trustees of the CBF at the beginning of that year under section 402(h) of SMCRA. Consistent with paragraphs (h)(2)(B) and (h)(3)(A) of section 402 of SMCRA (see Part V of this preamble), paragraph (b)(2)(i) of the rule caps the amount of estimated interest earnings transferred—and hence the total amount of fee collections needed—at the lesser of either $70 million or the amount that the trustees of the CBF estimate will be debited against the unassigned beneficiaries premium account under section 9704(e) of the Internal Revenue Code of 1986 (26 U.S.C. 9704(e)) for that fiscal year.

Under new section 870.13(b)(2), calculation of the total amount of fees that must be collected is a three-step process. First, under paragraph (b)(2)(i), we will estimate the amount that must be transferred to the CBF at the beginning of that fiscal year. We will compare the net amount of interest the AML Fund is estimated to earn in the coming fiscal year, the most recent estimate from the CBF trustees of their needs for unassigned beneficiaries for that year, and the statutory cap of $70 million. The estimated transfer amount will be the smallest of the three numbers.

The second step, in paragraph (b)(2)(ii), is to adjust the estimated transfer amount to account for overcollections or undercollections in prior years. SMCRA requires us to establish a fee that will provide for the transfer under section 402(h). As explained above, the initial transfer to the CBF under that section of the Act will be based on estimates of AML Fund interest earnings and the CBF's needs for unassigned beneficiaries during that year. After the close of the fiscal year, the amount of the transfer will be adjusted to reflect actual interest earnings (and, if necessary, actual CBF expenditures) when that data becomes available. As explained more fully below, any difference between estimated and actual data will not result in a revision of the previously established fee for that year. We will account for any excess fees collected, or any deficiencies, by adjusting the *next* fee scheduled to be determined.

For example, if we underestimate interest earnings, we will transfer the difference to the CBF, provided the CBF needs that amount for expenditures from the unassigned beneficiary premium account during that year and the transfer would not exceed the $70 million statutory cap. We would then need to recover the additional amount transferred. On the other hand, if we overestimate interest earnings or if the CBF's expenditures were lower than the original amount transferred, the CBF will refund the difference and we would need to address the excess amount of fees collected. However, this requirement would apply only to adjustments for fiscal years after FY 2004. Therefore, if we determine in FY 2005 that we underestimated FY 2003 interest earnings by $10 million, we would not include that adjustment in the fee calculation for FY 2006 (*i.e.*, we would not increase the fee collection needs for FY 2006 by $10 million), although we would send the $10 million to the CBF.

The third step under new paragraph (b)(2)(iii) is to adjust the estimated transfer amount to reflect differences between estimated and actual coal production in prior years. As explained above, the fee calculation for a fiscal year essentially is a fraction. The numerator is the amount of total fees to be collected for that fiscal year (with all adjustments), and the denominator is based on our estimate of coal production for that year. If we overestimate production, the calculated per-ton fee will be too low and we will undercollect for that year. Conversely, if we underestimate production, the calculated per-ton fee will be too high and we will overcollect for that year. Therefore, just like when we adjust the estimated interest and CBF needs to actual in step two, when we obtain actual production figures for fiscal years after October 1, 2004, we will calculate

the fees we overcollected or undercollected and that number will become an adjustment in the next fee calculation.

We identified two options to remedy fee undercollections and overcollections. Under the first option, we would recalculate the fee and have all operators submit amended reports with additional payments or requests for credit or refund. We find this option impractical for several reasons. First, it would impose a huge paperwork burden on both operators and OSM. Second, we often make several adjustments over a number of years as actual data become available for comparison with the estimates used to establish the fees. Therefore, multiple supplemental reports would be required. Third, the adjustments likely will be very small (fractions of a cent), so the cost to operators and OSM of accounting for adjustments may exceed the dollar value of the adjustment. For all these reasons, we rejected this option. We will not change the fee for a given fiscal year after we publish that fee in the **Federal Register**.

Instead, we are adopting the second possible approach to account for adjustments. We will adjust fee calculations for future years to account for adjustments to transfers in prior years. However, we will not adjust the fee calculations for future years when the transfer adjustments relate to FY 2004 or earlier fiscal years. Adjustments for transfers in those years would be inappropriate because the fee was statutorily set for those years.

The following example illustrates how this process will work: Assume estimated AML Fund interest earnings for FY 2008 are $60 million and the CBF's estimated unassigned beneficiary needs are $85 million. Under that scenario, the amount transferred to the CBF would be $60 million. Under paragraph (b)(2)(i) of this rule, that amount also would be the starting point for our fee calculations for FY 2008. Assume further that in FY 2006 we overestimate AML Fund interest earnings by $3 million, which means that fee collections for FY 2006 are $3 million higher than they should have been. To correct this situation, we would subtract the $3 million overcollection for FY 2006 from the $60 million estimated transfer in FY 2008, thereby reducing fees collected for that year. Hence, in FY 2008 operators as a group will recover the $3 million fee overcollection in FY 2006.

If there are multiple adjustments for more than one prior fiscal year, they all will be incorporated in the next fee calculation. In addition, if we later find that further adjustments are needed for a previously adjusted fiscal year, we will account for that adjustment in the next fee calculation. Thus, returning to the example in the previous paragraph, if we determine in FY 2008 that FY 2006 interest was overestimated by $4 million, not $3 million, we will adjust the next scheduled fiscal year's fee calculation (*i.e.*, FY 2009) by the additional $1 million.

Finally, if Congress were to specifically appropriate additional funds for transfer from the AML Fund to the CBF, that appropriation would not become part of the fee calculation. For example, if, in the FY 2007 appropriations act for the Department of the Interior, Congress designated a one-time $25 million supplemental payment to the CBF, we would not include that $25 million in the fee calculations for FY 2007.

Paragraph (b)(3) of section 870.13 of the final rule provides that we will determine per-ton fees after comparing the amount of the estimated transfer to the CBF (and hence the total amount of fee collections needed) with projected coal production for that fiscal year. Paragraph (b)(3)(ii) specifies that the new fees will maintain the same proportionality among surface-mined coal, coal produced by underground mining, and lignite as did the fees previously in effect under section 402(a) of SMCRA. In section 402(a) of SMCRA, Congress originally established lower fees for lignite and for coal produced by underground methods than it did for non-lignite coal produced by surface mining methods. According to the legislative history, the lower fees for underground mining reflect the "disproportionately high social costs incurred by underground coal mine operators in meeting responsibilities under the Coal Mine Safety and Health Act of 1969, as amended." H.R. Rep. No. 94–1445 (1976), at 85. Section 402(b) of SMCRA is silent on the question of whether differential rates should continue to apply to coal produced after September 30, 2004.

After evaluating those factors, we have decided to retain the per-ton fee ratios that have been in place since the enactment of SMCRA. Therefore, under paragraph (b)(3)(ii) of section 870.13 of the final rule, the fee per ton of non-lignite coal produced by underground methods will be 43 percent of the fee per ton of non-lignite coal produced by surface methods and the fee per ton of lignite coal produced will be 29 percent of the fee per ton of non-lignite coal produced by surface methods. The provision concerning fees for coal produced by in situ mining methods also will remain substantively unchanged from the existing rule governing fees for coal produced by in-situ mining methods before October 1, 2004, in that it would continue to apply the underground fee to all non-lignite coal produced by in-situ methods and the lignite fee to lignite coal produced by in-situ methods.

IV. What Alternatives Did We Consider?

We considered and rejected the following options to implement the provision of section 402(b) of SMCRA requiring the establishment of a fee for coal produced after September 30, 2004:

- Set the fee at zero and transfer only estimated interest earnings.

This option is inconsistent with the principles of statutory construction because it would render the section 402(b) provision concerning establishment of post-September 30, 2004, fee rates superfluous and essentially inoperative. See *In re Surface Mining Regulation Litigation*, 627 F.2d 1346, 1362 (D.C. Cir. 1980) ("It is, however, a fundamental principal of statutory construction that 'effect must be given, if possible, to every word, clause and sentence of a statute * * * so that no part will be inoperative or superfluous, void or insignificant.' "), quoting from and citing to 2A Sutherland, *Statutory Construction*, at § 46.06 (4th ed. 1973). See also *Boise Cascade Corp.* v. *EPA*, 942 F.2d 1427, 1432 (9th Cir. 1991) (statutes should not be construed so as to render any of their provisions superfluous). In addition, a fee of zero likely would not satisfy the section 402(h)(1) requirement that transfers from the AML Fund to the CBF may be made only when "fees are required to be paid under this section." Under this approach, the AML Fund and, consequently, the interest earned thereon, would decline the fastest.

- Assess fees at a rate that would generate revenues adequate to maintain the AML Fund at a level that would earn an amount of interest sufficient to meet CBF needs for unassigned beneficiaries, up to a maximum of $70 million.

This option could be construed to comply with the requirement to establish a fee that provides for the transfer to the Combined Fund under section 402(h). However, to maintain the principal in the AML Fund at a level that would earn sufficient interest to continue to provide for transfers to the CBF at recent levels, the fees under this option could be almost equal to, or even higher than, the current fees. There is no evidence that, in enacting section 402(b), Congress intended that the

principal balance of the AML Fund would or should be maintained at a level adequate to generate interest sufficient to meet CBF needs. This option also could have the effect of indefinitely extending the AML reclamation program by requiring collection of fees to replace appropriations for grants to States and tribes for those programs. There is no evidence that Congress intended for fees collected from coal produced after September 30, 2004, to be used for this purpose. Instead, the fact that Congress terminated the statutorily established reclamation fee in section 402(a) as of September 30, 2004 suggests the opposite, as does the language in section 402(b) that requires that, after September 30, 2004, the fee be established at a rate sufficient to continue to provide for transfers to the CBF.

- Assess a fee at a rate sufficient to meet any deficit between anticipated CBF health care benefit needs for unassigned beneficiaries (or $70 million, whichever is less) and the amount of estimated interest earnings transferred.

There is insufficient statutory authority to implement this option because nothing in either the statutory language or the legislative history of SMCRA suggests that, in section 402(b), Congress intended for any transfers to be made to the CBF in excess of an amount equal to yearly estimated AML Fund interest earnings (plus the reserve supplement of prior interest earnings, which is now depleted). Moreover, it would be anomalous to suggest that Congress intended for the CBF to receive a transfer of funds in an amount equal to estimated interest earnings in FY 2004 (as it did) and then to receive transfers in excess of that amount in FY 2005 and thereafter.

V. What Is the Rationale for the Cap on Annual Transfers to the CBF?

This final rule (*see* 30 CFR 870.13(b)) caps the amount transferred to the CBF at the beginning of each fiscal year at the estimated amount of interest earned by the AML Fund, estimated CBF expenditures for health care benefits for unassigned beneficiaries, or $70 million, whichever is the smallest amount. The first two items are later adjusted to reflect actual interest earnings and actual CBF expenditures for that fiscal year, provided the adjustments do not cause aggregate transfers for that year to exceed $70 million. This cap is consistent with both historical practice and section 402(h) of SMCRA. Paragraphs (3)(A) and (4) of section 402(h) impose the cap relating to actual CBF expenditures. The $70 million cap receives implied support from section 402(h)(2)(B) of SMCRA, which allows transfers of estimated interest earnings to be supplemented by prior interest earnings, but only up to a total transfer amount of $70 million. It also reflects the intent of Congress as described in the conference report on the Energy Policy Act. *See* 138 Cong. Rec. 17578, 17605 (1992) ("provision is made for monies to be transferred from the Abandoned Mine Land Fund in an amount up to, but not more than, $70 million per year * * *"). In addition, a report from the House Resources Committee on a bill approved by the Committee but never adopted by the full House characterizes section 402(h) in its entirety as allowing "the transfer to the CBF of not more than $70 million annually." *See* H.R. Rep. No. 106–1014, pt. 1 (2000).

VI. Will the Fees Collected Continue To Be Deposited Into the AML Fund?

Yes. Section 401(b)(1) of SMCRA requires that fees collected under section 402 be deposited into the AML Fund. In a proposed rule published separately in the **Federal Register** today, we are seeking comment on how those fees should be accounted for within the AML Fund. However, neither this final rule nor the proposed rule will affect the process for transfers between the AML Fund and the CBF. That process will remain the same as in previous fiscal years under applicable law and our agreements with the Treasury Department and the CBF trustees.

VII. What Are the Fees for Coal Produced in FY 2005?

Under new section 870.13(b)(2)(i), as adopted in this rulemaking, the total amount of fees collected for coal produced during FY 2005 should equal the amount of estimated AML Fund interest earnings that we anticipate will be transferred from the AML Fund to the trustees of the CBF at the beginning of the fiscal year pursuant to section 402(h) of the Act. The other two elements of the transfer cap—$70 million or the amount that the trustees of the CBF estimate will be debited against the unassigned beneficiaries premium account under section 9704(e) of the Internal Revenue Code of 1986 (26 U.S.C. 9704(e)) for that fiscal year—do not come into play for FY 2005 because estimated AML Fund interest earnings for that year are less than $70 million while the CBF estimate of its needs for unassigned beneficiaries during that year exceeds $70 million.

We estimate that the AML Fund, which is invested in a mix of long-term and short-term public debt securities, will earn $69,040,000 in interest during FY 2005. The most current available actuarial estimate of the CBF's health care benefit expenditures for unassigned beneficiaries in FY 2005 is approximately $85 million. The CBF trustees will provide an updated estimate in September 2004. However, that estimate will arrive too late for use in calculating fee rates for FY 2005. As provided in new section 870.13(b)(2)(ii) of this rule, any difference between the estimate we used to set the fees for FY 2005 in this rule and the estimate that the CBF provides in September (or a later actual number) will appear as an adjustment to the fee collection target for a subsequent fiscal year and thus will be reflected in the fee calculation for that year. However, no adjustment will be necessary if the new estimate or actual numbers show CBF needs for FY 2005 exceed the AML Fund's interest earnings for that year.

To summarize, because estimated AML Fund interest earnings during FY 2005 are less than $70 million while estimated CBF expenditures for unassigned beneficiaries during that year are in excess of $70 million, we estimate that the amount that we must transfer to the CBF at the beginning of the 2005 fiscal year will be $69,040,000.

Under new section 870.13(b)(3) of this rule, we must establish per-ton fees for FY 2005 based upon a comparison of the total amount of fee collections needed for that year, as determined under new section 870.13(b)(2) of this rule, with estimated coal production during FY 2005, broken out by type of coal and method of mining. We estimate that 1,027 million short tons of coal will be subject to fee payment obligations during FY 2005. We based that estimate on Department of Energy (DOE) projections published in December 2003. Relying upon our experience with historical differences between DOE data and our own fee compliance data, we reduced the DOE projection by ten percent to include only coal for which we anticipate that there will be a fee payment obligation. Applying the same ratios as in our data from fee collections in FY 2003, we estimate that the total amount of coal produced in FY 2005 will include 628 million tons of non-lignite coal mined by surface methods, 317 million tons of non-lignite coal mined by underground methods, and 82 million tons of lignite coal.

Under new section 870.13(b)(3)(ii) of this rule, the fee per ton of non-lignite coal produced by underground methods must be 43 percent of the fee for non-lignite coal produced by surface methods, while the fee for lignite coal

must be 29% of the fee for non-lignite coal produced by surface methods. Applying those ratios and rounding to the nearest 0.1 cent, we are establishing the following fees for coal produced during FY 2005:

- Surface-mined coal (except lignite): 8.8 cents per ton.
- Underground-mined coal (except lignite): 3.8 cents per ton.
- Lignite: 2.5 cents per ton.

By our calculations, those are the fees necessary to generate the $69,040,000 needed to equal the amount that we estimate will be transferred to the CBF at the beginning of the 2005 fiscal year, while maintaining the appropriate fee ratios. To the extent that the estimates upon which our calculations are based prove inaccurate, we will adjust the fee collection target for future years accordingly, as required by new section 870.13(b)(2)(ii) and (iii) of this rule.

We do not anticipate any in situ mining during the 2005 fiscal year. However, if such mining occurs, the fee will be the same as the fee for underground-mined coal (if the in situ-mined coal is anthracite, bituminous, or subbituminous coal) or for lignite (if that is the type of coal being mined by in situ methods). If in situ mining occurs, the fee will be based upon the quantity and quality of gas produced at the site, converted to Btu's per ton of coal upon which in situ mining was conducted, as determined by an analysis performed and certified by an independent laboratory.

Stockpiled coal that was mined before October 1, 2004, is subject to the fees established in this rule at the time it is used, sold, or transferred. For example, coal that was sold before October 1, 2004, but that has not physically left the minesite is subject to the fees established in section 402(a) of the Act, which will now be codified in paragraph (a) of section 870.13.

This portion of the preamble satisfies the notice requirements of new section 870.13(b)(1) of this rule with respect to the establishment of fees for FY 2005.

VIII. Why Are We Publishing a Proposed Rule at the Same Time as the Final Rule?

As explained further below, we are publishing a proposed rule in today's **Federal Register** that proposes the same changes that we are making in this final rule. The proposed rule also addresses some additional issues related to allocation and disposition of monies deposited in the AML Fund. Most significantly, the proposed rule includes a provision addressing whether the new fees should be allocated under section 402(g) of SMCRA. Because AML Fund revenues are not allocated until the end of the fiscal year, we have time to consider the allocation issue at a later date. Thus, we will not publish a final rule addressing the allocation issue until after the public has received notice and an opportunity for comment. In addition, after considering comments on the proposed rule, we may publish a new final rule that makes changes to the provisions of the final rule that we are adopting today.

IX. Why Are We Publishing This Rule as a Final Rule Without Opportunity for Comment?

We are adopting these regulations as final under the "good cause" exception in the Administrative Procedure Act (APA) at 5 U.S.C. 553(b)(3)(B). That provision of the APA allows an agency to issue a rule without prior notice or opportunity for public comment "when the agency for good cause finds (and incorporates the finding and a brief statement of the reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." Using the same rationale, we are also invoking the good-cause exemption at 5 U.S.C. 553(d)(3) to the APA requirement that rules be published at least 30 days prior to their effective date.

Section 402(b) of SMCRA imposes a clear expiration date (September 30, 2004) for the fee rates established in section 402(a) of the statute. It also specifies that, after that date, fees shall be established at a rate that will continue to provide for the deposit referred to in section 402(h), which pertains to transfers to the CBF. As explained above, we believe that provision is susceptible to only one reasonable interpretation. Therefore, comment is unnecessary.

Further, waiting to adopt a final rule until we provide advance notice and an opportunity for public comment would be impracticable and contrary to the public interest. Generally, the existence of a statutory deadline will provide an agency with a good cause justification for the publication of a final rule without advanced notice and an opportunity for comment. See, *e.g.*, *United States Steel Corp.* v. *United States Environmental Protection Agency*, 605 F.2d 283 (5th Cir.), *cert. denied*, 444 U.S. 1035 (1979). In the current situation, a statutory deadline exists because unless operators are required to pay fees for coal produced during the fiscal year beginning on October 1, 2004, we may be unable to transfer AML Fund monies to the CBF. This is explained in greater detail below.

We recognize that an agency delay in beginning a rulemaking may not necessarily establish the time constraint that would give rise to good cause for dispensing with advance notice and comment. However, unusual circumstances causing the delay in the present situation justify the use of the APA good cause exception. In this case, we delayed initiating a rulemaking to implement a new fee requirement because we thought that considerable activity in Congress, including the introduction of at least seven bills (H.R. 3778, H.R. 3796, H.R. 4529, S. 2049, S. 2086, S. 2208, and S. 2211), would lead to enactment of legislation that would establish fees for coal produced after September 30, 2004. In short, we thought it highly imprudent to begin the rulemaking process to attempt to solve a problem that Congress itself appeared prepared to solve. Moreover, we thought it to be an unnecessary waste of agency resources to begin the rulemaking process earlier given the likelihood that any new rule ultimately would become moot in light of what we believed to be a forthcoming congressional solution.

However, because those legislative efforts have thus far been unsuccessful, we now must establish those fees through the rulemaking process to provide for the transfer to the CBF on or about October 1. Section 402(h)(1) of SMCRA specifies that the Secretary may make the transfer to the CBF only in any fiscal year "with respect to which fees are required to be paid under this section." Therefore, unless we adopt this rule as final, allowing us to set new fees for coal produced on or after October 1, 2004, operators may be under no obligation to pay fees in the coming fiscal year and we may not be authorized to make the transfer to the CBF. Such a situation would be untenable and would adversely affect the approximately 17,000 unassigned beneficiaries currently receiving health care benefits from the CBF. See *N. Am. Coal Corp.* v. *Dir., Office of Workers' Compensation Programs, United States Dep't of Labor*, 854 F.2d 386 (10th Cir. 1988) ("good cause" found for emergency rule concerning claims for medical benefits under the Black Lung Act since any delay in publication of the rule that caused loss or interruption of medical benefits to eligible coal miners would be "contrary to public interest").

Maintaining the continuity of payment of health care premiums is an important public policy goal that will be accomplished through the continuing payment of fees by coal operators at a level significantly lower than they paid

for coal produced before October 1, 2004. We do not intend to jeopardize health care benefits for unassigned beneficiaries by waiting to publish a final rule until after October 1, 2004.

In addition, because the fee may be a factor in negotiating sale prices for coal, it is beneficial to notify industry as soon as possible about changes in fees. . Companies enter into a variety of mining and sales contracts with varying provisions for payment of the fee. For example, a mining contract may call for the mine owner, the permittee, the person extracting the coal, or the purchaser to pay the fee.

For those reasons, it is not in the public interest to provide notice and an opportunity for public comment before publication of a final rule establishing fees for coal produced after September 30, 2004.

Adoption of this rule on a final basis does not mean that we have no interest in seeking input from the public. To the contrary, in a separate document published in today's **Federal Register**, we are also publishing these rule changes as a proposed rule, soliciting comment on what changes, if any, we should make in the final rule that we are adopting today. Upon receipt and evaluation of those comments, we will publish a document addressing the comments and, if necessary, a new final rule making any appropriate changes to the final rule that we are adopting today.

X. Procedural Matters

A. Executive Order 12866

This document is considered a significant rule and is subject to review by the Office of Management and Budget under Executive Order 12866.

a. This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. The rule will not add to the existing cost of operating a mine under an approved regulatory program in any significant fashion. We anticipate that the average fee under this rule over the next ten years would be 5.7 cents per ton of surface-mined, non-lignite coal, which is less than 0.2 percent of the value of the coal, assuming an average price of $30 per ton. Furthermore, the fees established under this rule will be lower than the existing AML reclamation fees, which expire on September 30, 2004. The fees imposed under this rule will result in the collection of an estimated $469 million from the coal industry during FY 2005–2014, an average of $46.9 million per year. That amount is approximately $3 billion less than what would be collected if the existing AML reclamation fee were extended another ten years.

b. This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

c. This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

d. This rule raises novel legal and policy issues, which is why the rule is considered significant under Executive Order 12866.

B. Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). See the discussion in Part X.A. above.

C. Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This rule is not considered a significant energy action under Executive Order 13211. The replacement of the AML reclamation fee by a much smaller fee for continuation of the transfers to the CBF will not have a significant effect on the supply, distribution, or use of energy.

D. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons stated in Part X.A. above, this rule will not:

a. Have an annual effect on the economy of $100 million or more.

b. Cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

E. Executive Order 12630—Takings

This rule does not have any significant takings implications under Executive Order 12630. Therefore, a takings implication assessment is not required.

F. Executive Order 13132—Federalism

This rule does not have significant Federalism implications because it does not concern relationships between the Federal government and State or local governmental units. Therefore, there is no need to prepare a Federalism Assessment.

G. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

To the extent that this rule may have a substantial direct effect 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, potentially affected tribal governments will be notified through this publication in the **Federal Register**, and by direct notification from OSM, of the ramifications of this rulemaking. More importantly, in a separate document published in today's **Federal Register**, we are publishing this rule as a proposed rule, soliciting comment on what changes, if any, we should make in the final rule. This will enable tribal officials and other tribal constituencies throughout Indian Country to have meaningful and timely input in the development of the final rule. Upon receipt and evaluation of all comments, we will publish a document addressing the comments and making any appropriate changes to the final rule.

H. Executive Order 12988 on Civil Justice Reform

The Department of the Interior has determined that this rule meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988, "Civil Justice Reform" (56 FR 55195).

I. Unfunded Mandates Reform Act

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

J. Federal Paperwork Reduction Act

The Department of the Interior has determined that this rule does not contain collections of information which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* OMB has previously approved the collection activities and assigned clearance numbers 1029–0063 and 1029–0090 for the OSM–1 form and coal weight determination, respectively. Under this rule, the only change to the OSM–1 form will be a reduction in the fee rates printed on the form.

K. National Environmental Policy Act

OSM has determined that this rulemaking action is categorically excluded from the requirement to prepare an environmental document under the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4332 *et seq.* In addition, we have determined that none of the "extraordinary circumstances" exceptions to the categorical exclusion apply. This determination was made in accordance with the Departmental Manual (516 DM 2, Appendixes 1.9 and 2).

L. Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following:

(1) Are the requirements in the rule clearly stated?

(2) Does the rule contain technical language or jargon that interferes with its clarity?

(3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity?

(4) Would the rule be easier to understand if it were divided into more numerous but shorter sections? (A "section" appears in bold type and is preceded by the symbol "§" and a numbered heading; for example, "§ 870.13.")

(5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the rule?

(6) What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may also e-mail the comments to this address: *Exsec@ios.doi.gov*.

List of Subjects in 30 CFR Part 870

Abandoned Mine Reclamation Fund, Reclamation fees, Reporting and recordkeeping requirements, Surface mining, Underground mining.

Dated: September 7, 2004.

Chad Calvert,

Acting Assistant Secretary, Land and Minerals Management.

■ For the reasons set forth in the preamble, the Department is amending 30 CFR Part 870 as follows:

PART 870—ABANDONED MINE RECLAMATION FUND—FEE COLLECTION AND COAL PRODUCTION REPORTING

■ 1. The authority citation for Part 870 continues to read as follows:

Authority: 28 U.S.C. 1746, 30 U.S.C. 1201 *et seq.*, and Pub. L. 105–277.

■ 2. In § 870.12, paragraph (d) is revised to read as follows:

§ 870.12 Reclamation fee.

* * * * *

(d) The reclamation fee shall be paid after the end of each calendar quarter beginning with the calendar quarter starting October 1, 1977.

■ 3. Amend § 870.13 as follows:
■ A. Revise the section heading.
■ B. Redesignate paragraphs (a) through (d) as paragraphs (a)(1) through (4).
■ C. Add a heading for paragraph (a).
■ D. Add a new paragraph (b).

The revision and additions read as follows:

§ 870.13 Fee rates.

(a) *Fees for coal produced for sale, transfer, or use through September 30, 2004.* (1) * * *

* * * * *

(b) *Fees for coal produced for sale, transfer, or use after September 30, 2004.* In this paragraph (b), "we" refers to OSM, "Combined Fund" refers to the United Mine Workers of America Combined Benefit Fund established under section 9702 of the Internal Revenue Code of 1986 (26 U.S.C. 9702), and "unassigned beneficiaries premium account" refers to the account established under section 9704(e) of the Internal Revenue Code of 1986 (26 U.S.C. 9704(e)).

(1) *Fees to be set annually.* We will establish the fee for each ton of coal produced for sale, transfer, or use after September 30, 2004, on an annual basis. The fee per ton is based on the total fees required to be paid each fiscal year, as determined under paragraph (b)(2) of this section, allocated among the estimated coal production categories, as provided in paragraph (b)(3) of this section. We will publish the fees for each fiscal year after Fiscal Year 2005 in the **Federal Register** at least 30 days before the start of that fiscal year. Once we publish the fees, they will not change for that fiscal year and they will apply to all coal produced during that fiscal year.

(2) *Calculation of the total fee collections needed.* The total amount of fee collections needed for any fiscal year is the amount that must be transferred from the Fund to the Combined Fund under section 402(h) of the Act (30 U.S.C. 1232(h)) for that fiscal year, with any necessary adjustments for the amount of any fee overcollections or undercollections in prior fiscal years. We will calculate the amount of total fee collections needed as follows:

(i) *Step one.* We will determine the smallest of the following numbers:

(A) The estimated net interest earnings of the Fund during the fiscal year;

(B) $70 million; or

(C) The most recent estimate provided by the trustees of the Combined Fund of the amount that will be debited against the unassigned beneficiary premium account for that fiscal year ("the Combined Fund's needs").

(ii) *Step two.* We will increase or decrease, as appropriate, the amount determined under step one by the amount of any adjustments to previous transfers to the Combined Fund resulting from a difference between estimated and actual interest earnings or the estimated and actual Combined Fund's needs. This paragraph (b)(2)(ii) applies only to adjustments to transfers for prior fiscal years beginning on or after October 1, 2004, and only to those adjustments that have not previously been taken into account in establishing fees for prior years.

(iii) *Step three.* We will adjust the amount determined under steps one and two of this section by an amount equal to the difference between the fees actually collected (based on estimated production) and the amount that should have been collected (based on actual production) for any prior fiscal year beginning on or after October 1, 2004, if the difference has not previously been taken into account in establishing fees for prior years.

(3) *Establishment of fees.* We will use the following procedure to establish the per-ton fees for each fiscal year:

(i) *Step one.* We will estimate the total tonnage of coal that will be produced during that fiscal year and for which a fee payment obligation exists, categorized by the types of coal and mining methods described in paragraph (b)(3)(ii) of this section.

(ii) *Step two.* We will allocate the total fee collection needs determined under paragraph (b)(2) of this section among the various categories of estimated coal production under paragraph (b)(3)(i) of this section to establish a per-ton fee based upon the following parameters:

(A) The per-ton fee for anthracite, bituminous or subbituminous coal produced by underground methods will be 43 percent of the rate for the same type of coal produced by surface methods.

(B) Regardless of the method of mining, the per-ton fee for lignite coal will be 29 percent of the rate for other types of coal mined by surface methods.

(C) The per-ton fee for in situ mined coal will be the same as the fees set under paragraphs (b)(3)(ii)(A) and (B) of this section, depending on the type of coal mined. The fee will be based upon the quantity and quality of gas produced at the site, converted to Btu's per ton of coal upon which in situ mining was conducted, as determined by an analysis performed and certified by an independent laboratory.

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collection authority through September 30, 1995. Section 6002(c) of that law also required that the Fund be invested in interest-bearing public debt securities, with the interest becoming part of the Fund. Section 19143(b) of Title XIX of the Energy Policy Act of 1992 (Pub. L. 102–486, 106 Stat. 2776, 3056) subsequently extended the fees and our fee collection authority through September 30, 2004.

Section 2515 of Title XXV of the Energy Policy Act (106 Stat. 2776, 3113) further amended section 402(b) of SMCRA by adding the requirement that, after September 30, 2004, "the fee shall be established at a rate to continue to provide for the deposit referred to in subsection (h) [of section 402 of SMCRA]." See 30 U.S.C. 1232(b). The rule that we are proposing today would implement this provision of SMCRA by establishing criteria and procedures for establishment of the fee for coal produced on or after October 1, 2004.

B. What Is the Combined Benefit Fund?

The Energy Policy Act of 1992 also included provisions known as the Coal Industry Retiree Health Benefit Act of 1992 (the Coal Act), which is codified at 26 U.S.C. 9701 *et seq.* See Pub. L. 102–486, 106 Stat. 2776, 3036. The Coal Act created the United Mine Workers of America (UMWA) Combined Fund or CBF by merging two financially troubled health care plans, the UMWA 1950 Benefit Plan and Trust and the UMWA 1974 Benefit Plan and Trust, effective February 1, 1993. See 26 U.S.C. 9702. The CBF is a private employee benefit trust fund that provides health care and death benefits to UMWA coal industry retirees and their dependents and survivors who were both eligible to receive and were receiving benefits from the 1950 Benefit Plan or the 1974 Benefit Plan on July 20, 1992. See 26 U.S.C. 9703(f). Most current beneficiaries are widows and dependents of coal miners. The CBF health insurance plan provides "Medigap" coverage; *i.e.*, it pays for health care expenses remaining after Medicare and Medicaid reimbursement and covers prescription drugs.

Under the Coal Act, the Social Security Administration (SSA) has the duty of assigning retirees and their dependents to former employers or related companies. See 26 U.S.C. 9706. Coal operators and related companies pay monthly premiums (also determined by the SSA) to the CBF to cover the costs of benefits for the beneficiaries assigned to them. In addition, under 26 U.S.C. 9704(a)(3), those companies must pay a monthly premium for the health care costs of eligible unassigned beneficiaries; *i.e.*, those beneficiaries associated with now-defunct coal operators for which no related company exists or remains in business. However, as discussed in Part I.C. below, Congress created a mechanism to wholly or partially offset premium costs for unassigned beneficiaries by transferring an amount equal to certain interest earned by the AML Fund to the CBF.

C. Why Do We Transfer Monies From the AML Fund to the CBF and How Do We Determine the Amount To Transfer?

In paragraphs (a) and (b) of section 19143 of the Energy Policy Act of 1992, respectively, Congress amended the Internal Revenue Code of 1986 and SMCRA to require that, at the beginning of each fiscal year, starting with FY 1996, an amount equal to the AML Fund's estimated interest earnings for that year be transferred to the CBF to help defray the cost of health care benefits for unassigned beneficiaries. See section 402(h) of SMCRA (30 U.S.C. 1232(h)) and section 9705(b) of the Internal Revenue Code (26 U.S.C. 9705(b)). See also Pub. L. 102–486, 106 Stat. 3047 and 3056.

Section 9705(b)(2) of the Internal Revenue Code provides that any amount transferred to the CBF under section 402(h) of SMCRA "shall be used to proportionately reduce the unassigned beneficiary premium under section 9704(a)(3) of each assigned operator for the plan year in which transferred." However, to the extent that these transfers do not fully cover costs for unassigned beneficiaries, assigned operators remain obligated to pay the difference under 26 U.S.C. 9704(a)(3) and (d)(3)(A).

Section 402(h) of SMCRA (30 U.S.C. 1232(h)) states that—

> (1) In the case of any fiscal year beginning on or after October 1, 1995, with respect to which fees are required to be paid under this section, the Secretary shall, as of the beginning of such fiscal year and before any allocation under subsection (g), make the transfer provided in paragraph (2).
>
> (2) The Secretary shall transfer from the [AML] fund to the United Mine Workers of America Combined Benefit Fund established under section 9702 of the Internal Revenue Code of 1986 for any fiscal year an amount equal to the sum of—
>
> (A) The amount of interest which the Secretary estimates will be earned and paid to the Fund during the fiscal year, plus
>
> (B) The amount by which the amount described in subparagraph (A) is less than $70,000,000.
>
> (3)(A) The aggregate amount which may be transferred under paragraph (2) for any fiscal year shall not exceed the amount of expenditures which the trustees of the Combined Fund estimate will be debited against the unassigned beneficiaries premium account under section 9704(e) of the Internal Revenue Code of 1986 for the fiscal year of the Combined Fund in which the transfer is made.
>
> (B) The aggregate amount which may be transferred under paragraph (2)(B) for all fiscal years shall not exceed an amount equivalent to all interest earned and paid to the fund after September 30, 1992, and before October 1, 1995.
>
> (4) If, for any fiscal year, the amount transferred is more or less than the amount required to be transferred, the Secretary shall appropriately adjust the amount transferred for the next fiscal year.

In sum, section 402(h)(2)(A) of SMCRA requires an annual transfer of estimated interest earnings from the AML Fund to the CBF. Paragraphs (h)(2)(B) and (3)(B) of section 402 require the transfer of an additional amount from a reserve (the interest earned on the AML Fund between FY 1993 and FY 1995) if the estimated interest earnings during the fiscal year will not cover eligible estimated CBF expenditures for that year. However, as explained further below, the amounts in the reserve fund were fully utilized in FY 2003 and no longer are available to supplement the annual transfer. In addition, the total amount transferred under paragraphs (h)(2)(A) and (B) for any one year may not exceed $70 million, as discussed more fully in Part V below.

The section 402(h)(2)(A) transfer is further limited by section 402(h)(3)(A), which precludes the transfer of monies to the CBF in excess of the CBF's yearly costs for health benefits for unassigned beneficiaries. However, under a memorandum of understanding between OSM and the CBF trustees, which was signed on January 19, 2001, the amount transferred is not limited to estimated costs based on premium amounts determined by the SSA—it includes all actual health care expenditures for all unassigned beneficiaries, up to the amount authorized in section 402(h)(3) of SMCRA (subject to the $70 million cap). This approach reflects language in the conference report accompanying the FY 2001 appropriations bill for Interior and related agencies. Page 200 of that report (H.R. Rep. No. 106–914) states:

> As a general matter, the managers note that it has been the practice for the amount of the annual interest transfers under current law to be based on a calculation which multiplies the number of unassigned beneficiaries by that year's per beneficiary premium rate established by the Social Security Administration (SSA) with adjustments made later (normally two years after the initial transfer) to reflect the Combined Benefit Fund's actual expenditures for unassigned beneficiaries. This practice has an adverse effect on the Combined Benefit Fund's cash

flow and is contributing to its financial difficulties. * * * The managers believe that the interest transfer at the beginning of each fiscal year should be based on the Combined Benefit Fund trustees' estimate of the year's actual expenditures for unassigned beneficiaries, which may be adjusted to the actual amount of those expenditures at a later time if the initial transfer proves to be either too high or too low. This approach is completely consistent with the underlying statutory provision found in section 402(h) of the Surface Mining Control and Reclamation Act of 1977 which provides that the amount of interest transferred "shall not exceed the amount of expenditures that the trustees of the Combined Fund estimate will be debited against the unassigned beneficiaries premium account."

The transfer from the AML Fund to the CBF occurs at the beginning of the fiscal year based on our estimate of interest the AML Fund will earn during the fiscal year and the CBF trustees' estimate of their health care expenditures for unassigned beneficiaries for that year. After the close of the fiscal year, we adjust the amount of the transfer to reflect actual interest earnings and CBF expenditures. There is no statute of limitations on adjustments to the number of beneficiaries. Therefore, several adjustments to the transfer for a particular year may be made in following years as figures are refined (usually as a result of bankruptcies and litigation), provided that the statutory transfer cap of $70 million for that year has not been reached. For example, our transfer in FY 2002 included adjustments to our first transfer in FY 1996.

II. How Do We Propose To Determine the Total Amount of Fees To Collect Each Year?

As explained above, section 402(b) of SMCRA requires the establishment of a fee "to continue to provide for the deposit referred to in subsection (h)" of SMCRA. We interpret that language as requiring establishment of a fee that will generate revenue up to, but not more than, the amount of net interest that the AML Fund is anticipated to earn in the coming fiscal year, subject to certain limitations described in detail below. This interpretation gives meaning to the section 402(b) requirement that some "rate" be established. Furthermore, this reading construes the phrase "deposit referred to subsection (h)" in section 402(b) to mean only what is currently provided for in section 402(h) (*i.e.*, the transfer of an amount of money equal to estimated AML Fund interest earnings subject to the "caps" described below) and nothing more.

The legislative history of paragraphs (b) and (h) of section 402 sheds little light on congressional intent with respect to the amount of fees to be collected for coal produced after September 30, 2004. The provision in section 402(b) concerning post-September 30, 2004, fees appears to have originated in two bills introduced in 1992 in the 102nd Congress. Those bills, H.R. 4344 and H.R. 776, both included a version of section 402(h) that would have required an annual transfer of $50 million from the AML Fund to the CBF. However, H.R. 4344 was never adopted, and the House removed the CBF transfer provisions from H.R. 776 prior to passage. In acting on H.R. 776, the Senate added a variation of the provisions that the House had removed. However, instead of authorizing the transfer of $50 million from the AML Fund to the CBF each year as in the prior House version of section 402(h), the Senate version authorized transfer only of an amount equal to interest earned or estimated to be earned by the Fund. See 138 Cong. Rec. 10558, July 29, 1992. The Senate did not make any conforming changes to section 402(b). The House subsequently accepted the Senate version without change and the provisions became law as part of the Energy Policy Act of 1992.

Thus, the rationale for the fee collection target in section 870.13(b)(2) of the proposed rule that we are publishing today is the plain language of the statute and the absence of any legislative history to support a contrary reading. Section 402(b) of SMCRA provides that, after September 30, 2004, "the fee shall be established at a rate to continue to provide for the deposit referred to in subsection (h)." Section 402(h) of the Act lists two components of the deposit:

(1) An estimate of the interest that will be earned by and paid to the AML Fund during the fiscal year (paragraph (h)(2)(A)); and

(2) A "supplement" to increase that amount to $70 million if necessary (paragraph (h)(2)(B)), but with a cap on the total amount of the supplement for "all fiscal years" equal to the interest earned and paid to the AML Fund from October 1, 1992 to September 30, 1995 (paragraph (h)(3)(B)), and further capped by the needs of the CBF (paragraph (h)(3)(A)).

The supplement referenced in paragraph (h)(2)(B) is no longer available because the cap in paragraph (h)(3)(B) has been reached. By its terms, the cap applies to "all fiscal years" without any limitation. There is nothing in the legislative history to suggest that in section 402(b) Congress meant to refer only to certain portions of section 402(h). That is, we have no indication that Congress intended to continue the supplement in paragraph (h)(2)(B) without regard to the cap on that supplement in paragraph (h)(3)(B)). Moreover, the cap resulted in a transfer from the AML Fund to the CBF of only $49.8 million in FY 2004, which was based only on the estimate of interest that the Fund would earn in FY 2004. There was no supplement provided to raise that amount because the supplement already was exhausted. It would be anomalous to suggest that Congress intended for the cap in paragraph (h)(3)(B) to apply to the transfer in FY 2004 (as it did), but not in FY 2005, when the plain language of that paragraph applies the cap to "all fiscal years."

In sum, at this time nothing in SMCRA authorizes transfer of any monies to the CBF in excess of an amount equal to estimated interest earnings for that year (adjusted in future years to reflect actual interest earnings). Furthermore, there is no indication in the legislative history of sections 402(b) and (h) that Congress intended otherwise.

Therefore, the reference in section 402(b) to "the deposit referred to in subsection (h)" is best read as meaning that the fees established for coal produced after September 30, 2004, must be designed to generate an amount of revenue equal to the estimated interest earnings transferred to the CBF at the beginning of each fiscal year, with any modifications needed to reflect the true-up adjustments required by section 402(h)(4).

For the reasons discussed above, we believe that the proposed rule is a reasonable reconciliation of the statutory language with congressional intent as evidenced by the legislative history.

III. How Are We Proposing To Revise 30 CFR Part 870?

As discussed in Part IX of this preamble, we are publishing a final rule in today's **Federal Register** that adopts the same changes to Part 870 that we are proposing in this rule and puts them into effect immediately. However, we will fully consider all comments that we receive on this proposed rule. If we determine that changes are needed in response to those comments, we will issue a new final rule containing the appropriate modifications. As mentioned in Part IX, we seek comment on whether those changes should be effective as of October 1, 2004.

We are proposing to revise 30 CFR 870.13 by—

• Changing the section heading from "Fee computations" to "Fee rates";

• Redesignating existing paragraphs (a) through (d) as paragraphs (a)(1) through (4);

• Adding a new title and introductory language for paragraph (a) to clarify that the rates in that paragraph apply only to fees for coal produced on or *before* September 30, 2004; and

• Adding a new paragraph (b), which would establish criteria and procedures for use in establishing fees for coal produced *after* September 30, 2004.

In addition, in a conforming technical change, we are proposing to revise 30 CFR 870.12(d) to remove the September 30, 2004, expiration date for fee payment obligations.

Proposed paragraph 870.13(b) would implement in part the provision in section 402(b) of SMCRA that requires that, after September 30, 2004, "the fee shall be established at a rate to continue to provide for the deposit referred to in subsection (h)." As discussed in Part I.C. above, section 402(h) of SMCRA essentially requires the transfer from the AML Fund to the CBF, at the beginning of each fiscal year, of an amount equal to estimated AML Fund interest earnings during that year to defray the cost of health care benefits for the plan's unassigned beneficiaries. Those transfers effectively are capped at the estimated AML Fund interest earnings for that year, $70 million, or the CBF's estimated expenditures for health care benefits for unassigned beneficiaries for that year, whichever is the smallest amount. Therefore, effective October 1, 2004, we must determine the fee based on the amount of the transfer from the AML Fund to the CBF.

We recognize that section 402(h) of SMCRA does not expressly require adjustments to reflect differences between estimated and actual AML Fund interest earnings and estimated and actual CBF expenditures for unassigned beneficiaries. Paragraphs (h)(1), (2), and (3) of section 402 refer only to the use of estimates when determining the amount required to be transferred. However, section 402(h)(4) of the Act provides that, "[i]f, for any fiscal year, the amount transferred is more or less than the amount required to be transferred, the Secretary shall appropriately adjust the amount transferred for the next fiscal year." In our view, that provision essentially requires that the Secretary adjust the amount transferred to reflect any difference between the estimates used to determine the transfer amount at the beginning of the year and actual data for that year, as determined at a later date. Otherwise, section 402(h)(4) would have no real meaning, which would conflict with established principles of statutory construction. We invite comment on whether there is any other interpretation that would give effective meaning to section 402(h)(4). If so, we may reconsider adoption of proposed 30 CFR 870.13(b)(2)(ii).

Proposed paragraph 870.13(b)(1) would require us to establish fees on an annual basis. We selected this frequency because the amount transferred to the CBF each year will vary. We would publish the fees for each fiscal year after FY 2005 in the **Federal Register** at least 30 days before the start of the fiscal year to which the fees would apply. Although not specified in the rule, we also would provide notice of the new fees by modifying the Abandoned Mine Land Payer Handbook (*http://ismdfmnt5.osmre.gov*), revising the OSM–1 form, and issuing Payer Letters to permittees.

Under the proposed rule, once we publish the fees for a given fiscal year, they would not change during that year. Later in this preamble we explain how we would make adjustments for differences between the estimates (for factors as interest earnings and coal production) used to establish the fees and actual data once the actual data becomes available.

Proposed paragraph 870.13(b)(2) of the rule essentially would require that each year's fee be established to generate an amount of revenue equal to the amount of estimated AML Fund interest earnings that will transfer from the AML Fund to the trustees of the CBF at the beginning of that year under section 402(h) of SMCRA. Consistent with paragraphs (h)(2)(B) and (h)(3)(A) of section 402 of SMCRA (see Part V of this preamble), paragraph (b)(2)(i) of the rule would cap the amount of estimated interest earnings transferred—and hence the total amount of fee collections needed—at the lesser of either $70 million or the amount that the trustees of the CBF estimate will be debited against the unassigned beneficiaries premium account under section 9704(e) of the Internal Revenue Code of 1986 (26 U.S.C. 9704(e)) for that fiscal year.

Under proposed section 870.13(b)(2), calculation of the total amount of fee collections needed would be a three-step process. First, under proposed paragraph (b)(2)(i), we would estimate the amount that must be transferred to the CBF at the beginning of that fiscal year. We would compare the net amount of interest the AML Fund is estimated to earn during that fiscal year, the most recent estimate from the CBF trustees of their needs for unassigned beneficiaries for that year, and the statutory cap of $70 million. The estimated transfer amount would be the smallest of the three numbers.

The second step, under proposed paragraph (b)(2)(ii), would be to adjust the estimated transfer amount to account for overcollections or undercollections in prior years. SMCRA requires us to establish a fee that will provide for the transfer under section 402(h). As explained above, the initial transfer to the CBF under that section of the Act is based on estimates of AML Fund interest earnings and the CBF's needs for unassigned beneficiaries during that year. After the close of the fiscal year, the amount of the transfer is adjusted to reflect actual interest earnings (and, if necessary, actual CBF expenditures) when that data becomes available. As explained more fully below, any difference between estimated and actual data would not result in a revision of the previously established fee for that year. We would account for any excess fees collected, or any deficiencies, by adjusting the next fee scheduled to be determined.

For example, if we underestimate interest earnings, we would transfer the difference to the CBF, provided the CBF needs that amount for expenditures from the unassigned beneficiary premium account during that year and the transfer would not exceed the $70 million statutory cap. We would then need to increase fee collections in the following year to recover the additional amount transferred. On the other hand, if we overestimate interest earnings or if the CBF's expenditures were lower than the original amount transferred, the CBF would refund the difference and we would need to address the excess amount of fees collected. However, this requirement would apply only to adjustments for fiscal years after FY 2004. Therefore, if we determine in FY 2005 that we underestimated FY 2003 interest earnings by $10 million, we would not include that adjustment in the fee calculation for FY 2006 (*i.e.*, we would not increase the fee collection needs for FY 2006 by $10 million), although we would send the $10 million to the CBF.

The third step under proposed paragraph (b)(2)(iii) would be to adjust the estimated transfer amount to reflect differences between estimated and actual coal production in prior years. As explained above, the fee calculation for a fiscal year would essentially be a fraction. The numerator would be the amount of total fees to be collected for that fiscal year (with all adjustments), and the denominator would be based on our estimate of coal production for that year. If we overestimate production, the

calculated per-ton fee would be too low and we would undercollect for that year. Conversely, if we underestimate production, the calculated per-ton fee would be too high and we would overcollect for that year. Therefore, just like when we adjust the estimated interest and CBF needs to actual in step two, when we obtain actual production figures for fiscal years after October 1, 2004, we would calculate the fees we overcollected or undercollected and that number would become an adjustment in the next fee calculation.

We identified two options to remedy fee undercollections and overcollections. Under the first option, we would recalculate the fee and have all operators submit amended reports with additional payments or requests for credit or refund. We find this option impractical for several reasons. First, it would impose a huge paperwork burden on both operators and OSM. Second, we often make several adjustments over a number of years as actual data become available for comparison with the estimates used to establish the fees. Therefore, multiple supplemental reports would be required. Third, the adjustments likely would be very small (fractions of a cent), so the cost to operators and OSM of accounting for adjustments may exceed the dollar value of the adjustment. For all these reasons, we propose to reject this option. Under this proposed rule, we would not change the fee for a given fiscal year after we publish that fee in the **Federal Register**.

Instead, we are proposing to adopt the second possible approach to account for adjustments. Under that approach, we would adjust fee calculations for future years to account for adjustments to transfers in prior years. However, we would not adjust the fee calculations for future years when the transfer adjustments relate to FY 2004 or earlier fiscal years. Adjustments for transfers in those years would be inappropriate because the fee was statutorily set for those years.

The following example illustrates how this process would work: Assume estimated AML Fund interest earnings for FY 2008 are $60 million and the CBF's estimated unassigned beneficiary needs are $85 million. Under that scenario, the amount transferred to the CBF would be $60 million. Under paragraph (b)(2)(i) of the proposed rule, that amount also would be the starting point for our fee calculations for FY 2008. Assume further that in FY 2006 we overestimate AML Fund interest earnings by $3 million, which means that fee collections for FY 2006 are $3 million higher than they should have been. To correct this situation, we would subtract the $3 million overcollection for FY 2006 from the $60 million estimated transfer in FY 2008, thereby reducing fees collected for that year. Hence, in FY 2008 operators as a group would recover the $3 million fee overcollection in FY 2006.

If there are multiple adjustments for more than one prior fiscal year, they all would be incorporated in the next fee calculation. In addition, if we later find that further adjustments are needed for a previously adjusted fiscal year, we would account for that adjustment in the next fee calculation. Thus, returning to the example in the previous paragraph, if we determine in FY 2008 that FY 2006 interest was overestimated by $4 million, not $3 million, we would adjust the next scheduled fiscal year's fee calculation (*i.e.*, FY 2009) by the additional $1 million.

Finally, if Congress were to specifically appropriate additional funds for transfer from the AML Fund to the CBF, that appropriation would not become part of the fee calculation process. Thus, for example, if, in the FY 2007 appropriations act for the Department of the Interior, Congress designated a one-time $25 million supplemental payment to the CBF, we would not include that $25 million in the fee calculations for FY 2007.

Proposed paragraph 870.13(b)(3) provides that we would determine per-ton fees after comparing the amount of the estimated transfer to the CBF (and hence the total amount of fee collections needed) with projected coal production for that fiscal year. Proposed paragraph (b)(3)(ii) specifies that the new fees would maintain the same proportionality among surface-mined coal, coal produced by underground mining, and lignite as did the fees previously in effect under section 402(a) of SMCRA. In section 402(a) of SMCRA, Congress originally established lower fees for lignite and for coal produced by underground methods than it did for non-lignite coal produced by surface mining methods. According to the legislative history, the lower fees for underground mining reflect the "disproportionately high social costs incurred by underground coal mine operators in meeting responsibilities under the Coal Mine Safety and Health Act of 1969, as amended." H.R. Rep. No. 94–1445 (1976), at 85. Section 402(b) of SMCRA is silent on the question of whether this fee differential should continue to apply to coal produced after September 30, 2004.

After evaluating those factors, we propose to retain the per-ton fee ratios that have been in place since the enactment of SMCRA. Therefore, under proposed paragraph (b)(3)(ii), the fee per ton of non-lignite coal produced by underground methods would be 43 percent of the fee per ton of non-lignite coal produced by surface methods and the fee per ton of lignite coal produced would be 29 percent of the fee per ton of non-lignite coal produced by surface methods. The provision concerning fees for coal produced by in situ mining methods also would remain substantively unchanged from the rule governing fees for coal produced by in-situ mining methods before October 1, 2004, in that it would continue to apply the underground fee to all non-lignite coal produced by in-situ methods and the lignite fee to lignite coal produced by in-situ methods.

IV. What Alternatives Did We Consider in Developing the Proposed Changes to 30 CFR Part 870?

In developing this proposed rule, we considered and rejected the following options to implement the provision of section 402(b) of SMCRA requiring the establishment of a fee for coal produced after September 30, 2004:

- Set the fee at zero and transfer only estimated interest earnings.

This option is inconsistent with the principles of statutory construction because it would render the section 402(b) provision concerning establishment of post-September 30, 2004, fee rates superfluous and essentially inoperative. See *In re Surface Mining Regulation Litigation*, 627 F.2d 1346, 1362 (D.C. Cir. 1980) ("It is, however, a fundamental principal of statutory construction that 'effect must be given, if possible, to every word, clause and sentence of a statute * * * so that no part will be inoperative or superfluous, void or insignificant.'"), quoting from and citing to 2A Sutherland, *Statutory Construction*, at § 46.06 (4th ed. 1973). See also *Boise Cascade Corp.* v. *EPA*, 942 F.2d 1427, 1432 (9th Cir. 1991) (statutes should not be construed so as to render any of their provisions superfluous). In addition, a fee of zero likely would not satisfy the section 402(h)(1) requirement that transfers from the AML Fund to the CBF may be made only when "fees are required to be paid under this section." Under this approach, the AML Fund and, consequently, the interest earned thereon, would decline the fastest.

- Assess fees at a rate that would generate revenues adequate to maintain the AML Fund at a level that would earn an amount of interest sufficient to meet CBF needs for unassigned beneficiaries, up to a maximum of $70 million.

• This option could be construed to comply with the requirement to establish a fee that provides for the transfer to the Combined Fund under section 402(h). However, to maintain the principal in the AML Fund at a level that would earn sufficient interest to continue to provide for transfers to the CBF at recent levels, the fees under this option could be almost equal to, or even higher than, the current fees. There is no evidence that, in enacting section 402(b), Congress intended that the principal balance of the AML Fund would or should be maintained at a level adequate to generate interest sufficient to meet CBF needs. This option also could have the effect of indefinitely extending the AML reclamation program by requiring collection of fees to replace appropriations for grants to States and tribes for those programs. There is no evidence that Congress intended for fees collected from coal produced after September 30, 2004, to be used for this purpose. Instead, the fact that Congress terminated the statutorily established reclamation fee in section 402(a) as of September 30, 2004, suggests the opposite, as does the language in section 402(b) that requires that, after September 30, 2004, the fee be established at a rate sufficient to continue to provide for transfers to the CBF.

• Assess a fee at a rate sufficient to meet any deficit between anticipated CBF health care benefit needs for unassigned beneficiaries (or $70 million, whichever is less) and the amount of estimated interest earnings transferred.

There is insufficient statutory authority to implement this option because nothing in either the statutory language or the legislative history of SMCRA suggests that, in section 402(b), Congress intended for any transfers to be made to the CBF in excess of an amount equal to yearly estimated AML Fund interest earnings (plus the reserve supplement of prior interest earnings, which is now depleted). Moreover, it would be anomalous to suggest that Congress intended for the CBF to receive a transfer of funds in an amount equal to estimated interest earnings in FY 2004 (as it did) and then to receive transfers in excess of that amount in FY 2005 and thereafter.

V. What Is the Rationale for the Cap on Annual Transfers to the CBF?

Proposed 30 CFR 870.13(b) and 872.11(e) would cap the amount transferred to the CBF at the beginning of each fiscal year at the estimated amount of interest earned by the AML Fund, estimated CBF expenditures for health care benefits for unassigned beneficiaries, or $70 million, whichever is the smallest amount. The first two items would later be adjusted to reflect actual interest earnings and actual CBF expenditures for that fiscal year, provided the adjustments would not cause aggregate transfers for that year to exceed $70 million. This cap is consistent with both historical practice and section 402(h) of SMCRA. Paragraphs (3)(A) and (4) of section 402(h) impose the cap relating to CBF expenditures. The $70 million cap receives implied support from section 402(h)(2)(B) of SMCRA, which allows transfers of estimated interest earnings to be supplemented by prior interest earnings, but only up to a total transfer amount of $70 million. It also reflects the intent of Congress as described in the conference report on the Energy Policy Act. See 138 Cong. Rec. 17578, 17605 (1992) ("provision is made for monies to be transferred from the Abandoned Mine Land Fund in an amount up to, but not more than, $70 million per year * * *"). In addition, a report from the House Resources Committee on a bill approved by the Committee but never adopted by the full House characterizes section 402(h) in its entirety as allowing "the transfer to the CBF of not more than $70 million annually." See H.R. Rep. No. 106–1014, pt. 1 (2000).

VI. What Would the Fees Be Under This Proposed Rule for Coal Produced After September 30, 2004?

Under proposed 30 CFR 870.13(b)(1), we would determine fees on an annual basis, with notice of the fees for each year published in the **Federal Register** 30 days before the beginning of the fiscal year to which they would apply.

Part VII of the preamble to the final rule that we are publishing in today's **Federal Register** establishes fees for FY 2005.

Table 1 shows the fees for FY 2005 and our projection of fees for the following ten years based on this rule; on currently available estimates on interest rates, CBF needs, and coal production; and on maintaining current congressional appropriations, grant formulas, and AML Fund assets available for investment.

TABLE 1.—FEES FOR FY 2005 AND FEE PROJECTIONS FOR FY 2006–2015

Fiscal year	Estimated AML Fund interest earnings (millions of dollars)	Estimated CBF needs for unassigned beneficiaries (millions of dollars)	Fees for non-lignite coal produced by surface methods (cents per short ton)	Fees for non-lignite coal produced by underground methods (cents per short ton)	Fees for lignite coal (cents per short ton)
2005	69.0	85.0	8.8	3.8	2.5
2006	72.0	99.6	8.7	3.7	2.5
2007	71.9	97.9	8.5	3.7	2.4
2008	69.4	96.3	8.5	3.6	2.4
2009	65.8	94.1	7.8	3.4	2.2
2010	61.6	92.2	7.3	3.1	2.1
2011	22.1	90.1	2.6	1.1	0.7
2012	17.6	87.7	2.0	0.9	0.6
2013	14.2	85.4	1.6	0.7	0.5
2014	10.9	83.2	1.2	0.5	0.4
2015	46.4	81.0	5.2	2.2	1.5

In accordance with proposed 30 CFR 870.13(b) and 872.11(e), the fees in Table 1 are based upon a maximum annual transfer to the CBF of $70 million or the amount of estimated AML Fund interest earnings for that year, whichever is less. (The other limiting factor, estimated CBF needs for unassigned beneficiaries, does not come

into play because those estimates are in excess of $70 million for all years shown in the table.)

Because section 402(h)(2)(A) of SMCRA refers to the transfer of an amount equal to the estimated interest "earned and paid to the Fund during the fiscal year," we originally invested the Fund's assets only in short-term securities so as to maximize the amount of interest actually paid to the Fund during each year. By so doing, we also maximized the amount available for transfer to the CBF. However, we reevaluated that policy when short-term interest rates declined to the point that the Fund was earning less than $70 million in interest each year. We determined that interest on long-term securities could be deemed to be constructively earned and paid to the Fund on a prorated basis over the life of those securities even though it is not physically collected until the securities reach maturity. The estimated annual interest earnings reported in Table 1 reflect this interpretation. After changing our policy, in FY 2004, we invested $1.3 billion of the Fund in long-term public debt securities with an average interest rate of 4.18 percent. That rate is significantly more than the minuscule returns (currently hovering around one percent) recently available on short-term securities. However, we anticipate that we will need to redeem those long-term securities before their maturity dates to meet future Fund obligations because Congress has not reauthorized collection of a fee for AML reclamation. Consequently, the net interest earnings shown in Table 1 for FY 2011–2014 reflect the early redemption penalties that we expect to incur in those years. In other words, we will need to subtract early redemption penalties from the total estimated interest earnings in each of those years. The increase in net interest earnings shown for FY 2015 reflects the fact that, based on current estimates and assumptions, as of the end of FY 2014, all long-term securities will have been redeemed and that we will therefore incur no further early redemption penalties. By that time, the AML Fund would be invested exclusively in short-term securities and all estimated interest earnings on those securities would be available for transfer without first deducting any early redemption penalties for long-term securities.

Table 2 contains the coal production estimates that we used to establish fees for FY 2005 and to estimate fees for the other years in Table 1.

TABLE 2.—ESTIMATED COAL PRODUCTION FOR COAL SUBJECT TO FEE PAYMENT REQUIREMENTS

[In millions of short tons]

Fiscal year	Non-lignite surface mines	Underground mines	Lignite	Total
2005	628	317	82	1,027
2006	640	327	85	1,052
2007	651	335	87	1,073
2008	643	346	91	1,080
2009	672	340	86	1,098
2010	672	350	86	1,108
2011	680	346	86	1,112
2012	695	345	82	1,122
2013	707	352	82	1,141
2014	709	351	82	1,142
2015	723	359	82	1,164

The total production estimates in Table 2 are based upon projections in the Annual Energy Outlook (December 2003) prepared by the Energy Information Administration within the Department of Energy (DOE). We reduced those projections by ten percent to reflect our historical experience concerning the difference between DOE data and the tonnage subject to SMCRA's fee payment requirements. Allocation among the three production categories (surface, underground, and lignite) is based upon an extrapolation of our fee collection data for FY 2003.

VII. How Would the Fees Collected for Coal Produced After September 30, 2004, Be Used?

Section 401(b) of the Act provides that the AML Fund consists of "amounts deposited in the fund," including, among other things, "reclamation fees levied under section 402," and "interest credited to the fund under subsection (e)." Thus, under section 401(b) of SMCRA, fees collected under section 402 of the Act must be deposited into the AML Fund. Consistent with this requirement, the proposed rule considers all fees collected to be Fund revenues. See proposed 30 CFR 872.11(a).

The proposed rule would not affect the process by which transfers are made between the AML Fund and the CBF. That process will remain the same as in previous fiscal years under applicable law and our agreements with the Treasury Department and the CBF trustees.

Section 402(g) of the Act establishes an allocation formula that has been applied to date to the fees collected and to other AML Fund income. Fifty percent of the fees collected (but no other type of Fund income) was allocated to the appropriate State or tribal share account ("State share" or "Tribal share"). The remaining fifty percent of the fees collected, together with all other Fund income (including interest), were allocated among three other accounts, which are sometimes referred to collectively as the "Federal share," as follows:

- Twenty percent to the Secretary of Agriculture for use under section 406 of the Act, which authorizes use of those funds for the rural abandoned mine program (RAMP). This account is known as the RAMP allocation.
- Forty percent for supplemental AML reclamation grants to non-certified States and tribes, based on historical coal production before August 3, 1977. This account is known as the historical production allocation.
- Forty percent for the other purposes of Title IV, including items such as the small operator assistance program, the Clean Streams program, the emergency reclamation program, reclamation of high priority AML sites in States and tribes without approved AML reclamation plans, minimum program makeup grants, and the cost of administering the AML program and collecting fees. This account is known as the Secretary's discretionary share.

The existing regulations at 30 CFR 872.11(a) and (b) implement the

statutory requirements discussed above. Under our proposed rule, fees collected for coal produced for sale, transfer, or use before October 1, 2004, would be allocated according to the statutory scheme. Similarly, any other Fund income listed in section 401(b) of SMCRA, including, but not limited to, interest, user charges, recovered monies, and donations, would continue to be allocated according to that scheme.

However, we are proposing to add new paragraphs (d) and (e) to section 872.11 to address the disposition of fees collected for coal produced for sale, transfer, or use after September 30, 2004, and modify paragraphs (a) and (b) accordingly. Paragraph (d) would allocate fees collected for coal produced in any fiscal year beginning after September 30, 2004, only to the accounts from which the amount of the transfer to the CBF (as provided in new paragraph (e)) was taken at the beginning of that year. Fee collections would be distributed among the contributing accounts in amounts proportionate to which those accounts contributed to the transfer.

We are proposing to adopt this approach because we believe that the direction in SMCRA section 402(b) to establish the fee at a rate to provide for the CBF transfer conflicts with the allocation scheme in section 402(g) and that the two provisions cannot both be given effect. Section 402(b) states that, after September 30, 2004, "the fee shall be established at a rate to continue to provide for [transfers to the CBF]." SMCRA section 402(b), 30 U.S.C. 1232(b). The *only* purpose of the fee after September 30, 2004, is to support the continued funding of the CBF. In this regard, any fees collected would effectively replace the amount transferred to the CBF. Thus, we believe that the section 402(b) requirement to establish a fee to provide for the CBF transfer provides us with a directive to put whatever fees are collected back into the account from which the transfer was taken.

Transfers to the CBF after September 2004 will take place in the manner illustrated by the following example for FY 2005. On or about October 1, 2004, we will direct the Treasury Department to transfer from the AML Fund to the CBF an amount equal to the amount of interest that is estimated to be earned by the Fund during FY 2005. We will note from which accounts the transferred funds were withdrawn. We will levy a fee on mine operators pursuant to section 402(b) of the Act, with the goal of achieving aggregate fee collections in an amount equal to the amount transferred to the CBF. The section 402(b) directive can be construed as a requirement to use those fees, once collected, to replenish the accounts that contributed monies for the transfer to the CBF at the beginning of the year.

We recognize that the section 402(g) allocation formula arguably conflicts with that requirement. However, we believe that it is anomalous to suggest that Congress intended, in requiring establishment of the fee based on the CBF transfer, to also require that the fees collected continue to be allocated in accordance with the formula established in section 402(g) of the Act. Thus, for fees from coal produced after September 30, 2004, there is an inherent conflict between the direction in section 402(b) and the allocation scheme in section 402(g).

When there is an ambiguity that cannot be reconciled, the agency has discretion to reasonably interpret the statute. It is well-settled that when a court reviews an agency's construction of a statute that the agency administers, the first question for the court is—

> whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress * * * [I]f the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute.

Chevron, U.S.A., Inc. v. *Natural Res. Def. Council, Inc.*, 467 U.S. 837, 842–43 (1984)(footnotes omitted).

Here, the question is whether Congress has directly spoken to the precise question at issue; *i.e.*, whether the statute mandates the allocation of fees collected for coal produced after September 30, 2004, and, if not, whether an interpretation that such allocation is not required is reasonable. In this case, the statute does not unambiguously require allocation of these fees. Therefore, the agency may make the reasonable interpretation that fees collected pursuant to section 402(b) for transfer to the CBF are not required to be allocated pursuant to section 402(g). Our proposed addition of paragraph (d) to section 872.11 of our rules reflects this interpretation.

VIII. How Else Are We Proposing To Revise the AML Fund Rules in 30 CFR 872.11?

We are proposing to reorganize 30 CFR 872.11 to incorporate plain language principles and make the rules more user-friendly. Those changes are not substantive revisions. In addition, we are proposing to eliminate redundant or unnecessary language, improve clarity and consistency of terminology, consolidate provisions concerning interest, and add a paragraph reflecting the statutory requirements concerning transfers to the CBF. The most significant proposed changes (other than those discussed in Part VII of this preamble) are listed below:

- Removal of the sentence from 30 CFR 872.11(a)(6) providing that interest and other non-fee income to the Fund will be credited only to "the Federal share." "Federal share" is an anachronistic term that refers to the structure of section 402(g) of SMCRA as originally enacted. At that time, there were only two types of accounts: State/tribal share and the Secretary's discretionary share. However, as part of the Abandoned Mine Reclamation Act of 1990 (Pub. L. 101–508, 104 Stat. 1388–289 through 1388–299), Congress carved several other mandatory allocations (the RAMP allocation and the historical production allocation) from the original Secretary's discretionary share. The preamble to 30 CFR 872.11(a)(6), as revised on May 31, 1994 (*see* 59 FR 28148–49), clarifies that the term Federal share refers to three separate allocations (RAMP, historical production, and the Secretary's discretionary share), consistent with the changes that Congress made to section 402(g) of the Act.

Paragraph (b) of 30 CFR 872.11 also specifies that interest must be allocated among those three accounts. Therefore, we are proposing to remove this sentence from paragraph (a), both to eliminate any confusion that it may cause and because it is redundant to provisions in paragraph (b). Furthermore, the purpose of paragraph (a) is to identify all types of Fund revenues, not to allocate those revenues. Paragraph (b) addresses allocations.

- Removal of language from 30 CFR 872.11(a)(6), (b)(3), and (b)(4) that references transfers from the AML Fund to the CBF. Proposed new paragraph (e) would address those transfers in a comprehensive fashion. Specifically, consistent with paragraphs (g)(1) and (h)(1) of section 402 of SMCRA, proposed new paragraph (e)(4), like the language proposed for deletion, specifies that the amount transferred to the CBF is not subject to the allocation provisions of section 402(g) of the Act and 30 CFR 872.11(b).
- Modification of the introductory language of paragraph (b) of section 872.11 to clarify that that paragraph governs allocation of all Fund revenues (except fees collected for coal produced after September 30, 2004, and an amount of other revenues equal to

monies transferred to the CBF), not just those appropriated by Congress.

• Modification of the provision in paragraphs (b)(1) and (2) of section 872.11 concerning withdrawal of unexpended grant funds from States and Indian tribes to clarify that we will withdraw those funds only if the State or tribe no longer has any eligible and available abandoned mine sites to reclaim. This change is consistent with the explanation of the meaning of this provision in the preamble to the existing rule (see 59 FR 28150–51, May 31, 1994). In relevant part, the preamble states at 59 FR 28151 that:

> OSM's practice since the beginning of the AML program is not to withdraw funds from the States/Indian tribes. Rather, funds which are not expended by a State/Indian tribe during the grant period are returned to the State/Indian tribe account for future grants.

Therefore, we are proposing in paragraphs (b)(1)(iii) and (2)(ii) to specify that unexpended grant funds will be reallocated only if the Director finds in writing that the amounts involved are not necessary to carry out reclamation activities on lands within the State or on Indian lands subject to the tribe's jurisdiction.

• Modification of paragraph (b)(3) of section 872.11 to specify that, consistent with the provisions of section 402(g)(2) of SMCRA, the RAMP allocation consists of 20 percent of all Fund revenues (including available interest) remaining *after* making State and tribal share allocations. The existing rule assigns RAMP ten percent of *all* Fund revenues plus 20 percent of available interest earnings and other miscellaneous Fund receipts.

• Removal of paragraph (b)(8) of section 872.11 as that paragraph merely duplicates the requirements of paragraph (b)(5)(iii).

• Revision of paragraph (b)(5)(iv) of section 872.11 to adopt language more consistent with that of section 402(g)(3)(D), which provides that money from the Secretary's discretionary share may be used "[f]or the administration of this title by the Secretary." Existing paragraph (b)(5)(iv) provides that the Secretary may use those monies for "[a]dministration of the Abandoned Mine Land Reclamation Program." To avoid any confusion about the scope of that provision, we are proposing to revise this paragraph to authorize expenditures for "[a]dministration of title IV of the Act and this subchapter [subchapter R of our regulations]."

• Modification of paragraph (b)(7) of section 872.11 to replace references to statutory provisions with references to the corresponding provisions of our regulations. This change would make our regulations more specific and user-friendly as the reader would not have to flip through the statute and then compare those provisions to our regulations to determine their applicability.

• Addition of a new paragraph (e) to section 872.11 to provide a partial counterpart in our regulations to the CBF transfer requirements of section 402(h) of SMCRA and to clarify certain of those requirements, especially the applicability of the $70 million cap on annual transfers (see Part V of this preamble).

IX. Why Are We Publishing a Final Rule at the Same Time as This Proposed Rule?

In this proposed rule, we are publishing and seeking comment on the same changes that we are making to 30 CFR part 870 in a final rule published separately in today's **Federal Register**. As explained in the preamble to the final rule, we are making those changes effective immediately because of the need to have a fee in place on October 1, 2004, and ensure the continued transfer of monies to the Combined Benefit Fund. As discussed in Parts VII and VIII of this preamble, the proposed rule also includes changes to 30 CFR Part 872, the most significant of which would provide that the new fees need not be allocated under section 402(g) of SMCRA. After considering comments on the proposed rule, we may make changes to any or all of the provisions of this proposed rule. Because the proposed rule mirrors the final rule that we are adopting today with respect to 30 CFR Part 870, the public will have the opportunity to comment on all issues that we are addressing in both the proposed and final rules. However, the final rule that we are adopting today will remain in place until the effective date of any changes that we make. We invite comment on whether any changes that we make to 30 CFR Part 870 as a result of comments received should be made effective as of October 1, 2004, to ensure that they apply during the entirety of FY 2005.

X. How Do I Submit Comments on the Proposed Rule?

Electronic or Written Comments

Your comments should reference a specific portion of the proposed rule or preamble, explain the reason for any recommended change or objection, and include supporting data when appropriate. The most helpful comments are those that include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent Federal laws or regulations, technical literature, or other relevant publications or that involve personal experience.

We will not consider anonymous comments, but you may request that identifying information be withheld as discussed below under "Availability of comments." Please include the docket number for this rulemaking (1029–AC47) at the beginning of all written comments and in the subject line of all electronic comments. Except for comments provided in electronic format, please submit three copies of your comments if practicable. Comments received after the close of the comment period (see **DATES**) or at locations other than those listed above under **ADDRESSES** will not be considered or included in the administrative record of this rulemaking.

Availability of Comments

Except as noted below, all comments, including the names and addresses of commenters, will be available for review during regular business hours in our Administrative Record room at the location listed under **ADDRESSES**.

You may request that we withhold your home address from the administrative record. We will honor all such requests from individual commenters to the extent allowable by law. We also will withhold your identity upon request, to the extent allowable by law. If you wish us to withhold your name and/or address, you must state this request prominently at the beginning of your comment. In addition, if you wish this information withheld, please do not submit your comments by electronic means.

We will not withhold names or addresses in comments submitted by organizations, business entities, or individuals identifying themselves as representatives or officials of organizations or business entities. All such comments will be available for public inspection in their entirety.

Public Hearings

We will hold a public hearing on the proposed rule upon request only. We will announce the time, date, and address for any hearing in the **Federal Register** at least 7 days before the hearing.

If you wish to testify at a hearing please contact the person listed in **FOR FURTHER INFORMATION CONTACT**, either orally or in writing, by 4:30 p.m., Eastern time, on November 16, 2004. If no one expresses an interest in testifying at a hearing by that date, we will not hold a hearing. If only one person

expresses an interest, we will hold a public meeting rather than a hearing. We will place a summary of the public meeting in the administrative record of this rulemaking.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. If you are in the audience and have not been scheduled to speak but wish to do so, you will be allowed to testify after the scheduled speakers. We will end the hearing after all persons scheduled to speak and persons present in the audience who wish to speak have been heard. To assist the transcriber and ensure an accurate record, we request, if possible, that each person who testifies at a public hearing provide us with a written copy of his or her testimony.

Public meeting: If there is only limited interest in a hearing, we may hold a public meeting in place of a public hearing. If you wish to meet with us to discuss the proposed rule, you may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All meetings will be open to the public and, if appropriate, we will post notice of the meetings. A written summary of each public meeting will be included in the administrative record of this rulemaking.

XI. Procedural Matters

A. Executive Order 12866

This proposed rule is considered a significant rule and is subject to review by the Office of Management and Budget under Executive Order 12866.

a. This proposed rule would not have an effect of $100 million or more on the economy. It would not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. The rule would not add to the existing cost of operating a mine under an approved regulatory program in any significant fashion. We anticipate that the average fee under this rule over the next ten years would be 5.7 cents per ton of surface-mined coal, which is less than 0.2 percent of the value of the coal, assuming an average price of $30 per ton. Furthermore, the fees established under this rule would be lower than the existing AML reclamation fees, which expire on September 30, 2004. The fees imposed under this rule would result in the collection of an estimated $469 million from the coal industry during FY 2005–2014, an average of $46.9 million per year. That amount is approximately $3 billion less than what would be collected if the existing AML reclamation fee were extended another 10 years.

b. This proposed rule would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

c. This proposed rule would not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

d. This proposed rule raises novel legal and policy issues, which is why the rule is considered significant under Executive Order 12866.

B. Regulatory Flexibility Act

The Department of the Interior certifies that this proposed rule would 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.*). See the discussion in Part XI.A. above.

C. Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This proposed rule is not considered a significant energy action under Executive Order 13211. The replacement of the AML reclamation fee by a much smaller fee for continuation of the transfers to the CBF would not have a significant effect on the supply, distribution, or use of energy.

D. Small Business Regulatory Enforcement Fairness Act

This proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons stated in Part XI.A. above, this proposed rule would not:

a. Have an annual effect on the economy of $100 million or more.

b. Cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises for the reasons stated above.

E. Executive Order 12630—Takings

This proposed rule does not have any significant takings implications under Executive Order 12630. Therefore, a takings implication assessment is not required.

F. Executive Order 13132—Federalism

This proposed rule does not have significant Federalism implications because it does not concern relationships between the Federal government and State or local governmental units. Therefore, there is no need to prepare a Federalism Assessment.

G. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

To the extent that this proposed rule may have a substantial direct effect 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, potentially affected tribal governments will be notified through this publication in the **Federal Register**, and by direct notification from OSM, of the ramifications of this rulemaking. This will enable tribal officials and other tribal constituencies throughout Indian Country to have meaningful and timely input in the development of the final rule. Upon receipt and evaluation of all comments, we will publish a document addressing the comments and making any appropriate changes to the final rule.

H. Executive Order 12988 on Civil Justice Reform

The Department of the Interior has determined that this proposed rule meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988, "Civil Justice Reform" (56 FR 55195).

I. Unfunded Mandates Reform Act

This proposed rule would not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

J. Federal Paperwork Reduction Act

The Department of the Interior has determined that this rule does not contain collections of information which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* OMB has previously approved the collection activities and assigned clearance numbers 1029–0063 and 1029–0090 for the OSM–1 form and coal weight determination, respectively. Under this rule, the only change to the OSM–1 form would be a reduction in the fee rates printed on the form.

K. National Environmental Policy Act

OSM has determined that this rulemaking action is categorically excluded from the requirement to prepare an environmental document under the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4332 *et seq.* In addition, we have

determined that none of the "extraordinary circumstances" exceptions to the categorical exclusion apply. This determination was made in accordance with the Departmental Manual (516 DM 2, Appendixes 1.9 and 2).

L. Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following:

(1) Are the requirements in the rule clearly stated?

(2) Does the rule contain technical language or jargon that interferes with its clarity?

(3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity?

(4) Would the rule be easier to understand if it were divided into more numerous but shorter sections? (A "section" appears in bold type and is preceded by the symbol "§ " and a numbered heading; for example, "§ 870.13.")

(5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the rule?

(6) What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may also e-mail the comments to this address: *Exsec@ios.doi.gov*.

List of Subjects

30 CFR Part 870

Abandoned Mine Reclamation Fund, Reclamation fees, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 872

Abandoned Mine Reclamation Fund, Indian lands, Reclamation fees, Reporting and recordkeeping requirements, Surface mining, Underground mining.

Dated: September 7, 2004.

Chad Calvert,

Acting Assistant Secretary, Land and Minerals Management.

For the reasons set forth in the preamble, the Department is proposing to amend 30 CFR Parts 870 and 872 as follows:

PART 870—ABANDONED MINE RECLAMATION FUND—FEE COLLECTION AND COAL PRODUCTION REPORTING

1. The authority citation for Part 870 continues to read as follows:

Authority: 28 U.S.C. 1746, 30 U.S.C. 1201 *et seq.*, and Pub. L. 105–277.

2. In § 870.12, paragraph (d) is revised to read as follows:

§ 870.12 Reclamation fee.

* * * * *

(d) The reclamation fee shall be paid after the end of each calendar quarter beginning with the calendar quarter starting October 1, 1977.

3. Amend § 870.13 as follows:

A. Revise the section heading.

B. Redesignate paragraphs (a) through (d) as paragraphs (a)(1) through (4).

C. Add a heading for paragraph (a).

D. Add a new paragraph (b).

The revision and additions read as follows.

§ 870.13 Fee rates.

(a) *Fees for coal produced for sale, transfer, or use through September 30, 2004.* (1) * * *

* * * * *

(b) *Fees for coal produced for sale, transfer, or use after September 30, 2004.* In this paragraph (b), "we" refers to OSM, "Combined Fund" refers to the United Mine Workers of America Combined Benefit Fund established under section 9702 of the Internal Revenue Code of 1986 (26 U.S.C. 9702), and "unassigned beneficiaries premium account" refers to the account established under section 9704(e) of the Internal Revenue Code of 1986 (26 U.S.C. 9704(e)).

(1) *Fees to be set annually.* We will establish the fee for each ton of coal produced for sale, transfer, or use after September 30, 2004, on an annual basis. The fee per ton is based on the total fees required to be paid each fiscal year, as determined under paragraph (b)(2) of this section, allocated among the estimated coal production categories, as provided in paragraph (b)(3) of this section. We will publish the fees for each fiscal year after Fiscal Year 2005 in the **Federal Register** at least 30 days before the start of that fiscal year. Once we publish the fees, they will not change for that fiscal year and they will apply to all coal produced during that fiscal year.

(2) *Calculation of the total fee collections needed.* The total amount of fee collections needed for any fiscal year is the amount that must be transferred from the Fund to the Combined Fund under section 402(h) of the Act (30 U.S.C. 1232(h)) for that fiscal year, with any necessary adjustments for the amount of any fee overcollections or undercollections in prior fiscal years. We will calculate the amount of total fee collections needed as follows:

(i) *Step one.* We will determine the smallest of the following numbers:

(A) The estimated net interest earnings of the Fund during the fiscal year;

(B) $70 million; or

(C) The most recent estimate provided by the trustees of the Combined Fund of the amount that will be debited against the unassigned beneficiary premium account for that fiscal year ("the Combined Fund's needs").

(ii) *Step two.* We will increase or decrease, as appropriate, the amount determined under step one by the amount of any adjustments to previous transfers to the Combined Fund resulting from a difference between estimated and actual interest earnings or the estimated and actual Combined Fund's needs. This paragraph (b)(2)(ii) applies only to adjustments to transfers for prior fiscal years beginning on or after October 1, 2004, and only to those adjustments that have not previously been taken into account in establishing fees for prior years.

(iii) *Step three.* We will adjust the amount determined under steps one and two of this section by an amount equal to the difference between the fees actually collected (based on estimated production) and the amount that should have been collected (based on actual production) for any prior fiscal year beginning on or after October 1, 2004, if the difference has not previously been taken into account in establishing fees for prior years.

(3) *Establishment of fees.* We will use the following procedure to establish the per-ton fees for each fiscal year:

(i) *Step one.* We will estimate the total tonnage of coal that will be produced during that fiscal year and for which a fee payment obligation exists, categorized by the types of coal and mining methods described in paragraph (b)(3)(ii) of this section.

(ii) *Step two.* We will allocate the total fee collection needs determined under paragraph (b)(2) of this section among the various categories of estimated coal production under paragraph (b)(3)(i) of this section to establish a per-ton fee based upon the following parameters:

(A) The per-ton fee for anthracite, bituminous or subbituminous coal produced by underground methods will be 43 percent of the rate for the same type of coal produced by surface methods.

(B) Regardless of the method of mining, the per-ton fee for lignite coal will be 29 percent of the rate for other types of coal mined by surface methods.

(C) The per-ton fee for in situ mined coal will be the same as the fees set under paragraphs (b)(3)(ii)(A) and (B) of this section, depending on the type of coal mined. The fee will be based upon the quantity and quality of gas produced at the site, converted to Btu's per ton of coal upon which in situ mining was conducted, as determined by an analysis performed and certified by an independent laboratory.

PART 872—ABANDONED MINE RECLAMATION FUNDS

4. The authority citation for Part 872 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

5. Amend § 872.11 as follows:

A. In paragraph (a):

i. Revise the introductory text.

ii. Revise paragraph (a)(1).

iii. Remove the word "and" in paragraph (a)(4).

iv. Remove the period and add in its place "; and" in paragraph (a)(5).

v. Revise paragraph (a)(6).

B. In paragraph (b):

i. Revise the introductory text.

ii. Revise paragraphs (b)(1) through (b)(5).

iii. Add a new heading in paragraph (b)(6).

iv. Revise paragraph (b)(7).

v. Remove paragraph (b)(8).

C. Add paragraphs (d) and (e).

The revisions and additions read as follows.

§ 872.11 Abandoned Mine Reclamation Fund.

(a) Fund revenues. Revenues to the Fund include—

(1) Fees collected under section 402 of the Act and part 870 of this chapter;

* * * * *

(6) Interest and any other income earned from investment of the Fund.

(b) *Allocation of Fund revenues.* Except as provided in paragraphs (d) and (e) of this section, monies deposited in the Fund will be allocated and used as follows, subject to appropriation by Congress—

(1) *State share.* An amount equal to 50 percent of the reclamation fees collected under § 870.13(a) of this chapter during each fiscal year will be allocated at the end of that year to the State in which they were collected.

(i) Reclamation fees collected from Indian lands will not be included in the calculation of amounts to be allocated to a State.

(ii) No monies will be allocated to any State that advises OSM in writing that it does not intend to submit a State abandoned mine reclamation plan under section 405 of the Act.

(iii) Amounts granted to a State that have not been expended within three years from the date of grant award will be available for use under paragraph (b)(5) of this section if the Director finds in writing that the amounts involved are not necessary to carry out reclamation activities on lands within the State.

(2) *Tribal share.* An amount equal to 50 percent of the reclamation fees collected from Indian lands under § 870.13(a) of this chapter during each fiscal year will be allocated at the end of that year to the Indian tribe or tribes having an interest in the lands from which the fees were collected.

(i) No monies will be allocated to any Indian tribe that advises OSM in writing that it does not intend to submit a tribal abandoned mine reclamation plan under section 405 of the Act.

(ii) Amounts granted to an Indian tribe that have not been expended within three years from the date of grant award will be available for use under paragraph (b)(5) of this section if the Director finds in writing that the amounts involved are not necessary to carry out reclamation activities on Indian lands subject to the tribe's jurisdiction.

(3) *Rural Abandoned Mine Program.* An amount equal to 20 percent of the monies collected and deposited in the Fund each fiscal year (including interest but excluding monies allocated under paragraphs (b)(1) and (2) of this section) will be allocated for transfer to the Secretary of Agriculture for the Rural Abandoned Mine Program authorized by section 406 of the Act.

(4) *Grants based on historical coal production.* An amount equal to 40 percent of the monies collected and deposited in the Fund each fiscal year (including interest but excluding monies allocated under paragraphs (b)(1) and (2) of this section) will be allocated for use by the Secretary to supplement annual grants to States and Indian tribes under section 405 of the Act.

(i) States and Indian tribes eligible for supplemental grants are those that have not—

(A) Certified the completion of all eligible coal-related reclamation needs under section 411(a) of the Act; and

(B) Completed the reclamation of all sites meeting the priorities in paragraphs (a)(1) and (2) of section 403 of the Act.

(ii) In allocating these funds to eligible States and Indian tribes, the Secretary will use a formula based upon the amount of coal historically produced before August 3, 1977, in the State or from the Indian lands concerned.

(iii) The Secretary will not provide funds under this paragraph to a State or Indian tribe in any year in which funds to be granted during that year from the State's allocation under paragraph (b)(1) of this section or the tribe's allocation under paragraph (b)(2) of this section will be sufficient to address all remaining eligible coal-related sites in the State or on the tribe's Indian lands that meet the priorities in paragraphs (a)(1) and (2) of section 403 of the Act.

(iv) Funds awarded to a State or Indian tribe under this paragraph may not exceed the amount needed to fully address all remaining eligible coal-related sites in the State or on the tribe's Indian lands that meet the priorities in paragraphs (a)(1) and (2) of section 403 of the Act after utilizing all available funds under paragraph (b)(1) or (2) of this section.

(5) *Secretary's discretionary share.* Monies collected and deposited in the Fund that are not allocated under paragraphs (b)(1) through (4) of this section may be used for any of the following purposes—

(i) Up to $10 million per year for the small operator assistance program under section 507(c) of the Act;

(ii) Emergency projects under section 410 of the Act, including grants to States and Indian tribes for this purpose;

(iii) Non-emergency abandoned mine land reclamation projects on eligible lands in States without an approved abandoned mine reclamation plan under section 405 of the Act or on eligible Indian lands where the Indian tribe does not have an approved abandoned mine reclamation plan under section 405 of the Act;

(iv) Administration of title IV of the Act and this subchapter; and

(v) Projects authorized under section 402(g)(4) of the Act in States without an approved abandoned mine reclamation plan under section 405 of the Act or on Indian lands where the Indian tribe does not have an approved abandoned mine reclamation plan under section 405 of the Act.

(6) *Minimum program grants.* * * *

(7) *Special allocation provisions.* Funds allocated or expended by the Secretary under paragraphs (b)(3) and (5) of this section will not be deducted from funds allocated or granted to a State or Indian tribe under paragraphs (b)(1), (2), (4), and (6) of this section.

* * * * *

(d) *Disposition of fees collected for coal produced after September 30, 2004.* Fees collected under § 870.13(b) of this

chapter for a fiscal year will be allocated to the accounts from which the amount transferred under paragraph (e) of this section was taken at the beginning of that fiscal year. The amount allocated to each account will be proportionate to the amount transferred from that account.

(e) *Transfers to Combined Benefit Fund.* (1) At the beginning of each fiscal year for which fees must be paid under section 402 of the Act and § 870.13 of this chapter, the Secretary will transfer monies from the Fund to the United Mine Workers of America Combined Benefit Fund established under section 9702 of the Internal Revenue Code of 1986 (26 U.S.C. 9702) for the purpose described in section 402(h)(3)(A) of the Act and in the amount prescribed in paragraphs (h)(2) through (4) of section 402 of the Act.

(2) The amount of estimated Fund interest earnings transferred to the Combined Benefit Fund under paragraph (e)(1) of this section in any one fiscal year may not exceed the lesser of $70 million or the amount of the expenditures described in section 402(h)(3)(A) of the Act.

(3) If actual Combined Benefit Fund expenditures differ from the estimates provided under section 402(h)(3)(A) of the Act, or if interest earnings differ from the projections used to determine the amount of the transfer under section 402(h)(2)(A) of the Act, the amount transferred from the Fund to the Combined Benefit Fund in future years will be adjusted accordingly. However, the total amount ultimately transferred for any one fiscal year may not exceed $70 million, although adjustments for transfers in prior fiscal years may result in the transfer of more than $70 million during any given year.

(4) The amount transferred under paragraph (e)(1) of this section will be deducted from the amount of Fund revenues subject to allocation under paragraphs (b)(3) through (5) of this section at the end of the fiscal year.

[FR Doc. 04–20998 Filed 9–16–04; 8:45 am]
BILLING CODE 4310–05–P

Federal Register

Friday,
September 17, 2004

Part IV

The President

Federal Register
Vol. 69, No. 180
Friday, September 17, 2004

Presidential Documents

Title 3—

The President

Proclamation 7813 of September 14, 2004

National Prostate Cancer Awareness Month, 2004

By the President of the United States of America

A Proclamation

We have made dramatic progress in the battle against prostate cancer. However, prostate cancer is still the most commonly diagnosed form of cancer and the second-leading cause of cancer-related death among American men. During National Prostate Cancer Awareness Month, we again demonstrate our Nation's commitment to the prevention, research, and treatment of this disease.

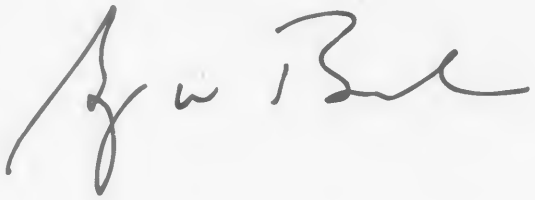
Studies have shown that men with certain risk factors are more likely to develop prostate cancer. Age is the most significant factor—most men with prostate cancer are older than 65. Family history, a diet high in animal fats or meat, and certain other factors may also increase the likelihood of developing this disease. As we work to better understand the factors contributing to prostate cancer, I urge all men to talk to their doctors about the best course of action to reduce their own risk.

Although we cannot yet prevent prostate cancer, we know that early detection and treatment often make the difference between life and death. Screenings available include blood tests and physical examinations that can help detect the cancer at earlier, less dangerous stages. Researchers and scientists are also working to find more effective treatments that will give patients and their families greater hope. My Administration is committed to funding vital research and finding a cure for prostate cancer. Currently, the National Cancer Institute is sponsoring the largest prostate cancer prevention clinical trial ever conducted. The National Institutes of Health invested $379 million in prostate cancer research in 2003, and plans to spend almost $400 million this year and an estimated $417 million in 2005. In addition, the Centers for Disease Control and Prevention, the Department of Defense, and the Department of Veterans Affairs are playing essential roles in efforts to translate research into effective treatments.

To help save lives and raise awareness of prostate cancer, I urge all Americans to talk with family and friends about the importance of screening and early detection. By educating ourselves and others about this disease, we can improve our ability to prevent, detect, treat, and ultimately cure prostate cancer.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim September 2004 as National Prostate Cancer Awareness Month. I call upon government officials, businesses, communities, health care professionals, educators, volunteers, and all people of the United States to reaffirm our Nation's strong and continuing commitment to control and cure prostate cancer.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of September, in the year of our Lord two thousand four, and of the Independence of the United States of America the two hundred and twenty-ninth.



[FR Doc. 04–21122
Filed 9–16–04; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7814 of September 14, 2004

National Historically Black Colleges and Universities Week, 2004

By the President of the United States of America

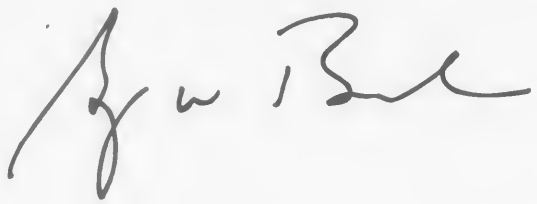
A Proclamation

This year, as we celebrate the 50th anniversary of *Brown v. Board of Education* and the 40th anniversary of the Civil Rights Act of 1964, we recognize our Historically Black Colleges and Universities (HBCUs) for their extraordinary accomplishments in education and for extending the promise of our Nation's founding to all of our citizens. Historically Black Colleges and Universities were created to educate African Americans when they were wrongly denied the opportunity to attend school during the 19th century. Today, these great institutions continue to advance equal opportunity and excellence in education. In 2002, HBCUs enrolled 14 percent of all African Americans attending college. Their graduates are leaders in medicine, education, government, the military, business, the arts, the law, and many other fields. They include such heroes as Thurgood Marshall, who led the struggle for equal justice under law for African Americans and successfully represented African-American schoolchildren in *Brown*.

Half a century after the Supreme Court's historic decision in *Brown*, America is still working to reach the high calling of its ideals. Education remains the path to equality and opportunity, and HBCUs are a vital part of our national commitment to improving education for all of our citizens. Funding for HBCUs is now at an all-time high. By providing students with a quality education, HBCUs are continuing to help America remain a place of opportunity and hope for every citizen.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim September 12 through September 18, 2004, as National Historically Black Colleges and Universities Week. I call upon public officials, educators, librarians, and all the people of the United States to observe this week with appropriate ceremonies, activities, and programs to show our respect and appreciation for these remarkable institutions and their graduates.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of September, in the year of our Lord two thousand four, and of the Independence of the United States of America the two hundred and twenty-ninth.



[FR Doc. 04–21123
Filed 9–16–04; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7814 of September 14, 2004

National POW/MIA Recognition Day, 2004

By the President of the United States of America

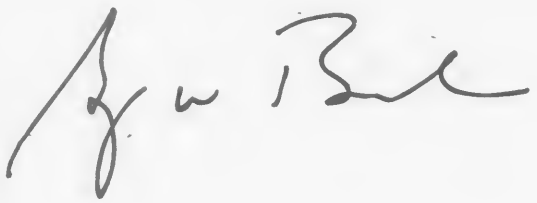
A Proclamation

Throughout our history, when the enemies of freedom were on the march and our country needed brave Americans to take up arms and stop their advance, the members of our Armed Forces answered the call of duty. These patriotic men and women defended our country in hours of need and continue to stand watch for freedom. Many of these courageous individuals risked capture, imprisonment, and their lives to protect our homeland. On National POW/MIA Recognition Day, we honor the sacrifices and remarkable determination of those captured as prisoners of war. We also remember those who remain unaccounted for and ask for God's special blessing on their families. Our Nation will not forget these heroes, and we will not stop searching for our service members who are missing in action.

On National POW/MIA Recognition Day, the flag of the National League of Families of American Prisoners and Missing in Southeast Asia is flown over the White House, the Capitol, the Departments of State, Defense, and Veterans Affairs, the Selective Service System Headquarters, the National Vietnam Veterans and Korean War Veterans Memorials, U.S. military installations, national cemeteries, and other locations across our country. This flag serves as a reminder of our continued commitment to those still missing and those imprisoned while serving in World War II, Korea, Vietnam, the Persian Gulf, Somalia, Kosovo, Iraq, and other conflicts. We remain grateful for their service and sacrifice and pledge to continue to achieve the fullest possible accounting for all of our men and women in uniform still missing.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim September 14, 2004, as National POW/MIA Recognition Day. I call upon the people of the United States to join me in saluting all American POWs and those missing in action who valiantly served our great country. I call upon Federal, State, and local government officials and private organizations to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of September, in the year of our Lord two thousand four, and of the Independence of the United States of America the two hundred and twenty-ninth.



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Federal Register

Vol. 69, No. 180

Friday, September 17, 2004

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FEDERAL REGISTER PAGES AND DATE, SEPTEMBER

CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT SEPTEMBER 17, 2004

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Kiwifruit grown in—
California; published 9-16-04
COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Atka mackerel; published 8-18-04
DEFENSE DEPARTMENT
Acquisition regulations:
Aviation critical safety items and related services; quality control; published 9-17-04
Berry Amendment changes; published 9-17-04
Contract requirements; consolidation; published 9-17-04
Corrosion prevention and mitigation; acquisition plans; published 9-17-04
Indian Incentive Program; published 9-17-04
Personal services contracts; published 9-17-04
Terrorist country; definition; published 9-17-04
ENVIRONMENTAL PROTECTION AGENCY
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
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Thifensulfuron methyl; published 9-17-04
FEDERAL COMMUNICATIONS COMMISSION
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Federal-State Joint Board on Universal Service—
Schools and libraries; universal service support mechanism; published 9-17-04
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Maritime security:
Dangerous cargo definitions and notification of arrival electronic submission options; published 8-18-04
INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Abandoned mine land reclamation:
Coal production fees; published 9-17-04
TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Hoffmann Propeller GmbH & Co KG; published 9-2-04

RULES GOING INTO EFFECT SEPTEMBER 18, 2004

HOMELAND SECURITY DEPARTMENT
Coast Guard
Regattas and marine parades:
Catholic Charities Dragon Boat Races; published 9-17-04

RULES GOING INTO EFFECT SEPTEMBER 19, 2004

HOMELAND SECURITY DEPARTMENT
Coast Guard
Regattas and marine parades:
Chesapeake Bay Workboat Races; published 9-17-04

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Cotton classing, testing and standards:
Classification services to growers; 2004 user fees; Open for comments until further notice; published 5-28-04 [FR 04-12138]
AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Exportation and importation of animals and animal products:
Tuberculosis in cattle; import requirements; comments due by 9-20-04; published 7-20-04 [FR 04-16282]
AGRICULTURE DEPARTMENT
Commodity Credit Corporation
Loan and purchase programs:
Conservation Security Program; comments due by 9-20-04; published 6-21-04 [FR 04-13745]
AGRICULTURE DEPARTMENT
Natural Resources Conservation Service
Loan and purchase programs:
Conservation Security Program; comments due by 9-20-04; published 6-21-04 [FR 04-13745]
COMMERCE DEPARTMENT
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Steel Import Monitoring and Analysis system; comments due by 9-24-04; published 8-25-04 [FR 04-19490]
COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
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H.R. 5005/P.L. 108–303
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Last List August 18, 2004

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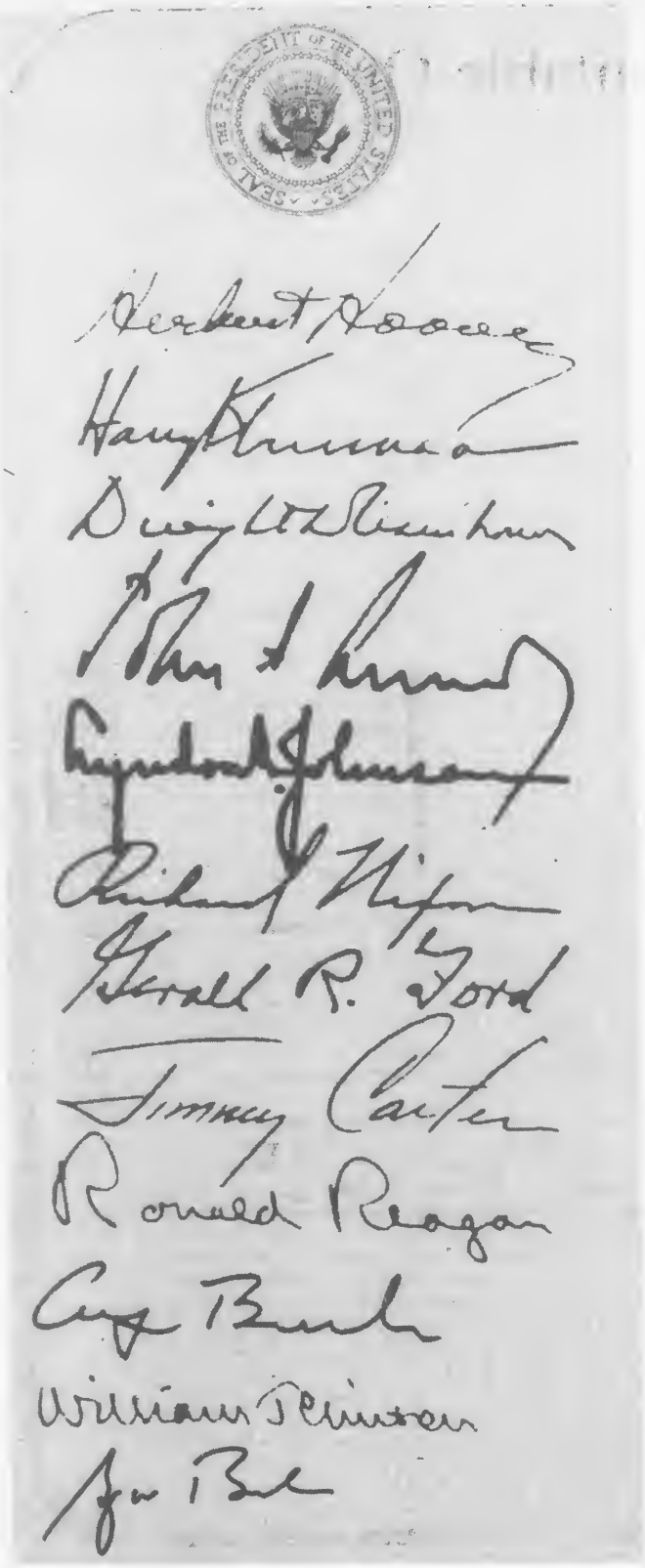

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